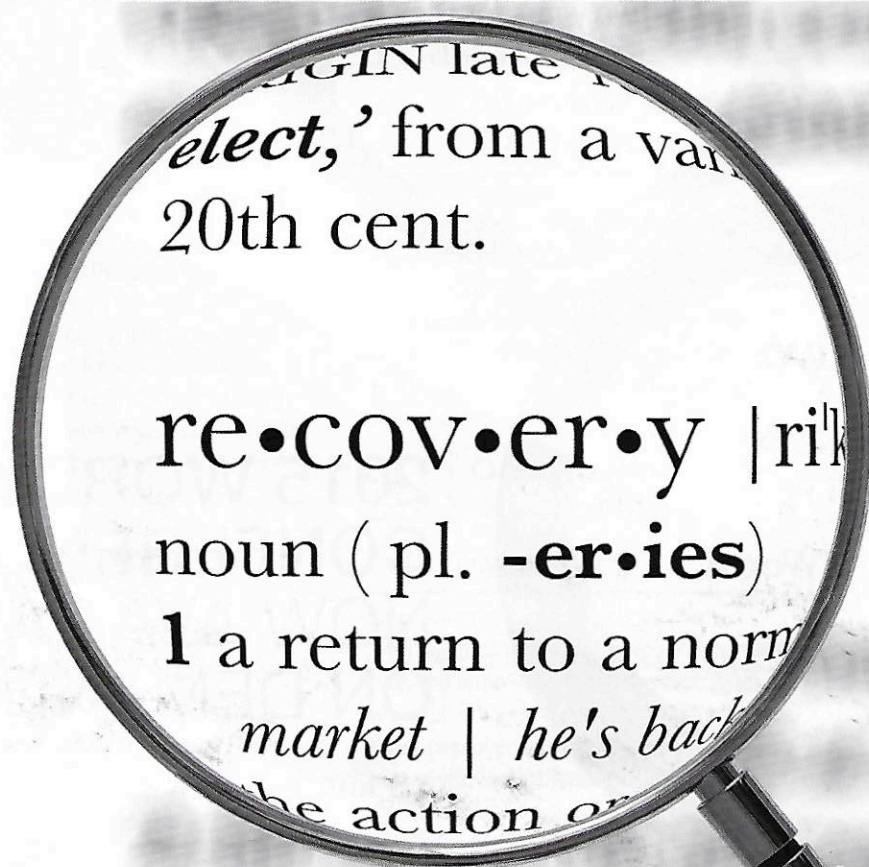


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PLUS:

**Legal Effects of
Addiction**

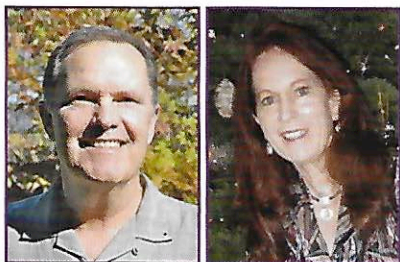
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Legal Effects of Addiction through a Recovery Lens

"Failure to address the entire group and the social dynamic produces abysmal outcomes. Until those around the addict (co-workers, supervisors, executive management, and family) become educated and act differently, addiction will do what it has always done, that is, disrupt and destroy — individually and corporately."

By Roger A. Moss and Alice H. Tanner

Everyone exposed to addiction becomes ill in varying degrees. In fact, alcoholism, addiction and mental illness impact entire social systems. Addiction-driven conflict produces chaos and destroys relationships. It causes financial losses and other liabilities.

Recovery practices, conversely, can resolve conflict and restore health to the workplace, as they do for families. One intention of this article is to help employers and employees navigate the consequences of addiction while pursuing holistic health solutions. In particular, this article will address often-misunderstood legal issues.

The Case of Deranged Distillery

The following case study was inspired by true events. Names and facts have been altered to preserve confidentiality.

Recently the ownership of Deranged Distillery ("DD"), a spirits production and marketing enterprise, arranged for a workplace investigation and mediation. The incident reflected a challenge common to family-owned enterprises: *"Jack and Jill, a dynamic, entrepreneurial married couple, confuse employees with conflicting direction. Help them all get on the same page."*

DD had retail tasting outlets that were drenched in the culture of drinking. DD employed roughly 12 people, including the owners. With annual revenues of \$7 million that were sharply declining, there was a lot at stake.

Workplace mediations of this type generally proceed with an initial management meeting, then private interviews, and finally a joint mediation session focused on resolving conflict and strategic planning. The initial steps addressed issues that required reorientation of purpose and process at DD.

Signs of Illness at Deranged Distillery

Preliminary interviews brought to light textbook symptoms of middle to advanced stages of addiction throughout the organization. Indicators of problems included physical, emotional and psychological signs of substance abuse and underlying personality disorders.

Interviewees reported widespread physical signs of addiction including slurred speech, drowsiness, impaired coordination, and hyperactivity. Emotional signs were abundant, such as violent mood swings, aggression and anger, and immature coping skills. Psychological signs included manic and depressive behavior, paranoia,

extreme sensitivity, destructive reactivity, and defensiveness.

The interviews demonstrated that all but three of the employees habitually abused alcohol and other substances, including Jack and Jill. In fact, workplace drinking was encouraged. Jack and a key employee evidenced psychological traits consistent with serious personality disorders.

Jill admitted to heavy daily drinking, which was "under control" through use of Xanax purchased "off market" from a bipolar employee who was no longer in treatment, but self-medicating. Jill blamed Jack's diagnosed but untreated borderline personality disorder (BPD) for their business woes. Jack acknowledged his BPD and heavy drinking but insisted that, *"I would be okay if everyone else just did their job."* He admitted brandishing a shotgun at employees and customers in DD's tasting room, but disagreed that this was unhealthy behavior. Jack's concern was unfavorable reviews of the incident on Yelp.

An interview with Hope, DD's marketing consultant, was enlightening. She was engaged to "rescue a declining brand from the abyss." Hope knew about DD's culture from her boyfriend Rhino, DD's alcohol operations manager.

A non-drinker herself, she had grown up in an alcoholic family, then married and divorced two alcoholic husbands. "The thing is," Hope cheerfully opined, "we just can't give up on these people."

Sick people often coalesce into very sick groups, with disturbing and sometimes tragic results. Knowing this, the mediator requested a recovery consultant. DD agreed to engage an interventionist with expertise in correcting addiction-related group dysfunction.

DD's tolerance of addictive behavior was fueled by collective co-dependence and denial of numerous problems such as poor work performance, missed deadlines, declining quality of products, and worker conflicts. That's not

all. There was also managerial mayhem, injuries, accidents, lousy attitudes, and deteriorating personal appearances. Such conduct was ignored, tolerated and shared, since it was enabled by the entire system.

The High Cost of Addiction

Addiction masterfully fools people, and in DD's case, the employers' illnesses were in lock-step with those of the employees. So the owners assigned other "reasons" for the business's decline – any reason other than addiction.

Sometimes stringent employment laws and social mores make employers easy prey to the co-dependent trap of justifying, rationalizing and minimizing what they witness. But the risks are huge,


including sub-standard work performance and products, industrial accidents, environmental disasters, and even death.

According to the U.S. Centers for Disease Control and Prevention, addiction and co-dependency cost employers *hundreds of billions* every year – a sad reality that could be avoided through awareness and training. In DD's case, co-dependent, addiction-driven group denial placed the business in enormous peril.

Dangers in Early Recovery

Recovery starts by acknowledging addiction. Action must follow, whether through treatment or other appropriate modalities. Now the real challenge begins: *early recovery*.

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Employers are not trained sober coaches. Workplaces are not recovery incubators. There is a business to run. Bottom line goals depend in part on employee health, performance and attitude. But most firms only reluctantly monitor employee recovery efforts, sometimes through drug testing.

In fields like aviation, management tracks an employee's engagement of recovery resources: attendance at 12-step meetings, sponsorship, counseling, psychotherapy, and adherence to probation. Only rarely does an employer encourage or offer, let alone require, addiction and co-dependency education or implementation of what is learned.

The biggest mistake made in recovery treatment is underestimating the resiliency of addiction and co-dependency. By the time these illnesses are detected, they are deeply entrenched. Relapse is the norm, not the exception. Marginal, unstable recovery is common. Since the addict is viewed as the "problem," he or she receives the lion's share of treatment and *attention*.

Failure to address the entire group and the social dynamic produces abysmal outcomes. Until those around the addict (co-workers, supervisors, executive management, and family) become educated and act differently, addiction will do what it has always done, that is, disrupt and destroy—individually and corporately.

Legal Concerns of Addiction at Work

Employers and employees often express concern regarding *confidentiality* and *discrimination*. Fear and

confusion over these issues deter recovery in the workplace.

Protecting confidentiality is critical in mental health treatment. People fear the stigma of addiction and often avoid treatment. As a result, successful treatment partly depends on guarding privacy interests. Federal law recognizes this principle and governs confidentiality in the substance abuse field.

Federal rules outline the conditions under which information about a client's treatment may be shared with third parties. They apply to any program involving substance abuse education, treatment or prevention that is regulated or assisted by the federal government.

Confidentiality rules apply to all records relating to treatment of patients in programs assisted by federal resources or agencies. A patient must consent before records are shared. The consent must contain ten elements, including identification of requesting parties, the purpose and a detailed description of shared information.

Substance abuse practitioners and employers should become familiar with the federal guidelines and the complexities of applying them to individual cases.

Concerns about potential workplace discrimination relate primarily to the *Americans with Disability Act* (ADA). The ADA protects classes of people from discrimination in employment and other circumstances and requires employers to make accommodations for members of the protected class.

Alcoholism and drug addiction are protected classes under ADA,

but the illnesses are treated differently. Generally speaking, alcoholics are always protected by ADA. Drug addicts are protected so long as they have ceased using illegal drugs or are currently in treatment for the addiction.

ADA protects classes of people, not conduct. The law also creates exclusions if an alcoholic or addict's condition poses a direct

“Alcoholism and drug addiction are protected classes under ADA, but the illnesses are treated differently. Generally speaking, alcoholics are always protected by ADA. Drug addicts are protected so long as they have ceased using illegal drugs or are currently in treatment for the addiction.”

threat of harm to themselves or others. ADA does not shield an employee from termination for cause. It does prohibit stigma-driven discrimination in hiring and other workplace practices.

The following examples illustrate the distinction between class and conduct. If an exemplary employee discloses that he is battling alcoholism, termination for merely making the admission violates ADA. But an employee who habitually performs poorly due to hangovers may be disciplined or

discharged, provided the actions conform to pertinent labor laws and collective bargaining agreements.

ADA requires employers to provide accommodations to employees of a protected class so they can do their jobs. This means an employee may be entitled to a modified work schedule to attend AA meetings. A job may be restructured to eliminate “marginal” tasks that compromise recovery. Temporary reassignment may be required by ADA for safety-sensitive positions. An airline pilot may be assigned to non-flight duties while he or she undergoes treatment for drug addiction.

Confusion about workplace confidentiality and discrimination issues is common, even among HR professionals. Confidentiality is often confused with anonymity, as practiced by 12-Step groups. People fear the addiction stigma, but it cannot be dispelled without open, informed discussion about addiction and mental health.

Unjustified fears about ADA compliance can trigger staggeringly destructive attitudes. Recently an employment attorney said, *“My people aren’t interested in promoting recovery awareness. They believe that it’s too late and too expensive to help people by the time these problems surface. They just want to terminate and stay clear of ADA issues.”*

Such policies are heartless, wrong, and bad for business. What can we do about it?

Transparency and Social System Healing

Hiding from the realities of addiction will not diminish its stigma.

Stigma must be met head on, with bold transparent leadership. Education about addiction is a good start. Such efforts are vastly more effective when they include testimonials from people in long-term recovery. Managers and co-workers in recovery should offer their experiences, whether privately or as part of an educational workshop.

If this is not possible, utilize experts willing to share recovery stories, including non-addicts who have embraced the need for group recovery efforts. Consider showing films (such as *The Anonymous People*) which address the stigma issue by offering recovery stories from public figures.

If circumstances point to the need for an intervention, place the process under the umbrella of mediation. Workplace mediations are increasingly used to resolve disputes among co-workers, including serious charges such as sexual harassment. As the Deranged Distillery case shows, mediation affords an excellent, safe method for discussing workplace addiction. Recovery specialists can be integrated into mediation along with other resources vital to protecting the business, all the while saving lives.

These thoughts represent an overview of our approach to holistic workplace recovery. We welcome readers’ questions and comments at: ram@rogeramoss.com or Alice@BayArea-Intervention.com. ♦

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J.D. operates Addiction Recovery Services from Tiburon, CA. Find Alice at www.BayArea-Intervention.com. Alice and Roger collaborate in early recovery and aftercare assignments, including workplace mediations, interventions and case management. They serve clients nationally and abroad.

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