

Passing the State Bar but Not Your Local Bar? The Effects of Rising Alcohol Consumption on Noncommunicable Diseases and What the Legal Community Can Do to Protect Attorneys

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INTRODUCTION

It is no secret that many attorneys experience a significant amount of stress while working the long hours demanded by their respective positions.¹ Complex matters, high-profile clients, and 2,000-hour billable requirements are enough to break down even the most determined attorneys, and adding a global pandemic to the mix has only further exacerbated attorney stress levels.² This exorbitant stress has become so extreme that a whopping 19% of attorneys report having anxiety while 28% report experiencing depression.³ What then can attorneys do to help abate all of the stress inherent in the industry? Unfortunately, there is one answer that often seems to prevail: turn to alcohol and other substances.⁴

The legal profession and alcohol consumption have become so inexplicably intertwined that it is difficult to imagine the legal environment any other way. Firm-wide happy hours signal the end of a long week, lavish dinners with free-flowing drinks mark the close of a deal, and even films and television shows often depict attorneys with a glass of scotch in hand.⁵ Perhaps unsurprisingly, attorneys also have much higher rates of problematic drinking and substance use habits, even when compared to other highly educated professionals; a survey of 12,825 attorneys revealed that 20.6% of participants drank at a level consistent with problematic drinking while the rate for other professionals lies at 11.8%,⁶ and the

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1. Nicole Black, *ABA Survey: Lawyers Are Stressed Out*, ABOVE THE LAW (Aug. 5, 2021), <https://abovethelaw.com/2021/08/aba-survey-lawyers-are-stressed-out/> [<https://perma.cc/J4S9-BDHF>].

2. Forty percent of attorneys surveyed by the ABA reported that their work-related stress levels had increased in light of the pandemic. *See id.*

3. *Profile of the Legal Profession 2021*, A.B.A. (July 2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf> [<https://perma.cc/QK28-BRNE>].

4. *See* Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. OF ADDICTION MED. 46, 52 (2016).

5. *See, e.g., Suits: Tiny Violin* (USA Network television broadcast Apr. 25, 2018).

6. Krill *et al.*, *supra* note 4, at 51.

rate for the general population at a meager 5.3%.⁷ While the legal community is hardly blameless for its struggle with problematic drinking and substance use behaviors, the alcohol industry itself is significantly augmenting these issues.

Part I of this Note will begin by examining the growth of the alcohol industry, its effect on noncommunicable diseases (NCDs), and the increased risks that Covid-19 has imposed on people who are afflicted by these diseases. Next, it will discuss the effects that Covid-19 has had on alcohol consumption for professionals and how the industry is targeting young adults specifically. Part II will then suggest the proper role that the United States government should play in taxing and regulating the alcohol industry. Finally, Part III of this Note will start by examining the problem of alcohol and substance abuse in law schools and what law schools should be doing to mitigate these issues. It will further explain how these problems persist for practicing attorneys and the role that law firms should play in the battle against alcohol and substance abuse.

I. THE EFFECTS OF ALCOHOL ON NCDs, THE INCREASED RISKS IMPOSED BY COVID-19, AND THE ALCOHOL INDUSTRY'S TARGETING OF YOUNG ADULTS

The alcohol industry has been booming in recent history.⁸ After remaining relatively stagnant for a number of years, alcohol sales in the United States have increased by 30% since 2011, and as of 2019, sales of alcoholic beverages reached over \$252 billion.⁹ In the past three years since the inception of the Covid-19 pandemic, this trend of upward growth has accelerated even more rapidly than in previous years.¹⁰ Though there was a slight dip in alcohol sales during March and April of 2020, consumers more than compensated for this by the end of the year; liquor sales alone increased by 7.7%, the largest percentage increase in 18 years.¹¹ More recently, the state of affairs around the country has continued to “return to normal,” but this has not hampered the rapid growth persisting in the alcohol industry. Alcohol sales in 2021 outpaced sales in 2020,¹² and the U.S.

7. *The Alarming Alcoholism Rates For Lawyers*, THE RECOVERY VILLAGE (Aug. 13, 2021), <https://www.therecoveryvillage.com/alcohol-abuse/alarming-alcoholism-rate-lawyers/> [https://perma.cc/5EWG-CV5Y].

8. Andrea Blázquez, *Total Alcoholic Beverage Sales in the United States From 2006-2019*, STATISTA (Jul. 26 2021), <https://www.statista.com/statistics/207936/us-total-alcoholic-beverages-sales-since-1990/> [https://perma.cc/4C9P-ANVH].

9. *Id.*

10. Tori Rodriguez, *COVID-19's Continuing Toll: Increasing Alcohol Use and Liver Disease Disproportionately Affect Women*, PSYCHIATRY ADVISOR (July 29, 2021), <https://www.psychiatryadvisor.com/home/topics/addiction/alcohol-related-disorders/covid-19-pandemic-disproportionate-affect-on-women-led-to-increased-alcohol-use/> [https://perma.cc/Z96D-7WYQ].

11. Justin Fox, *Wow, We Sure Drank a Lot Last Year*, BLOOMBERG (Mar. 20, 2021, 8:00 AM), <https://www.bloomberg.com/opinion/articles/2021-03-20/covid-drove-alcohol-sales-higher-even-as-bars-closed> [https://perma.cc/B7WQ-3NCH].

12. Dorothy Gambrell & James Ellis, *One Thing Covid Can't Stop: Alcohol Sales*, BLOOMBERG BUSINESSWEEK (Jan. 14, 2022), <https://www.bloomberg.com/news/articles/2022-01-14/covid-lockdowns-saw-soaring-alcohol-sales-at-pre-pandemic-levels> [https://perma.cc/TM2E-Q4MF].

market is expected to continue increasing at a compound annual growth rate of almost 5% until at least 2024.¹³ The alcohol industry is thriving in the U.S., and there does not seem to be any sign of this growth plateauing in the foreseeable future. Expanded access to alcohol and its increased variety may seem like a plus to the average consumer, but this industry expansion poses a threat to public health in America as a whole.¹⁴

With the rise and ever-expanding growth of the alcohol industry has come devastating health consequences for many Americans.¹⁵ The consumption of alcohol has been linked to more than 200 disease and injury conditions as well as a broad spectrum of mental and behavioral disorders.¹⁶ Worse yet, alcohol-induced deaths in the United States have risen from less than 20,000 in 2000 to over 34,000 in 2016.¹⁷ When considering all deaths where alcohol is a factor, that number jumps to 95,000, making alcohol the third leading cause of preventable death in the United States.¹⁸ This is in part because general alcohol consumption increases the risk of developing various cancers, and heavier use contributes to cardiovascular and liver diseases; altogether these chronic diseases account for more than 50% of alcohol-related deaths.¹⁹

Unsurprisingly, these NCDs related to alcohol consumption have posed an even greater threat to those affected by them during the era of Covid-19.²⁰ People with cancer, cardiovascular, and respiratory diseases are all more vulnerable to Covid-19 than their nonaffected counterparts, and those with alcohol use disorders are more susceptible as well due to their compromised immune systems.²¹ This epidemic is widespread as at least one in five people face a higher risk of

13. See Technavio, *Alcoholic Beverages Market in the US to Grow by USD 64.01 Billion at Almost 5% CAGR During 2020-2024*, CISION PR NEWSWIRE (Mar. 31, 2021, 9:00 PM), <https://www.prnewswire.com/news-releases/alcoholic-beverages-market-in-the-us-to-grow-by-usd-64-01-billion-at-almost-5-cagr-during-2020-2024-technavio-301258952.html> [<https://perma.cc/SCA9-FQQ5>]; see Blázquez, *supra* note 8. The compound annual growth rate describes the rate at which an investment would have grown if it had grown at the same rate every year between a certain period and profits were reinvested at the end of each year. Jason Fernando, *Compound Annual Growth Rate (CAGR)*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/cagr.asp> [<https://perma.cc/EB6F-BVWG>] (last visited Apr. 17, 2022).

14. Nicholas Freudenberg, *LETHAL BUT LEGAL: CORPORATIONS, CONSUMPTION AND PROTECTING PUBLIC HEALTH* 34 (2014).

15. *See id.*

16. *See Alcohol*, WORLD HEALTH ORGANIZATION (Sep. 21, 2018), <https://www.who.int/news-room/fact-sheets/detail/alcohol> [<https://perma.cc/ZLJ2-W2AC>].

17. Susan Spillane, Meredith S. Shiels, Ana F. Best, Emily A. Haozous, Diana R. Withrow, Yingzi Chen, Amy Berrington de González & Neal D. Freedman, *Trends in Alcohol-Induced Deaths in the United States, 2000-2016*, JAMA NETWORK OPEN (Feb. 21, 2020).

18. *Alcohol Facts and Statistics*, NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM (Mar. 2022), <https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/alcohol-facts-and-statistics> [<https://perma.cc/Q4C3-9QZ6>].

19. Freudenberg, *supra* note 14 at 29–30.

20. Jeremias N. Paul Jr., *Building Back Better with Health Taxes*, WORLD HEALTH ORGANIZATION, https://www.g24.org/wp-content/uploads/2021/03/Jeremias-N.-Paul-Jr._-G24-03052021-Final.pdf [<https://perma.cc/83AQ-DG8U>] (last visited Apr. 17, 2022).

21. *Id.*

experiencing a severe reaction to Covid-19 (if infected) due to an underlying NCD.²² Worse yet, many governments have shifted funds away from NCD prevention and related services in order to compensate for the extreme burden that the Covid-19 crisis has caused.²³ Medical experts are understandably very concerned about the adverse impact that this reallocation of funds will have on the future healthcare burden of NCDs.²⁴ Despite all of this, there is little momentum in either the United States or abroad for expanding NCD prevention and treatment as a response to both this pandemic or future threats.²⁵

The increase in alcohol sales is likely to have an adverse effect on alcohol use disorders as well. While a certain amount of this increase in alcohol consumption was perhaps the result of people having additional time on their hands at home, many reported that their increase in alcohol consumption was a product of increased stress brought on by the pandemic, and thus, it is surmised that many Americans were drinking to cope with their anxieties.²⁶ This is concerning, as people who drink alcohol as a coping mechanism are at higher risk for developing alcohol-use disorders as opposed to those who merely drink for pleasure.²⁷

As previously stated, attorneys already have high rates of depression, anxiety, and alcohol use disorders, and evidence suggests that the pandemic has only worsened these issues.²⁸ Multiple lawyer assistance programs saw attendance on virtual webinars discussing mental health and substance abuse skyrocket during the height of the pandemic, and mental health professionals are unsurprised given the isolation accompanying the long hours of working from home.²⁹ Adding to this problem is the lack of repercussions for abusing drugs or alcohol; attorneys no longer have to drive to and from work, and it is much easier to hide a buzz or hangover during a Zoom meeting than in the office.³⁰ Finally, some attorneys who were receiving treatment for alcohol-use disorders in Alcoholics Anonymous struggled when these meetings had to be held virtually instead of face-to-face.³¹ Regardless of which factor influenced individual attorneys the most, it is clear that

22. *Id.*

23. Thomas J Bollyky, Serena Tohme & Samantha Kiernan, *Noncommunicable Diseases Kill Slowly in Normal Times and Quickly in Covid-19 Times*, COUNCIL ON FOREIGN RELATIONS (Sep. 10, 2021, 11:00 AM), <https://www.cfr.org/article/noncommunicable-diseases-kill-slowly-normal-times-and-quickly-covid-19-times> [<https://perma.cc/A96K-NQT9>].

24. *Id.*

25. *Id.*

26. See Kim Tingley, *How Bad Is Our Pandemic Drinking Problem?*, THE NEW YORK TIMES MAGAZINE (Apr. 21, 2021), <https://www.nytimes.com/2021/04/21/magazine/covid-drinking-alcohol-health.html> [<https://perma.cc/3YZV-S32T>].

27. *Id.*

28. Eilene Zimmerman, *Why Professionals, Depressed and Anxious, Are Developing Addictions During Covid*, THE GUARDIAN (Oct. 13, 2020), <https://www.theguardian.com/lifeandstyle/2020/oct/13/white-collar-professionals-substance-use-disorders-pandemic> [<https://perma.cc/ML39-BS68>].

29. *Id.*

30. *Id.*

31. *Id.*

the pandemic has only pushed the alcohol abuse issues of the legal community further in the wrong direction.³²

Because young attorneys and law students are most susceptible to developing alcohol-use disorders,³³ it is particularly dangerous that many alcohol companies are targeting Millennials and older Gen Z adults more directly than they ever have before.³⁴ As these young adults are often more enticed by health and wellness trends than previous generations, one novel tactic that many companies are using to appeal to them is to highlight the ways that new alcoholic beverages are less harmful than traditional alternatives.³⁵ For example, Dry Farm Wines heavily advertises the fact that its wines are low-sugar and keto-friendly in an attempt to downplay the harmful effects that the consumption of wine still carries.³⁶ While it is technically more beneficial to one's health to consume a low-sugar wine as opposed to its standard-sugar counterpart, the damaging properties of the alcohol remain the same. Another harmful tactic used to appeal to young adults is to create alcoholic beverages for those that do not like the taste of alcohol.³⁷ The number of Millennial and Gen Z adults who simply do not enjoy the taste of alcohol is higher than in previous generations, so sparkling water-based seltzers like White Claw have become a popular means of attracting young adults who might not otherwise drink.³⁸ Again, individual consumers often view these new products as beneficial offerings, but influencing alcohol usage in a way that is likely going to increase consumption will have dangerous health consequences for the young adults who are affected.

II. THE GOVERNMENT'S OPTIMAL ROLE IN DECREASING ALCOHOL CONSUMPTION

One possible route for managing the influence of alcohol on American society concerns altering regulatory policies in a manner that discourages excessive consumption. Sovereigns around the globe have struggled with exactly how to limit and regulate the alcohol industry, but there are a number of measures that have proven to be successful. First, there is a growing amount of evidence showing that increasing taxation can be an effective means of decreasing alcohol

32. *See id.*

33. Krill, *supra* note 4; Orgena Lewis Singleton, Alfred "Cal" Baker & Elizabeth Escobar, A.B.A., *Substance Abuse in Law Schools: A Tool Kit for Law School Administrators* (2005), https://www.texasbar.com/AM/Template.cfm?Section=Law_Students1&Template=/CM/ContentDisplay.cfm&ContentID=15124 [<https://perma.cc/YPU5-X9F3>].

34. *See* Doran Lamb, *Clean Drinking: Why Alcohol Advertising Directed at Millennials Is More Dangerous Than Ever*, BETTER MARKETING (Mar. 16, 2021), <https://bettermarketing.pub/clean-drinking-why-alcohol-advertising-directed-at-millennials-is-more-dangerous-than-ever-87a96d13c74> [<https://perma.cc/YEB5-945A>].

35. *Id.*

36. *See id.*

37. *Id.*

38. *Id.*

consumption.³⁹ Second, the U.S. can further restrict advertising practices beyond what it currently has in place in order to better regulate the messages that consumers receive about alcohol. Finally, warning labels placed on the front of alcoholic beverages can be bolstered to provide the general public with greater awareness of the harm that alcohol causes both to individual and national health.

A. INCREASING TAXES ON ALCOHOL

Perhaps the most pivotal move that the U.S. government could make to decrease alcohol consumption would be to raise taxes on alcoholic beverages. While there are alcohol taxes currently in effect, these taxes are low and have not been raised to keep up with inflation in over 30 years.⁴⁰ Current taxes rest at only 13 cents per 1.5 oz serving of liquor, 4 cents per 5 oz serving of wine, and 4 cents per 12 oz serving of beer, a mere fraction of the inflation-adjusted value that these taxes imposed 30 years ago.⁴¹ While these taxes might have been sufficient at one point, real alcohol tax rates were roughly 67% lower in 2015 than in 1933, and the real cost of a shot of liquor in 1950 was over 15 times that in 2011.⁴² Although current tax rates impose little deterrent effect, experts have noted that increasing taxes on alcoholic beverages would be one of the easiest ways to reduce the instances of NCDs and deaths stemming from alcohol; as the infrastructure for a tax on alcohol is already in place, increased benefits could be realized by merely raising those tax rates.⁴³

In fact, researchers estimate that doubling tax rates on alcohol would reduce the mortality rate of these alcohol-related diseases by an average of 35% and reduce the rates of other negative externalities stemming from alcohol consumption as well.⁴⁴ Furthermore, implementing more stringent taxes on a harmful product is not an unprecedented idea. Raising taxes to discourage consumption has proven to be very effective with tobacco products; the jurisdictions with the

39. Alberto Alemanno & Amandine Garde, *Emergence of an EU Lifestyle Policy: The Case of Alcohol, Tobacco and Unhealthy Diets*, 50 COMMON MARKET L. REV. 1745, 1758 (2013); cf. *Cigarette and Tobacco Taxes*, AMERICAN LUNG ASSOCIATION (Dec. 10, 2020), <https://www.lung.org/policy-advocacy/tobacco/tobacco-taxes> [<https://perma.cc/7GEU-4R6H>] (noting that increases in cigarette taxes decrease consumption).

40. Federal alcohol taxes have not been raised since 1991. *Alcohol Excise Taxes: Current Law and Economic Analysis*, EVERYCRSREPORT.COM (Dec. 23, 2015), <https://www.everycrsreport.com/reports/R43350.html> [<https://perma.cc/NNY8-HFS3>].

41. *Id.*

42. Richard Hahn, *Raising the Federal Excise Tax on Alcohol*, THE HILL (Sep. 22, 2021), <https://thehill.com/blogs/congress-blog/politics/573519-raise-the-federal-excise-tax-on-alcohol> [<https://perma.cc/9UJF-NPHL>].

43. See German Lopez, *The Case for Raising the Alcohol Tax*, VOX (Dec. 13, 2018, 8:00 AM), <https://www.vox.com/future-perfect/2018/12/13/18130843/alcohol-taxes> [<https://perma.cc/P676-9FWP>].

44. Doubling tax rates on alcohol would also decrease traffic-crash deaths by 11%, sexually transmitted disease cases by 6%, episodes of violence by 2%, and episodes of crime by 1.4%. James I. Daley, Mandy A. Stahre, Frank J. Chaloupka & Timothy S. Naimi, *The Impact of a 25 Cent-Per-Drink Alcohol Tax Increase: Who Pays the Tab?*, 42 AM. J. PREVENTATIVE MED. 382, 382 (2012).

highest taxes produce the lowest levels of consumption.⁴⁵ On average, a 10% increase in tobacco taxes produces a 4% decrease of consumption in adult populations and a 7% decrease among youth.⁴⁶ Similarly, a recent meta-analysis has shown that alcohol taxes also produce positive health outcomes by significantly reducing the prevalence of alcohol-related diseases.⁴⁷

That being said, federal, state, and local governments have been far less active in enacting high taxes on alcoholic beverages when compared to the taxes that these governments have levied on tobacco products.⁴⁸ U.S. congressional members recently suggested further raising taxes on cigarettes and other nicotine products to help finance a proposed spending bill, but a discussion on increasing alcohol taxes never appeared to enter the conversation.⁴⁹ In fact, the last serious proposal set forth regarding alcohol taxation in the U.S. was aimed at *lowering* these taxes and making alcoholic products even more readily accessible.⁵⁰ While the data supporting the benefits of higher tax rates on alcohol in the U.S. are clear, politicians on both sides of the aisle seem unwilling to support a proposal that might be politically unpopular among voters. This is despite the fact that increased “sin taxes” in other countries have led to an increase in governmental revenue that can in turn be used to finance healthcare programs.⁵¹ In essence, other nations have realized that these taxes create health benefits on the front end by decreasing consumption of a harmful product while also creating health benefits on the back end by increasing funding available for healthcare initiatives.

B. IMPLEMENTING MORE STRINGENT ADVERTISING REGULATIONS AND MORE EFFECTIVE HEALTH WARNINGS

Aside from raising taxes, the government needs to take a more aggressive stance in regulating the advertising practices of alcohol companies as well. Certain restrictions on the advertisements of alcohol have already been put in the place by both the Alcohol and Tobacco Tax and Trade Bureau (TTB), and the

45. See Cigarette and Tobacco Taxes, *supra* note 39.

46. *Id.*

47. Randy W. Elder, Briana Lawrence, Aneegah Ferguson, Timothy S. Naimi, Robert D. Brewer, Sajal K. Chattopadhyay, Traci L. Toomey & Jonathan E. Fielding, *The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms*, 38 AM J. PREVENTATIVE MED. 217, 224 (2010).

48. Lucy Dadayan, *Smoking and Drinking: Remedies for State Budgets?*, in 49 THE COUNCIL OF STATE GOV'TS, THE BOOK OF THE STATES 347 (2017).

49. Hailey Fuchs, *Big Tobacco Comes Out Swinging Against Biden's Build Back Better Bill*, Politico (Oct. 7, 2021, 1:58 PM) <https://www.politico.com/news/2021/10/07/big-tobacco-congress-tax-black-market-515595> [<https://perma.cc/QXL6-LVCV>].

50. German Lopez, *The Seante's Tax Plan Would Cut Alcohol Taxes. That Would Be a Public Health Disaster.*, VOX (Nov. 18, 2017, 12:35 PM), <https://www.vox.com/policy-and-politics/2017/11/3/16600770/alcohol-tax-increase> [<https://perma.cc/ZTH3-ELF2>].

51. Increasing sin taxes in the Philippines led to a drastic increase in healthcare funding as well. Paul, *supra* note 20. Sin taxes are taxes on products that are traditionally thought of as harmful to society such as tobacco, alcohol, guns, or gambling ventures. Julia Kagan, *Sin Tax*, INVESTOPEDIA (July 31, 2020), https://www.investopedia.com/terms/s/sin_tax.asp [<https://perma.cc/M553-2TT8>].

Federal Trade Commission (FTC).⁵² The TTB directs that all advertisements 1) must not contain false or misleading statements about the product, 2) must not contain any statements of alcohol content like “strong” or “high proof,” and 3) must not contain any health-related statement that is untrue or misleading.⁵³ These are just a few of the most well-known restrictions on alcohol companies, but none of the major restrictions on these companies are particularly stringent or constraining.⁵⁴ That being said, there are multiple sets of voluntary codes and guidelines that alcohol companies can and often do adhere to.⁵⁵ Many of these codes propose that alcohol companies only place advertisements in traditional media outlets when at least 71.6% of the audience is expected to be of legal drinking age, and for digital media, the user should be required to confirm that she is of legal drinking age before being able to view the advertisement.⁵⁶ While these guidelines are certainly helpful, they are not always respected by companies, and even the companies who have made a commitment to follow these guidelines cannot be punished for breaching them.⁵⁷

Alternatively, the World Health Organization (WHO) recommends implementing a number of additional binding restrictions beyond what the United States already has in place due to the fact that advertising restrictions are one of the most effective and cost-efficient means of preventing NCDs.⁵⁸ Many recommended restrictions are aimed at reducing alcohol advertising to minors given that the earlier that one begins drinking alcohol, the more likely that she is to develop an alcohol use disorder later in life.⁵⁹ Aside from those regulations, there are other restrictions targeted at promoting responsible alcohol consumption in general. The WHO notes that many alcohol companies include strategic marketing statements imploring one to drink “responsibly” or “in moderation,” but these statements are often vague or even deceptive.⁶⁰ Consequently, the government should regulate the health warnings that must be included with any alcohol advertisements, just as the U.S. government mandated that tobacco advertisements

52. Christian Staples, *Summary of U.S. Advertising Law and Regulations for Malt Beverages and Energy Drinks*, JD SUPRA (Jan. 29, 2020), <https://www.jdsupra.com/legalnews/summary-of-u-s-advertising-laws-and-41026/> [<https://perma.cc/PQ8Z-VV6U>].

53. *Id.*

54. There are other, more specific regulations including restrictions on showing athletes consuming alcohol before an athletic activity, showing anyone consuming alcohol before operating a motor vehicle, or making statements about a low caloric or sugar content that are unsubstantiated. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. SAFER, WORLD HEALTH ORGANIZATION, <https://www.who.int/initiatives/SAFER/alcohol-advertising> [<https://perma.cc/V52T-YEE8>] (last visited Apr. 17, 2022).

59. *Id.*; *Early Drinking Linked to Higher Lifetime Alcoholism Risk*, NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM (July 3, 2006), <https://www.niaaa.nih.gov/news-events/news-releases/early-drinking-linked-higher-lifetime-alcoholism-risk> [<https://perma.cc/8SKS-Y4ZU>].

60. SAFER, *supra* note 58.

must contain both text statements and colored graphics warning consumers about the negative health consequences that can result from consumption.⁶¹

These health warnings must also be included on alcohol containers themselves. Currently, the only warning label required on alcoholic beverages in the U.S. merely warns consumers about drinking alcohol while pregnant, cautions against drinking alcohol before driving, and offers one vague statement claiming that alcohol “may cause health problems.”⁶² Studies suggest that this warning was helpful for raising awareness about some alcohol-related health risks in the years shortly after the mandate was enacted, but over time, this warning has proven to be both ineffective, as people no longer notice the label, and underinclusive, as more information about the plethora of health risks associated with alcohol consumption has surfaced than when this warning was scripted.⁶³ In light of the fact that less than half of Americans are aware of the connection between alcohol consumption and cancer, public health agencies have been pushing federal regulators to add new warning labels that, at the very least, indicate that alcohol consumption may cause cancer.⁶⁴ While these pleas have largely fallen on deaf ears, advocacy groups should continue pressing for more forceful and informative health warnings on alcohol containers that can alert consumers to the many NCDs caused by alcohol consumption.⁶⁵

III. HOW LAW SCHOOLS AND LAW FIRMS CAN PROTECT THE LEGAL COMMUNITY

A. THE ROLE OF LAW SCHOOLS

While practicing attorneys are most notorious for their high rates of alcohol and substance use disorders, these unhealthy addictions and their precursor behaviors do not suddenly begin once an attorney begins her practice. Rather, these behaviors can often be seen developing and worsening throughout one’s time in law school as demonstrated by the fact that law students use alcohol and

61. *Id.*; *FDA Proposes New Health Warnings for Cigarette Packs and Ads*, U.S. FOOD AND DRUG ADMIN. (May 1, 2020), <https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/fda-proposes-new-health-warnings-cigarette-packs-and-ads> [<https://perma.cc/9BZR-DF7U>].

62. All alcoholic beverages must have a warning label reading, “GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.” 27 U.S.C. § 215(a) (1988).

63. See Sharon James Williams, Daniel Dubovsky, Jason Merritt & Pamela Martinez, *Are Alcohol Warning Signs and Labels Working? An Examination of Approaches and Outcomes*, THE ARC <https://thearc.org/wp-content/uploads/forchapters/Are-alcohol-warning-signs-and-labels-working-An-examination-of-approaches-and-outcomes.pdf> [<https://perma.cc/LKJ4-DNDW>] (last visited Apr. 17, 2022).

64. Specifically, the new warning labels proposed by various advocacy groups would read, “Government Warning: According to the Surgeon General, consumption of alcoholic beverages can cause cancer, including breast and colon cancers,” Megan Cerullo, *Alcoholic Beverages Should Carry Cancer Warnings, Health Groups Say*, CBS NEWS (June 28, 2019, 5:41 PM), <https://www.cbsnews.com/news/cancer-warning-labels-proposed-for-alcohol/> [<https://perma.cc/NL8Q-36RS>].

65. *Id.*

certain illicit drugs at higher rates than high school and college graduates of the same age.⁶⁶ Accordingly, it is important that law students better understand the pressures that they will face during law school and how these pressures can end up impacting the ways that they use drugs and alcohol. Because research shows that law students will continue to increase their drug and alcohol usage throughout their law school careers, law schools cannot continue to turn a blind eye to the prevalence of these issues.⁶⁷

1. CREATING SUBSTANCE ABUSE POLICIES, PROVIDING CONFIDENTIAL COUNSELING,
AND TRAINING FACULTY MEMBERS

Almost all law schools have some sort of policy prohibiting substance abuse, but the most recent data shows that only 25 out of 107 university-affiliated law schools surveyed had a substance abuse policy specifically for the law school, and only one had a policy that addressed the impact of substance abuse on the legal profession.⁶⁸ Moreover, only 25% of these law schools include substance abuse education programs as part of the first-year orientation, and even fewer discuss substance abuse problems as part of their Professional Responsibility courses.⁶⁹ Most law school substance abuse policies also fail to address concerns of confidentiality that often plague students who might otherwise be willing to reach out and seek help.⁷⁰ Students are understandably concerned about how seeking treatment for such issues could impact future admission to the Bar, so it is imperative for law schools to be clear about confidentiality standards. A law school administrator can sometimes be put in the difficult position of serving as both a counselor to students and also as an agent required to report to the Bar. As a result, law schools should obtain assurance from Bar admission authorities that such counseling and treatment can remain confidential in order to avoid disincentivizing these programs. Bar admission authorities in many states have already acquiesced to such requests, so law schools in these states should make it explicitly clear to their students that they may seek guidance and counseling without fear of repercussions related to Bar admission down the road.⁷¹

Even if law schools do begin to make the necessary changes required for their students to feel comfortable and secure asking for help, some students will inevitably still fear for either their personal or professional reputations. In order to combat this, schools should expand their current resources in order to allow for increased anonymity. For example, Georgetown University Law Center provides students with Counseling and Psychiatric Services (CAPS), but in order to take

66. Larry Dubin, *The Legal Profession's Hidden Secret: Substance Abuse*, 83 MICH. BAR J., 44 (2004); Singleton *et al.*, *supra* note 33.

67. Dubin, *supra* note 66.

68. Singleton *et al.*, *supra* note 33.

69. *Id.*

70. *See id.* at 8.

71. *Id.*

advantage of such services, a student must request an appointment using a school issued identification number, set up an appointment via email, and meet with a counselor either virtually or in person.⁷² Such services can be very helpful for students who feel comfortable disclosing their identities to the administration but can exclude those who would only seek help through greater levels of anonymity. In light of this barrier, law schools should add online chat portals to their current mental health services where students can anonymously reach out with questions regarding personal concerns or requesting information on additional out of school resources.

Beyond improving confidentiality for struggling students, law schools should also seek to better educate faculty members on how to spot signs of substance use disorders and how to react appropriately when handling such a situation. Such educational objectives can be accomplished in a number of ways. First, law school faculty members should undergo a training program that would teach them the signs of alcohol and substance use disorders in law students. This training program would teach faculty members both how to spot issues (ironically enough) and how to promote well-being in the classroom. Professors might initially be averse to attending yet another training, but educating faculty members on these issues could be critically important to students struggling with alcohol and substance use issues. Following the initial training, law schools should make additional resources readily available to all faculty members, including those recommended by the ABA such as Mental Health First Aid.⁷³ Second, law schools should establish Student Wellness Committees that bring together students, faculty members, and mental health professionals to address student well-being in areas of substance abuse and otherwise.⁷⁴ This would allow faculty members to stay engaged in the conversation and act as a clear resource for students who might want to seek help from a professor. Finally, professors should track class attendance. Students struggling with substance use disorders and other mental issues often skip class, and it is important for professors to reach out to either the student or the dean of students if poor attendance occurs.⁷⁵

2. EDUCATING STUDENTS ABOUT SUBSTANCE ABUSE ISSUES AND RELATED RESOURCES

Training faculty members on how to recognize and assist students with substance use issues is important for helping students once a problem has already developed, but it is even more important that law schools proactively educate students about the dangers of alcohol and substance use disorders in the legal

72. *Georgetown Law CAPS Appointment Request Form*, GEORGETOWN UNIVERSITY LAW CENTER, https://georgetownuniversity-kmzbf.formstack.com/forms/georgetown_law_caps_first_appointment_request_form [<https://perma.cc/E946-25MK>] (last visited Apr. 17, 2022).

73. A.B.A., *SUBSTANCE USE AND MENTAL HEALTH TOOLKIT FOR LAW STUDENTS AND THOSE WHO CARE ABOUT THEM* 45-46, (3d ed., 2020).

74. *See id.* at 40.

75. *See id.* at 45-46.

profession before these issues mature. First, a baseline level of student education should be offered during the first-year orientation. As previously stated, the most recent data shows that only 25% of law schools address alcohol and substance use disorders during orientation.⁷⁶ It is critical that first-year students receive at least some amount of education on these issues at the inception of their law school careers since this is the point in time when they can take appropriate steps to prevent these problematic behaviors from developing in the first place. Students should be educated on 1) the prevalence of alcohol and substance use disorders in law school and the legal profession, 2) the questions that will later be asked on the Bar about substance use disorders, and 3) the mental health resources available to them both through the school and outside of it.⁷⁷

First-year orientation can only cover so much material, and what is covered might slip through the cracks since students are so bombarded with information throughout this process. Beyond a brief education of alcohol and substance use disorders at the inception of one's law school career, law schools should also mandate that professors teaching Professional Responsibility address substance use disorders in their courses. An attorney has a duty to her client to withdraw if a physical or mental condition materially impairs her ability to represent a client, so professors should stress just how much a substance use disorder has the potential to interfere with an attorney's ability to uphold her legal responsibilities.⁷⁸ Even given the importance of these issues, law schools might still be hesitant to mandate that a professor must teach something in her curriculum. That said, while mandating that this material be covered in these courses would likely still be best practice, it might become unnecessary in the future. The ABA has recommended that questions related to attorney well-being be added to the Multistate Professional Responsibility Examination (MPRE), and if the National Conference of Bar Examiners followed through on this recommendation, then professors who teach Professional Responsibility might be more willing to incorporate the aforementioned teachings into their curriculums independently.⁷⁹ Nevertheless, mandating education on these issues would send a clear message to both professors and students about their importance.

Another helpful approach would be to add a 1-credit pass/fail course where students can learn about the dangers of alcohol and substance abuse. These courses could cover a variety of topics including the warning signs of substance use disorders, the relationship between substance abuse and other mental health issues, where to seek help when experiencing signs of difficulty, and how to approach a

76. Singleton *et al.*, *supra* note 33.

77. A.B.A., *supra* note 73 at 43.

78. See MODEL RULES OF PROF'L CONDUCT R. 1.16 (2020) [hereinafter MODEL RULES].

79. See ABA Working Group To Advance Well-Being In The Legal Profession Commission On Lawyer Assistance Programs Standing Committee On Professionalism National Organization Of Bar Counsel, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_2018_hod_midyear_105.pdf [https://perma.cc/7EBY-ZMNN].

colleague who may be in trouble.⁸⁰ To help reduce the stigma surrounding such courses, they would ideally be taught by recovering lawyers who could stress how harmful these disorders can be while simultaneously showing a student who may be struggling that it is possible to overcome these issues.⁸¹ Many law schools already offer similar 1-credit pass/fail courses on interesting topics related to the legal profession, so adding a course addressing this subject is unlikely to be a significant undertaking for these institutions.⁸²

Even if a law school is unwilling to make any changes to its programming or curriculum to accommodate the need for substance use disorder education, it could still inform at least some of its student body about the seriousness of these issues through a speaker series. The series could consist of lectures by recovering attorneys warning students about the looming signs of substance use disorders and making them aware of the serious impacts that these disorders can have on one's career. Hearing these testimonies could encourage students to think more carefully about how they use alcohol and other substances and make them more cognizant of avoiding problematic behavior.

A key component of substance use disorder education in either an orientation program, Professional Responsibility course, 1-credit course, or speaker series would be to introduce students to the resources available to them via Lawyer Assistance Programs (LAPs). Each state has a LAP run by its State Bar Association that provides confidential services to judges, lawyers, and law students who are facing substance use issues or other mental health concerns.⁸³ These LAPs can perform assessments of attorneys' mental health, offer free short-term counseling, offer additional paid counseling, give referrals for outside treatment, and introduce attorneys to peer support groups.⁸⁴ As a whole, these organizations seek to support attorneys in both their personal and professional

80. See *The Path to Lawyer Well-Being*, NAT'L TASK FORCE ON LAW. WELL-BEING 39–40 (Aug. 2017).

81. See *id.* at 17.

82. See, e.g., *First Year Week-One Simulations*, GEORGETOWN UNIVERSITY LAW CENTER, <https://www.law.georgetown.edu/experiential-learning/simulations/first-year-week-one-simulations/> [<https://perma.cc/96P5-ABN2>] (last visited Apr. 17, 2022); *Course Offerings*, UNIVERSITY OF GEORGIA LAW, https://www.law.uga.edu/course-offerings?sort_by=field_credit_hours_value&sort_order=ASC [<https://perma.cc/Z5F6-AAQV>] (search filters applied) (last visited Apr. 17, 2022); *Berkeley Law – Schedule of Classes*, BERKELEY LAW, https://www.law.berkeley.edu/php-programs/courses/courseSearchResults.php?termCode=D&termYear=2021&key=&Search.x=0&Search.y=0&instructorSearch=&categoryfield=&courseTitleSearch=&courseNumSearch=&descriptionfield=&unitfield=1&start_time_open=&start_time_open_am=AM&start_time_close=&start_time_close_am=AM&end_time_open=&end_time_open_am=AM&end_time_close=&end_time_close_am=AM [<https://perma.cc/98H4-VJ7P>] (search filters applied) (last visited Apr. 17, 2022).

83. *Directory of Lawyer Assistance Programs*, A.B.A., https://www.americanbar.org/groups/lawyer-assistance/resources/lap_programs_by_state/ [<https://perma.cc/2MHE-U8R7>] (last visited Apr. 17, 2022).

84. See, e.g., DC BAR LAWYER ASSISTANCE PROGRAM, <https://www.dobar.org/for-lawyers/lawyer-assistance-program> [<https://perma.cc/Z973-A8Y8>] (last visited Apr. 17, 2022); STATE BAR OF GEORGIA LAWYER ASSISTANCE PROGRAM, <https://www.gabar.org/committeesprogramsections/programs/lap/index.cfm> [<https://perma.cc/F6TP-A58Y>] (last visited Apr. 17, 2022); STATE BAR OF CALIFORNIA LAWYER ASSISTANCE PROGRAM, <https://www.calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program> [<https://perma.cc/QY4K-PWYC>] (last visited Apr. 17, 2022).

lives by helping them recover and seek treatment for these mental health concerns.⁸⁵ Making students aware of the external resources provided by LAPs can help to curtail the fear that one's confidentiality would be breached by a law school's administration. For struggling students who are unwilling to take the perceived risk of seeking help through their respective schools, LAPs could provide a crucial alternative means of receiving help and treatment.

3. HOLDING LAW SCHOOLS ACCOUNTABLE

It is clear that there are steps law schools could take to address the ever-increasing rates of alcohol and substance use disorders in the legal field, but what is less clear is whether these institutions would actually be willing to implement any of the suggestions put forth above. After all, mandating faculty training or creating a course dedicated solely to substance abuse education could be viewed as an admonition that there is a problem on campus, something an institution may not be willing to acknowledge. For this, the ABA should intervene and create an incentive structure for schools to continue to take steps in the right direction. By monitoring and collecting information, the ABA could institute a process of naming and shaming for law schools that are unwilling to take the steps outlined above.⁸⁶ Each year, lists could be published of the legal institutions that, for example, do not educate their faculty members on substance use disorders, do not have an anonymous chat portal available to students, or do not include substance use disorder education in the first-year orientation. As no law school would want to be put on the list, the goal would be for schools to readily adopt the suggestions above and for these lists to ultimately become antiquated. Greater accountability and scrutiny in the public eye could be just what these institutions need to start taking the rampant problems of alcohol and substance use disorders on their campuses more seriously.

B. THE ROLE OF LAW FIRMS

While it is important for law schools to educate students about the dangers of alcoholism and substance use disorders at the inception of their legal careers, it is equally important that law firms take steps to prevent problematic behaviors from coming to fruition and provide resources to attorneys who struggle with them. After all, a number of attorneys felt that their problematic drinking habits began in law school, but a far greater amount felt that these issues arose within the

85. See, e.g., *Mission and History*, DC BAR LAWYER ASSISTANCE PROGRAM, <https://www.dcbbar.org/for-lawyers/lawyer-assistance-program/who-we-are/mission-history> [<https://perma.cc/G3FS-7FLB>] (last visited Apr. 17, 2022).

86. Naming and shaming is, "the activity of saying publicly that a person, company, etc. has behaved in a bad or illegal way." *Naming and shaming*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/naming-and-shaming> [<https://perma.cc/MVV4-66JZ>] (last visited Apr. 17, 2022).

15-year period following law school.⁸⁷ This is to be expected, given that people with higher incomes are both more likely to drink in general and more likely to drink in greater quantities than those with lower incomes.⁸⁸

In order for law firms to retain competitive and competent attorneys, steps must be taken to address the alarming rates of alcohol and substance use disorders that transpire in these environments. Law firms, like law schools, need to acknowledge the widespread pervasiveness of these issues and avoid the common “not at my firm” mentality.⁸⁹ Minimizing these issues or pretending that they do not exist will only make the problem worse while harming a firm’s attorneys in the process; work will suffer, relationships will be hurt, and firm culture will devolve as a result.⁹⁰ Firms that ignore problematic alcohol and substance use tend to have a reactive approach to treatment once an attorney has already developed a substantial problem.⁹¹ Only by taking ownership of these issues will firms be able to proactively prevent alcohol and substance use disorders from emerging in the first place.

One way that a firm can take ownership is to mandate training on alcohol and substance use disorders as part of the onboarding process for new hires. Just as it is important to educate law students on how these issues could affect them during school, it is equally important that young associates are educated on how these issues could impact them in practice. This is especially true given that the same study finding that attorneys generally had much higher rates of problematic drinking than the general population also concluded that these rates were even more extreme for young attorneys.⁹² Firms could develop their own internal materials to teach attorneys about alcohol and substance use matters, but there are also resources readily available on LexisNexis that firms could easily require young associates to watch or read.⁹³ These resources should be advertised to more senior attorneys as well since the ABA now requires one credit of training in Mental

87. A study of 2901 attorneys found that 14.2% felt that their problematic drinking behaviors began during law school while 58.3% felt that their unhealthy behaviors began after completing law school. Krill *et al.*, *supra* note 4, at 48.

88. Matt Schneiderman, *Rich People Are Drinking More*, HEALTHLINE (June 19, 2017), <https://www.healthline.com/health-news/rich-people-drinking-more> [<https://perma.cc/FF3M-CFAM>].

89. See Aebrá Coe, *What BigLaw Can Do About The Industry’s Drinking Problem*, LAW360 (Mar. 3, 2016), <https://www.law360.com/articles/765113/what-biglaw-can-do-about-the-industry-s-drinking-problem> [<https://perma.cc/94B3-ZKRM>].

90. See *Impact of Alcohol Abuse in the Workplace*, DISCOVERY MOOD & ANXIETY PROGRAM, <https://discoverymood.com/blog/alcohol-abuse-with-professionals/> [<https://perma.cc/76PS-R4K7>] (last visited Apr. 17, 2022).

91. Coe, *supra* note 89.

92. 32.3% of attorneys under the age of 30, and 26.1% of attorneys aged 31-40 displayed problematic drinking behaviors compared to 20.6% of all attorneys. Similarly, junior associates also have the highest rates of problematic alcohol use among those at law firms. Krill *et al.*, *supra* note 4, at 51.

93. LEXISNEXIS UNIVERSITY, <https://www.lexisnexis.com/university/Catalogue.aspx?training=cle&PracticeArea=Substance%20Abuse%20and%20Mental%20Health%20> [<https://perma.cc/2MWT-SRE4>] (search filter applied for “Substance Abuse and Mental Health”) (last visited Apr. 17, 2022).

Health and Substance Use Disorders as part of its updated Model Rule for Minimum Continuing Legal Education passed in 2017.⁹⁴

As part of this effort to demonstrate to employees that the firm does in fact take these issues seriously, a wellbeing committee made up of attorneys from various levels should be established.⁹⁵ A formal committee is essential for ensuring that issues of attorney wellbeing do not become eclipsed by “more important matters” during busy seasons. The members of this committee can ensure that their fellow attorneys are prioritizing wellbeing and not falling prey to substance use disorders or mental illnesses that can be brought on by stress. The committee can organize speaker events that promote education and awareness, provide resources to attorneys who may be struggling, and present concerns to upper-level management about unhealthy firm practices. This way, attorneys who are concerned about their substance use habits can feel seen and supported by both the firm and their fellow attorneys.

Perhaps the largest factor influencing problematic drinking behaviors in law firms is the omnipresence of free and unlimited alcohol at virtually all firm social events.⁹⁶ In order to avoid inadvertently encouraging irresponsible alcohol consumption, firms should work to provide social events outside of happy hours or mixers that do not revolve around drinking. This idea is not wholly unprecedented; some firms have begun to introduce events that encourage a healthier lifestyle such as yoga classes, hiking trips, exercise classes, and meditation sessions.⁹⁷ That said, the frequency with which these events occur and the attendance rates they receive pale in comparison to firm events that do provide alcohol.⁹⁸

Beyond events held solely for attorneys within firms, law firms must change the way that they market themselves to law students via their summer associate programs. Summer associates are wined and dined for 10 weeks straight with countless happy hours, dinners, and social events, nearly all revolving around alcohol.⁹⁹ These events can certainly be a lot of fun and provide opportunities for summer associates to bond with attorneys at the firm, but this comes at a cost; having so many firm events that revolve around alcohol sends the message that alcohol is an integral part of law firm culture before students are even hired as

94. *ABA MCLE Model Rule Implementation Resources*, A.B.A., <https://www.americanbar.org/events-cle/mcle/modelrule/> [https://perma.cc/P5DT-PBBW] (last visited Apr. 17, 2022).

95. *ABA Working Group To Advance Well-Being In The Legal Profession Commission On Lawyer Assistance Programs Standing Committee On Professionalism National Organization Of Bar Counsel*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_2018_hod_midyear_105.pdf [https://perma.cc/SQ5E-PV5G].

96. Katelyn Polantz, *Alcoholism Is a Serious Problem for Law Firms*, INSIDER, <https://www.businessinsider.com/alcoholism-is-a-serious-problem-for-law-firms-2017-7> [https://perma.cc/A4H7-GSHD] (last visited Apr. 17, 2022).

97. *See id.*

98. *See id.*

99. *See id.*

attorneys. Instead, firms should seek to encourage that relationship building through the same alternative events that it could provide to its attorneys. This is not to say that firms should never have happy hours or other events that incorporate alcohol with their summer associates, but firms should reduce the frequency of these events and take steps to ensure that there are alternatives for those who would prefer not to drink, such as providing small snacks or mocktails.¹⁰⁰ Nearly a third of attorneys exhibit problem drinking patterns during their first 10 years of practice, and providing numerous events with large quantities of alcohol only fans the flame.¹⁰¹

CONCLUSION

The seemingly endless rise in alcohol consumption has only worsened the unprecedented rates of NCDs seen today, and this increase weighs heavily on America's already significant healthcare burden, particularly in the wake of Covid-19. As expected, the alcohol industry has continued to target consumers in a way that encourages greater consumption of alcohol, and for this, it is the government's responsibility to increase taxation on alcohol, restrict marketing practices in the industry, and mandate more comprehensive warning labels in a way that will discourage alcohol consumption. As law students and attorneys are two populations that suffer at disproportionately high rates from alcohol use and substance use disorders, law schools and law firms urgently need to heed the suggestions outlined above in order to fight against this detrimental trend in the legal profession.

100. A mocktail is "a usually iced drink made with any of various ingredients (such as juice, herbs, and soda water) but without alcohol: a nonalcoholic cocktail." *Mocktail*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/mocktail> [<https://perma.cc/GHX7-5VPP>] (last visited Apr. 17, 2022).

101. See Krill *et al.*, *supra* note 4, at 51.