

TLAP and Recent Developments for Judges

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SPEAKER

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TLAP Advisory Commissioner



PART ONE

Judicial Burnout Test WHAT YOU NEED TO KNOW

EARLY WARNING SIGNS OF JUDICIAL BURNOUT TEST

ISAIAH M. ZIMMERMAN, PhD

Please Tally Your Score as We Go!



EARLY WARNING SIGNS OF JUDICIAL BURNOUT

ISAIAH M. ZIMMERMAN, PhD

- I feel tired after hearing three or four cases in a row
- I often daydream of earning a good living in some other way
- I am easily irritated, and generally feel impatient
- Despite my efforts, I find that my attention wanders a lot
- I delay picking up a ringing telephone, or checking messages

BURNOUT WARNING SIGNS

Continued

- I feel isolated from the mainstream of current legal thought and administrative innovation in the judiciary
- I delay returning troublesome calls; I search out pleasant calls among messages and return them right away
- I care little about the outcome of most trials
- I believe that the concerns of most litigants are banal and exaggerated
- I allow myself to tolerate boredom, without trying to initiate some relevant and stimulating dialogue

BURNOUT WARNING SIGNS

Continued

- I let others ramble on excessively while I rationalize that they ought to be allowed to get to the point in their own way
- I cannot wait for the day's work to end; I terminate proceedings a little early
- I realize I am too heavily burdened with committee and other commitments
- I cringe at the prospect of night or weekend calls
- I am reluctant to be socially identified as a judge

BURNOUT WARNING SIGNS

Continued

- I neglect record-keeping
- I feel impotent when colleagues are procrastinators
- I have let office correspondence and memos lay about; some are never even answered, but not deliberately
- I sometimes think I behave inappropriately without much concern about being challenged or censured
- I am impatient at meetings; instead of attempting to facilitate or enliven discussion, I tend to be either too directive or too withdrawn

BURNOUT WARNING SIGNS

Continued

- I have largely given up explaining or speaking up about the nature of my work
- I feel cynical about the motives of my colleagues
- I increasingly feel supremely confident about my own motives and reasoning.
- I never ask a respected colleague to critique my work
- My social isolation has increased to the point where I cannot recall who among my old friends is still alive

BURNOUT WARNING SIGNS

Continued

- I have an answer or approach for most questions
- I find that 15 minutes are usually more than enough for a 30 minute hearing
- I seem to glance at my watch a lot
- I feel that basically people do not change and that the human condition is rather hopeless
- I have no desire to write anything about my work as a judge

BURNOUT WARNING SIGNS

Continued

- My day-dreams are increasingly concerned with money/security, sex and peace
- After verbally making an appointment or promise, I often forget to write it down
- Shortly after my work day begins, I think about lunch, or about the little chores I will squeeze in
- I often feel physically exhausted or "wiped out"
- I have diminished interest or curiosity about the fate of my former colleagues

BURNOUT WARNING SIGNS

Continued

- Holiday greetings, Christmas cards, etc., have become a nuisance
- It's not funny any more; at work, I seldom seem to laugh when others do
- Every case in a particular category starts to sound the same; I've heard it all before
- I seldom have time to see my friends
- My reaction to pleas of urgency is increasingly numb

BURNOUT WARNING SIGNS

Continued

- I feel little empathy for others
- I keep people waiting while I finish reading a magazine
- While others are talking, I stare at and admire 111)' collection of framed degrees and awards
- My notes are perfunctory; I largely rely upon my memory and my clerk's memoranda
- I have difficulty recalling details in cases. I wait for others to start the discussion and fill me in

BURNOUT WARNING SIGNS

Continued

- When meeting lawyers and court staff outside of the court, I often fail to recognize them
- I have stopped fighting administrative battles and I let them do it their way; it's not worth the struggle
- I feel that my present appointment holds my last chance to advance professionally or socially
- I find that only cases involving the wealthy, the powerful, or the big corporations command my full attention

BURNOUT WARNING SIGNS

What's Your Score?

SUGGESTED SELF-SCORING GUIDE

26 or less: coping satisfactorily

26 to 34: in the danger zone for developing burnout

35 to 50: probably suffering from burnout

BURNOUT ACTION TRACKS

per Dr. Zimmerman

FOUR PREVENTATIVE ACTION TRACKS:

Professional

Personal

Physical

Administrative

BURNOUT ACTION TRACKS

per Dr. Zimmerman

Professional Track: (FOR TWO WEEKS, CHOOSE ONE)

- Discuss your thoughts and feelings about your work with your closest friend and spouse.
- Resign from one committee or board.
- Read one book in a totally unfamiliar field or topic.
- Ask a respected law professor or colleague to critique a sample of your recent writing.
- Tell several close colleagues that you are going through a period of important personal reassessment. Do not be apologetic, defensive or humorous about it.

BURNOUT ACTION TRACKS

per Dr. Zimmerman

Personal Track: (FOR TWO WEEKS, CHOOSE ONE)

- Meditate, pray or simply relax, with eyes shut, for a brief period twice each day.
- At home, finish one house-repair or gardening project.
- By telephone, "visit" and chat with three friends you have not seen for a long time.
- Ask your spouse to be the initiating and active partner in sex and affection for two weeks.
- Go through your family photo albums. Think about the course of your life, and discuss it with your family.

BURNOUT ACTION TRACKS

per Dr. Zimmerman

Physical Track: (FOR TWO WEEKS, CHOOSE ONE)

- Do an alternating tensing and relaxing exercise for three minutes, twice each day.
- After medical consultation, start light jogging, walking, or swimming daily.
- Arrange not to be disturbed and take a short nap daily in the office or as soon as you come home.
- Cut out all sugar and salt in your diet. Limit coffee, tea and liquor to two drinks a day.

BURNOUT ACTION TRACKS

per Dr. Zimmerman

Administrative Track: (FOR TWO WEEKS, CHOOSE ONE)

- Exchange your briefcase for a larger in-basket, and take no work home.
- Take an hour off each week to visit around your courthouse and get acquainted with the people who work there. Show an active interest in their job and its problems.
- At the end of each day, take fifteen minutes to talk the day over with your whole staff, and go over plans for the next day.
- Find funds and time for a course or workshop not directly related to your work a "mini-sabbatical."
- Invite your administrative staff to two "brainstorming" sessions (one week apart) where no ideas will be criticized during the sessions.



PART TWO

TLAP UPDATES

Compassion Fatigue

- **Different than Burnout (it's about type of info seen)**
- **Cumulative effect of viewing disturbing evidence**
- **Highest risk in Domestic and Criminal Cases**
- **Symptoms:**
 - ✓ **Indecisiveness**
 - ✓ **Anxiousness**
 - ✓ **Procrastination**
 - ✓ **Alienation from others**

The Two Big Uglies

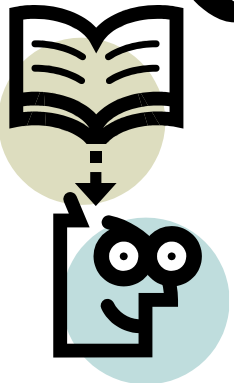


WORKLOAD HOURS



**TRUAMA
EXPOSURE**

Protect Yourself from Being “Slimed”



What IS TLAP?

- **Court Program created in 1999 via Rule 33**
- **E.D. is Lawyer in Recovery & Interventionist**
- **Masters-Level Professional Clinical Staff**
- **Comprehensive Program with Peer-Monitoring**
- **Highly specialized clinical standards that protect the public**

TLAP: Three Missions

PROTECTING THE PUBLIC: BPR and BLE referral cases to objectively establish fitness to practice.

TOTALLY CONFIDENTIAL HELP: life-saving help to an impaired lawyer, judge, or law student.

EDUCATING PROFESSION: mental health risks and solutions.



TLAP IS NOW COMPREHENSIVE

**TLAP PROVIDES ASSISTANCE
WITH
ALL MENTAL HEALTH ISSUES**

TLAP'S TRAFFIC

In FY 2021-2022:

- **fifty-three percent (53%)** pertained to mental health issues that *did not involve alcohol or drug issues*, such as depression and anxiety.
- **thirty-three percent (33%)** of intake calls pertained to Substance Use Disorders
- **fourteen percent (14%)** of intake calls presented with issues such as marital conflict, financial distress, performance productivity, cognitive impairment, stress, eating disorder, domestic abuse, and compulsive behaviors. These statistics reflect TLAP's success as a full spectrum service provider.

TLAP Confidentiality

T.C.A. 23-4-105

The records, proceedings and all communications of any lawyers' assistance program **shall be deemed confidential and shall not be available for court subpoena** (except business records).

TLAP Immunity

T.C.A 23-4-101

A person who works **with TLAP is immune from civil liability** for reporting, taking action, or taking no action in good faith and without malice (good faith is presumed).

TLAP'S SERVICES

TLAP's Professional Clinical Staff Provides:

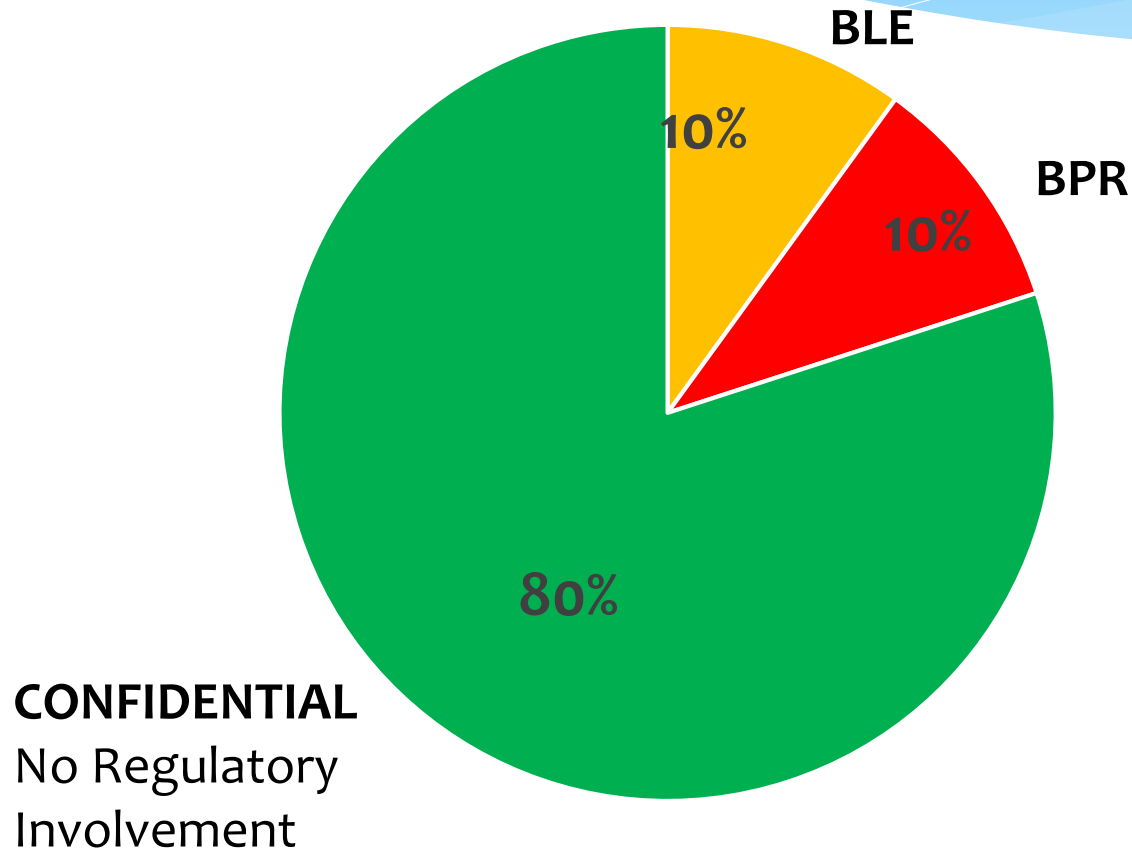
- Direct Crisis Counseling
- Clinical Consultations
- Professional Interventions
- **TLAP-approved Assessments, Diagnostics, and Treatment**
- **Comprehensive TLAP Recovery Monitoring (ALL ISSUES)**

TLAP's Sources of Referrals

- **SELF:** Lawyer, Judge, Law Student seeking self-help
- **FAMILY:** concerns about their lawyer, judge, or student
- **LAW FIRM:** concerns about an associate or partner
- **JUDGES:** concerns about a lawyer or fellow judge (and **BJC**)
- **BLE:** Rule 7; referrals of Bar Applicants with “Conduct”
- **BPR:** Rule 9; Section 36.1(A) 1-7 or Section 27

TLAP: Primarily Confidential Cases

Referral Sources



TLAP “COMPLIANCE” BPR/BLE CASES GENERATES:

Fitness to Practice: by “Clear and Convincing Evidence”

Per Court Rules: Impairment has been “Removed”

Long-term Recovery: continues after TLAP Monitoring

Relapse-Free Success Rates

Alcoholics Anonymous:	7%
Outpatient:	20 to 40%
30 Day Inpatient:	50%
TLAP-approved Treatment/Monitoring:	85% - 95%



**Is there a Duty to address mental
impairment in the profession?**

ABA Standing Committee on Ethics

(Formal Opinion 03-431 on Reporting and Impairment)

- “Because lawyers are not mental health care professionals, they cannot be expected to discern when another lawyer suffers from mental impairment . . .”
- “Nonetheless, **a lawyer may not shut his eyes to conduct reflecting generally recognized symptoms of impairment.**”

ABA Standing Committee on Ethics

(Formal Opinion 03-431 on Reporting and Impairment)

ABA Standing Committee: a **PATTERN** of conduct comprised of Rule 1.1 (Competence) and 1.3 (Diligence) shortcomings may be a “Red Flag” that the lawyer is not meeting his or her obligations:

- Missing deadlines;
- Failing to timely file pleadings or complete transactions;
- Failure to complete agreed upon tasks; and,
- Failing to raise issues and advance client’s interests as would be expected by competent counsel.

ABA Standing Committee on Ethics

(Formal Opinion 03-431 on Reporting and Impairment)

ABA Standing Committee: a **SINGLE ACT** “Red Flag” of Rule 1.1 (Competence) and 1.3 (Diligence) impairment may include:

- Visibly intoxicated or impaired in court or in a deposition, etc.
- ABA Ethics Committee: “An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover.”
- ABA suggests consulting mental health experts or your local State LAP . . . **CALL TLAP FOR REFERRAL TO AN EXPERT!**

ABA Standing Committee on Ethics

(Formal Opinion 03-431 on Reporting and Impairment)

The ABA: “Knowing that another lawyer is drinking heavily or is evidencing impairment in social settings is not itself enough to trigger a duty to report under Rule 8.3”

TLAP view: *“Where there is a lot of smoke there’s usually fire.”*

- A lawyer who is routinely, heavily impaired by alcohol in social settings is likely at risk and will likely exhibit patterns of conduct that include difficulty in meeting obligations and deadlines.
- Even a moderate pattern of decline in diligence may be the “Tip of the Iceberg” of a High Functioning Alcoholic’s illness.



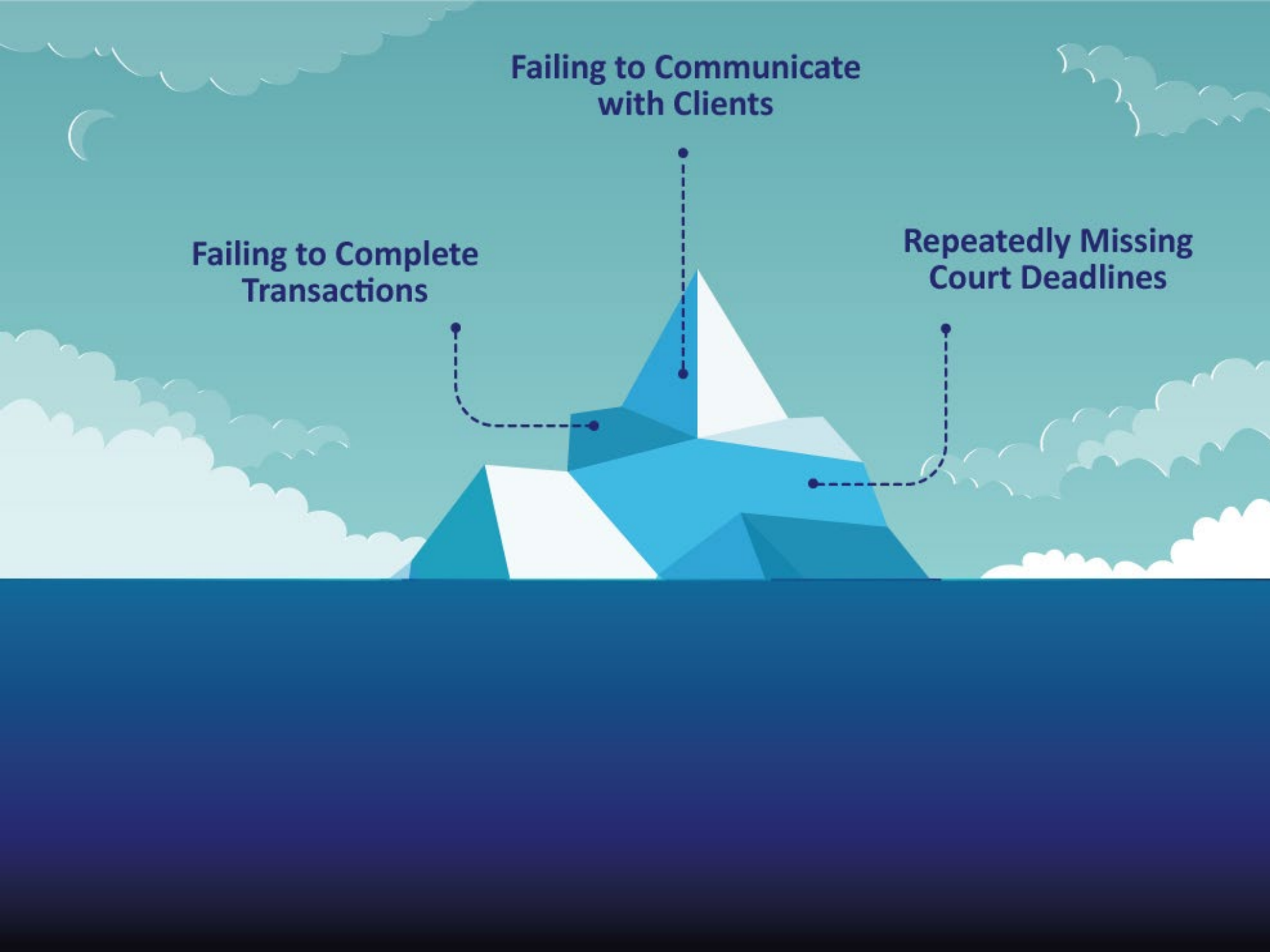
**In Impairment Cases The Profession
Often Sees Only The**

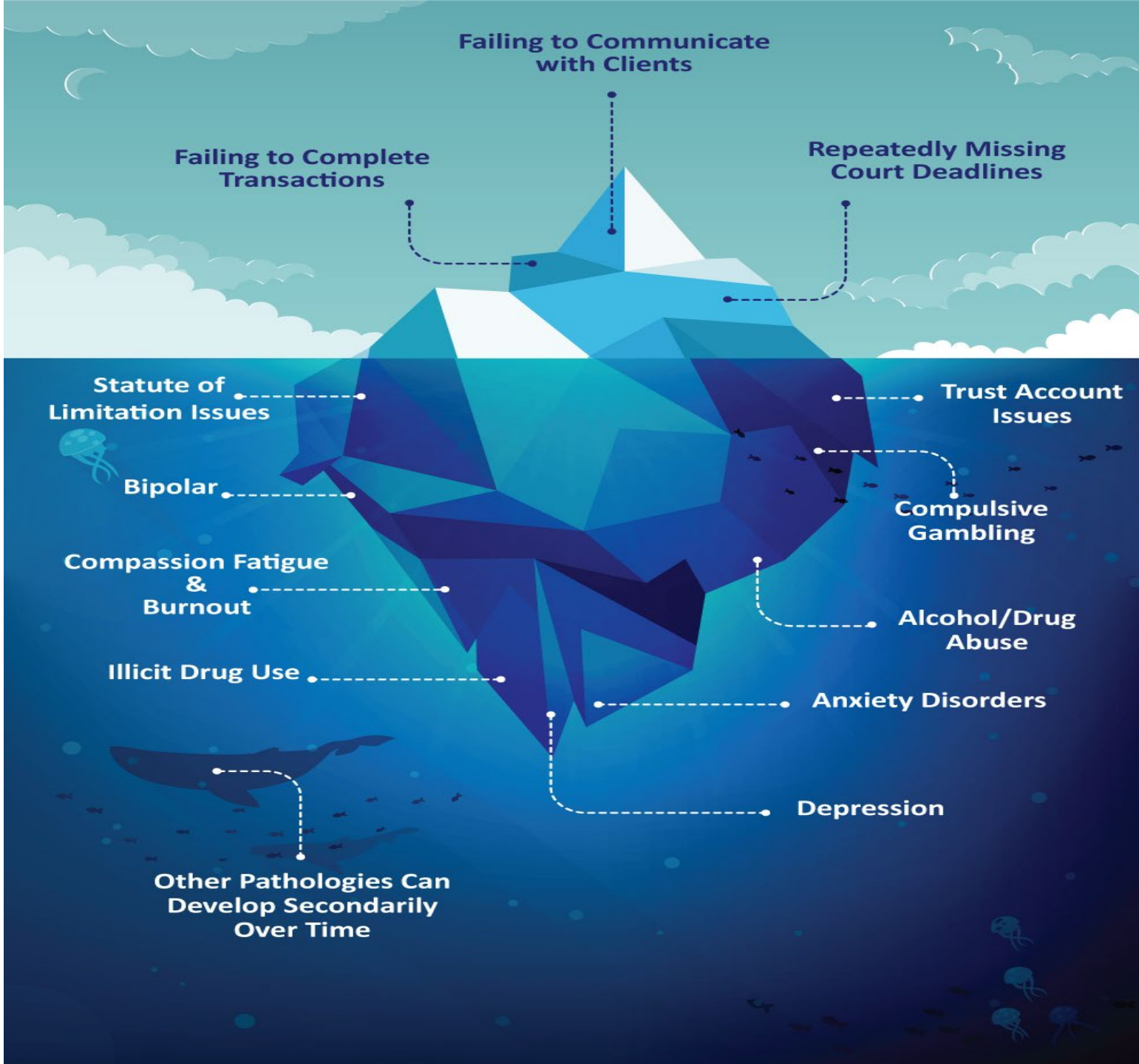
“Tip of the Iceberg”

Failing to Communicate with Clients

Failing to Complete Transactions

Repeatedly Missing Court Deadlines





Failing to Communicate with Clients

Failing to Complete Transactions

Repeatedly Missing Court Deadlines

Statute of Limitation Issues

Trust Account Issues

Bipolar

Compulsive Gambling

Compassion Fatigue & Burnout

Alcohol/Drug Abuse

Illicit Drug Use

Anxiety Disorders

Other Pathologies Can Develop Secondarily Over Time

Depression

ADD DEMENTIA TO THE LIST!

- “Baby Boomers” and the “Senior Tsunami”
- TLAP Interventions adapted from Addiction Interventions
- Seeing more and more Dementia cases at TLAP
- Appropriate Cognitive testing and support
- Practice Settings make a difference

Tennessee Rule 5.1(c)(2)

Law Partners; Supervising Lawyers

- A partner in a law firm, or together with other lawyers possesses comparable managerial authority in a law firm . . .
- A lawyer having direct supervisory authority over another . . .

(c)(2) shall be responsible for another lawyer's violation if the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and **knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

- “Avoided or mitigated” suggests **duty to act before a violation.**

Law Partners; Supervising Lawyers (cont'd)

- All calls from any source to TLAP are confidential.
- Confidential assistance is available to both the firm and lawyer.
- TLAP referral and compliance satisfies Firm's duty per the Rules.
- Law Firm and impaired lawyer are supported/protected.
- TLAP compliance generates reliable "fitness to practice".
- All parties benefit; public is protected.
- Disciplinary involvement is averted, if successful in TLAP.

Judges and Impairment

Rule 10 Section 2.14

“A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.”

Rule 10 Section 2.14; Comment [1]

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

Rule 10 Section 2.14; Comment [2]

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals.

Depending upon the gravity of the conduct that has come to the judge's attention, however, the **judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body.** See RJC 2.15.

The Ticking Time Bomb

- Subtle declines in competency and diligence seen on the surface can signal a serious progression of an underlying impairment such as alcoholism, addiction or depression.
- The profession abides the “tolerable inconvenience” that is caused by low levels of incompetency and lack of diligence that do not meet the “substantial question” trigger of Rule 8.3.
- Often, by the time impairment driven behavior triggers Rule 8.3 reporting, the public and the profession are already damaged.
- **Missing or co-mingled trust funds; client matters irreparably harmed; malpractice claims; and, disciplinary charges.**

“WE KNEW SOMETHING WAS WRONG”

- Lawyers and judges calling TLAP “early on” *in their eyes* for confidential help for a colleague are often stunned by the underlying behavior and damage that has already occurred.
- In solo practitioner cases, peers who initially planned to confidentially rally behind and cover cases for the impaired solo lawyer under Rule 8.3(c) can uncover a hornet’s nest of severe ethical violations in some cases.
- The damage is sometimes so profound that the helpful peers see no way to continue to help under 8.3(c) and call Discipline.

“We Should Have Called TLAP Sooner”

In the wake of mental health impairment cases, coming confidentially through TLAP or via disciplinary referral to TLAP, judges and peers routinely declare:

“We honestly did not realize things were that bad.”

INTERVENTION

- You can't negotiate/reason with addiction
- Why leverage is needed
- Judges often are the pivotal factor
- Tough Love!



“It’s better to apologize than eulogize.”

The Addicted Brain (a disease, not a moral failing)

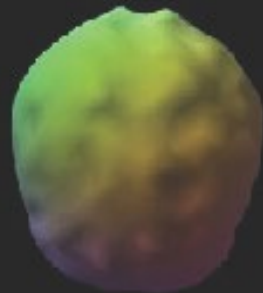
- New information via CT, PET, MRI and SPECT imaging has allowed science to better understand how the disease of addiction impacts the brain.
- Alcohol compromises the brain system responsible for problem solving, memory, arranging things in order, and doing multiple tasks simultaneously.
- It can take up to two years of abstinence for a brain to heal from severe alcohol abuse and in some cases there is **permanent damage**.

The Addicted Brain, cont'd

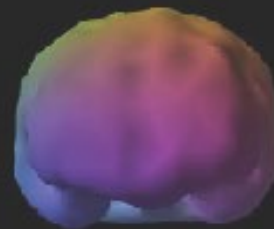
- Methamphetamines and cocaine inhibit the building of communication networks in the brain.
- Research suggests that resulting impairment lasts well into sobriety.
- If used in large amounts over prolonged periods, the damage can be irreversible.
- EARLY Intervention is the key to mitigating harm and reducing the risk of permanent brain damage.

NORMAL 3-D BRAIN SPECT IMAGES

Top-
down
surface
view



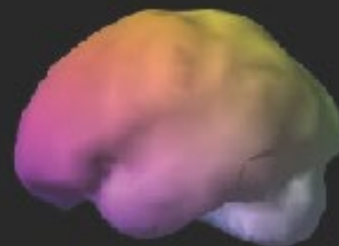
Front-on
surface
view



Underside
surface
view



Side
surface
view

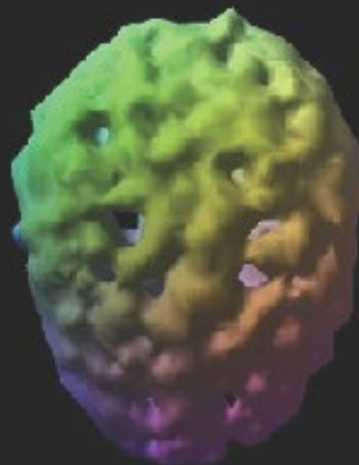


COCAINE



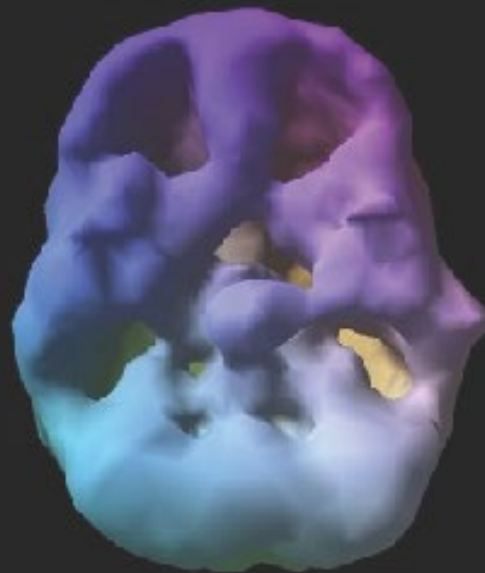
Twenty-four year old.
Using two years frequently.

METHAMPHETAMINE



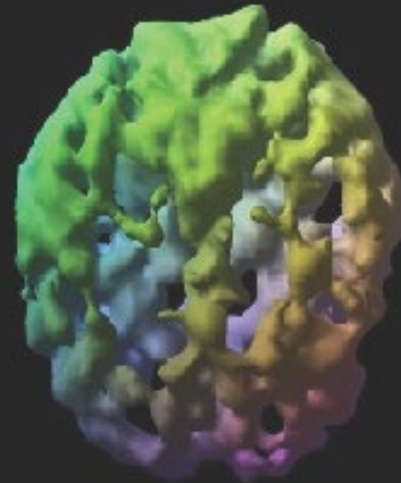
Twenty-eight year old.
Eight year heavy use.

MARIJUANA



Eighteen year old.
Using 3 years.
Four times week.

OPIATES



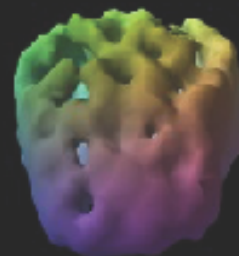
Forty year old.
Methadone 7 years.
Previously, heroin 10 years.

ALCOHOL - 17 YEARS OF HEAVY WEEKEND USE

Top-
down
surface
view



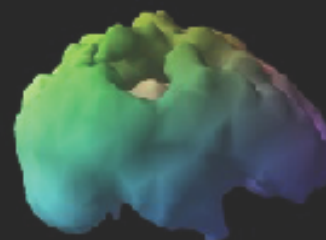
Front-on
surface
view



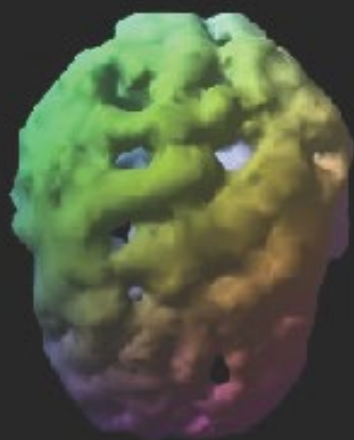
Underside
surface
view



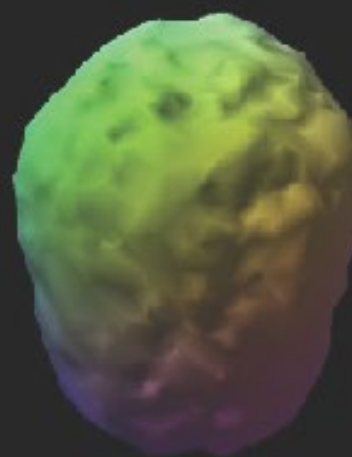
Side
surface
view



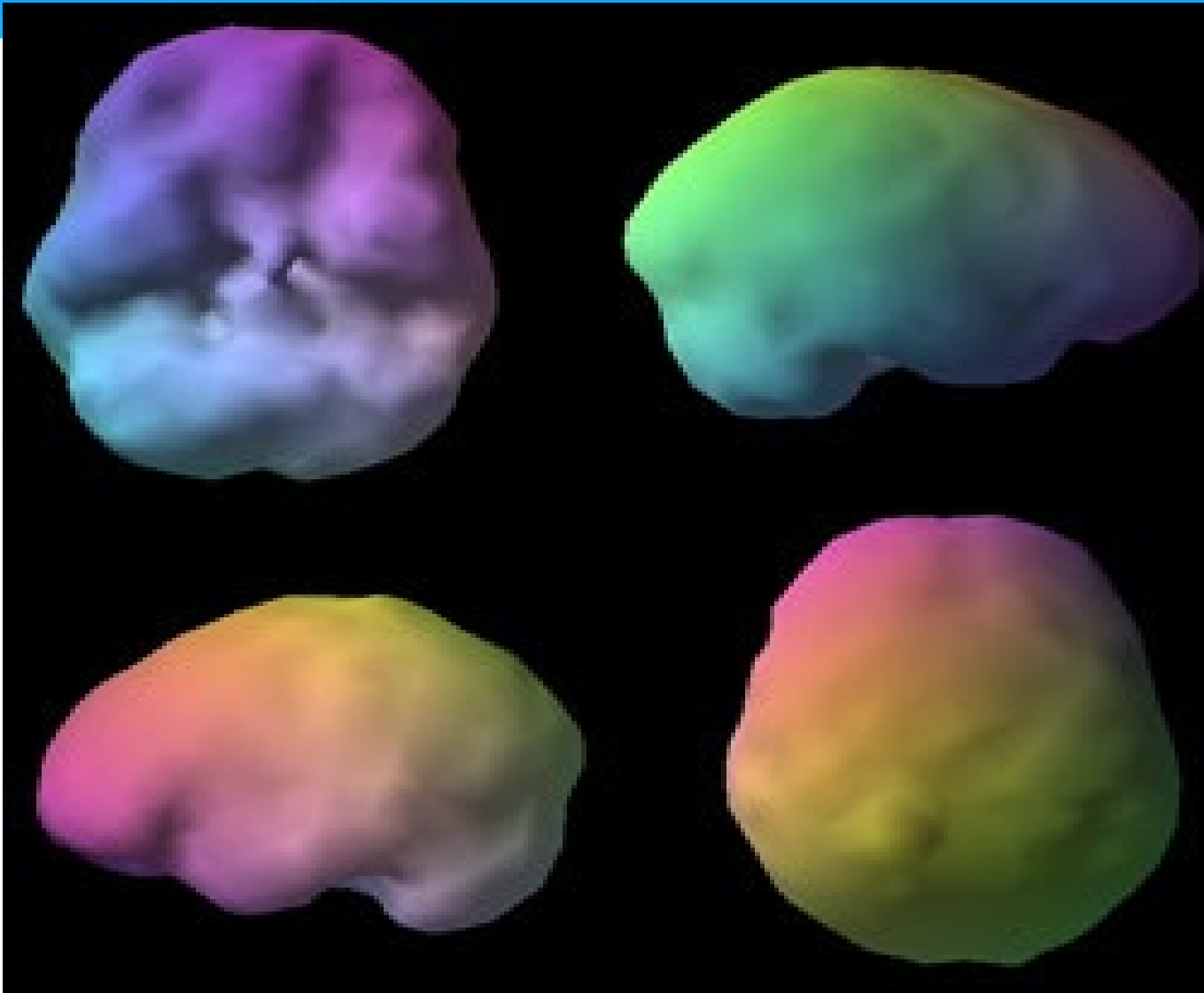
BEFORE & AFTER RECOVERY



Top down surface view
during substance abuse.



Same view after one year
alcohol and drug free.



NORMAL BRAIN

In cases of suspected mental health impairment

- Can we trust that applicable Court Rules are health-related restorative tools for reliable reporting that saves lives and careers in impairment cases?
- Can we see beyond the discomfort that these Rules may feel intrusive to some, or raise “Tattle Tale” eyebrows, and instead be confident that helping an impaired peer is an act of love and support, not condemnation and prosecution?
- Can we believe the Rules as to TLAP do something wonderful FOR a peer rather than something terrible TO a peer?

Early Action Saves Lives and Careers

Whether it be by confidential referral to TLAP or via reporting impairment-related conduct to discipline and a formal referral to TLAP, early intervention is key.

REMEMBER: per the ABA Standing Committee on Ethics:
“lawyers may not shut their eyes to conduct reflecting generally recognized symptoms of impairment.”

Our self-regulated profession cannot be an “enabler” or turn a “blind eye” toward alcoholism, addiction, or other mental health issues in our peers because to do so harms the person, the person’s family, our profession, and can ultimately place clients and the public at risk.



***If you **THINK** a colleague is at
risk . . .***

Don't wait . . .

CALL TLAP!

NEW TLAP Foundation

- **501(c)(3) Non-Profit**
- **Independent from TLAP**
- **Supports TLAP Participants**
- **Provides Loans/Grants**
- **Funds for Treatment and Monitoring**
- **Lawyers, Judges, and Law Students**
- **A Path Back After “All is Lost”**

THE GOAL OF TLAP:



Healthy Lawyers at Their Best!



THANK YOU!

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