

A GUIDE TO DEALING WITH ADDICTION AND MENTAL ILLNESS

By Mark G. Astor, Esquire
Founder of Drug And Alcohol Attorneys

<http://drugandalcoholattorneys.com>

(561) 419-6095

mark@drugandalcoholattorneys.com

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FOREWORD

This book is dedicated first and foremost to my father, Lionel Astor, who passed away on January 15, 2017. I did not know how much I had learned from him until he was gone. He also taught me that the older we get the faster time goes by. I didn't believe that until the time had already past.

Second, this book is dedicated to all the moms and dads who have trusted me to save their children when all hope seemed lost. Thank you for believing in us during this darkest of times.

INTRODUCTION

As a young Certified Legal Intern at the Palm Beach County State Attorneys in 1993, I was convinced that everyone in the criminal justice system was bad and should be locked up. The legislative mandate in Florida is to punish individuals not to rehabilitate them.

By the time I left the State Attorney's Office in 1999, I had come to realize that this is not the case. In fact, the majority of people that find themselves in the criminal justice system are suffering from addiction and/or mental illness. Unfortunately, most of those people will never get the treatment they desperately need in order to get better.

On January 15, 2017, one (1) week to the day after my fiftieth birthday, we lost my father. For the previous two (2) years he had been sick, suffering from repeated strokes and having to endure multiple surgeries. Wherever one goes after death, I truly believe that my father was ready to go to that place.

During his time of sickness, when we thought he'd get better, I lost count of how many times we either dialed 911 or rushed him to the emergency room. I began to realize that as my father was laying in one of his many different hospital beds that we, as a family, were in emotional crisis. I cannot speak for my siblings or mother, but I know that I couldn't sleep, I was having trouble focusing at work, I was depressed, and I am certain that my clients did not get 100% of my attention. My father's illness was very much a personal problem for me, permeating my entire life.

When a client comes to see us very often their life is in turmoil, they cannot sleep at night, they cannot focus at work, their relationships are in shambles, and they may well be suffering from depression too. As lawyers we view the client as someone with a "legal problem" and that we have the "legal solution" based on the number of issues we are able to spot and potentially solve. The diseases of addiction and mental illness are never just a legal problem, they are a personal problem too.

One of the things I've learned since turning the focus of our practice to helping families and individuals who are dealing with addiction and mental illness is that they, like my family was, are in emotional crisis. One of the cases we handled involved a young man who found himself in the criminal justice system because he had an "impulse control" issue. For over twenty (20) years he had suffered from a mental illness that was poorly managed and mis-diagnosed. As a result, he used, abused, and became addicted to anything he could either put in his mouth, in his veins, or up his nose. He did everything and anything he could to make himself "feel better."

While he fought to stay out of trouble, his family, in particular his mother and father, suffered terribly as they watched their son's life going from bad to worse. The emotional toll his troubles took on his parents was there for all to see. The first time I met them the look in their eyes was identical to the look I had seen in my own mother and sisters' eyes as we sat in one of my father's many hospital rooms. His parents were financially, spiritually, physically and emotionally spent. They needed options and answers, they needed help with their personal problem.

THE BASICS

We know from experience that the diseases of addiction and mental illness, when left unchecked, only get worse with time, not better. As a result, an individual suffering from these diseases can only go to one (1) of three (3) places: 1) The morgue; 2) Prison; or 3) Treatment.

If your loved one dies we cannot help you, we wish we could.

If your loved one is arrested, because addicts tend to lie, cheat and steal (not because they are bad but because this is the nature of the disease) we can help them. We have fifty (50) years combined experience in the criminal justice system.

If your loved one needs treatment and either will not go into treatment, or will not stay in treatment, we can help. Treatment is not a magic pill but your loved one's chances of ending up dead or in prison are significantly reduced if they are made to go into treatment.

TEN THINGS YOU DIDN'T KNOW ABOUT ADDICTION

1. **Addiction Is a Disease.** When an addiction is active, the alcoholic/addict has virtually no control over their actions. They are just as much a victim of their disease as is someone with diabetes, cancer, heart disease, or any other chronic condition.

2. **Addiction Is a Lonely Disease but Addicts Are Not Alone.** Because of the deception and denial that, hand-in-hand with addiction, many substance abusers find themselves separate from those around them. This isolation can exacerbate their problem, because they feel alone and unworthy.

3. **Addiction Is Incurable.** Addiction is a chronic, progressive disease, it can never be cured. A person who is addicted will always have to be on guard with their thoughts and actions, lest they suffer a relapse. There is no such thing as a “recovered” addict or alcoholic.

4. **Many Addicts Cannot Feel Normal without Their Drug of Choice.** Addiction is a disease of the brain. The brain of someone who is actively addicted to drugs or alcohol will actually undergo physical and chemical changes, and these changes are what makes it so hard to overcome an addiction.

5. **There Is No Such Thing as a “Stereotypical” Addict.** For whatever reason, many people still have the mental picture of an addict/alcoholic as homeless, dirty, incoherent, and criminal. While there is no doubt that some substance abusers fit that profile, there are many more who appear outwardly as normal, productive, everyday citizens. In fact, because up to 20% of the US population suffers from a drug or alcohol dependency, high-functioning addicts may even be the rule, rather than the exception.

6. **No One Knows Exactly What Causes Addiction.** Addiction is a disease with many contributing factors, but no single identifying cause. Some factors that may play a role include:

- Genetics, Trauma, Family History, Social pressure, Co-occurring mental disorders and behavior (In other words, if a person drinks or uses drugs long enough and heavily enough, they will become addicted)

7. **Addiction Can Be Fatal, but so Can Unsupervised Recovery.** Most people understand that recovery from addiction means abstaining from drinking and using, *and that* means unpleasant withdrawal, with symptoms such as:

- anxiety/irritability
- nausea/vomiting/diarrhea
- headaches and confusion
- wild mood swings
- muscle cramps/bodily pain
- insomnia

- tremors

8. **A Person Can Be Addicted to Anything.** When talking about addiction, we usually think in terms and focus upon drugs and alcohol, but those are by no means the only types of addiction. A person can be addicted to:

- sex
- cigarettes
- caffeine
- gambling
- the Internet
- video games
- shopping
- hoarding

Any behavior that disrupts a person's life and leaves them powerless to stop may qualify as an addiction, and professional intervention and counseling may be necessary.

9. **Recovery from Addiction Can Require Drastic Lifestyle Changes.** People in recovery for alcoholism or drug addiction learn that in order to stay sober they will have to avoid the people, places, and things that were a regular part of their drinking and drugging lifestyles.

This means that to avoid risking relapse, the recovering alcoholic/addict must stay away from friends and family members who are still actively addicted, find new places to go, and change their behaviors and mindsets.

This can be difficult, but it is often necessary.

10. **Recovery from Addiction Is Possible.** With proper treatment by trained professionals, it is possible for a person to recover from alcoholism or drug abuse. Addiction is a highly personalized disease, and it will manifest itself differently from individual to individual.

TEN THINGS YOU DIDN'T KNOW ABOUT MENTAL ILLNESS

1. 1 out of 4 adults suffer from mental illness in a given year.
2. Mental illness typically strikes young people in their most productive years, 16-25.
3. Half of mental disorders begin before the age of 14.
4. 1 out of 10 children and adolescents are living with some form of mental illness.
5. Depression is ranked as the leading cause of disability worldwide.
6. Schizophrenia affects 2.2 million adults over the age of 18 in the USA.
7. 2 out of 3 people who suffer do so in silence, fearing judgment and rejection.
8. Mental illness affects more than twice as many women as men.
9. Anxiety disorders affect 12% of the population and many people go undiagnosed for a decade or more.
10. Mental illness is number 1 cause of workplace disability, accounting for 30% of disability claims and 70% of total disability costs.

THE OPTIONS

The Marchman Act

The Centers for Disease Control estimate that 114 people a day die because of drugs (*TIME* magazine offers a much higher estimate), and 6,748 will be sent to hospital emergency rooms for treatment. While addiction and substance abuse are undoubtedly major problems in the US, a survey conducted by the Substance Abuse and Mental Health Service Administration found that as many as 90 percent of people who most need drug rehab do not receive it.

The best kept secret in the battle against the opioid epidemic in Florida is the Marchman Act, a critical piece of life saving legislation that has been on the books since 1993. The Marchman Act permits the involuntary commitment of an individual suffering from a drug or alcohol substance abuse disorder.

After an ex parte petition is filed and reviewed for legal sufficiency, the Court can order an individual to be assessed for up to five (5) days and thereafter involuntarily committed for up to ninety (90) days (which can be extended for a further ninety days). If the individual leaves treatment prior to completion of the Court ordered treatment, contempt proceedings can be initiated and a pick up order requested. The Court can use the threat of incarceration to "leverage" the individual back into treatment.

I am fortunate and proud to have a brother who is a doctor currently completing his residency at Mount Sinai hospital in Miami. He has shared the horror of working in the Emergency Room and treating a child who has been brought in after suffering a heart attack caused by opioid ingestion. *"There is nothing worse than having to tell a mother*

and father that their 18, 19, or 20 year old child is gone because they suffered a heart attack after shooting up with heroin. The brain cannot survive when it's been starved of oxygen for ten or fifteen minutes."

I speak to lawyers, medical personnel and families on a regular basis and I am shocked that few, if any, have heard of the Marchman Act and how it can be used to save lives. 80% of people in treatment in South Florida are from other states, some treatment centers spending upwards of \$100,000 a month to advertise and attract clients to our state for addiction treatment, yet few families are being told about the Marchman Act and how it can be used to protect patients who are at risk of walking away from treatment.

Families often ask me why I'm such a proponent of making someone go into treatment. First and foremost, treatment, even forced treatment, saves lives. Additionally, in our experience, making the decision for someone that cannot make that decision for themselves, to go into treatment, is almost a cathartic experience for all concerned, and that's why we love the Marchman Act.

Emergency Temporary Guardianship

A Guardianship, and more specifically an ETG appointment, enables a Petitioner to make health care decisions on behalf of a Respondent when “there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person’s property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.” The court will consider whether the alleged incapacitated person (AIP) is a danger to themselves or others (like the Marchman Act). The ETG also gives the Petitioner control over finances.

One of the benefits of Petitioning the Court for an ETG, is the ability to circumvent HIPAA (the Federal medical privacy law that also has a Florida equivalent), and other such laws, that must be considered when an individual becomes eighteen (18) years of age. Generally, a parent, physician or interested person over the age of eighteen (18), who qualifies as a Guardian, can immediately begin to manage the AIP’s medical decisions, receive medical information on behalf of the AIP, authorize treatment based on physician recommendations, change facilities, or any specific medical decisions unique to that particular AIP.

The ETG is good for ninety (90) days, with the ability to renew for an additional ninety (90) days (like the Marchman Act), if a determination of Permanent Guardianship is not heard prior to that time.

We love the ETG in large part because when an individual does not meet Marchman Act criteria, such as when there is no current drug use, but there is ongoing mental illness, an ETG can help to get that individual the treatment they desperately need.

Permanent Guardianship

A permanent guardianship can be granted with or without the granting of an ETG. If it appears that the AIP is not going to become competent to manage their own affairs, either after the granting of an ETG or for a significant period of time, the Petitioner can ask the court for a permanent guardianship.

This requires the court to appoint an examining committee of three (3) experts who will then advise the court as to the AIP's ability to make rational decisions and the likelihood of competency returning to the AIP. If the court determines that a permanent guardianship should be granted, all the benefits of the ETG apply but for an indefinite period of time.

The Future

The Discretionary Trust

Addiction comes in many forms, such as drugs, alcohol, shopping, gambling and other destructive behaviors that someone may be unable to control, which not only affects them, but their families as well. An addict can place a strain on their loved ones both emotionally and financially.

A common question to consider is, *“If my son or daughter is suffering from addiction or mental illness, should I exclude them from receiving an inheritance upon my death?”* Of course, the concern is that if an addict or someone suffering from mental illness receives a large sum of money, they may make decisions that are not in their best interests, or in the best interests of other beneficiaries.

“Parameters may be set up so you do not have to disinherit a beneficiary, but instead can control what they might receive. You may wish to consider establishing a Discretionary Trust, which allows the creator to control any distributions that are made while you are alive or deceased.”

A Discretionary Trust will allow its creator to suspend the distribution of trust assets if, for instance, the beneficiary relapses, does not submit to random drug testing, or fails to continue on a course of treatment. The Trust may also allow one who manages the trust the authority to engage professionals to treat the beneficiary, and if they refuse treatment, then their interest in the trust may be terminated.

Opioid Litigation

The opioid epidemic in the United States has claimed the lives of hundreds of thousands of people and is caused, in large part, by a group of greedy drug manufacturers that made billions from opioid sales at the expense of patients and our country. Lately, various states, cities and municipalities have been filing law suits against the pharmaceutical companies hoping to get compensation for the cost of treating their citizens.

At Drug And Alcohol Attorneys we're all about helping families and individuals to get some justice for their loss. *"Overdose or addiction from the use of opioids is not your fault and is the number one threat we face as a society."* If you or a loved one were prescribed an opioid pain reliever and suffered an injury as a result, you may be entitled to significant compensation from the drug manufacturers that profited from your suffering. Common injuries related to opioids include:

Brain and heart damage due to overdose or even death, babies born addicted to opioids, the need for drug rehabilitation, loss of employment, arrest, and/or heroin addiction.

Now you can fight back. Individuals and families in numerous states, including Florida, plan to file suit against the pharmaceutical companies to hold them accountable for the damage they have done and continue to do. If you or your loved one has suffered from addiction or overdose following the prescribing of an opioid, contact the opioid litigation team at Drug and Alcohol Attorneys today to find out if you're eligible to receive compensation.

DRIVING UNDER THE INFLUENCE (DUI)

An arrest and DUI charge is no laughing matter. The effects of the experience can change your life forever and derail you from your dreams. This is why it is essential if you are charged with DUI you work with experienced attorneys who can help you navigate the complexities of the court system. We represent people charged with DUI in Florida.

WHAT'S AT STAKE

We understand that DUI is big business in the state – from the money paid to the arresting officer to the fees charged for probation and the classes you must take if charged. The result is a system that treats citizens unfairly and puts your livelihood and well-being at risk. Even before you are convicted, you risk losing your driver's license for as much as a year. We can help you fight the penalties, fines, and repercussions of a DUI arrest.

We will assist you with issues that include DUI school, ignition interlock devices, higher insurance rates, loss of your job, community service requirements, probation, loss of an immigrant or non-immigrant visa, and loss of any professional licenses. All of these scenarios are very real in light of a DUI arrest – you need an attorney on your side, fighting to protect your rights.

GET HELP

Florida is also home to mandatory minimum sentencing, which means no matter the circumstances of your situation, you are looking at least a year in jail and a \$1000 fine. Drug convictions in Florida, even minor ones, are serious business. You need an attorney

on your side to protect your rights and help you avoid a lifetime of misery from one mistake.

DRUG CRIMES

Drug crimes can include anything from possession to selling or trafficking. And unfortunately, your intentions might be misinterpreted and merely having an illegal drug with you could result in serious charges. Matters are made worse by your location, and in Florida with its proximity to international ports, accusations against you can be lofty. Our state has the harshest marijuana possession laws in the country, and any drug – from cocaine to methamphetamine to heroin – can cause you a lifetime of trouble.

WHAT'S AT STAKE

- Loss of your driving privileges
- Loss of your job
- Potential loss of custody & loss of opportunity to adopt or foster a child in the future
- Loss of voting rights
- Revoked student loan privileges

GET HELP

Florida is also home to mandatory minimum sentencing, which means no matter the circumstances of your situation, you are looking at least a year in jail and a \$1000 fine. Drug convictions in Florida, even minor ones, are serious business. You need an attorney on your side to protect your rights and help you avoid a lifetime of misery from one mistake.

This is just a glimpse into how your life can change following a drug conviction. If you are facing drug charges and frightened about what might happen, we can help. We are experienced attorneys who have been helping Boca Raton, FL residents fight drug

charges for years. We understand the Florida court system and we know things are not always as simple as they seem – even when you are not guilty of a crime.

CONCLUSION

At Drug And Alcohol Attorneys are goal and our passion, is to help those that suffer from substance abuse and mental health disorders clean up the wreckage of their past so they can build a better future.

We hope this book gives you an outline of how we can help you and your loved one.

Because we cannot anticipate all of your questions and concerns we invite you to schedule a consultation with us, it's free of charge and we may be able to give you some options and the ability to get control of an out of control situation.

Please call us at (561) 419-6095 or visit us on the web at

<http://drugandalcoholattorneys.com>

ABOUT US

Mark G. Astor (founder and Managing Partner)

Born and raised in the United Kingdom until the age of twenty-one, Mark Astor has been an attorney since 1994. Before entering private practice, Mark served the citizens of Palm Beach County as an Assistant State Attorney from 1994-1999. During his career as a prosecutor, he served as Chief of two different County Court Divisions and, thereafter, was promoted to a felony trial division. He has handled thousands of cases ranging from first-degree misdemeanors to Capital Murder.

Mark was admitted to the Florida Bar in 1994 and, in 1995, was admitted to practice before the U. S. District Court for the Southern District of Florida. In 2005, he was admitted to the District of Columbia Bar. He received his Bachelor of Arts Degree from the University of Michigan in 1990, his Juris Doctorate from Nova Southeastern University College of Law in 1994, and his Master of Laws Degree (L.L.M.) from American University, Washington College of Law in 2005.

In 2016 Mark founded Drug and Alcohol Attorneys (<http://drugandalcoholattorneys.com>) a law firm dedicated to empowering and representing families and individuals who are in crisis because of drug, alcohol and mental health disorders. Many times, individuals or families come to Mark because they have a friend or loved one who either refuses to go into treatment, or

will not stay in treatment. When this is the case, Mark's team helps them navigate through the complexities of the Marchman Act process, Florida's involuntary commitment statute for drug, alcohol and co-occurring mental health disorders. When a family needs to regain control over medical decisions and finances, Mark's team assists them to file an Emergency Temporary Guardianship (ETG) so that an individual who is no longer competent to make medical decisions for themselves can have that burden taken off their shoulders. Other times when an individual has been arrested for a criminal offense that stems from drug addiction or a mental health disorder, Mark's team can help to put in place a plan of action to not only get the person into recovery, but help them stay out of prison.

When he's not working in his law practice, Mark empowers members of the community by teaching Krav Maga (the Israeli system of hand to hand taught to the military, special forces and anti-terror units). He also enjoys an early morning work out believing that a healthy body leads to a healthy mind.

Email: mark@drugandalcoholattorneys.com

Audra Simovitch

Audra Simovitch is a solo practitioner with a law firm in Boca Raton, Florida. She has been practicing in both Massachusetts and Florida for the past twenty-two (22) years in the areas of Estate Planning, Probate, Guardianship and Real Estate Law. She graduated from Nova Southeastern Shepard Broad Law School in 1992 and continued her studies to earn an LLM degree in Taxation from Boston University Law School.

Her practice began in Boston, Massachusetts in the firm of Rosencrantz and Daily where her primary areas of practice were Estate Planning and Probate. Many of her clients were high net worth individuals. In 1997 she began work at a prestigious Real Estate Firm in Charlestown, Massachusetts, McCullough Steivater and Polvere. In 2011 she earned an LLM in Banking and Finance from Boston University Law School and subsequently moved with her two children back to Boca Raton, Florida. After working at Labovick Law Group, she opened her own law firm in 2014 and has been a solo practitioner since then.

Audra is admitted to practice law in Massachusetts and Florida as well as the District Court of Massachusetts, US Tax court, and Southern District Court of Florida. She has lectured on numerous occasions on issues regarding asset protection.

Email: audra@drugandalcoholattorneys.com

Lewis Hanna

Lewis K. Hanna is a sole practitioner attorney with his Law Firm in Boca Raton Florida. He graduated from Nova Southeastern University, School of Law, in 1992. Prior to undergraduate school, Lewis served a tour of duty with the U.S Army and attended the U.S Army Intelligence School in Arizona.

Immediately after law school Lewis worked as an Assistant State Attorney, investigating and prosecuting criminal offenses in Palm Beach County, from 1992 until 1997. After leaving the State Attorney's office, he opened his firm in Boca Raton where he has primarily focused on both State and Federal civil and criminal defense litigation. Mr. Hanna has also successfully prosecuted State appellate cases that have been reported in the national law reporters.

In addition to his legal practice, Lewis has also taught Political Science and Business Law I and II, as an Adjunct Professor for Palm Beach State College since 1994. During his time at PBSC, he also served as the Head Coach for the College's Mock Trial Team. The PBSC team has competed in several American Mock Trial Association trial competitions against power house schools such as Harvard, Clemson, University of Florida, and Florida State University.

Additionally, Lewis has served two terms (6 years) as an investigating member of the Florida Bar Ethics Grievance Committee for the 15th Circuit. During his last tenure he served as Vice Chairman of his Committee. The several Ethics Grievance Committees,

of the Florida Bar, are made up of attorneys and lay persons throughout each Circuit, whom are charged with administering the Bar's statewide disciplinary system to enforce Supreme Court Rules of Professional Conduct for the more than 100,000 lawyers admitted to practice law in Florida. On behalf of the Florida Bar, the committee accepts complaints against attorneys, investigates the complaints and renders decisions on whether to prosecute any potential attorney's unethical conduct.

Email: lewis@drugandalcoholattorneys.com