

**RECOGNIZING SIGNS OF IMPAIRMENT  
IN THE AGING ATTORNEY**

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**CHAPTER 1**



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Gabrielle S. Hobday, MD, MA, is a forensic psychiatrist at The Gabbard Center in Bellaire, Texas, where she does three-day outpatient professional assessments on physicians and other professionals who are sent by licensing boards, physician health programs and hospitals. She is also a Clinical Assistant Professor of Psychiatry at Baylor College of Medicine in Houston, where she teaches psychotherapy to residents. Previously, she served as Assistant Director for forensic evaluations at the Baylor Psychiatry Clinic in Houston.

In her forensic work she reviews records for medical malpractice and civil damages cases and can be called to testify on issues related to ethics, professionalism, and boundary violations. In addition, Dr. Hobday evaluates and testifies in criminal cases.

Dr. Hobday has co-authored Professionalism in Psychiatry with Dr. Glen Gabbard, and has published many papers. These include papers on self-deception and corruption in physicians in the British Journal of Psychotherapy and the management of sexualized transferences in the American Journal of Psychiatry. She has taught in international settings, including Poland, Italy, and Canada. She also conducts workshops for physicians on professionalism and boundaries in the doctor-patient relationship.

Dr. Hobday received her medical education at University of North Carolina, where she graduated AOA. Her psychiatry residency was completed at Baylor College of Medicine in Houston, and her forensic psychiatry fellowship was completed at Emory University Medical School in Atlanta Georgia.



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**INTRODUCTION**

As attorneys move through middle age and enter the golden years, they are subject to the slings and arrows that all of us must face. Are they still competitive? Are the younger colleagues outdoing them in productivity and the rapidity of response? Can they work the same hours as they always have? Many of these concerns cross over into fears that they are “losing it”, i.e., that they are not as mentally sharp as they once were and may be getting demented. They may then work harder to compensate for their insecurities and find themselves burning out or becoming depressed. They may turn to drink as a way of self-medicating or numbing themselves. Longstanding obsessive-compulsive personality traits may become more pronounced as they age, and others may find them irritating and controlling. In this presentation we will provide a brief overview of these problems and provide some helpful warning signs of possible impairment that will help you spot the aging attorney in your work setting before he or she is too impaired to work.

As a preface to our discussion, it is essential to clarify that showing signs of psychiatric symptoms is not the same thing as impairment. The term *impairment* is used to describe an inability to practice law with reasonable skill because of mental or physical illness that adversely affect cognitive or perceptual skills or due to abuse of alcohol, controlled substances, or illegal recreational drugs. Most psychiatric conditions are treatable, and early identification of the symptoms of these conditions is thus essential. Hence our presentation will focus on how to recognize problems before they reach the threshold of impairment.

**DEPRESSION**

Depression is a common problem among older adults, but it is **not** a normal part of aging. Depression is not a natural reaction to chronic illness, loss or social transition. Depression affects more than 6.5 million of the 35 million Americans aged 65 years or older. However, only 10% receive treatment for depression. One of the reasons older adults may not get treatment is that symptoms in this stage of life often present differently. Also, many older persons think that depression is a character flaw and are worried about being made fun of or of being humiliated. They may blame themselves for their illness. Depression in the elderly is also frequently confused with the effects of multiple illnesses and the medicines used to treat them.

Depression may be mistaken for medical illness, and it may be easier for the individual themselves, or those around him/her, to try and attribute their symptoms to a medical illness over the admission of suffering from depression. Some of the medical conditions that depression can mimic are: Alzheimer’s disease, arthritis, cancer, heart disease, Parkinson’s disease, stroke, and thyroid disorders.

Sadness is often seen as a required symptom for someone to be depressed. However, many depressed seniors claim not to feel sad at all. They may complain, instead, of low motivation, a lack of energy, or physical problems. In fact, physical complaints, such as arthritis pain or worsening headaches, are often the predominant symptom of depression in the elderly. Other signs that may be seen when an older person is depressed include: memory problems, confusion, social withdrawal, loss of appetite, weight loss, vague complaints of pain, inability to sleep, irritability, delusions, and hallucinations.

Since depression and dementia share many similar symptoms, including memory problems, sluggish speech and movements, and low motivation, it can be difficult to tell the two apart. There are, however, some differences that can help you distinguish between the two. See table below.

<u>Symptoms of Depression</u>	VS	<u>Symptoms of Dementia</u>
Mental decline is relatively rapid		Mental decline happens slowly
Maintains orientation		Confused and disoriented
Difficulty concentrating		Difficulty with short-term memory
Language and motor skills are slow, but normal		Writing, speaking, and motor skills are impaired
Notices or worries about memory problems		Doesn’t notice memory problems or seem to care

Unrecognized and untreated depression may have fatal consequences. Suicide is more common in older people than in any other age group. The population over age 65 accounts for more than 25 percent of the nation's suicides. Suicide attempts or suicidal thoughts or wishes by older adults must always be taken seriously.

Late-life depression increases risk for medical illness and cognitive decline. Fortunately, the prognosis for depression is good if treatment is sought out. Eighty percent of clinically depressed can be effectively treated with a combination of treatment modalities.

**ALZHEIMER’S DISEASE**

Alzheimer’s is a type of dementia that causes problems with memory, thinking and behavior. More than 5 million people are living with this disease. 1 in 3 seniors dies of Alzheimer’s. It’s the 6<sup>th</sup> leading cause of death. The cause is unknown despite extensive research, and prevention is a controversial area. There are 10 warning signs that might mean an early case of Alzheimer’s. They are listed below with normal aging signs in the column next to the list:

<u>Alzheimer</u>	VS	<u>Normal Aging Process</u>
1. Memory loss that disrupts daily life		1. Forgetting the name of someone you rarely see
2. Challenges in planning/problem solving		2. Occasional checkbook errors
3. Difficulty completing familiar tasks		3. Needing help with taping on TV
4. Confusion about time or place		4. Momentarily forgetting what day it is
5. Trouble understanding visual/spatial cues		5. Visual changes related to cataracts
6. New problems with words and thinking		6. Occasional word finding problem
7. Misplacing something and being unable to retrace steps to find it		7. Misplacing glasses occasionally
8. Decreased or poor judgment		8. A bad decision once in awhile
9. Withdrawal from work or social groups		9. Weary feelings about socializing at times
10. Striking changes in mood and personality		10. Irritation with those who disrupt usual routine

**ALCOHOL ABUSE**

7-10% of any population anywhere will manifest some form of alcohol abuse. How do you know when you or someone you work with has a problem with alcohol? The best answer is the simplest: when it interferes with physical, social, or occupational functioning. Twin studies suggest that there is a strong genetic component to alcoholism that involves a different form of physiological response to alcohol. Also, as one ages, the inevitable disappointments in life may lead one to use a drink or two as “self-medication”. The key to prevention is to monitor one’s pattern of drinking. If one cannot go a week without drinking, that is a sign that one may be beginning to need alcohol as a way of dealing with stress. Occasional drinking to excess in social situations does not make one an alcoholic, but *regular* drinking to excess should cause concern. Denial is universal, and often a spouse or partner is the first one to express concern. Denial can be just as prevalent in co-workers who “see, but don’t see” the warning signs.

Warning signs of alcohol abuse

1. Erratic behavior
2. Unusual irritability towards co-workers
3. Irregular hours, including coming in late on Monday mornings
4. Calling in sick
5. Odor of alcohol on breath
6. Unusual sleepiness at work
7. Forgetting appointments
8. Drinking at lunch
9. Consistently drinks more than others at social functions
10. Inability to remember a conversation
11. Falls or unexplained injuries

## PERSONALITY ISSUES

While many instances of impairment involve discrete psychiatric illnesses, some are more accurately described as growing out of longstanding traits embedded in the attorney's personality. When these traits are so extreme that they cause serious problems in work or in relationships, they may be classified as personality *disorders* rather than simply *traits*. Two common personality types among those who make their careers as lawyers are obsessive-compulsive and narcissistic. The obsessive-compulsive attorney is the classic workaholic who is an overly conscientious, somewhat rigid list-maker who rarely takes time off and whose life lacks much time for fun or emotional spontaneity. Obsessive-compulsive individuals are also "control freaks." They can't delegate and feel they must do everything themselves because others might not do it as well as they can. They tend to micro-manage those with whom they work and irritate everyone around them. They also may be haunted by where they stand in the monthly rankings of who has brought in the most revenue to the firm. When under stress, they may work harder to the point of burnout. Burnout is generally defined as a state of exhaustion or emotional depletion brought about by adherence to a professional role that has failed to produce expected results. A simpler definition is "erosion of the soul." Signs of burnout include a feeling that one is on automatic pilot, a complete lack of pleasure in one's work, and a sense of "joyless striving." Burnout can also lead to depression and even suicidal thoughts.

The narcissistic personality type is characterized by excessive self-promotion that often covers up a deep-seated insecurity. These individuals may feel entitled and enjoy grandstanding in the courtroom or elsewhere. They demand that others recognize them for their accomplishments, and no amount of praise is enough. Because they never feel they are sufficiently appreciated, they may work harder and longer to try to gain the approval they seek. When they are unable to reach the heights that they seek or receive the acclaim they feel they deserve, they may "crash" and become depressed or burned out. Of particular importance is the fact that often these obsessive-compulsive and narcissistic personality features are exacerbated by aging. As one's faculties start to fail, there is a tendency to become "more like you already are."

## THE DISRUPTIVE ATTORNEY

The end result of any of the above described conditions can be the "disruptive attorney". The irritability of depression, the frustration with the self when your mind starts to fail you in dementia, and the defensiveness in the midst of addiction can interfere with interpersonal interactions in the work place. We are using the term disruptive attorney to refer to the following scenarios in the work setting: exploding at co-workers, making demeaning or sexually harassing comments to co-workers, externalizing blame for one's own shortcomings, accusing others of not doing their job correctly in the absence of evidence that criticism is warranted, lying to cover up mistakes they made, and insensitivity to the impact of comments or behaviors on others. These individuals may not be able to accept feedback about these behaviors, making it difficult to address concerns that might lead to meaningful change. This picture may be the final common pathway of any of these conditions discussed or a combination of many requiring a good diagnostic work up to tease out contributing factors. The bottom line message to you is the following:

If you think a colleague is showing concerning signs of any of the above behaviors, don't keep those concerns to yourself. We recommend you discuss your thoughts with a colleague, and then share your concerns with the individual directly.

