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### The House Edge: On Gambling and Professional Discipline

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# THE HOUSE EDGE: ON GAMBLING AND PROFESSIONAL DISCIPLINE

By Stacey A. Tovino\*

*Abstract:* On March 26, 2014, the Iowa Supreme Court revoked the license to practice law of Cedar Rapids attorney Susan Hense. Admitted to the Iowa Bar in 1996, Hense subsequently misappropriated \$837,000 in client trust funds to feed her addiction to casino gambling. This Article assesses how attorneys like Hense who are addicted to gambling are treated in professional disciplinary actions, including license suspension, revocation, and reinstatement proceedings. Themes that emerge include public misunderstanding of gambling disorder, stigma against individuals with gambling disorder, statutory recognition of substance addictions but not behavioral addictions, and mandatory attendance at religion-based fellowship meetings as a condition of license reinstatement. An important contribution to both the health law and professional responsibility literatures, this Article makes five specific proposals designed to ensure the fair and equitable treatment of individuals with gambling disorder in future professional disciplinary proceedings.

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## INTRODUCTION

On March 26, 2014, the Iowa Supreme Court revoked the license to practice law of Cedar Rapids attorney Susan Hense.<sup>1</sup> Admitted to the Iowa Bar in 1996, Hense subsequently misappropriated \$837,011 in client trust funds to feed her addiction to casino gambling.<sup>2</sup>

Hense is not the first Iowa attorney to be disbarred for conduct associated with gambling disorder. In 2006, the Iowa Supreme Court revoked the license to practice law of Council Bluffs attorney Michael

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1. See Trish Mehaffey, *Cedar Rapids Attorney Disbarred: Admits to Taking \$800,000 Out of Client Accounts for Gambling*, CEDAR RAPIDS GAZETTE (Mar. 28, 2014), <http://www.thegazette.com/2013/02/22/cedar-rapids-attorney-disbarred-admits-to-taking-800000-out-of-client-accounts-for-gambling> [https://perma.cc/27HM-CERX] (reporting Hense's disbarment).

2. See Trish Mehaffey, *Disbarred Cedar Rapids Lawyer Pleads Guilty to Wire Fraud in Federal Court*, CEDAR RAPIDS GAZETTE (Oct. 20, 2014), <http://www.thegazette.com/subject/news/public-safety/crime/fraud/disbarred-cedar-rapids-lawyer-pleads-guilty-to-wire-fraud-in-federal-court-20141020> [https://perma.cc/4BQS-3DXS] (reporting that Hense misappropriated \$837,011 in client funds).

Reilly.<sup>3</sup> First licensed in 1982, Reilly subsequently misappropriated over \$96,000 of an Iowa resident's personal injury settlement funds to finance his gambling.<sup>4</sup> Prior to Reilly's disbarment, the Iowa Supreme Court also revoked the license of Des Moines attorney Stacie Lett.<sup>5</sup> Lett, who specialized in family law, had misappropriated \$5,000 in client trust funds in order to gamble.<sup>6</sup>

Although Hense and Lett remain disbarred, other attorneys with gambling disorder have succeeded in petitions for license reinstatement. On June 18, 2015, the Supreme Court of Nevada reinstated the license of Las Vegas attorney Douglas Crawford.<sup>7</sup> The State Bar of Nevada had temporarily suspended Crawford's license in 2007 after he misappropriated over \$398,000 in client trust funds to finance his gambling.<sup>8</sup> In the eight years between his license suspension and reinstatement, Crawford completed six weeks of intensive inpatient treatment for gambling disorder, hundreds of weekly therapy sessions, and thousands of Gamblers Anonymous meetings.<sup>9</sup> Crawford, a leader in the Las Vegas recovery community, has used the income from his new law practice to pay tens of thousands of dollars in restitution to his former clients.<sup>10</sup>

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3. Iowa Sup. Ct. Disciplinary Bd. v. Reilly, 708 N.W.2d 82, 82–85 (Iowa 2006) [hereinafter Reilly (Iowa)].

4. See *id.* at 82 (identifying the conduct that led to Reilly's disbarment); State *ex rel.* Counsel for Discipline v. Reilly, 712 N.W.2d 278, 278 (Neb. 2006).

5. Iowa Supreme Court v. Lett, 674 N.W.2d 139, 140 (Iowa 2004).

6. See *id.* at 146 (recognizing but not allowing as mitigating evidence Lett's gambling addiction).

7. Order of Reinstatement at 4, *In re* Reinstatement of Douglas C. Crawford, No. 65284, (Nev. June 18, 2015) [hereinafter Crawford Order of Reinstatement].

8. See Order of Temporary Suspension at 2, *In re* Discipline of Douglas C. Crawford, No. 49333 (Nev. May 1, 2007) [hereinafter Crawford Order of Temporary Suspension] (identifying the conduct that led to Crawford's license suspension); Cy Ryan, *LV Attorney Who Stole \$398,345 for Gambling Habit Suspended*, LAS VEGAS SUN (Feb. 19, 2009), <http://lasvegassun.com/news/2009/feb/19/lv-attorney-who-stole-398345-gambling-habit-suspen/> [<https://perma.cc/JG4B-LRZZ>].

9. See Opening Brief of Douglas C. Crawford at 14, State Bar v. Crawford, No. 51724 (Nev. July 30, 2008) [hereinafter Crawford Opening Brief] (identifying the number and frequency of treatments and mutual support meetings Crawford completed and attended, respectively); E-mail from Douglas Crawford, Of Counsel, Law Offices of Mandy J. McKellar, to Stacey Tovino, Lehman Professor of Law and Director, Health Law Program, William S. Boyd School of Law, University of Nevada, Las Vegas (Jan. 24, 2016, 1:32 P.M.) (on file with author) [hereinafter Second Crawford E-mail].

10. See E-mail from Douglas Crawford, Of Counsel, Law Offices of Mandy J. McKellar, to Stacey Tovino, Lehman Professor of Law and Director, Health Law Program, William S. Boyd School of Law, University of Nevada, Las Vegas (Jan. 24, 2016, 11:39 A.M.) [hereinafter First Crawford Email] (on file with author) (noting that, as of January 25, 2016, Crawford had paid more than \$130,000 in restitution to his former clients, including approximately \$55,000 since his June 2015 reinstatement).

This Article examines how attorneys like Hense, Reilly, Lett, and Crawford—attorneys who are addicted to casino gambling, riverboat gambling, fantasy sports betting, storefront video gambling, or online gambling—are treated in professional disciplinary actions. As background, gambling is defined as the risking of something of value with the hope of obtaining something of greater value.<sup>11</sup> Although gambling is prevalent in many cultures and most individuals who gamble do so without negative consequences, some individuals become significantly impaired as a result of their gambling behaviors.<sup>12</sup>

The American Psychiatric Association (APA) first recognized pathological gambling as a mental disorder in the third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III), published in 1980.<sup>13</sup> Originally classified as an impulse control disorder, pathological gambling was characterized with reference to an individual's chronic and progressive failure to resist impulses to gamble as well as gambling behavior that compromised, disrupted, or damaged the individual's personal, family, or vocational pursuits.<sup>14</sup>

In the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), published in 2013, the APA renamed the condition gambling disorder and reclassified it as a non-substance-related disorder within the larger substance-related and addictive disorders chapter, alongside alcohol use disorder and the various drug use disorders.<sup>15</sup> According to the APA, gambling disorder's new classification reflects research showing that "gambling disorder is similar to [the] substance-related disorders in clinical expression, brain origin, comorbidity, physiology, and treatment."<sup>16</sup> Today, mental health professionals consider gambling disorder to be a very serious disease of

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11. See AM. PSYCHIATRIC ASS'N DIAGNOSTIC & STAT. MANUAL OF MENTAL DISORDERS 586 (5th ed. 2013) [hereinafter DSM-5] (defining gambling).

12. See *id.* (noting the difference between social gambling and disordered gambling).

13. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STAT. MANUAL OF MENTAL DISORDERS 291 (3d ed. 1980) [hereinafter DSM-III] (recognizing pathological gambling as a mental disorder and classifying it as an impulse control disorder).

14. See *id.* (defining pathological gambling).

15. DSM-5, *supra* note 11, at 585; AM. PSYCHIATRIC ASS'N, SUBSTANCE-RELATED & ADDICTIVE DISORDERS 1 (2013), <http://www.dsm5.org/documents/substance%20use%20disorder%20fact%20sheet.pdf> [https://perma.cc/ZS48-RU3D] [hereinafter APA FACT SHEET]. In addition to alcohol, the ten other classes of drugs that have DSM-5-recognized use disorders include caffeine, cannabis, hallucinogens, inhalants, opioids, sedatives, hypnotics, stimulants, tobacco, and other, unknown substances. See DSM-5, *supra* note 11, at 483–585.

16. APA FACT SHEET, *supra* note 15, at 1.

the brain.<sup>17</sup> A mental health professional may diagnose an individual with the disorder if the individual meets four or more of nine diagnostic criteria in a twelve-month period and the individual's gambling behavior is not better explained by a manic episode.<sup>18</sup>

Gambling disorder can adversely impact or result in the complete loss of family relationships, employment, and educational pursuits.<sup>19</sup> Gambling disorder is also associated with poor general health, high utilization of medical services,<sup>20</sup> and high rates of suicidal ideation and attempted suicide.<sup>21</sup> More than one in two disordered gamblers

17. See, e.g., Cynthia Lee, *Doctors Treat Gambling Addiction as a Brain Disease*, UCLA NEWSROOM (Jan. 20, 2011), <http://newsroom.ucla.edu/stories/gambling-addicts-suffer-from-brain-190668> [<https://perma.cc/WAS7-G6U8>] (reporting that mental health professionals understand gambling addiction as a "brain disease"); Liz Benston, *Illness Theory Gaining Ground for Gambling Addiction: Similar Disorders Found in Alcoholics, Those with a Compulsion to Gamble*, LAS VEGAS SUN (Nov. 23, 2009), <http://lasvegassun.com/news/2009/nov/23/illness-theory-gaining-ground/> [<https://perma.cc/FH6T-GZPA>] ("A growing collection of research has found that the most afflicted have the kinds of biological brain disorders that are found among drug and alcohol abusers.").

18. Gambling disorder's nine diagnostic criteria include: (1) "Needs to gamble with increasing amounts of money in order to achieve the desired excitement"; (2) "Is restless or irritable when attempting to cut down or stop gambling"; (3) "Has made repeated unsuccessful efforts to control, cut back, or stop gambling"; (4) "Is often preoccupied with gambling (e.g., having persistent thoughts of reliving past gambling experiences, handicapping or planning the next venture, thinking of ways to get money with which to gamble)"; (5) "Often gambles when feeling distressed (e.g., helpless, guilty, anxious, depressed)"; (6) "After losing money gambling, often returns another day to get even ('chasing' one's losses)"; (7) "Lies to conceal the extent of involvement with gambling"; (8) "Has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling"; and (9) "Relies on others to provide money to relieve desperate financial situations caused by gambling." DSM-5, *supra* note 11, at 585. If an individual exhibits four or more of the nine criteria in a twelve-month period, a mental health professional may diagnose the individual with gambling disorder. *Id.* Under the DSM-5, a mental health professional may classify an individual's gambling disorder as: (1) "mild" if only four or five diagnostic criteria are satisfied; (2) "moderately severe" if six or seven diagnostic criteria are satisfied; (3) "most severe" if eight or nine diagnostic criteria are satisfied; (4) "in early remission" if none of the criteria for gambling disorder has been met for at least three months but for less than twelve months after a prior diagnosis of gambling disorder; and (5) "in sustained remission" if none of the criteria for gambling disorder has been met during a period of twelve months or longer after a prior diagnosis of gambling disorder. *Id.* at 586.

19. *Id.* at 586, 589.

20. *Id.*

21. See, e.g., *Gambling and Suicide*, CONN. COUNCIL ON PROBLEM GAMBLING, <http://www.ccp.org/problem-gambling/more/gambling-and-suicide/> [<https://perma.cc/5NTP-ZDTH>] ("The National Council on Problem Gambling, citing various studies, reports that one in five pathological gamblers attempts suicide, a rate higher than for any other addictive disorder."); *id.* (reporting the results of a 2005 conducted by researchers at Yale University and the Connecticut Council on Problem Gambling (CCPG) finding that of 986 individuals who called the CCPG Helpline, 252 acknowledged gambling-related suicidality (25.6%) and, of those, 53 (21.5%) reported gambling-related suicide attempts).

experience suicidal ideation and approximately one in five disordered gamblers attempts suicide.<sup>22</sup>

Notwithstanding the updated medical understanding of gambling disorder<sup>23</sup> and widespread agreement among mental health professionals regarding the seriousness of the disease,<sup>24</sup> individuals with the disorder continue to struggle for equal protection under the law. In a series of articles recently published in the *Tulane Law Review* and *Utah Law Review*, the author showed that some state benchmark plans exclude inpatient and outpatient treatments for gambling disorder from health insurance coverage even though the same plans cover inpatient and outpatient treatments for alcohol and drug use disorders.<sup>25</sup> The author also showed how individuals with gambling disorder are not considered protected individuals with disabilities under the Americans with Disabilities Act and analogous state disability discrimination laws even though individuals with other mental health conditions are expressly protected under federal and state disability discrimination law.<sup>26</sup> That is,

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22. See DSM-5, *supra* note 11, at 587 (referencing these statistics). See generally Benston, *supra* note 17 (reporting the results of a group-therapy session in which three patients with gambling disorder said they had thought about suicide); Chris Wright, *How Gambling Can Kill You Faster Than Drug Abuse or Alcoholism*, THE FIX (Sept. 13, 2012), <http://www.alternet.org/how-gambling-can-kill-you-faster-drug-abuse-or-alcoholism> [https://perma.cc/B7BG-B3TA] (“[O]ne in five problem gamblers try to kill themselves . . . [This is w]hy gambling may be the most dangerous addiction of all.”); LANIE’S HOPE, <http://lanieshope.org> [https://perma.cc/6R4Z-VLVK] (sharing the story of Lanie Aikins, who committed suicide due to the desperation associated with her gambling disorder); Crawford Opening Brief, *supra* note 9, at 8, lines 6–7 (describing Crawford’s near suicide attempt associated with his gambling disorder, including his extreme remorse associated with his misappropriation his clients’ trust funds); *id.* at 11, line 18 (referencing the fact that Crawford was “wracked with grief and remorse”); *id.* at 13, lines 13–14 (referencing Crawford’s “huge remorse”); *id.* at 16, line 9 (referencing Crawford’s “extreme[] remorse”); *id.* at 20, lines 19–22 (referencing Crawford’s multiple instances of remorse).

23. See *supra* text accompanying notes 15–17 (discussing the updated medical understanding of gambling disorder).

24. See, e.g., Logan Faerber, *How the Brain Gets Addicted to Gambling*, SCI. AM. (Nov. 1, 2013), <http://www.scientificamerican.com/article/how-the-brain-gets-addicted-to-gambling/> [https://perma.cc/LMA6-4EFX] (“In the past, the psychiatric community generally regarded pathological gambling as more of a compulsion than an addiction—a behavior primarily motivated by the need to relieve anxiety rather than a craving for intense pleasure. . . [now, there is a new] understanding of the biology underlying addiction”); Mayo Clinic Staff, *Compulsive Gambling*, MAYO CLINIC, <http://www.mayoclinic.org/diseases-conditions/compulsive-gambling/basics/definition/con-20023242> [https://perma.cc/VH2Y-AHLZ] (“Compulsive gambling is a serious condition that can destroy lives.”).

25. See Stacey A. Tovino, *Lost in the Shuffle: How Health and Disability Laws Hurt Disordered Gamblers*, 89 TUL. L. REV. 191, 213–24 (2014) (showing this result) [hereinafter Tovino, *Lost in the Shuffle*]; Stacey A. Tovino, *The DSM-5: Implications for Health Law*, 2015 UTAH L. REV. 767, 775–86 (2015) [hereinafter Tovino, *The DSM-5*].

26. See, e.g., 42 U.S.C. § 12114(b) (2012) (including within the ADA’s protections qualified individuals with disabilities whom: (1) have successfully completed a supervised drug rehabilitation

the author showed that individuals with gambling disorder are vulnerable under the law in a way that other, similarly situated individuals are not.<sup>27</sup> Using neuroscience, economics, and principles of biomedical ethics to argue that individuals with gambling disorder should have the same legal protections as individuals with other substance-related and addictive disorders, the author's prior works proposed important amendments to state benchmark and other health plans as well as federal and state anti-discrimination laws.<sup>28</sup>

Building on the author's prior scholarship, this Article examines the legal treatment of individuals with gambling disorder in a third context; that is, attorney disciplinary proceedings, including license suspension, revocation, and reinstatement proceedings. Part I begins by reviewing the obligation of attorneys to safeguard client trust funds under state rules of professional conduct, the sanctions that may be imposed on attorneys who misappropriate client trust funds, and the procedural due process afforded attorneys during this sanction process.<sup>29</sup> Part I also reviews state laws governing attorney reinstatement, including the criteria that attorneys seeking reinstatement must meet by clear and convincing evidence.<sup>30</sup>

Part II examines four illustrative cases in which attorneys with gambling disorder misappropriated client trust funds in violation of state rules of professional conduct to feed their addiction to gambling.<sup>31</sup> In each case, Part II identifies the sanctions imposed on the attorney; factors considered by the state or regional disciplinary board and the state supreme court, as appropriate, in imposing such sanctions, including aggravating and mitigating factors; the possibility of license

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program and are no longer engaging in the illegal use of drugs; (2) have otherwise been rehabilitated successfully and are no longer engaging in the illegal use of drugs; (3) are participating in a supervised rehabilitation program and are no longer engaging in the illegal use of drugs; or (4) are erroneously regarded as engaging in the illegal use of drugs but are not engaging in such use); *id.* § 12211(b)(2) (“Under this chapter, the term ‘disability’ shall not include . . . compulsive gambling . . .”); CAL. GOV’T CODE § 12926(j) (2015) (“‘Mental disability’ does not include . . . compulsive gambling . . .”); *id.* § 12926(m)(6) (“‘Physical disability’ does not include . . . compulsive gambling . . .”); Tovino, *Lost in the Shuffle*, *supra* note 25, at 230–38 (discussing the lack of protection under federal and state disability discrimination law for individuals with gambling disorder); Tovino, *The DSM-5*, *supra* note 25, at 793–98.

27. See, e.g., Tovino, *Lost in the Shuffle*, *supra* note 25, at 252 (arguing that, for too long, individuals with gambling disorder have not had significant legal protections under health and disability laws).

28. See, e.g., *id.* at 191, 238–52.

29. *Infra* Part I.

30. *Id.*

31. *Infra* Part II.



reinstatement, if any; the period of time the attorney was required to wait or the conditions the attorney was required to meet, if any, prior to applying for reinstatement; and the conditions, if any, imposed on the attorney's future practice.<sup>32</sup>

Part III identifies several themes that emerge out of these four case studies. These themes include public misunderstanding of gambling disorder, stigma against individuals with gambling disorder, statutory recognition of substance addictions but not behavioral and process addictions, and mandatory attendance at religion-based fellowship meetings as a condition of license reinstatement.<sup>33</sup>

Part IV makes five specific proposals designed to ensure the fair and equitable treatment of attorneys with gambling disorder in future disciplinary proceedings and provides draft language implementing these proposals. This draft language: (1) incorporates the concepts of treatment, recovery, and remission, not just cure and removal, into Supreme Court rules; (2) incorporates the concepts of physical and mental illness generally, not just alcohol and drug use disorder, into Supreme Court rules; (3) guides disciplinary boards and Supreme Courts with respect to the offering of a range of evidence-based treatments and mutual support programs for attorneys with gambling disorder; (4) guides disciplinary boards and supreme courts with respect to medically appropriate language to be used in recommendations and orders involving attorneys with gambling disorder; and (5) offers a system of judge, lawyer, and law student education designed to increase awareness of gambling disorder as a disease of the brain and reduce stigma against individuals with the disorder.

## I. ON PROFESSIONAL RESPONSIBILITY

Attorneys are required to uphold certain ethical standards adopted by the highest court of each state in which they are licensed to practice law.<sup>34</sup> These ethical standards are codified in state rules of professional conduct and are referred to as the law of professional responsibility.<sup>35</sup>

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32. *Id.*

33. *Infra* Part III.

34. *See, e.g.*, STATE BAR OF NEVADA, ATTORNEY DISCIPLINE: INFORMATIONAL BROCHURE 1 (2011) ("All attorneys licensed to practice law in Nevada are sworn to uphold the ethical standards of conduct adopted by the Supreme Court of Nevada.").

35. *See, e.g., id.* ("These standards are listed in the Nevada Rules of Professional Conduct . . . and are enforced by the State Bar of Nevada. Any attorney who violates these ethical standards is subject to discipline.").

The law of professional responsibility requires attorneys to deposit any funds received or held for the benefit of a client, including advances for costs and expenses, in one or more identifiable bank accounts designated as a client trust account.<sup>36</sup> Attorneys have a fiduciary duty to safeguard their clients' trust funds.<sup>37</sup> The general rule is that an attorney may not commingle the attorney's own funds with a client's trust funds.<sup>38</sup> An attorney may, however, deposit his or her own funds into a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary to pay such charges.<sup>39</sup>

Importantly, an attorney may not withdraw funds from a client trust account unless the attorney is withdrawing earned legal fees, incurred legal expenses, or is delivering funds owed or due to the client.<sup>40</sup> Upon receiving funds or other property in which a client has an interest, such as a settlement check, the attorney must promptly notify the client of the funds received and deliver the funds to the client.<sup>41</sup> An attorney is required to maintain detailed records regarding each client trust account, including records of account withdrawals and other payments, for a period of time, including up to seven years in some states, after termination of the representation.<sup>42</sup> Upon request, an attorney must promptly provide the client a full accounting of his or her trust funds.<sup>43</sup>

An attorney who fails to safeguard client trust funds in accordance with the law of professional responsibility may be sanctioned. Depending on the jurisdiction, sanctions may include admonition, censure, restitution, diversion, probation, interim suspension, suspension for a fixed period of time, and/or disbarment.<sup>44</sup> Regional and state

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36. See, e.g., LA. RULES PROF'L CONDUCT R. 1.15 (2015); NEV. RULES PROF'L CONDUCT R. 1.15(a) (2015).

37. See, e.g., *In re Deschane*, 84 Wash. 2d 514, 516, 527 P.2d 683, 684 (1974) ("[A] lawyer, as a fiduciary, owes the highest duty to his clients as a matter of law."); *id.* at 514, 527 P.2d at 683 (referencing the defendant attorney's "high duties and responsibilities in dealing with trust funds").

38. See, e.g., LA. RULES PROF'L CONDUCT R. 1.15(a) (2015).

39. See, e.g., *id.* R. 1.15(b).

40. See, e.g., *id.* R. 1.15(c).

41. See, e.g., *id.* R. 1.15(d).

42. See, e.g., ILL. RULES PROF'L CONDUCT R. 1.15(a) (requiring Illinois attorneys to maintain client trust fund account records for seven years); N.J. CT. R. 1:21-6(b) (requiring financial institutes to produce attorney trust account records for a period of seven years).

43. See, e.g., LA. RULES PROF'L CONDUCT R. 1.15(a) (2015).

44. See, e.g., LA. SUP. CT. R. XIX § 10(A) (2015) (stating that attorney misconduct in Louisiana may result in one or more of the following sanctions: (1) permanent disbarment; (2) suspension for a fixed period of time not in excess of three years; (3) probation not in excess of two years; (4) public reprimand; (5) private admonition; (6) restitution to persons financially injured by the attorney's actions or omissions; (7) limitation on the nature or extent of the attorney's future

disciplinary boards and, on appeal, state supreme courts consider a range of factors when recommending and ordering sanctions including, but certainly not limited to, whether the attorney has violated a duty owed to a client, the public, the legal system, or the profession; whether the attorney acted intentionally, knowingly, or negligently; the amount of the actual or potential injury caused by the attorney's misconduct; and the existence of any aggravating or mitigating factors.<sup>45</sup>

The author's prior *Tulane Law Review* article, which examined the lack of health insurance coverage and disability discrimination protections for individuals with gambling disorder, began with a hypothetical involving an attorney named Gary.<sup>46</sup> A portion of that hypothetical may be helpful to illustrate how attorneys with gambling disorder may violate the law of professional responsibility and find themselves subject to disciplinary proceedings. Although this hypothetical involves a very traditional form of gambling—poker playing at a land-based casino—the hypothetical could just as easily involve fantasy sports betting,<sup>47</sup> Internet gambling,<sup>48</sup> riverboat casino

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practice; and (8) diversion); NEV. SUP. CT. R. 102 (2015) (stating that attorney misconduct in Nevada may result in one or more of the following sanctions: (1) permanent, irrevocable disbarment; (2) suspension for a fixed period of time; (3) temporary restraining order regarding funds; (4) temporary suspension precluding the attorney from accepting new cases but allowing the attorney to continue to represent existing clients for fifteen days; (5) public or private reprimand, with or without conditions; and (6) a letter cautioning the attorney against specific conduct).

45. See, e.g., LA. SUP. CT. R. XIX, § 10(C) (2015). Depending on the jurisdiction, aggravating factors may include prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct versus one instance of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, submission of false evidence or statements during the disciplinary proceeding, refusal to acknowledge the wrongful nature of conduct, vulnerability of the victim, substantial experience in the practice of law, indifference to making restitution, and illegal conduct, including illegal conduct involving the use of controlled substances. See, e.g., NEV. SUP. CT. R. 102.5(1)(a)–(k) (2015). Depending on the jurisdiction, mitigating factors may include absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to disciplinary authority or cooperative attitude toward proceeding, inexperience in the practice of law, character or reputation, physical disability, mental disability or chemical dependency (“including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by chemical dependency or a mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely”), delay in disciplinary proceedings, interim rehabilitation, imposition of other penalties or sanctions, remorse, and remoteness of prior offenses. *Id.* § 102.5(2)(a)–(n).

46. See Tovino, *Lost in the Shuffle*, *supra* note 25, at 192–93 (providing a hypothetical about an individual with gambling disorder).

47. See, e.g., Walt Bogdanich & Jacqueline Williams, *For Addicts, Fantasy Sites Can Lead to a Ruinous Path*, N.Y. TIMES, Nov. 22, 2015, at A1 (reporting Josh Adams's addiction to fantasy

gambling,<sup>49</sup> storefront video gambling,<sup>50</sup> or any other type of regulated or unregulated gambling or gaming activity.

To that end, imagine a thirty-five-year-old attorney named Gary.<sup>51</sup> During the day, Gary practices personal injury law at a prominent New Orleans law firm.<sup>52</sup> At night, Gary plays poker at Harrah's New Orleans Hotel and Casino, located just blocks away from the French Quarter and the New Orleans Riverfront.<sup>53</sup> Following a string of poker losses, Gary vows to stop gambling.<sup>54</sup> Unfortunately, each attempt by Gary to stop gambling is unsuccessful.<sup>55</sup> Regardless of how hard he tries to focus on his family and his law practice, Gary has persistent thoughts relating to his past poker wins and his future poker tournaments.<sup>56</sup> Gary also has become preoccupied with finding creative ways to finance his gambling and has begun to lie to his wife, his law partners, and his clients regarding the extent of his gambling and the sources of funds he uses to finance his gambling.<sup>57</sup>

After losing hundreds of thousands of dollars of his own funds playing poker, Gary turns to his clients' trust accounts to fund his addiction.<sup>58</sup> Assume that several clients who were owed substantial personal injury settlement funds did not receive them and subsequently complained to the Louisiana Attorney Disciplinary Board's Office of

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sports: "I wish I never would have gotten back into playing fantasy sports, because for me, and I think for compulsive gamblers, it leads us right back into a destructive state.").

48. See, e.g., James Glanz et. al, *17 People in Three States Are Held in Online Gambling Ring*, N.Y. TIMES (Oct. 28, 2015), [http://www.nytimes.com/2015/10/29/us/queens-prosecutors-indict-17-in-internet-gambling-ring.html?\\_r=0](http://www.nytimes.com/2015/10/29/us/queens-prosecutors-indict-17-in-internet-gambling-ring.html?_r=0) [https://perma.cc/2JQA-BAG7] ("Internet gambling has been compared by some to the crack cocaine epidemic of the late '80s and early '90s . . . . It is highly addictive.").

49. See, e.g., David Blanchette, *State Criticized for Approach to Problem Gambling*, ST. J.-REG. (Oct. 11, 2015), <http://www.sj-r.com/article/20151011/NEWS/151019943> [https://perma.cc/B9Y2-QRSD] (noting that Illinois has implemented a self-exclusion program for individuals addicted to riverboat casino gambling and that approximately 11,000 individuals participate in that program).

50. James Fuller, *Coffee-Shop Looking Café Casinos Taking Hold in Suburbs*, DAILY HERALD (Feb. 9, 2015), <http://www.dailyherald.com/article/20150208/news/150208933/> [https://perma.cc/3JXB-UXY8] (quoting a representative of the nonprofit organization Stop Predatory Gambling as stating that storefront video gambling is like "marijuana in being a 'gateway drug' to harder use").

51. See Tovino, *Lost in the Shuffle*, *supra* note 25, at 192 (using this hypothetical verbatim).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

Disciplinary Counsel (ODC).<sup>59</sup> Gary now has the option of permanently resigning from the practice of law in lieu of subjecting himself to disciplinary proceedings.<sup>60</sup> Assume, however, that Gary does not wish to permanently resign from the practice of law. In this case, the matter will proceed to the ODC, which will conduct an investigation and hearing and likely recommend license suspension for a fixed period of time or disbarment based on Gary's misappropriation of significant client trust funds in violation of Rule 1.15 of the Louisiana Rules of Professional Conduct.<sup>61</sup> An automatic de novo appeal to the Louisiana Supreme Court will follow, and the Court will determine whether to uphold the ODC's recommendations and enter an order of suspension or disbarment or decline to order disciplinary action.<sup>62</sup>

Assuming the Court orders suspension for more than one year but not permanent disbarment, Gary may wish to resume the practice of law following his suspension.<sup>63</sup> If Gary wishes to resume his practice, he

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59. See *Attorney Discipline: The Complaint Process*, LA. ATTORNEY DISCIPLINARY BD. (2014), [hereinafter Louisiana Attorney Complaint Process], <https://www.ladb.org/Complaint/HowTo.aspx> [<https://perma.cc/Z42R-PY3E>] (explaining the process by which members of the public may file complaints against Louisiana-licensed attorneys).

60. If Gary wishes to permanently resign from the practice of law in lieu of discipline, Louisiana law requires that he execute and serve on the ODC a request for permanent resignation accompanied by an affidavit of consent stating that he will not practice law in Louisiana or any other jurisdiction ever again and that he will permanently resign and not seek readmission to the practice of law in Louisiana or any other jurisdiction. See LA. SUP. CT. R. XIX § 20.1(A), (C) (2015). If the ODC concurs with the request for permanent resignation, the request is moved to the Louisiana Supreme Court, which may enter an Order of Permanent Resignation. *Id.* § 20.1(F).

61. See *infra* Part II (reviewing four cases in which the Supreme Courts of Iowa, Nebraska, Nevada, and California ordered license suspension or revocation following the defendant attorney's misappropriation of client trust funds); LA. RULES PROF'L CONDUCT R. 1.15 (2015) (requiring attorneys licensed in Louisiana to safeguard client trust funds); Louisiana Attorney Complaint Process, *supra* note 59, at 1–2 (explaining the procedural due process afforded Louisiana-licensed attorneys subject to disciplinary proceedings, including the right to a hearing before a three-person hearing committee, appellate review by the Louisiana Attorney Disciplinary Board, and final review by the Louisiana Supreme Court); *Attorney Disciplinary Process: Complaint Diagram*, LA. ATTORNEY DISCIPLINARY BD., <https://www.ladb.org/Complaint/complaintDiagram.html> [<https://perma.cc/UER8-H9DF>] (illustrating the same process using a diagram).

62. Louisiana Attorney Complaint Process, *supra* note 59, at 2.

63. Under Louisiana law, an attorney who has served a suspension period of one year or less pursuant to disciplinary proceedings shall be reinstated at the end of the one-year period of suspension by filing with the court and serving upon disciplinary counsel an affidavit stating that the lawyer has fully complied with the requirements of the suspension order and other administrative requirements, including the payment of bar dues, disciplinary administration and enforcement fees, filing fees. LA. SUP. CT. R. XIX § 23 (2015). An attorney who has served a suspension period of more than one year shall be reinstated only upon order of the Supreme Court of Louisiana following the submission of a petition for reinstatement meeting the requirements set forth at *infra* note 66. *Id.* § 24.

must successfully petition the Court for reinstatement. In some jurisdictions, a suspended “attorney has the burden of demonstrating by clear and convincing evidence that [the attorney] has the moral qualifications, competency, and learning in law required” for reinstatement and that reinstatement “will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.”<sup>64</sup> Other jurisdictions require attorneys seeking reinstatement to prove by clear and convincing evidence that they meet specific criteria.<sup>65</sup> In Louisiana, which follows the second approach, Gary has the burden of pleading with particularity and proving by clear and convincing evidence that he meets eleven reinstatement criteria.<sup>66</sup>

Under Louisiana’s third reinstatement criterion, Gary would have to specify with particularity how any mental disabilities, presumably although not expressly including his gambling disorder, have been “removed.”<sup>67</sup> If Gary had an alcohol use disorder or a drug use disorder instead of a gambling disorder, and such alcohol or drug use disorder was a “causative factor” in his misconduct, Louisiana law would allow Gary to be considered for reinstatement if he satisfied three criteria.<sup>68</sup> These criteria include pursuing rehabilitative treatment, abstaining from

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64. *See, e.g.*, NEV. SUP. CT. R. 116 (2015) (setting forth Nevada’s pleading standards for attorneys seeking reinstatement).

65. *See, e.g.*, *infra* note 66 (setting forth Louisiana’s reinstatement criteria).

66. *See* LA. SUP. CT. R. XIX § 24(E) (2015) (requiring an attorney seeking reinstatement in Louisiana to have: (1) fully complied with the terms and conditions of all prior disciplinary orders; (2) not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension; (3) had any physical or mental disabilities or infirmities “removed” and, “[w]here alcohol or other drug abuse was a causative factor in the lawyer’s misconduct, the lawyer shall not be reinstated or readmitted unless: (a) the lawyer has pursued appropriate rehabilitative treatment; (b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and (c) the lawyer is likely to continue to abstain from alcohol or other drugs”; (4) recognized the wrongfulness and seriousness of the attorney’s misconduct; (5) not engaged in any other professional misconduct since suspension; (6) the requisite honesty and integrity to practice law; (7) kept informed about recent developments in the law and satisfied continuing legal education requirements for the year of reinstatement; (8) paid to the Louisiana State Bar Association currently owed bar dues; (9) paid all filing fees owed to the Clerk of Court and all disciplinary costs to the Louisiana Attorney Disciplinary Board (Board); (10) paid to the Board currently owed disciplinary administration and enforcement fees and filed required registration statements; and (11) obtained a certification from the Louisiana State Bar Association Client Assistance Fund (Fund) stating that no payments have been made by the Fund to any of the attorney’s former clients or, to the extent the Fund has made such payments, obtained a certification from the Fund stating that the attorney has reimbursed the Fund or that the attorney has entered into a payment plan that will result in reimbursement of the Fund); *id.* § 18(D) (stating that the burden of proof in reinstatement proceedings is on the attorney seeking reinstatement); *id.* § 18(C) (stating that an attorney shall prove the facts set forth in his or her petition for reinstatement by clear and convincing evidence).

67. *Id.* § 24(E)(3).

68. *Id.* § 24(E)(3).

alcohol and drugs for at least twelve months, and continuing to abstain from alcohol and drugs in the future.<sup>69</sup>

If Gary proves the eleven reinstatement criteria by clear and convincing evidence, the Louisiana Supreme Court may issue a reinstatement order and, as part of that order, may impose conditions on Gary's future practice if the Court believes that additional safeguards are needed to protect the public.<sup>70</sup> For example, the Court may require Gary to: (1) take and pass the Louisiana State Bar Examination a second time; (2) limit his practice area to one or more areas of the law; (3) associate with an experienced, supervising attorney instead of practicing on a solo basis; (4) participate in continuing legal education courses; (5) agree to the monitoring of his client trust accounts; (6) abstain from the use of alcohol and drugs; (7) participate in Alcoholics Anonymous or other alcohol and drug rehabilitation programs; and (8) agree to monitoring of his compliance with any other orders, including abstention from alcohol and drugs and participation in alcohol and drug rehabilitation programs.<sup>71</sup>

In this Part, the author provided a hypothetical involving an attorney named Gary to illustrate how attorneys with gambling disorder can violate rules of professional conduct and subject themselves to professional discipline. The following Part reviews four cases in which the State Bars of Iowa, Nebraska, Nevada, and California disciplined attorneys with gambling disorders following their misappropriation of client trust funds.

## II. ON ATTORNEY GAMBLING

One of the DSM-5's nine diagnostic criteria for gambling disorder provides that the individual "[r]elies on others to provide money to relieve desperate financial situations caused by gambling."<sup>72</sup> Just like Gary in the hypothetical described immediately above, some attorneys with gambling disorder do rely on their clients' trust funds to gamble or

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69. *See id.* § 24(E)(3)(a)–(c) ("Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless: (a) the lawyer has pursued appropriate rehabilitative treatment; (b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and (c) the lawyer is likely to continue to abstain from alcohol or other drugs.").

70. *Id.* § 24(J).

71. *Id.*

72. DSM-5, *supra* note 11, at 585.

to relieve desperate financial situations caused by their gambling.<sup>73</sup> The professional disciplinary actions of Michael Reilly, Danny Winder, Samuel Bellicini, and Douglas Crawford illustrate the application of different states' disciplinary processes of attorneys who have relied on client trust funds to finance their disordered gambling.

A. *In re Michael Reilly*

First licensed to practice law in Nebraska in 1982, Michael Reilly was a well-respected attorney who later gained admission to the Iowa Bar and subsequently misappropriated over \$96,000 of an Iowa resident's personal injury settlement funds to feed his gambling disorder.<sup>74</sup> Following an investigation, the Grievance Commission of the Iowa Supreme Court (Commission) found that Reilly had violated the Iowa Rules of Professional Conduct, including rules prohibiting attorneys from withdrawing client trust funds for personal use as well as rules prohibiting attorneys from engaging in illegal conduct, conduct involving dishonesty, and conduct adversely reflecting on fitness to practice law.<sup>75</sup> The Commission recommended that the Iowa Supreme Court suspend Reilly's license to practice law for a period of three years.<sup>76</sup>

In its January 13, 2006 opinion reviewing the Commission's recommendations, the Iowa Supreme Court respectfully considered the Commission's recommendation but ultimately imposed a greater

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73. See, e.g., Affidavit Consenting to Disbarment ¶¶ 2, 5, 6, *In re Susan L. Hense*, No. 772 (Sup. Ct. Iowa Grievance Comm., Jan. 2, 2013) [hereinafter *Hense Affidavit*] (stating that Iowa attorney Susan Hense has a "debilitating gambling addiction," that she is doing "everything in [her] power to never gamble again," and that she voluntarily consents to disbarment due to her misappropriation of approximately \$837,000 in client trust funds); *Iowa Sup. Court v. Lett*, 674 N.W.2d 139, 145–46 (Iowa 2004) (Iowa Supreme Court opinion revoking the license to practice law of attorney Stacie Lett following her misappropriation of client trust funds; the Court recognized that Lett had "gambling addiction" among other physical and mental health conditions and personal circumstances); *In re Kelley*, 755 S.E.2d 197, 197–98 (Ga. 2014) (Georgia Supreme Court opinion accepting the voluntary surrender of the license to practice law of attorney Richard Wesley Kelley following his misappropriation of over \$200,000 in client trust funds); Rachel Stockman, *Attorney Loses License After Allegedly Stealing \$200k from Clients*, WSB-TV ATLANTA (Feb. 27, 2014) <http://www.wsbtv.com/news/local/attorney-loses-licence-after-allegations-stealing/138204281> [<https://perma.cc/Y8PX-CXD4>] (noting that Kelley spent the client trust funds he misappropriated on gambling in Las Vegas, among other activities).

74. See *Reilly (Iowa)*, 708 N.W.2d 82, 83 (Iowa 2006); *Nebraska v. Reilly*, 712 N.W.2d 278, 278 (Neb. 2006).

75. *Reilly (Iowa)*, 708 N.W.2d at 82–84.

76. *Id.* at 82.



sanction: license revocation.<sup>77</sup> The Court reasoned that it considered trust fund misappropriation to be a “particularly reprehensible” ethical violation that “almost universally” called for license revocation.<sup>78</sup> The Court also reasoned that it had ordered license revocation in prior cases involving relatively smaller (e.g., \$1,500) misappropriations as well as in prior cases in which attorneys had returned the misappropriated funds to their clients’ trust accounts before the clients discovered the wrongful takings.<sup>79</sup> According to the Court, the only prior trust fund misappropriation cases that had not resulted in license revocation were cases in which the attorney had a colorable claim to the client funds at issue, such as in earned fee disputes, as well as cases in which the attorney had not taken the funds for his or her own use.<sup>80</sup>

In its conclusion, the Iowa Supreme Court stated that Reilly’s “fall from grace was precipitated by an uncontrollable gambling habit that left him constantly in need of funds.”<sup>81</sup> The Court further stated that although Reilly’s gambling habit was “regrettable and cause for sympathy,” the habit did not “obviate the seriousness of the improper attorney conduct that ha[d] occurred.”<sup>82</sup>

On January 17, 2006, four days following the Iowa Supreme Court’s order revoking Reilly’s license, the Office of the Counsel for Discipline of the Nebraska Supreme Court (Discipline Counsel) filed a motion for reciprocal discipline<sup>83</sup> against Reilly based on the Iowa Supreme Court’s order.<sup>84</sup> In granting Discipline Counsel’s motion in an opinion issued April 21, 2006, the Supreme Court of Nebraska quoted the Iowa Supreme Court’s reference to Reilly’s “gambling habit.”<sup>85</sup>

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77. *Id.* at 82, 84, 85.

78. *Id.* at 84.

79. *Id.*

80. *Id.*

81. *Id.* at 85.

82. *Id.*

83. See MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT r. 22 (AM. BAR ASS’N 2002) (explaining in the commentary that a second jurisdiction may impose “reciprocal discipline” on the basis of discipline imposed by another jurisdiction in which the attorney also had a license; noting that the second jurisdiction should “consider any difference, in kind or scope, between the sanction imposed in the originating jurisdiction and the sanctions available in the forum jurisdiction”).

84. *Nebraska v. Reilly* 712 N.W.2d 278, 279 (Neb. 2006).

85. *Id.* at 278. Later in its opinion, the Supreme Court of Nebraska substituted “respondent’s gambling” for the Iowa Supreme Court’s “habit” language. See *id.* at 279 (“We agree with the Iowa Supreme Court, which stated that ‘[u]nfortunately, [respondent’s gambling] is a matter which, although regrettable and cause for sympathy, does not obviate the seriousness of the improper attorney conduct that has occurred.’ *Iowa Sup. Ct. Atty. Disc. Bd. v. Reilly*, 708 N.W.2d 82, 85 (Iowa 2006).”).

Reilly filed applications for reinstatement in January 2009 and again in November 2015.<sup>86</sup> In response to the second application for reinstatement, the Iowa Supreme Court Attorney Disciplinary Board (Board) urged the Supreme Court to deny it, arguing that revocation is “indisputably the appropriate sanction for conduct involving the conversion of client funds to which an attorney has no colorable future claim.”<sup>87</sup> Although the Board acknowledged that Reilly had a gambling addiction, the Board felt that the addiction was irrelevant “because no illness, regardless of its severity, can excuse an attorney’s dishonest conduct.”<sup>88</sup> The Board specifically argued that Reilly’s trust fund misappropriation was “fundamentally dishonest and worthy of a permanent sanction, not a temporary one.”<sup>89</sup>

On September 2, 2016—more than ten years following his license revocation—the Iowa Supreme Court issued an unexpected opinion provisionally granting Reilly’s application for reinstatement.<sup>90</sup> Before Reilly may be formally reinstated, he must complete thirty hours of continuing legal education and take and receive an acceptable score on the Multistate Professional Responsibility Examination.<sup>91</sup> In the opinion, the Iowa Supreme Court stated that Reilly’s gambling addiction “[did] not obviate the seriousness of his improper conduct,” but held that the evidence Reilly submitted together with his second application for reinstatement demonstrated his sincere acceptance of responsibility for his wrongful actions, his successful treatment, and his sustained commitment to recovery.<sup>92</sup>

### B. *In re Danny Winder*

First licensed to practice law in 1984, Nevada attorney Danny Winder ran a successful general law practice in northern Nevada throughout the

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86. Iowa Sup. Court Attorney Disciplinary Bd. v. Reilly, No. 05-1365, at 3–4 (Sept. 2, 2016), [http://www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Supreme\\_Court\\_Opinions/Recent\\_Opinions/20160902/05-1365.pdf](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160902/05-1365.pdf) [<https://perma.cc/Z8GB-QYFG>] (referencing the applications for reinstatement).

87. *Id.* at 7.

88. *Id.*

89. *Id.* at 10.

90. *Id.* at 20.

91. *Id.* at 19–20.

92. *Id.* at 18–19.

mid-to-late 1980s.<sup>93</sup> In April 1990, less than six years into his practice, Winder misappropriated a client's \$9,000 personal injury settlement check to feed his gambling disorder and his substance-related disorders.<sup>94</sup> On July 11, 1990, Winder tendered a conditional plea of guilty to the disciplinary matters then pending against him.<sup>95</sup>

On December 23, 1990, the Supreme Court of Nevada issued an order indefinitely suspending Winder's license to practice law and precluding him from applying for reinstatement for a period of at least two and one-half years.<sup>96</sup> In its order, the Court stated that any reinstatement would be subject to Winder's compliance with numerous conditions precedent to reinstatement set forth in his conditional guilty plea.<sup>97</sup> These conditions included, but were not limited to: (1) paying restitution, including interest, to his injured client; (2) refraining from gambling, alcohol, and drugs for at least two and one-half years; (3) submitting to random urinalysis or blood testing for alcohol and drugs; (4) attending at least three Gamblers Anonymous (GA) meetings per week for the first three months of his suspension, attending at least two GA meetings per week for the second six months of his suspension, and providing proof of such attendance to Bar Counsel; (5) attending at least three Alcoholics Anonymous (AA), Lawyers Concerned for Lawyers (LCL), or similar organizational meetings per week for the first three months of his suspension, attending at least two AA, LCL, or similar organizational meetings per week for the second six months of his suspension, and providing proof of such attendance to Bar Counsel; and (6) attending counseling or other therapy sessions for gambling addiction with a licensed psychologist or psychiatrist approved by Bar Counsel for a period of two and one-half years.<sup>98</sup>

In 1998, Winder petitioned for reinstatement.<sup>99</sup> After a hearing on the issue, a panel of the Northern Nevada Disciplinary Board recommended

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93. STATE BAR OF NEVADA: FIND A LAWYER, <https://www.nvbar.org/find-a-lawyer/?usearch=danny+winder> [<https://perma.cc/7CSH-TLFX>] (search for Danny Winder) (stating that Danny Winder was admitted to the State Bar of Nevada on October 1, 1984).

94. Conditional Guilty Plea in Exchange for a Stated Form of Discipline at 1-2, *State Bar v. Winder*, No. 90-50-139 (St. Bar. Nev., N. Nev. Disc. Bd., July 11, 1990) [hereinafter *Winder Conditional Guilty Plea*].

95. *Id.*

96. Order of Suspension at 1, *State Bar v. Winder*, No. 20984 (Nev. Sup. Ct. Dec. 23, 1990).

97. *Id.*

98. See *Winder Conditional Guilty Plea*, *supra* note 94, at 2-4 (listing the conditions precedent to reinstatement).

99. Order of Reinstatement at 1, *In re Reinstatement of Danny Winder*, No. 38723 (Nev. Sup. Ct. May 9, 2002).

that Winder's petition be denied without prejudice because he had not satisfied certain conditions in his guilty plea, including paying full restitution, abstaining from drugs for a period of two and one-half years, and completing two and one-half years' worth of gambling counseling.<sup>100</sup> Following the denial of his petition for reinstatement, Winder relocated to southern Nevada.<sup>101</sup>

In 2001, Winder again petitioned for reinstatement.<sup>102</sup> This time, a panel of the Southern Nevada Disciplinary Board found that Winder had satisfied all of the conditions precedent to reinstatement set forth in his 1990 guilty plea and recommended reinstatement subject to a one-year probationary period with several conditions.<sup>103</sup> These conditions required Winder to: (1) continue to attend Lawyers Concerned for Lawyers (LCL) and Narcotics Anonymous (NA) meetings during the probationary period and provide proof of attendance to Bar Counsel; (2) complete all continuing legal education requirements and attend a Bridge the Gap program offered by the State Bar of Nevada; (3) submit his general operating and trust account records to Bar Counsel for inspection upon request at any time during the probationary period; and (4) submit to random alcohol and drug testing upon Bar Counsel request at any time.<sup>104</sup>

On May 9, 2002, eleven and one-half years following his initial license suspension, the Supreme Court of Nevada reinstated Winder's license to practice law.<sup>105</sup> Today, Winder has a busy solo practice in Las Vegas and is a member in good standing of the State Bar of Nevada.<sup>106</sup>

### C. *In re Samuel Bellicini*

On May 7, 1991, Samuel Bellicini was admitted to the State Bar of California.<sup>107</sup> Two years later, Bellicini misappropriated approximately \$3,520 in client trust funds to feed his gambling and alcohol use

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100. *Id.* at 1–2, nn.1–3.

101. *Id.* at 2.

102. *Id.*

103. *Id.*

104. *Id.* at 2–3.

105. *Id.* at 1, nn.2–3.

106. *See Services*, FULL SERVICE LAW OFFICE: DAN M. WINDER (2013), <http://www.attorneydanwinder.com/services.html> [<https://perma.cc/S9NE-VJBB>]; STATE BAR OF NEVADA: FIND A LAWYER, <https://www.nvbar.org/find-a-lawyer/?usearch=danny+winder> [<https://perma.cc/7CSH-TLFX>] (search for Danny Winder) (listing Winder's status as "Attorney Active").

107. *In re Samuel C. Bellicini*, No. 03-R-03728, 2006 WL 541224, at \*1 (Rev. Dep't, St. Bar Ct. Cal. Mar. 6, 2006).

disorders.<sup>108</sup> On September 28, 1993, Bellicini voluntarily surrendered his license with disciplinary charges pending.<sup>109</sup>

On May 15, 2001, almost eight years after surrendering his law license, Bellicini experienced his first full day of recovery from alcohol and gambling.<sup>110</sup> Three days later, on May 18, 2001, Bellicini enrolled in Kaiser Permanente's two-year Chemical Dependency Recovery Program (CDRP), which provides intensive education regarding the physiological and emotional bases of alcoholism, daily group therapy sessions, and weekly individual visits with a psychologist.<sup>111</sup> Sixty days after enrolling in CDRP, Bellicini's wife and son went on vacation and Bellicini felt the urge to drink again. Bellicini told his therapist about his helpless feelings towards alcohol and the therapist referred him to AA, in which fellow participants assist each other with their sobriety efforts.<sup>112</sup> During the next year, Bellicini continued to attend CDRP and AA meetings on a regular basis.<sup>113</sup> By July 2003, Bellicini had paid restitution to his former clients and outstanding sanctions.<sup>114</sup>

On September 17, 2003, Bellicini petitioned for reinstatement and, on August 24, 2004, a hearing on Bellicini's petition commenced.<sup>115</sup> On December 21, 2004, the hearing judge decided that Bellicini had demonstrated by clear and convincing evidence that he was rehabilitated and that he possessed the moral qualifications necessary for reinstatement, which the judge recommended.<sup>116</sup>

On March 6, 2006, the Review Department of the State Bar of California (Department) issued an opinion reviewing the hearing judge's decision and recommendation.<sup>117</sup> The Department's opinion commended Bellicini's incredible recovery efforts but reversed the decision of the hearing judge, reasoning that Bellicini's period of sustained exemplary conduct (i.e., the thirty-nine month period beginning May 15, 2001,

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108. *See id.* at \*3 ("In one matter, after petitioner retained \$2,962.20 in client funds for payment to a client's doctor, petitioner failed to make that payment and instead used the funds to gamble and purchase alcohol.")

109. *Id.* at \*1.

110. *See id.* at \*7 ("Although petitioner resigned in 1993, he continued to drink alcohol until he enrolled in a recovery program in 2001. As discussed in greater detail, *post*, we measure petitioner's rehabilitation from this point.")

111. *Id.* at \*4.

112. *Id.*

113. *Id.*

114. *Id.* at \*5.

115. *Id.*

116. *Id.* at \*7.

117. *Id.* at \*1.

Bellicini's first day of recovery, and ending August 24, 2004, the first day of Bellicini's hearing) was insufficient to demonstrate his overall rehabilitation from his past misconduct.<sup>118</sup> The Department noted the lack of any other cases granting reinstatement following only thirty-nine months of recovery.<sup>119</sup>

On July 27, 2007, Bellicini applied for reinstatement for the second time and, on July 14, 2008, the State Bar of California Hearing Department (Department) found that Bellicini had clearly and convincingly satisfied the requirements for reinstatement and recommended reinstatement.<sup>120</sup> The Department reasoned that Bellicini had now been sober for seven years, had abstained from gambling for six years, and had demonstrated a sustained commitment to his sobriety through his participation and volunteer work in AA and other chemical dependency treatment programs.<sup>121</sup> The State Bar of California officially reinstated Bellicini's license on October 15, 2008,<sup>122</sup> and Bellicini now practices law as a State Bar defense attorney in San Rafael, California.<sup>123</sup>

#### D. *In re Douglas Crawford*

On September 30, 1985, Douglas Crawford was admitted to the State Bar of Nevada.<sup>124</sup> Over the following decade, Crawford built a lucrative family law and criminal defense practice in Las Vegas, grossing shy of one million dollars per year<sup>125</sup> and accumulating more than \$1.5 million in assets, including a lavish home, automobile, and downtown office.<sup>126</sup> Due in part to the stress associated with his successful practice as well as the departure of key employees who helped him run his practice,

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118. *Id. See also id.* at \*14 (“We commend petitioner’s efforts in overcoming his addictions that caused him to commit serious ethical violations early in his legal career and which plagued him for many years thereafter.”); *id.* (“Having viewed the evidence in its totality, we conclude that petitioner’s rehabilitative showing is insufficient at this time to establish his overall rehabilitation from his past misconduct over an extended period of time.”).

119. *Id.* at \*11–13.

120. *In re Samuel C. Bellicini*, No. 07-R-12922-LMA, at 5 (St. Bar. Ct. Cal., Hearing Dep’t San Fran. 2008).

121. *Id.* at 15–16.

122. STATE BAR OF CALIFORNIA: ATTORNEY SEARCH, <http://members.calbar.ca.gov/fal/Member/Detail/152191> [<https://perma.cc/8VK3-43T6>] (search for Samuel Christian).

123. SAMUEL C. BELLICINI: ABOUT, <http://www.statebaradvice.com/about/> [<https://perma.cc/9BXD-3JWP>].

124. STATE BAR OF NEVADA: FIND A LAWYER, <https://www.nvbar.org/find-a-lawyer/?usearch=douglas+crawford> [<https://perma.cc/5FLY-ZTRH>] (search for Douglas Crawford).

125. *See Crawford Opening Brief, supra* note 9, at 6.

126. *Id.* at 6.

Crawford suffered a mental breakdown in 2006.<sup>127</sup> Part of that mental breakdown was associated with his addiction to gambling, resulting in the loss of \$1.5 million of his own assets and his subsequent misappropriation of approximately \$398,345 in client trust funds between late 2005 and 2007, as well as Crawford's co-occurring mental health conditions, including substance abuse and depression.<sup>128</sup>

On May 1, 2007, the State Bar of Nevada temporarily suspended Crawford's license to practice law pending the resolution of formal disciplinary proceedings against him.<sup>129</sup> In June and September 2007, the State Bar filed two complaints against Crawford.<sup>130</sup> Shortly thereafter, Crawford entered a conditional plea of guilty, admitting to sixty-five violations of the Nevada Rules of Professional Conduct and agreeing to seek not less than a five-year suspension.<sup>131</sup> In exchange, the State Bar retained the right to seek a suspension lasting longer than five years, including disbarment.<sup>132</sup> A final recommendation as to Crawford's discipline was left to a future hearing panel of the Southern Nevada Disciplinary Board.<sup>133</sup>

In the meantime, on October 8, 2007, Crawford experienced his first full day of recovery from gambling, alcohol, and drugs.<sup>134</sup> One day of recovery led to a second and soon Crawford had completed six weeks of intensive inpatient treatment for gambling disorder; hundreds of weekly therapy sessions, "aftercare" sessions, and "friends and family" sessions; and thousands of GA meetings.<sup>135</sup> Crawford remains in recovery to this day.

On March 26, 2008, a hearing was held before a panel of the Southern Nevada Disciplinary Board (Panel) to determine Crawford's sanction. On April 24, 2008, the Panel unanimously recommended disbarment.<sup>136</sup> In its Order of Disbarment, the Panel referred to Crawford's gambling

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127. *Id.* at 7.

128. *Id.* at 8.

129. Crawford Order of Temporary Suspension, *supra* note 8, at 2.

130. Crawford Opening Brief, *supra* note 9, at 4-5.

131. Order of Suspension at 1-2, *In re* Discipline of Douglas C. Crawford, No. 51724 (Nev. Sup. Ct. Feb. 18, 2009) [hereinafter Crawford Order of Suspension].

132. *Id.* at 2.

133. *Id.*

134. Crawford Opening Brief, *supra* note 9, at 14; Motion to Assign Douglas C. Crawford to a Program for the Treatment of Problem Gambling Pursuant to NRS 458A.200 through 458A.260 at 9, in *State v. Crawford*, Case No. C-11-275513-1 (Dist. Ct., Clark Cty., Nev. Dec. 22, 2011).

135. Crawford Opening Brief, *supra* note 9, at 14.

136. Order of Disbarment at 2, line 28, *State Bar of Nevada v. Douglas C. Crawford* (S. Nev. Disc. Bd. Apr. 24, 2008) [hereinafter 2008 Panel Decision].

disorder as a “character weakness”<sup>137</sup> and a “bad habit[.]”<sup>138</sup> The Panel further reasoned that disbarment was the appropriate sanction because some individuals with gambling disorder “are never cured.”<sup>139</sup> In addition, the Panel referred to Crawford’s condition as “terrible and despicable” and his potential for relapse as a “black stain” upon the State Bar:

[Crawford’s] direct testimony was that it was the pressures of the practice of law which caused him to succumb, the first time, into these *terrible and despicable* depths . . . if this were to happen even one more time to an innocent client whose life savings were lost due to an act of Mr. Crawford, it would be a *black stain* upon the State Bar and the attorneys who abide, on a daily basis, to the professional ethics of that organization which could never be erased. The risk is too great and, therefore, after much soul searching and discussion, it is the final decision of this Panel that Mr. Crawford be disbarred as an attorney and refused the opportunity to ever practice law in this jurisdiction again.<sup>140</sup>

An automatic *de novo* appeal to the Supreme Court of Nevada followed. In his opening appellate brief, Crawford argued that he should be suspended for five years, but not permanently disbarred, because his trust fund misappropriations occurred as a result of his gambling disorder, a disease of the brain.<sup>141</sup> In its answering brief, the State Bar supported the Panel’s order of disbarment, arguing that Crawford’s conduct was too egregious, even with mitigation, to allow for a lesser sanction.<sup>142</sup> In its brief, the State Bar also referred to Crawford’s gambling, substance abuse, and depression as “bad habits”<sup>143</sup> and “personal demons.”<sup>144</sup>

On February 18, 2009, the Supreme Court of Nevada sided with Crawford, suspending him for a period of five years but not disbaring him.<sup>145</sup> Relying on Nevada Supreme Court Rule 102.5, which identifies

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137. *Id.* at 2, line 6.

138. *Id.* at 2, line 12.

139. *Id.* at 2, lines 10–11.

140. *Id.* at 3, lines 2–12 (emphasis added).

141. Crawford Opening Brief, *supra* note 9, at 18.

142. State Bar of Nevada’s Answering Brief at 17, *State Bar of Nevada v. Douglas Crawford* (Nev. Sup. Ct. Sept. 8, 2008).

143. *Id.* at 24, line 3.

144. *Id.* at 19, line 6.

145. See Crawford Order of Suspension, *supra* note 131.



a number of mitigating and aggravating circumstances that may be considered in sanction determinations,<sup>146</sup> the Court found that a number of mitigating circumstances existed, including personal and emotional problems, good character and reputation, restitution, remorse, and “most importantly according to Crawford, mental disabilities of depression and gambling addiction.”<sup>147</sup> The Court also identified, however, several aggravating circumstances, including prior attorney discipline matters, selfish motive for the misconduct, multiple offenses, and substantial experience as an attorney.<sup>148</sup> The Court concluded that Crawford’s mitigating circumstances outweighed his aggravating circumstances and that the appropriate sanction was a five-year suspension rather than permanent disbarment.<sup>149</sup> Bar Counsel also agreed that the five-year suspension should be retroactive to May 1, 2007, the date the State Bar first (temporarily) suspended Crawford’s license.<sup>150</sup>

In its order of suspension, the Court imposed numerous conditions on any future application by Crawford for reinstatement.<sup>151</sup> According to the Court, Crawford would be required to: (1) take and pass the Nevada State Bar Examination and the Multistate Professional Responsibility Examination again; (2) maintain his “gambling recovery efforts . . . including attending his weekly gamblers anonymous and 12-step program meetings along with continued weekly meetings with his psychiatrist”; (3) not engage in the unlicensed practice of law or handle client trust funds during his five-year suspension; (4) agree to mentorship and refrain from handling client trust funds for a period of time after reinstatement, if reinstated; (5) pay restitution to his former clients for the trust funds he misappropriated; and (6) pay restitution to the Nevada Clients’ Security Fund (Fund) for the amounts the Fund paid to Crawford’s former clients.<sup>152</sup>

On March 22, 2012, Crawford petitioned for reinstatement.<sup>153</sup> A hearing panel of the Southern Nevada Disciplinary Board subsequently

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146. See NEV. SUP. CT. R. 102.5(1), (2) (2015) (listing dozens of aggravating and mitigating circumstances that may be relevant to an attorney sanction determination).

147. Crawford Order of Suspension, *supra* note 131, at 3 (citing NEV. SUP. CT. R. 102.5(1)).

148. Crawford Order of Suspension, *supra* note 131, at 3 (citing NEV. SUP. CT. R. 102.5(2)).

149. Crawford Order of Suspension, *supra* note 131, at 3–4.

150. Petition for Extraordinary Relief and Motion for Modification of Order of Suspension and for Conditional Reinstatement to the Practice of Law at 2, *In re Discipline of Douglas C. Crawford* (Nev. Sup. Ct. Mar. 22, 2012) [hereinafter Crawford Petition for Reinstatement]; Crawford Opening Brief, *supra* note 9, at 5.

151. Crawford Order of Suspension, *supra* note 131, at 4.

152. *Id.*

153. Crawford Petition for Reinstatement, *supra* note 150, at 2.

recommended reinstatement subject to seven conditions. These conditions required Crawford to: (1) refrain from abusing alcohol and drugs and from gambling for as long as he wishes to practice law in Nevada; (2) submit to mentoring by attorney Robert Dickerson or an alternate mentor and cooperate with such mentoring for three years; (3) submit semi-annual reports to the State Bar of Nevada until full restitution has been made, including an oath stating that he has abstained from all substance abuse and gambling; (4) refrain from the solo practice of law, work in affiliation with and under the supervision of an established law office, and refrain from signing any trust or operating accounts for two years following reinstatement; (5) allow a mentor to review his trust accounts, operating accounts, and adherence to salary restrictions on a regular basis thereafter, if he wishes to open a solo practice; (6) adhere to an annual salary cap of \$25,000 until full restitution is made and pay income received above the cap towards restitution; and (7) pay the costs of the reinstatement proceeding within one year of reinstatement.<sup>154</sup>

On June 18, 2015, over eight years after the State Bar of Nevada first suspended Crawford's license, the Supreme Court of Nevada issued an order reinstating Crawford to the rolls of the Nevada Bar.<sup>155</sup> In its order of reinstatement, the Court agreed with the latest recommendations and conditions of the Panel but added two additional conditions including: (1) continuing his gambling recovery efforts including by regularly attending GA, alumni, and aftercare meetings; and (2) report such attendance to the State Bar of Nevada in semi-annual reports.<sup>156</sup>

As of this writing, Crawford is serving as Of Counsel to The Law Offices of Mandy J. McKellar in Las Vegas and is a member in good standing of the State Bar of Nevada.<sup>157</sup> In the first six months of his reinstated license, Crawford paid over \$55,000 in restitution to his former clients.<sup>158</sup>

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154. See Crawford Order of Reinstatement, *supra* note 7, at 2–3 (summarizing the Panel's recommendations).

155. See *id.* at 4.

156. *Id.* at 3–4.

157. See *Attorneys*, THE LAW OFFICES OF MANDY J. MCKELLAR, <http://www.mckellarlawoffice.com/attorneys/> [<https://perma.cc/8MSM-BM7P>] (listing Douglas Crawford as Of Counsel); STATE BAR OF NEVADA: FIND A LAWYER, <http://www.nvbar.org/lawyer-detail/3490> [<https://perma.cc/T3L6-ATG2>] (search for Douglas Crawford) (listing Crawford's status as "Attorney Active").

158. First Crawford Email, *supra* note 10.

### III. THE HOUSE EDGE

The previous Part reviewed four cases in which the State Bars of Iowa, Nebraska, Nevada, and California disciplined attorneys who misappropriated client trust funds to finance their gambling. As discussed in more detail in this Part III, several themes emerge from these four cases, including public misunderstanding of gambling disorder, stigma against individuals with gambling disorder, statutory recognition of substance addictions but not behavioral and process addictions, and mandatory attendance at religion-based fellowship meetings as a condition of license reinstatement. Each of these themes is discussed in more detail below.

#### A. *Gambling Disorder Is a Disease of the Brain, Not a Bad Habit, Moral Failing, or Character Weakness*

The disciplinary proceedings involving attorneys Michael Reilly, Danny Winder, Samuel Bellicini, and Douglas Crawford demonstrate that some of the studied state and regional disciplinary boards and some of the supreme courts misunderstand the nature of gambling disorder. Some background regarding the medical and scientific understanding of gambling disorder is necessary before proceeding to this first point.

##### 1. *Understanding Gambling Disorder*

###### a. *Gambling Disorder Classification, Diagnostic Criteria, and Prevalence*

The American Psychiatric Association (APA) first recognized pathological gambling as a mental disorder in the third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III), published in 1980.<sup>159</sup> Originally classified as an impulse control disorder, pathological gambling was characterized with reference to an individual's chronic and progressive failure to resist impulses to gamble as well as gambling behavior that compromised, disrupted, or damaged personal, family, or vocational pursuits.<sup>160</sup>

In the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), published in May 2013, the APA renamed the condition gambling disorder and reclassified it as a non-substance-related disorder within the larger substance-related and addictive

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159. DSM-III, *supra* note 13, at 291.

160. *Id.*

disorders chapter, alongside alcohol use disorder and the various drug use disorders.<sup>161</sup> According to the APA, gambling disorder's new classification reflects research showing that "gambling disorder is similar to [the] substance-related disorders in clinical expression, brain origin, comorbidity, physiology, and treatment."<sup>162</sup> Today, mental health professionals consider gambling disorder to be a very serious disease of the brain<sup>163</sup> and may diagnose an individual with the disorder if the individual meets four or more of nine diagnostic criteria in a twelve-month period and the individual's gambling behavior is not better explained by a manic episode.<sup>164</sup>

According to the APA, "[t]he essential feature of gambling disorder is persistent and recurrent maladaptive gambling behavior that disrupts personal, family, and/or vocational pursuits."<sup>165</sup> Gambling disorder is associated with poor general health, high utilization of medical services,<sup>166</sup> and high rates of suicidal ideation and attempted suicide.<sup>167</sup> More than one in two disordered gamblers experience suicidal ideation and approximately one in five disordered gamblers attempt suicide.<sup>168</sup>

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161. DSM-5, *supra* note 11, at 585; APA FACT SHEET, *supra* note 15, at 1. In addition to alcohol, the ten other classes of drugs that have DSM-5-recognized use disorders include caffeine, cannabis, hallucinogens, inhalants, opioids, sedatives, hypnotics, stimulants, tobacco, and other, unknown substances. See DSM-5, *supra* note 11, at 481, 483–585.

162. APA FACT SHEET, *supra* note 15, at 1.

163. See, e.g., Lee, *supra* note 17 (referring to gambling disorder as a disease of the brain).

164. The nine diagnostic criteria are set forth at *supra* note 18.

165. DSM-5, *supra* note 11, at 586.

166. *Id.* at 589.

167. See, e.g., *Gambling and Suicide*, CONN. COUNCIL ON PROBLEM GAMBLING, <http://www.ccpog.org/problem-gambling/more/gambling-and-suicide/> [<https://perma.cc/ZE2J-YSYV>] ("The National Council on Problem Gambling, citing various studies, reports that one in five pathological gamblers attempts suicide, a rate higher than for any other addictive disorder."); *id.* (reporting the results of a 2005 conducted by researchers at Yale University and the Connecticut Council on Problem Gambling (CCPG) finding that of 986 individuals who called the CCPG Helpline, 252 acknowledged gambling-related suicidality (25.6%) and, of those, 53 (21.5%) reported gambling-related suicide attempts).

168. DSM-5, *supra* note 11, at 587 (referencing these statistics). See generally Wright, *supra* note 22 ("[O]ne in five problem gamblers attempt to kill themselves. [This is why] gambling may be the most dangerous addiction of all."); Home, LANIE'S HOPE, <http://lanieshope.org> [<https://perma.cc/HP6G-5W2S>] (sharing the story of Lanie Aikins, who committed suicide due to the desperation associated with her gambling disorder); Crawford Opening Brief, *supra* note 9, at 8, lines 6–7 (describing Crawford's near suicide attempt associated with his gambling disorder, including his extreme remorse associated with his misappropriation his clients' trust funds); *id.* at 11, line 18 (referencing the fact that Crawford was "wracked with grief and remorse"); *id.* at 13, lines 13–14 (referencing Crawford's "huge remorse"); *id.* at 16, line 9 (referencing Crawford's "extreme[] remorse"); and *id.* at 20, lines 19–22 (referencing Crawford's multiple instances of remorse).

Gambling disorder prevalence estimates vary by study. The APA states in the DSM-5 that the lifetime prevalence rate of gambling disorder is approximately one percent of the U.S. population.<sup>169</sup> Other sources report a prevalence rate as high as five percent in particular states, including California and Nevada, as well as other countries.<sup>170</sup>

*b. Family Studies Involving Individuals with Gambling Disorder*

Both environmental and genetic factors are believed to play a role in gambling disorder.<sup>171</sup> Studies have shown, for example, that gambling disorder is more frequent in monozygotic than in dizygotic twins.<sup>172</sup> Studies also have shown that individuals who have a first-degree relative with moderate to severe alcohol use disorder are more likely to develop gambling disorder.<sup>173</sup> Other family studies report similar results.<sup>174</sup> In a study published in 2006, for example, scientists at the University of Iowa College of Medicine and the Indiana University School of Medicine investigated whether pathological gambling (the term then in effect under the DSM-IV-TR) is familial.<sup>175</sup> The study authors recruited thirty-one case probands<sup>176</sup> with pathological gambling diagnosed using the DSM-IV (the edition of the DSM then in effect) and thirty-one

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169. DSM-5, *supra* note 11, at 587.

170. See, e.g., V.C. Lopez Viets & W.R. Miller, *Treatment Approaches for Pathological Gamblers*, 17 CLINICAL PSYCHOL. REV. 689, 690 (1997) (“Prevalence rates for pathological gambling have been estimated to range from 1.0% to 4.0% in nations, including Australia, Canada, England, Spain, and Holland.”); Lee, *supra* note 17 (“Gambling addicts make up 1 percent to 2 percent of the [U.S.] population, but that rate is closer to 4 percent in California, almost one in every 25 Californians—a not-so-surprising fact considering that the state is home to approximately 89 card clubs, roughly 100 tribal casinos, the state lottery and racetracks.”); LANIE’S HOPE, Home, <http://lanieshope.org> [<https://perma.cc/6R4Z-VLVK>] (“Problem gambling is a progressive, chronic, mental health disorder impacting up to 5% of the U.S. population.”).

171. See DSM-5, *supra* note 11, at 588 (identifying factors that contribute to gambling disorder). See also Aleks Milosevic & David M. Ledgerwood, *The Subtyping of Pathological Gambling: A Comprehensive Review*, 30 CLINICAL PSYCHOL. REV. 988, 993 (2010) (describing a model proposing that “all gamblers, regardless of pathway, gamble in part because of environmental determinants (e.g., availability of gambling), operant and classical conditioning, and cognitive processes resulting in faulty beliefs related to personal skill and probability”).

172. See DSM-5, *supra* note 11, at 588 (referencing this research finding).

173. See *id.* (referencing these research findings).

174. With minor technical changes, the text accompanying notes *infra* 175–184 is taken from Tovino, *Lost in the Shuffle*, *supra* note 25, and is reprinted here with permission of the author.

175. Donald W. Black et al., *A Family Study of Pathological Gambling*, 141 PSYCHIATRY RES. 295, 295 (2006).

176. A proband is an individual affected with a disorder who is the first subject in a genetic or other study. See, e.g., *Proband*, Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/proband> [<https://perma.cc/TTD7-AFU4>].

control probands and conducted in-depth interviews of them and their first-degree relatives (“FDRs”).<sup>177</sup> The study authors found that the lifetime rates of pathological gambling and “any gambling disorder” were significantly greater among the FDRs of case probands (8.3% and 12.4%, respectively) than among the control FDRs (2.1% and 3.5%, respectively).<sup>178</sup> That is, the study authors reported a rate of 8.3% for pathological gambling and 12.4% for any gambling disorder among the FDRs of pathological gamblers, compared to only 2.1% and 3.5%, respectively, among the control group. The study authors also found that pathological gambling FDRs had significantly higher lifetime rates of alcohol disorders, “any substance use disorder,” antisocial personality disorder, and “any mental disorder.”<sup>179</sup> Finally, the study authors found that “any gambling disorder,” alcohol disorder, and “any substance use disorder” remained significant.<sup>180</sup> The study authors formally concluded that gambling disorders are familial<sup>181</sup> and co-aggregate with substance misuse.<sup>182</sup> Although the study may be criticized on a number of grounds,<sup>183</sup> the results of this study are believed to be important to gambling disorder treatment advocates; that is, demonstrating that gambling disorder runs in families is a step toward identifying specific genes that may lead to the development of prevention and treatment strategies.<sup>184</sup>

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177. Black et al., *supra* note 175, at 296–97.

178. *Id.* at 299 tbl. 3.

179. *Id.* at 299 tbl. 4.

180. *Id.*

181. *Id.* at 300 (“The findings are consistent with a growing body of literature suggesting that problematic gambling is familial. Gambling disorders were significantly more frequent among relatives of PG than comparison probands.”).

182. *Id.* (“The findings also show that substance use disorders were excessive among the relatives of PG probands.”).

183. The study may be criticized due to elements of recall bias. That is, first-degree relatives of individuals with problem gambling may be more likely than first-degree relatives of controls to remember gambling experiences. See, e.g., Eman Hassan, *Recall Bias Can Be a Threat to Retrospective and Prospective Research Designs*, 3 INTERNET J. EPIDEMIOLOGY 1, 1 (2005) (“Recall bias is a classic form of information bias. . . . It arises when there is intentional or unintentional differential recall (and thus reporting) of information about the exposure or outcome of an association by subjects in one group compared to the other.”) (internal citations and references omitted). Further, the study authors indicated that studied families with problem gambling were larger than studied control families. Black et al., *supra* note 175, at 298 (“PG families were larger than control families (6.6 persons versus 4.6 persons, respectively”). The chances of studied families with problem gambling having a family member with problem gambling would increase, then, simply due to the larger number of people in each family.

184. See, e.g., Helen Breen & Sally Gainsbury, *Aboriginal Gambling and Problem Gambling: A Review*, 11 INT’L J. MENTAL HEALTH ADDICTION 75, 75 (2013) (“[I]t is important to identify] risk

c. *Co-Occurring Mental Disorders*

Additional studies investigate gambling disorder's co-occurrence with other mental disorders, including substance-related disorders, depressive disorders, anxiety disorders, and personality disorders.<sup>185</sup> A study published in 2008 by scientists affiliated with Harvard Medical School, the Cambridge Health Alliance, and the University of Minnesota, for example, analyzed the gambling data included in the United States National Comorbidity Survey Replication (NCS-R). The NCS-R is a face-to-face household survey of 9,282 English-speaking respondents ages eighteen years and older carried out between February 2001 and April 2003 in a nationally representative multi-stage clustered area probability sample of the U.S. household population.<sup>186</sup>

The study authors found that lifetime pathological gambling, the term then in effect under the DSM-IV-TR, was significantly associated in the total sample with other disorders; that is, 96.3% of respondents with lifetime pathological gambling also met lifetime criteria for one or more other Composite International Diagnostic Interview (CIDI)/DSM-IV disorders and 64.3% suffered from three or more disorders.<sup>187</sup> Among those who developed pathological gambling, 23.5% developed pathological gambling before any other psychiatric problem, 74.3% of respondents developed pathological gambling after experiencing other psychiatric problems, and 2.2% developed pathological gambling and other psychiatric problems at about the same time.<sup>188</sup>

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factors which facilitate the development and maintenance of problem gambling and potentially for underpinning protection, prevention and treatment programs.”)

185. See DSM-5, *supra* note 11, at 588 (“Gambling disorder also appears to aggregate with antisocial personality disorder, depressive and bipolar disorders and other substance use disorders, particularly with alcohol disorders”); *id.* at 589 (“Individuals with gambling disorder have high rates of comorbidity with other mental disorders, such as substance use disorders, depressive disorders, anxiety disorders, and personality disorders.”); Felicity K. Lorains, Sean Cowlshaw & Shane A. Thomas, *Prevalence of Comorbid Disorders in Problem and Pathological Gambling: Systematic Review and Meta-Analysis of Population Surveys*, 106(3) ADDICTION 490, 490–98 (2011) (reviewing evidence pertaining to the prevalence of common comorbid disorders, including alcohol use disorder, depression, substance use disorders, nicotine dependence, anxiety disorders, and antisocial personality disorder, in population-representative samples of problem and pathological gamblers); *id.* at 490 (“Problem and pathological gamblers experience high levels of other comorbid mental health disorders and screening for comorbid disorders upon entering treatment for gambling problems is recommended.”). With minor technical changes, the text accompanying notes 186–191 is taken from Tovino, *Lost in the Shuffle*, *supra* note 25, and is reprinted here with the permission of the author.

186. Ronald C. Kessler et al., *DSM-IV Pathological Gambling in the National Comorbidity Survey Replication*, 38(9) PSYCHOL. MED. 1351, 1351–52 (2008).

187. *Id.* at 1356–57.

188. *Id.*

The study authors also found that respondents with other psychiatric disorders were 17.4 times more likely to develop pathological gambling than those without such problems.<sup>189</sup> Substance use disorders, in particular, were significantly elevated among participants with pathological gambling; that is, 76.3% met criteria for any substance use disorder, 46.2% met criteria for alcohol or drug abuse, 31.8% met criteria for alcohol or drug dependence, and 63% met criteria for nicotine dependence.<sup>190</sup> The study authors formally concluded that pathological gambling is a “seriously impairing . . . and undertreated disorder . . . [that] is frequently secondary to other mental or substance disorders that are associated with both [pathological gambling] onset and persistence.”<sup>191</sup>

*d. Functional Neuroimaging Studies*

Current research focuses on improving gambling disorder awareness, diagnosis, and treatment. Some of these studies use functional magnetic resonance imaging (fMRI) to study activations in the brain that occur when individuals see gambling cues or otherwise participate in gambling activities.<sup>192</sup> In 2001, for example, scientists from Massachusetts General Hospital, Harvard Medical School, Concordia University, and Princeton University used fMRI to monitor the brain activity of individuals without gambling disorder who played games of chance where money was at stake.<sup>193</sup> This study was the first to demonstrate that anticipation of and winning a monetary reward in a gambling-like experiment produces brain activation very similar to that observed in users of cocaine.<sup>194</sup> The study authors concluded that, “The overlap of the

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189. *Id.* at 1357.

190. *Id.*

191. *Id.* at 1351.

192. See, e.g., David N. Crockford et al., *Cue-Induced Brain Activity in Pathological Gamblers*, 58 *BIOLOGICAL PSYCHIATRY* 787, 787–95 (2005) (concluding that their research findings suggest that “visual gambling sensory cues are preferentially recognized by [pathological gambling] subjects as being salient for attention, reward expectancy, and behavior planning for attaining rewards.”).

193. Hans C. Breiter et al., *Functional Imaging of Neural Responses to Expectancy and Experience of Monetary Gains and Losses*, 30 *NEURON* 619, 619–39 (2001).

194. See NAT’L CTR. FOR RESPONSIBLE GAMING, RESEARCH & RESOURCES: A GUIDE TO GAMBLING DISORDERS AND RESPONSIBLE GAMING 11 [hereinafter NCRG, RESEARCH GUIDE] (reviewing the study and reporting this research finding); Breiter et al., *supra* note 193, at 634 (“These common patterns of hemodynamic response are consistent with the view that dysfunction of neural mechanisms and psychological processes crucial to adaptive decision making and behavior may contribute to a broad range of . . . disorders such as drug abuse and compulsive gambling.”).



observed activations with those seen previously in response to . . . euphoria-inducing drugs is consistent with a contribution of common circuitry to the processing of diverse rewards.”<sup>195</sup> The results of this study were important because they suggested that treatments for substance abuse might work for gambling disorder and that addiction—regardless of the object of the addiction—is a syndrome involving a shared neurobiology with distinct impressions.<sup>196</sup>

In a second neuroimaging study published in 2003, scientists from Yale University School of Medicine, Vanderbilt University School of Medicine, and the Connecticut Council on Problem Gambling found that male participants diagnosed with pathological gambling—the term then in effect under the DSM-IV-TR—reported greater gambling urges after viewing videotaped gambling scenarios versus control subjects, although the groups did not differ significantly in their subjective responses to happy or sad (non-gambling) videotapes.<sup>197</sup> The study authors formally concluded that in men diagnosed with pathological gambling, cue presentation elicits gambling urges and leads to a temporally dynamic pattern of brain activity changes in frontal, paralimbic, and limbic brain structures.<sup>198</sup> When viewing gambling cues, pathological gambling subjects demonstrate relatively decreased activity in brain regions implicated in impulse regulation compared with controls.<sup>199</sup> The study authors further concluded that their finding of distinct patterns of neural responses to gambling-related stimuli could provide a basis for future experimentation in the prevention and treatment of pathological gambling.<sup>200</sup>

These neuroimaging studies have had a very real impact on the medical community’s understanding of gambling disorder. As discussed above, the APA recently changed the classification of gambling disorder from the impulse control disorder chapter, where the disorder was classified in the DSM-III (1980), the DSM-III-R (1987), the DSM-IV (1994), and the DSM-IV-TR (2000), to the substance-related and

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195. Breiter et al., *supra* note 193, at 619.

196. NCRG, RESEARCH GUIDE, *supra* note 194, at 11 (reviewing the study).

197. Marc N. Potenza et al., *Gambling Urges in Pathological Gambling: A Functional Magnetic Resonance Imaging Study*, 60(8) ARCHIVES GEN. PSYCHIATRY 828, 828–36 (2003).

198. *Id.*

199. *Id.*

200. *Id.* at 835.

addictive disorder chapter of the DSM-5 (2013).<sup>201</sup> Dr. Charles O'Brien, who chaired the DSM-5's Substance-Related Disorders Work Group, explained the classification change as follows:

The idea of a non-substance-related addiction may be new to some people, but those of us who are studying the mechanisms of addiction find strong evidence from animal and human research that addiction is a disorder of the brain reward system, and it doesn't matter whether the system is repeatedly activated by gambling or alcohol or another substance . . . In functional brain imaging—whether with gamblers or drug addicts—when they are showed video or photograph cues associated with their addiction, the same brain areas are activated.<sup>202</sup>

*e. Pharmacological Studies*

Additional research studies investigate the efficacy of drugs, including opioid antagonists, serotonin reuptake inhibitors, and mood stabilizers, for the treatment of gambling disorder.<sup>203</sup> In a detailed review essay published in 2006, for example, two University of Minnesota scientists summarized study results investigating the efficacy of opioid-receptor antagonists, serotonin reuptake inhibitors, and mood stabilizers for the treatment of gambling disorder.<sup>204</sup> As one example of a reviewed study, scientists from the University of Minnesota Medical School and the Sungkyunkwan University School of Medicine published in 2001 a study assessing the efficacy and tolerability of naltrexone in the treatment of pathologic gambling, the term then in effect under the DSM-IV-TR.<sup>205</sup> The study authors conducted a one-week, single-blind placebo lead-in followed by an eleven-week, double-blind, placebo-controlled trial of naltrexone, analyzing data relating to forty-five

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201. See Tovino, *Lost in the Shuffle*, *supra* note 25, at Part II (discussing the history and diagnostic classification of gambling disorder, including the disorder's classification in the DSM-III, DSM-III-R, DSM-IV, DSM-IV-TR, and DSM-5).

202. Mark Moran, *Gambling Disorder to Be Included in Addictions Chapter*, 48(8) PSYCHIATRIC NEWS 5, Apr. 19, 2013, at 5.

203. NCRG, RESEARCH GUIDE, *supra* note 194, at 13. The text accompanying this note 203, as well as *infra* notes 204–214, is taken with only minor technical changes from Tovino, *Lost in the Shuffle*, *supra* note 25, and is reprinted here with permission of the author.

204. See Jon E. Grant & Suck Won Kim, *Medication Management of Pathological Gambling*, 89(9) MINN. MED. 44, 44–48 (2006).

205. Suck Won Kim et al., *Double-Blind Naltrexone and Placebo Comparison Study in the Treatment of Pathological Gambling*, 49(11) BIOLOGICAL PSYCHIATRY 914, 914 (2001).

subjects who were pathological gamblers, the term then in effect under the DSM-IV-TR.<sup>206</sup>

At the end of the study, seventy-five percent of the participants taking naltrexone were “much” or “very much” improved on both the patient-rated Clinical Global Impression and clinician-rated Clinical Global Impression scales, compared with only twenty-four percent of those on placebo.<sup>207</sup> The study authors stated that their results suggest that naltrexone may be effective in reducing the symptoms of pathologic gambling; however, the study authors also cautioned that their results should be interpreted cautiously until further studies corroborated their findings.<sup>208</sup>

Other scientists have investigated the efficacy of nalmefene, a second opioid antagonist, in the treatment of gambling disorder. In one illustrative study published in 2006, scientists from the University of Minnesota, Yale University, Mount Sinai School of Medicine, Washington University School of Medicine, and Bio-Tie Therapies Corporation in Finland examined the efficacy and tolerability of nalmefene in the treatment of adults with pathological gambling, the term then in effect under the DSM-IV-TR<sup>209</sup> In a sixteen-week, randomized, dose-ranging, double-blind, placebo-controlled trial conducted at fifteen outpatient treatment centers across the United States between March 2002 and April 2003, 207 participants with pathological gambling diagnosed under the DSM-IV-TR were randomly assigned to receive nalmefene at doses of twenty-five milligrams per day, fifty milligrams per day, or one hundred milligrams per day, or to receive a placebo.<sup>210</sup>

Upon analysis, estimated regression coefficients showed that the twenty-five milligrams per day and the fifty milligrams per day groups had significantly different scores on the Yale-Brown Obsessive Compulsive Scale Modified for Pathological Gambling, compared to the placebo group.<sup>211</sup> A total of 59.2% of the subjects who received twenty-five milligrams per day of nalmefene were rated as “much improved” or “very much improved” at the last evaluation, compared to thirty-four

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206. *Id.* at 914.

207. *Id.*

208. *Id.*

209. Jon E. Grant et al., *Multicenter Investigation of the Opioid Antagonist Nalmefene in the Treatment of Pathological Gambling*, 163(12) AM. J. PSYCHIATRY 303, 303-312 (2006).

210. *Id.* at 303.

211. *Id.*

percent of those who received placebo.<sup>212</sup> The study authors formally concluded that the participants who received nalmefene had a statistically significant reduction in severity of pathological gambling<sup>213</sup> and that nalmefene may be effective in the acute treatment of pathological gambling.<sup>214</sup>

## 2. *Legal Understandings of Gambling Disorder in Attorney Disciplinary Proceedings*

While the scientific and medical communities have developed a strong, evidence-based understanding of gambling disorder, the four case studies presented in Part II demonstrate that some disciplinary board members and judges continue to misunderstand the disorder. In the case of attorney Michael Reilly, for example, remember that the Iowa Supreme Court stated on July 17, 2006, that Reilly's gambling "habit" caused his misappropriation of client trust funds.<sup>215</sup> On April 21, 2006, the Supreme Court of Nebraska also referred to Reilly's gambling as a "habit."<sup>216</sup> In the case of Douglas Crawford, by further example, the Southern Nevada Disciplinary Panel (Panel) referred to Crawford's gambling as a "character weakness"<sup>217</sup> and a "bad habit[]." <sup>218</sup> In addition, the Panel referred to Crawford's condition as "terrible and despicable" and his potential for relapse as a "black stain" upon the State Bar.<sup>219</sup>

Neither "habit" nor "character weakness" is a medically or scientifically appropriate description of the conditions of Reilly, Crawford, and other individuals with gambling disorder. A "habit" is something that an individual does in a regular way.<sup>220</sup> A "character weakness" is personality quirk, or flaw, that makes an individual less effective or useful in certain situations.<sup>221</sup> Neither term rises to the level

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212. *Id.*

213. *Id.*

214. *Id.* at 311.

215. Reilly (Iowa), 708 N.W.2d 82, 85 (Iowa 2006).

216. State *ex rel.* Counsel for Discipline v. Reilly, 712 N.W.2d 278, 278 (Neb. 2006).

217. 2008 Panel Decision, *supra* note 136, at 2, line 6.

218. *Id.* at 2, line 12.

219. *Id.* at 3, lines 2–12.

220. See, e.g., *Habit*, Merriam-Webster Dictionary (2015), <http://www.merriam-webster.com> [<https://perma.cc/TTD7-AFU4>] (defining habit).

221. See, e.g., *Character*, Merriam-Webster Dictionary (2015), <http://www.merriam-webster.com> [<https://perma.cc/TTD7-AFU4>] (defining character); *Weakness*, Merriam-Webster Dictionary (2015), <http://www.merriam-webster.com> [<https://perma.cc/TTD7-AFU4>] (defining weakness).

of a disease of the brain, including DSM-5-diagnosed gambling disorder, which is defined as the “persistent and recurrent maladaptive gambling behavior that significantly disrupts personal, family, and/or vocational pursuits.”<sup>222</sup>

In addition, the Panel’s use of the words and phrases “terrible,” “despicable,” and “black stain,” the last of which may be defined as “without hope” or “wicked or harmful,”<sup>223</sup> suggests a strong stigma against mental illness in general and individuals who gamble in particular.<sup>224</sup> If, by “black stain,” the Panel meant “without hope,” this phrase is also medically and scientifically incorrect because gambling disorder is a treatable mental illness and individuals with the disorder can recover and lead productive, healthy lives.<sup>225</sup> In addition, the words and phrases “terrible,” “despicable” and “black stain” are demeaning, degrading, unprofessional, and inappropriate. Neither disciplinary boards nor supreme courts should be using them in any context, especially the context of professional discipline.

Indeed, the only disciplinary proceedings that suggest a full and correct understanding of gambling disorder are those involving attorneys who voluntarily consented to disbarment and those involving attorneys who applied for reinstatement multiple times and therefore had time to

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222. DSM-5, *supra* note 11, at 586.

223. *See, e.g., Black Stain*, Reverso Dictionary, <http://dictionary.reverso.net/english-definition/black%20stain> [<https://perma.cc/J6E3-USTS>] (defining “black stain”); text accompanying notes 129–132.

224. *See, e.g., Nerilee Hing et al., Stigma and Problem Gambling: Current Knowledge and Future Research Directions*, INT’L GAMBLING STUD. 64, 64 (2013) (“Stigma has been identified as a major barrier to help-seeking, treatment and recovery from gambling problems.”); *id.* (“The contribution of this paper is that for the first time stigma and problem gambling are drawn together and reviewed using broad constructs and literature from a range of seminal and new sources to present a synthesis of new and important information on stigma.”); ANNIE CAROLL ET AL., STIGMA & HELP-SEEKING FOR GAMBLING PROBLEMS 7 (2013) (stating, “stigma is a significant barrier to both prevention and treatment efforts for problem gambling”; seeking to “uncover a deeper understanding of how stigma impacts on the lives of people with gambling problems in general—and on their help-seeking and reluctance to seek help in particular.”); Sara T. Williams, *To Treat Gambling Disorder, You Must Dig a Little Deeper*, MINN. POST 3, July 24, 2014 (“The stigma around gambling disorder cuts especially deep.”).

225. *See, e.g., Viets & Miller, supra* note 170, at 689 (“As a whole, the literature indicates that pathological gambling can be treated with highly successful outcomes.”); Roxanne Dryden-Edwards & William C. Shiel, Jr., *Gambling Addiction (Compulsive or Pathological Gambling)*, MEDICINET.COM (2014), [http://www.medicinenet.com/gambling\\_addiction/article.htm](http://www.medicinenet.com/gambling_addiction/article.htm) [<https://perma.cc/K5BF-WTN3>] (“With treatment, the prognosis of compulsive gambling can be quite encouraging. More than two-thirds of people with this disorder tend to abstain from problem gambling a year after receiving six weeks of treatment.”); *id.* (“After treatment has ended, less than one-fifth of those who receive follow-up for relapse prevention tend to relapse into gambling addiction behavior after one year compared to half of those who do not receive follow-up.”).

educate the disciplinary board or court regarding gambling disorder. For example, former Iowa attorney Susan Hense misappropriated \$837,000 in client trust funds between 2009 and 2012 to feed her severe gambling disorder.<sup>226</sup> In January 2013, while disciplinary charges were pending, Hense voluntarily consented to disbarment.<sup>227</sup> In her affidavit consenting to her disbarment, which was adopted by the Iowa Supreme Court in its Order of Disbarment on Consent, Hense stated that she had a “debilitating gambling addiction,”<sup>228</sup> suggesting a correct understanding by Hense and the Iowa Supreme Court of Hense’s brain disease.

By further example, the Southern Nevada Disciplinary Board in 2008 referred to Douglas Crawford’s gambling as a “character weakness” and a “bad habit.”<sup>229</sup> In 2009, after being educated by Crawford on the nature of his brain disease, the Supreme Court of Nevada formally recognized that Crawford had “mental disabilities [including] depression and gambling addiction.”<sup>230</sup>

In conclusion, the language used by some of the disciplinary boards and some of the supreme courts referenced in Part II is medically inappropriate at best and unprofessional at worst. Part IV of this Article proposes a system of judge, lawyer, and law student education designed to improve the understanding of gambling disorder as a disease of the brain and reduce stigma against individuals with the disorder.<sup>231</sup>

*B. Reinstatement Criteria Should Incorporate the Concepts of Treatment, Recovery, and Remission, Not Just Cure and Removal*

Some of the disciplinary boards and supreme courts referenced in Part II (and some of the state laws referenced in Part I) misunderstand gambling disorder in still other ways. Remember, for example, that the Southern Nevada Disciplinary Panel, in its initial opinion, reasoned that disbarment was an appropriate sanction for Douglas Crawford because

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226. Hense Affidavit, *supra* note 73, ¶ 7; *Cedar Rapids Lawyer Pleads Guilty to Fraud, Faces Prison*, 13WREX.COM, <http://www.wrex.com/story/26845843/2014/10/21/cedar-rapids-lawyer-pleads-guilty-to-fraud-faces-prison> [<https://perma.cc/CYY7-K9BL>] (“Hense admitted that over three years she stole more than \$837,000 from her clients.”).

227. *Id.*

228. *Id.* (“I state that I have a debilitating gambling addiction, that I have self-excluded myself from the casinos I frequented (as well as all casinos in Iowa, Wisconsin and Illinois), that I attend individual counseling at least weekly, and that I will shortly begin attending one-day-at-a-time meetings. I have not gambled since making initial contact with [a treatment] program October 6, 2012, and will do everything in my power to never gamble again.”).

229. See 2008 Panel Decision, *supra* note 136, at 2.

230. See Crawford Order of Suspension, *supra* note 131, at 3.

231. *Infra* Part IV.

of the lack of a “cure[.]” for gambling disorder.<sup>232</sup> Similarly, remember that Louisiana Supreme Court Rules require a suspended attorney with gambling disorder to have his disorder “removed” before he may apply for reinstatement.<sup>233</sup> The same “remov[al]” requirement is set forth in the supreme court rules of other states.<sup>234</sup>

Many mental and physical health conditions do not yet have a cure and/or cannot be removed. Illustrative examples include alcohol use disorder, drug use disorder, Type I diabetes, and AIDS. Individuals with these conditions can be treated, though, and they can recover from the symptoms of their diseases or enter remission in a way that allows them to participate meaningfully and healthfully in society. Individuals with gambling disorder also can be treated and also can learn to abstain from the socially disruptive behavior that sometimes is associated with the disorder.<sup>235</sup> For these reasons, many treatment providers refer to gambling disorder’s standard treatments as “highly successful” and the disorder’s prognosis as “quite encouraging.”<sup>236</sup> Indeed, the APA has created specific terminology for individuals who are in recovery.<sup>237</sup> According to the APA, individuals are considered to be “in early remission” from gambling disorder if not one of the nine criteria for gambling disorder exists for at least three months but for less than twelve months after a prior diagnosis of gambling disorder.<sup>238</sup> Individuals are considered to be “in sustained remission” from gambling disorder if not one of the nine criteria for gambling disorder exists during a period of twelve months or longer after a prior diagnosis of gambling disorder.<sup>239</sup>

In summary, clinicians and scientists involved in gambling disorder treatment and research understand the disorder using concepts such as

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232. 2008 Panel Decision, *supra* note 136, at 2, lines 10–11.

233. See LA. SUP. CT. R. XIX § 24(E) (2015) (requiring an attorney seeking reinstatement in Louisiana to have had, among other things, any physical or mental disabilities or infirmities “removed”).

234. See, e.g., S.C. SUP. CT. R. 33(f)(3) (2015) (“If the lawyer was suffering under a physical or mental infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the infirmity has been removed.”).

235. See *supra* note 225 (referencing sources explaining that gambling disorder is a diagnosable and treatable mental disorder).

236. See *supra* note 225.

237. See *infra* DSM-5, *supra* note 11, at page 586.

238. DSM-5, *supra* note 11, at 586.

239. *Id.*

“treatment,”<sup>240</sup> “recovery,”<sup>241</sup> and “remission,”<sup>242</sup> but not “cure” or “removal.” A requirement that attorneys with gambling disorder be “cured” or have their disorder “removed” prior to reinstatement may make these attorneys more vulnerable to permanent license revocation compared to attorneys with other physical and mental health conditions. In Part IV, this Article proposes an amendment to reinstatement criteria that would incorporate the concepts of treatment, recovery, and remission.<sup>243</sup> These concepts are applicable to individuals with a wide variety of mental health conditions.

*C. Reinstatement Criteria Should Incorporate the Concept of Mental Illness Generally, Not Just the Alcohol and Drug Use Disorders*

A review of state court rules governing attorney reinstatement reveals that many rules provide specific, helpful guidelines for suspended attorneys with alcohol use disorder and drug use disorder, but not suspended attorneys with gambling disorder or other mental health conditions. Louisiana Supreme Court Rules, for example, allow attorneys with alcohol or drug use disorder to be considered for reinstatement so long as they have “pursued appropriate rehabilitative treatment,” “abstained from the use of alcohol or other drugs for at least one year,” and are “likely to continue to abstain from alcohol or other drugs.”<sup>244</sup> Likewise, North Dakota Supreme Court Rules provide that, “Where alcohol or drug abuse was a causative factor in the lawyer’s misconduct, the petitioner must show that the petitioner has been successfully rehabilitated or is pursuing appropriate rehabilitative treatment.”<sup>245</sup> South Carolina Supreme Court Rules also provide that where alcohol or drug abuse is a causative factor in the attorney’s misconduct, the attorney may be reinstated if the attorney “has pursued

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240. See, e.g., Leena Kovanen et al., *A Randomised, Double-Blind, Placebo-Controlled Trial of As-Needed Naltrexone in the Treatment of Pathological Gambling*, 22 EUR. ADDICTION RES. 70, 70 (2015) (consistently referencing “treatment” for individuals with gambling disorder, including in the title); Pinhas N. Dannon et al., *Sustained-Release Bupropion Versus Naltrexone in the Treatment of Pathological Gambling: A Preliminary Blind-rater Study*, 25 J. CLIN. PSYCHOPHARMACOLOGY 593, 593–96 (2005) (also consistently referencing the “treatment” of individuals with gambling disorder, including in the title).

241. See, e.g., Danielle Rossini-Dib, Daniel Fuentes & Hermano Tavares, *A Naturalistic Study of Recovering Gamblers: What Gets Better and When They Get Better*, 30 PSYCHIATRY RES. 17, 17–25 (2015) (using the word “recovery” repeatedly throughout the study).

242. See *supra* notes 240–241 (consistently referring to early and sustained “remission”).

243. *Infra* Part IV.

244. LA. SUP. CT. R. XIX § 24(E)(3) (2015).

245. N.D. SUP. CT. R. 4.5(F)(4) (2015).



appropriate rehabilitative treatment,” “has abstained from the use of alcohol or other drugs for at least [one] year or the period of suspension, whichever is shorter,” and “is likely to continue to abstain from alcohol or other drugs.”<sup>246</sup>

Research did not reveal one state court rule that provided similar, specific guidance for individuals with gambling disorder or any other behavioral addiction, thus begging the question: should individuals in recovery from gambling disorder and other behavioral addictions be treated like individuals in recovery from alcohol and drug use disorder?

Although this Article focuses on individuals with gambling disorder, individuals can become addicted to eating, sex, exercise, and other behaviors.<sup>247</sup> Current research suggests that the brains of individuals with behavioral addictions function much like the brains of individuals with substance addictions.<sup>248</sup> As just one example, scientists affiliated with the University of Cambridge, Brighton and Sussex Medical School, and Yale University used fMRI to study the brain activity of nineteen research participants with compulsive sexual behavior (CSB) as well as an equal number of healthy research participants while all participants watched and compared sexually explicit videos with non-sexual exciting videos.<sup>249</sup> The scientists reported that neural differences in the processing of sexual-cue reactivity were found in participants with CSB in regions previously implicated in drug-cue reactivity studies.<sup>250</sup> Additional studies involving individuals with other behavioral addictions report similar findings.<sup>251</sup>

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246. S.C. SUP. CT. R. 33(f)(3)(A)–(C) (2015).

247. See, e.g., Alice G. Walton, *Does Sex Addiction Function Like Drug Addiction in the Brain*, FORBES (July 12, 2014, 9:50 AM), <http://www.forbes.com/sites/alicegwalton/2014/07/12/does-sex-addiction-function-like-drug-addiction-in-the-brain/> [<https://perma.cc/DDG8-DSMT>] (“We can get addicted to just about anything—gambling, eating, exercising, and using the internet.”).

248. See, e.g., Valerie Voon et al., *Neural Correlates of Sexual Cue Reactivity in Individuals with and Without Compulsive Sexual Behaviours*, 9 PUB. LIBRARY SCI. ONE 1, 9 (2014) (“The current and extant findings suggest that a common network exists for sexual-cue reactivity and drug-cue reactivity in groups with CSB and drug addictions, respectively. These findings suggest overlaps in networks underlying disorders of pathological consumption of drugs and natural rewards.”).

249. See *id.* at 1–4 (summarizing the study’s methods).

250. See *id.* at 1 (“Neural differences in the processing of sexual-cue reactivity were identified in CSB subjects in regions previously implicated in drug-cue reactivity studies.”).

251. See, e.g., Ashley N. Gearhardt et al., *Neural Correlates of Food Addiction*, 68 ARCHIVES GEN. PSYCHIATRY 808, 808 (2011) (“Similar patterns of neural activation are implicated in addictive-like eating behavior and substance dependence: elevated activation in reward circuitry in response to food cues and reduced activation of inhibitory regions in response to food intake.”); Nora D. Volkow et al., *Overlapping Neuronal Circuits in Addiction and Obesity: Evidence of Systems Pathology*, 363 PHIL. TRANSACTIONS ROYAL SOC’Y B 3191, 3196 (2008) (“[S]everal common brain circuits have been identified by imaging studies as being relevant in the

State court rules currently offer attorneys who have violated rules of professional responsibility due to socially disruptive or illegal behavior associated with alcohol or drugs the possibility of reinstatement if they seek and obtain treatment and are likely to abstain from their substance of abuse.<sup>252</sup> The current direction of neuroimaging research does not support the black-and-white distinctions court rules make between attorneys with alcohol and drug addiction and attorneys with other behavioral addictions. As such, Part IV of this Article proposes that reinstatement remain an option for attorneys with gambling disorder as well as other mental health conditions that may be associated with socially disruptive behavior or illegal conduct so long as, in addition to meeting other reinstatement criteria, the attorney petitioning for reinstatement: (1) seeks and obtains treatment or rehabilitation, as appropriate; and (2) abstains (and is likely to continue to abstain) from any substance or behavior of addiction, if applicable, and/or the socially disruptive behavior or illegal conduct associated with his or her health condition.

*D. State-Mandated Attendance at Gamblers Anonymous Is Constitutionally Problematic*

State disciplinary boards and supreme courts frequently require attorneys seeking reinstatement to attend GA and other twelve-step meetings as a condition of restatement. For example, the Supreme Court of Nevada required Danny Winder to adhere to several reinstatement requirements,<sup>253</sup> including: (1) attending at least three GA meetings per week for the first three months of his suspension, attending at least two GA meetings per week for the second six months of his suspension, and providing proof of such attendance to Bar Counsel; and (2) attending at least three AA, LCL, or similar organizational meetings per week for the first three months of his suspension, attending at least two AA, LCL, or

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neurobiology of drug abuse/addiction and obesity. Here, we highlight four of these circuits . . ."); Eric J. Nestler, *Is There a Common Molecular Pathway for Addiction*, 8 NATURE NEUROSCIENCE 1445, 1445 (2005) ("Drugs of abuse have very different acute mechanisms of action but converge on the brain's reward pathways by producing a series of common functional effects after both acute and chronic administration. Some similar actions occur for natural rewards as well."); *id.* ("A major goal for future research is to determine whether such common underpinnings of addiction can be exploited for the development of more effective treatments for a wide range of addictive disorders.").

252. See, e.g., *supra* notes 244–246 (referencing illustrative Louisiana, North Dakota, and South Carolina court rules providing reinstatement guidelines for attorneys in recovery from alcohol and drug addiction).

253. Order of Suspension at 1, *State Bar v. Winder*, No. 20984 (Nev. Sup. Ct. Dec. 23, 1990).

similar organizational meetings per week for the second six months of his suspension, and providing proof of such attendance to Bar Counsel.<sup>254</sup> Likewise, the Supreme Court of Nevada required Douglas Crawford to continue his gambling recovery efforts through “regular attendance at Gamblers Anonymous, alumni, and aftercare meetings.”<sup>255</sup>

GA is a twelve-step,<sup>256</sup> “mutual aid fellowship”<sup>257</sup> that is modeled on AA.<sup>258</sup> Several of the GA (and similar AA) steps require recovering gamblers to admit that they are powerless over their gambling and give themselves up to “God” or a “higher power.”<sup>259</sup> Indeed, one of the Core Principles of GA states, “Only through a belief and reliance on a higher power, can a gambling addict achieve recovery. A higher power need not be God in the traditional sense, but must be a power outside of yourself, and cannot be another living person.”<sup>260</sup>

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254. See Winder Conditional Guilty Plea, *supra* note 94, at 2–4 (listing the conditions precedent to Winder’s reinstatement).

255. See Crawford Order of Reinstatement, *supra* note 7, at 3.

256. *Recovery Program*, GAMBLERS ANONYMOUS, <http://www.gamblersanonymous.org/ga/content/recovery-program> [<https://perma.cc/MH2Q-UPLQ>] (identifying the following twelve steps as within GA’s program of recovery: (1) “We admitted we were powerless over gambling — that our lives had become unmanageable”; (2) “Came to believe that a Power greater than ourselves could restore us to a normal way of thinking and living”; (3) “Made a decision to turn our will and our lives over to the care of this Power of our own understanding”; (4) “Made a searching and fearless moral and financial inventory of ourselves”; (5) “Admitted to ourselves and to another human being the exact nature of our wrongs”; (6) “Were entirely ready to have these defects of character removed”; (7) “Humbly asked God (of our understanding) to remove our shortcomings”; (8) “Made a list of all persons we had harmed and became willing to make amends to them all”; (9) “Make direct amends to such people wherever possible, except when to do so would injure them or others”; (10) “Continued to take personal inventory and when we were wrong, promptly admitted it”; (11) “Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry that out”; and (12) “Having made an effort to practice these principles in all our affairs, we tried to carry this message to other compulsive gamblers”).

257. Peter Ferentzy, Wayne Skinner & Paul Antze, *The Serenity Prayer: Secularism and Spirituality in Gamblers Anonymous*, 5 J. GROUPS ADDICTION & RECOVERY 124, 125 (2010) (“Founded in the 1950s, Gamblers Anonymous (GA) is a 12-step, mutual aid fellowship . . .”).

258. *About Us*, GAMBLERS ANONYMOUS, <http://www.gamblersanonymous.org/ga/node/1> [<https://perma.cc/UAW4-KCRN>] (“Gamblers Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from a gambling problem.”). Ferentzy, Skinner & Antze, *supra* note 257, at 125 (“Founded in the 1950s, Gamblers Anonymous (GA) is a 12-step, mutual aid fellowship.”).

259. See *infra* notes 261–263.

260. *Questions and Answers About Gamblers Anonymous*, GAMBLERS ANONYMOUS, <http://www.gamblersanonymous.org/ga/content/questions-answers-about-gamblers-anonymous> [<https://perma.cc/GY5C-LQEG>] (“Most of us feel that a belief in a Power greater than ourselves is necessary in order for us to sustain a desire to refrain from gambling.”); John Lee, *Gamblers Anonymous: 12 Steps of Recovery*, CHOOSE HELP (Nov. 18, 2011)

Several of the twelve GA steps reflect this Core Principle. For example, individuals working the first and second GA steps must admit that they are “powerless over gambling” and that they have “[co]me to believe that a Power greater than [themselves] could restore [them] to a normal way of thinking and living.”<sup>261</sup> Individuals working the third and seventh GA steps must make a decision to “turn [their] will and [their] lives over to the care of this Power” and to “[h]umbly ask[] God (of [their] understanding) to remove [their] shortcomings.”<sup>262</sup> The eleventh GA step requires individuals to seek through “prayer and meditation to improve [their] conscious contact with God as [they] underst[and] Him, praying only for knowledge of His will for [them] and the power to carry that out.”<sup>263</sup>

In researching this Article, the author spoke with many theist and atheist attorneys in recovery from gambling disorder. Without exception, all of them, including the atheist attorneys, currently attend GA meetings and report tremendous satisfaction with GA. Several maintain leadership roles within GA, including service as meeting chairperson.<sup>264</sup> Although the attorneys referenced in this Article report that they have benefited from GA and other twelve-step meetings, this Article expresses concern that disciplinary boards and supreme courts are impermissibly mixing church and state when they mandate attendance at GA without allowing completion of secular medical treatments and/or participation in secular mutual support programs to suffice.<sup>265</sup>

The Establishment Clause of the First Amendment to the U.S. Constitution provides, in relevant part, “Congress shall make no law

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<http://www.choosehelp.com/topics/gambling-addiction/gamblers-anonymous-12-steps-of-recovery.html> [<https://perma.cc/7TJH-LJZ9>] (“Only through a belief and reliance on a higher power, can a gambling addict achieve recovery. A higher power need not be God in the traditional sense, but must be a power outside of yourself, and cannot be another living person.”).

261. *Recovery Program* at steps 1 and 2, GAMBLERS ANONYMOUS, <http://www.gamblersanonymous.org/ga/content/recovery-program> [<https://perma.cc/MH2Q-UPLQ>].

262. *Id.* at steps 3, 7.

263. *Id.* at step 11.

264. *See, e.g.*, Second Crawford E-mail, *supra* note 9 (stating that Crawford serves as chairperson for a GA meeting at least once a week); *supra* note 120, at 5 (noting that Samuel Bellicini not only participates in twelve-step meetings but also does volunteer work for them, including answering phones and sponsoring other attendees).

265. *See generally* Ferentzy, Skinner & Antze, *supra* note 257, at 124–44 (exploring the uneasy tension between secularism and spirituality in GA; analyzing whether GA is more secular in orientation than similar twelve-step programs, including AA; concluding that GA does place less emphasis on the spiritual steps but also finding that GA has become more spiritual in orientation over the last two decades).

respecting an establishment of religion . . .”<sup>266</sup> In the criminal law context, many courts have held that government-mandated attendance at twelve-step programs violates the Establishment Clause.<sup>267</sup> In *Warner v. Orange County Department of Probation*, for example, the U.S. Court of Appeals for the Second Circuit held unconstitutional a probation condition requiring plaintiff Robert Warner, who had been convicted of three alcohol-related driving offenses in less than one year, to “attend Alcoholics Anonymous at the direction of [his] probation officer.”<sup>268</sup> The Second Circuit reasoned that the AA meetings “were intensely religious events” and that Warner was “coerced into participating in these religious exercises by virtue of his probation sentence” because he was not offered “any choice among therapy programs.”<sup>269</sup> The Second Circuit clarified that had Warner “been offered a reasonable choice of therapy providers . . . the considerations would be altogether different.”<sup>270</sup>

Similarly, the U.S. Court of Appeals for the Ninth Circuit held in *Inouye v. Kemna* that plaintiff Ricky Inouye’s First Amendment rights were violated when a parole officer mandated Inouye’s attendance at AA and Narcotics Anonymous (NA) meetings as a condition of his parole.<sup>271</sup> The Ninth Circuit explained, “While we in no way denigrate the fine work of AA/NA, attendance in their programs may not be coerced by the state. The Hobson’s choice offered Inouye—to be imprisoned or to renounce his own religious beliefs—offends the core of Establishment Clause jurisprudence.”<sup>272</sup>

Courts have upheld state-mandated participation in self-help programs, however, when the individual is permitted to choose among a

266. U.S. CONST. amend. I.

267. See, e.g., *Kerr v. Ferry*, 95 F.3d 472, 474 (7th Cir. 1996) (“We find . . . that the state has impermissibly coerced inmates to participate in a religious program.”). See generally Derek P. Apanovitch, Note, *Religion and Rehabilitation: The Requisition of God by the State*, 47 DUKE L.J. 785, 786 (1998) (“[S]tate-imposed participation in AA and, more generally, government support of AA raises significant constitutional issues under the Establishment Clause.”).

268. *Warner v. Orange Cty. Dep’t of Prob.*, 115 F.3d 1068, 1069–70, 1074 (2d Cir. 1997) [hereinafter *Warner I*] (“The County also argues that forcing Warner to attend Alcoholics Anonymous did not violate the First Amendment’s Establishment Clause. We disagree.”), *aff’d*, *Warner v. Orange Cty. Dep’t of Prob.*, 173 F.3d 120 (2nd Cir. 1999), *cert. denied sub nom.*, *Orange Cty. Dep’t of Prob. v. Warner*, 528 U.S. 1003 (1999).

269. *Warner I*, 115 F.3d at 1075.

270. *Id.*

271. *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007) (“In this case, it is essentially uncontested that requiring a parolee to attend religion-based treatment programs violates the First Amendment.”).

272. *Id.* at 714 (internal citations and references omitted).

menu of religious and secular support and treatment options. In *O'Connor v. California*, for example, the District Court for the Central District of California upheld the mandatory participation of plaintiff Edward O'Connor, who had been convicted of multiple driving-while-intoxicated offenses, to either AA, Rational Recovery (a non-religious source of self-help information), or any other self-devised means of self-help approved by Orange County, California (County).<sup>273</sup> The Court explained:

Significant to this Court's decision is that the individual has a choice over what program to attend. Rational Recovery is a viable, although less frequently offered, self-help program that does not use any concept of "spirituality" to treat alcohol-related problems. Moreover, individuals who do not want to attend either Alcoholics Anonymous or Rational Recovery may devise their own means of "self-help" and seek approval from the County. Given this array of options, it cannot be said that the State and County are endorsing the religious message of AA rather than promoting the concept of "self-help."<sup>274</sup>

*Warner, Inouye, and O'Connor* were criminal cases involving individuals forced to attend AA, NA, or other self-help programs as a condition of parole or probation.<sup>275</sup> The plaintiffs in those cases argued that they should not be forced to choose between imprisonment and their religious freedoms. It may be argued that an attorney who faces the permanent loss of ability to practice law (an administrative sanction) but not incarceration (a criminal sanction) experiences less coercion. Although less coercive, mandatory participation in a twelve-step program as a condition of license reinstatement is still constitutionally problematic.

In other contexts, such as the Privileges and Immunities Clause, the Supreme Court of the United States has emphasized the fundamental importance of an individual's interest in making a living, including the privilege of practicing law.<sup>276</sup> In *Supreme Court of New Hampshire v. Piper*, for example, the Court stated that "the opportunity to practice law

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273. *O'Connor v. California*, 855 F. Supp. 303, 308 (C.D. Cal. 1994).

274. *Id.* at 308.

275. See *supra* text accompanying notes 268–273 (discussing the *Warner, Inouye, and O'Connor* cases).

276. See, e.g., *Sup. Court N.H. v. Piper*, 470 U.S. 274, 283 (1985) (holding that a rule limiting New Hampshire Bar limitations to New Hampshire residents violated the Privileges and Immunities Clause).

should be considered a ‘fundamental right.’”<sup>277</sup> In addition, the Court has found coercion in violation of the Establishment Clause in arguably less pressured circumstances, such as a convocation ceremony at a middle school graduation where prayers were offered by invited clergy.<sup>278</sup>

To avoid coerced religious activity that could violate the Establishment Clause, Part IV of this Article proposes that attorneys with gambling disorder be offered a range of secular treatment options and secular mutual support programs as a condition of license reinstatement.<sup>279</sup> Stated another way, GA could be one but should not be the only intervention offered.

*E. For Clinical Reasons, a Menu of Treatment Options and Mutual Support Programs Should Be Offered to Attorneys with Gambling Disorder*

As discussed above, the Supreme Court of Nevada required both Danny Winder and Douglas Crawford to attend GA and other twelve-step meetings as a condition of license reinstatement.<sup>280</sup> A growing body of research investigates the efficacy of a range of gambling disorder mutual support programs and treatment interventions,<sup>281</sup> including GA, behavioral therapies, and pharmacological therapies.<sup>282</sup> As discussed in

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277. *Id.* at 281.

278. *See* Lee v. Weisman, 505 U.S. 577, 577 (1992) (“Including clergy who offer prayers as part of an official public school graduation ceremony is forbidden by the Establishment Clause.”).

279. *Infra* Part IV.

280. *See supra* Parts II.B and II.D (reviewing the *In re Winder* and *In re Crawford* cases); text accompanying notes *supra* 253–255 (re-reviewing the conditions of license reinstatement imposed on Danny Winder and Douglas Crawford).

281. *See generally* Sara Gordon, *The Use and Abuse of 12-Step Programs in Drug Courts* (forthcoming 2016) (manuscript at 19–38) (on file with author) (distinguishing between evidence-based treatments for addiction and mutual support programs).

282. *See, e.g.*, NANCY M. PETRY, *PATHOLOGICAL GAMBLING: ETIOLOGY, COMORBIDITY, AND TREATMENT* 135–226 (2005) (reviewing research on interventions for gambling disorder in Part III); JON E. GRANT & MARC N. POTENZA, *PATHOLOGICAL GAMBLING: A CLINICAL GUIDE TO TREATMENT* 169–205 (2004) (reviewing studies investigating the efficacy of cognitive and behavioral treatments for gambling disorder in Chapter 12 and pharmacological treatments for gambling disorder in Chapter 13); Peter Ferentzy & Wayne Skinner, *Gamblers Anonymous: A Critical Review of the Literature*, 9 *ELEC. J. GAMBLING ISSUES* 1, 16 (2003) (“A review of the literature on Gamblers Anonymous points out the paucity of knowledge we have about this approach to recovery.”); *id.* (“GA remains a black box about which we know too little. There would be real benefits to a detailed and sophisticated understanding of the processes and events of GA that contribute to its success with some individuals and its lack of success with others.”); *id.* (“Since formal treatment programs normally suggest (and often insist upon) GA attendance, the ways in which GA can complement—or hinder—various types of treatment is an immediate concern.”);

more detail below, some studies demonstrate some efficacy for GA.<sup>283</sup> Other studies suggest that GA is less effective than other, evidence-based treatment options or is better used in combination with such other treatment options.<sup>284</sup> Still other studies suggest that GA is not effective for certain individuals with gambling disorder.<sup>285</sup> These studies are important for assessing the clinical desirability of state-mandated attendance at GA.

In one study published in 1988, scientists affiliated with Western Infirmary in Glasgow reported that out of a sample of 232 GA attendees: (1) eight percent had remained completely abstinent from gambling and active in GA one year following their first GA meeting; and (2) approximately seven percent had remained completely abstinent from gambling and active in GA two years following their first meeting.<sup>286</sup> The Glasgow study focused on the efficacy of GA as a stand-alone intervention. In a second study published in 2006, scientists at the University of Connecticut Health Center investigated the efficacy of cognitive and cognitive-behavioral (CB) therapy compared to GA referral for the treatment of gambling disorder.<sup>287</sup> As background, the study authors knew that GA fellowship was the most popular gambling

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COMMITTEE ON THE SOCIAL AND ECONOMIC IMPACT OF PATHOLOGICAL GAMBLING, *PATHOLOGICAL GAMBLING: A CRITICAL REVIEW* 192 (1999) (reviewing treatments for gambling disorder); Viets & Miller, *supra* note 225, at 690 (reviewing gambling disorder treatments including psychodynamic, behavioral, cognitive, cognitive-behavioral, pharmacotherapeutic, and multimodal approaches); Richard J. Rosenthal & Loreen J. Rugle, *A Psychodynamic Approach to the Treatment of Pathological Gambling*, 10 *J. GAMBLING STUD.* 21, 21 (1994) (making an argument for integrating a traditional psychodynamic approach with an addictions model); Ruth M. Stewart & R. Ian F. Brown, *An Outcome Study of Gamblers Anonymous*, 152 *BRIT. J. PSYCHIATRY* 284 (1988) (“Retrospective and prospective studies of a total sample of 232 attenders at groups of Gamblers Anonymous suggest that total abstinence from gambling was maintained by 8% of all comers at one year from first attendance and by 7% at two years.”); Angel M. Russo et al., *An Outcome Study of an Inpatient Treatment Program for Pathological Gamblers*, 35 *HOSP. & COMMUNITY PSYCHIATRY* 823, 823 (1984) (reporting results from a thirty-day, highly structured, inpatient treatment program for gambling disorder at the Cleveland Veterans Administration Medical Center; stating that fifty-five percent of the sixty former patients who responded reported complete abstinence from gambling since discharge; “Chi-square analyses demonstrated significant relationships between abstinence from gambling and improved interpersonal relationships, better financial status, decreased depression, and participation in professional aftercare and Gamblers Anonymous.”).

283. See *infra* text accompanying note 286.

284. See *infra* text accompanying notes 287–295.

285. See *infra* text accompanying notes 296–301.

286. See Ruth M. Brown & R. Iain Brown, *An Outcome Study of Gamblers Anonymous*, 152 *BRIT. J. PSYCHIATRY* 284, 284 (1988).

287. Nancy M. Petry et al., *Cognitive-Behavioral Therapy for Pathological Gamblers*, 74(3) *J. CONSULTING & CLINICAL PSYCHOL.* 555, 555–67 (2006).



intervention at the time of the study.<sup>288</sup> However, the study authors also knew that then-current data showed that, per the Glasgow study, less than ten percent of GA attendees were actively involved in the fellowship and that overall gambling abstinence rates remained low.<sup>289</sup> The purpose of the University of Connecticut Health Center study, then, was to evaluate the efficacy of a short-term, CB treatment and compare its efficacy to GA referral.<sup>290</sup>

To this end, the University of Connecticut Health Center study authors recruited 231 individuals who met then-current DSM-IV-TR criteria for pathological gambling, had gambled in the past two months, were eighteen years or older, and could read at the fifth grade level.<sup>291</sup> The study authors randomly assigned the participants to one of three study arms including: (1) referral to GA; (2) referral to GA plus a self-directed CB workbook; or (3) referral to GA plus eight sessions of individual CB therapy.<sup>292</sup> The study authors then assessed gambling and related problems at baseline, one month later, post-treatment, and at six and twelve months post-treatment.<sup>293</sup>

The study authors found that participants who were assigned to the third arm (*i.e.*, participants who received in-person, professional CB therapy while enrolled in GA) made significantly more progress in modifying their gambling behaviors than participants who only attended GA (*i.e.*, participants in the first arm) or who attended GA and used a self-directed CB therapy workbook (*i.e.*, participants in the second arm).<sup>294</sup> Although the study authors recognized that future studies would be needed to evaluate the cost-benefits and cost-effectiveness of CB interventions, their data suggest efficacy of individual CB therapy in decreasing the negative consequences of pathological gambling.<sup>295</sup>

Other research studies suggest that disordered gamblers are heterogeneous and that treatment interventions that work for one type of disordered gambler may not work for a second type of disordered gambler.<sup>296</sup> For example, Aleks Milosevic and David Ledgerwood found

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288. *Id.* at 555.

289. *Id.*

290. *Id.*

291. *Id.* at 556.

292. *Id.* at 555.

293. *Id.*

294. *Id.* at 563.

295. *Id.* at 565.

296. See, e.g., E. Moran, *Varieties of Pathological Gambling*, 116 BRIT. J. PSYCHIATRY 593, 593-97 (1970) (suggesting that pathological gambling, the then-currently accepted medical term, is

in their comprehensive 2010 review three subtypes of disordered gamblers, including: (1) behaviorally conditioned gamblers, who “fluctuate between regular/heavy and excessive gambling mainly because of the effects of conditioning, distorted cognitions, and/or a series of bad judgments or poor decision-making rather than because of impaired control or premorbid psychopathological vulnerabilities”; (2) emotionally vulnerable gamblers, who “present with premorbid depression and/or anxiety, a history of inadequate coping and problem-solving skills, and negative family background experiences, developmental variables, and life events”; and (3) antisocial impulsivist gamblers, “the most psycho-pathological subtype . . . [, exhibiting] substantial psychological disturbance from gambling and are characterized by signs of potential neurological or neurochemical dysfunction.”<sup>297</sup>

In light of these and other studies, the National Center on Addiction and Substance Abuse at Columbia University recently reported that, “[t]he research evidence clearly demonstrates that a one-size-fits-all approach to addiction treatment typically is a recipe for failure.”<sup>298</sup> Faces and Voices of Recovery, a leading U.S. advocacy organization for individuals in recovery, also recognizes in its Recovery Bill of Rights that:

[W]e must accord dignity to people with addiction and recognize that there is no one path to recovery. Individuals who are striving to be responsible citizens can recover on their own or with the help of others. Effective aid can be rendered by mutual support groups or health care professionals. Recovery can begin in a doctor’s office, treatment center, church, prison, peer support meeting or in one’s own home. The journey can be guided by religious faith, spiritual experience or secular teachings.<sup>299</sup>

In addition, the National Institute on Drug Abuse now states in its Second Principle of Drug Addiction Treatment that:

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likely a heterogeneous group of conditions that share the feature of excessive gambling but differ in underlying etiological and motivational factors).

297. Milosevic & Ledgerwood, *supra* note 171, at 993.

298. NAT’L CTR. ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., ADDICTION MEDICINE: CLOSING THE GAP BETWEEN SCIENCE AND PRACTICE 10 n.57 (2012) (internal references and citations omitted).

299. FACES AND VOICES OF RECOVERY, RECOVERY BILL OF RIGHTS 1 (2012) [hereinafter Bill of Rights]. The Bill of Rights further states, “We have the right—as do our families and friends—to know about the many pathways to recovery.” *Id.* at 1, § 2.

No single treatment is appropriate for everyone. Treatment varies depending on the type of drug and the characteristics of the patients. Matching treatment settings, interventions, and services to an individual's particular problems and needs is critical to his or her ultimate success in returning to productive functioning in the family, workplace, and society.<sup>300</sup>

In summary, current research suggests that treatment interventions may vary in effectiveness among subtypes of disordered gamblers,<sup>301</sup> suggesting that the mandatory GA approach taken by some disciplinary boards and supreme courts in professional discipline proceedings may be suboptimal.<sup>302</sup> Part IV of this Article proposes that disciplinary boards and supreme courts offer attorneys in recovery from gambling disorder who petition for license reinstatement a menu of evidence-based treatment options and mutual support programs, not just GA. The attorney's treating mental health professional should select one or more particular treatment options and/or mutual support programs based on the attorney's clinical needs.

*F. Co-Occurring Disorders Challenge Research Assessing the Legal Treatment of Individuals with Gambling Disorder*

As discussed in Part III.A, many studies investigate the prevalence of co-occurring mental disorders, including gambling disorder that co-occur with other mental disorders.<sup>303</sup> As an illustration, remember the study published in 2008 by scientists affiliated with Harvard Medical School, the Cambridge Health Alliance, and the University of Minnesota that found that lifetime pathological gambling was significantly associated in the total sample studied with other disorders. In that study, 96.3% of respondents with lifetime pathological gambling also met

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300. U.S. DEP'T HEALTH & HUM. SERVS., NAT'L INST. DRUG ABUSE, PRINCIPLES OF DRUG ADDICTION TREATMENT: A RESEARCH-BASED GUIDE 1 (3d. ed. 2012).

301. Milosevic & Ledgerwood, *supra* note 171, at 997 ("Future research should investigate the differential association between gambling subtypes and types of treatment and recovery outcomes."); *id.* ("[T]reatment may vary in effectiveness among subtypes, and treatment techniques may be developed that appropriately address individual differences in clinical presentation.").

302. *See, e.g.*, Ferentzy & Skinner, *Gamblers Anonymous*, *supra* note 282. *See generally* Gordon, *supra* note 281, at 48 ("Mutual support groups, while well-intentioned and helpful as a supplement to evidence-based addiction treatment, are not a substitute for scientifically valid addiction treatment and should not constitute the primary form of medical assistance received by drug court participants.").

303. *Supra* Part III.A.

lifetime criteria for one or more other CIDI/DSM-IV disorders and 64.4% suffered from three or more disorders.<sup>304</sup>

Among those who developed pathological gambling, 23.5% developed pathological gambling before any other psychiatric problem, 74.3% of respondents developed pathological gambling after experiencing other psychiatric problems, and 2.2% developed pathological gambling and other psychiatric problems at about the same time.<sup>305</sup> Remember, too, that the study authors also found that respondents with other psychiatric disorders were 17.4 times more likely to develop pathological gambling than those without such problems.<sup>306</sup> Substance use disorders, in particular, were significantly elevated among participants with pathological gambling; that is, 76.3% met criteria for any substance use disorder, 46.2% met criteria for alcohol or drug abuse, 31.8% met criteria for alcohol or drug dependence, and 63% met criteria for nicotine dependence.<sup>307</sup>

The cases of Danny Winder, Samuel Bellicini, and Douglas Crawford illustrate the co-occurrence of gambling disorder with other mental disorders. Danny Winder had diagnoses of gambling disorder, alcohol use disorder, and drug use disorder.<sup>308</sup> Samuel Bellicini had diagnoses of gambling disorder and alcohol use disorder.<sup>309</sup> Douglas Crawford had diagnoses of gambling disorder, alcohol use disorder, drug use disorder, and major depressive disorder.<sup>310</sup>

In other areas of the law, including health insurance law and disability discrimination law, it is easier for legal research to assess the relationship between a particular mental disorder and the provision or withholding of a legal benefit or protection. In the context of health insurance law, for example, most state benchmark health plans expressly cover inpatient and outpatient treatments for alcohol and drug use disorder although some state benchmark plans expressly exclude inpatient and outpatient treatments for gambling disorder.<sup>311</sup> In the

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304. Ronald C. Kessler et al., *DSM-IV Pathological Gambling in the National Comorbidity Survey Replication*, 38(9) *PSYCHOL. MED.* 1351, 1356–57 (2008).

305. *Id.* at 1357.

306. *Id.*

307. *Id.*

308. *Supra* Part II.B.

309. *Supra* Part II.C.

310. *Supra* Part II.D.

311. See Tovino, *Lost in the Shuffle*, *supra* note 25, at Part IV (comparing health insurance coverage of gambling disorder to health insurance coverage of other physical and mental health conditions).

context of disability discrimination law, by further example, federal and state laws protect many individuals with a wide variety of physical and mental health impairments if those impairments substantially limit a major life activity.<sup>312</sup> The federal Americans with Disabilities Act (ADA), however, as well as many analogous state laws, expressly exclude individuals with gambling disorder from protection.<sup>313</sup>

Indeed, in cases interpreting the ADA and analogous state laws in which the plaintiff has more than one claimed physical or mental impairment, including gambling disorder, the court will assess each alleged health impairment and make a determination regarding whether the individual can qualify as a protected individual with a disability based on that impairment. For example, in *Trammell v. Raytheon Missile Systems*,<sup>314</sup> the United States District Court for the District of Arizona assessed the plaintiff's alleged gambling disorder and depression.<sup>315</sup> The Court held that the plaintiff could not be protected due to his gambling disorder because of the ADA's specific exclusion of that condition and that the plaintiff could not be protected due to his depression because the defendant did not know of the depression.<sup>316</sup>

Similarly, in *Labit v. Akzo-Nobel Salt, Inc.*,<sup>317</sup> the United States Court of Appeals for the Fifth Circuit assessed the plaintiff's disability claims based on his gambling disorder, absence of one arm, history of alcoholism in remission, and symptoms of depression.<sup>318</sup> The Fifth Circuit held that the only impairment that constituted a disability within the meaning of the ADA was the plaintiff's absence of one arm.<sup>319</sup> According to the Court, the ADA specifically excluded gambling disorder from protection and the plaintiff's history of alcoholism in remission and the plaintiff's symptoms of depression did not limit a major life activity.<sup>320</sup>

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312. *See id.* at Part V (discussing federal and state disability discrimination law protections for individuals with a variety of physical and mental health conditions).

313. *See id.*; text accompanying *supra* note 26.

314. 721 F. Supp. 2d 876 (D. Ariz. 2010).

315. *Id.*

316. *See, e.g., id.* at 882 ("Plaintiff's theory of the case is that compulsive gambling is synonymous with depression . . . . Unless there is proof the Defendant knew of this manifestation, the Court rejects this approach given the ADA's express exclusion of compulsive gambling as a disability.").

317. No. 99-30047, 2000 WL 284015 (5th Cir. Feb. 7, 2000) (unpublished decision).

318. *Id.* at \*2.

319. *Id.*

320. *Id.*

The law of professional responsibility is different than health insurance law and disability discrimination law. Research reveals that not one state has a law that expressly prohibits a suspended attorney with gambling disorder from applying for reinstatement, for example, while expressly permitting a suspended attorney with a different physical or mental health condition to apply for reinstatement. Some state supreme court rules do provide specific guidance for attorneys with alcohol and drug use disorders, but those special guidelines do not preclude attorneys with gambling disorder from applying for reinstatement, although as discussed in Part III.C, they may make it more difficult.<sup>321</sup>

Initially, the research that led to this Article set out to assess every publicly available license suspension, revocation, and/or reinstatement proceeding against an attorney with gambling disorder in any state in the United States to see whether such attorneys were being treated fairly compared to attorneys with other physical and mental health conditions. However, gambling disorder's high rate of co-occurring disorders makes this research nearly impossible. For example, the Supreme Court of Nevada finally reinstated Danny Winder's license to practice law on May 9, 2002, eleven and one-half years following his initial license suspension and seven years into his recovery from gambling, alcohol, and drugs.<sup>322</sup> If Winder only had one mental health condition (gambling disorder) and his reinstatement still took eleven years compared to other attorneys with other physical and mental health conditions whose reinstatements took less time based on the same ethical violation (misappropriation of client trust funds in roughly similar amounts), one might conclude that individuals with gambling disorder are treated unfairly in professional discipline actions. However, Winder had a number of diagnoses and all of those diagnoses likely played a role in his ethical violations.

The same is true of Douglas Crawford. On June 18, 2015, over eight years after the State Bar of Nevada first suspended Crawford's license, the Supreme Court of Nevada issued an order reinstating Crawford to the rolls of the Nevada Bar.<sup>323</sup> If Crawford only had one mental health condition (gambling disorder) and his reinstatement still took eight years compared to other attorneys with other conditions whose reinstatements took less time based on the same ethical violation (misappropriation of client trust funds in roughly similar amounts), one might conclude that

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321. *Supra* Part III.C.

322. *See* Order of Reinstatement at 1 n.2, 2, *In re* Reinstatement of Winder, No. 38723 (Nev. Sup. Ct. May 9, 2002).

323. *See* Crawford Order of Reinstatement, *supra* note 7, at 4.

Crawford was treated unfairly due to his gambling disorder. However, Crawford had a number of diagnoses, including gambling disorder, alcohol use disorder, drug use disorder, and major depressive disorder; some or all of these disorders may have played a role in his ethical violations.<sup>324</sup> In summary, gambling disorder's high rate of co-occurring disorders challenges research designed to assess the legal treatment of individuals with gambling disorder in professional discipline actions in a way that it does not in other contexts, including health insurance and disability discrimination.

In addition, client trust fund misappropriation is a severe ethical violation that frequently results in license suspension or revocation regardless of whether the attorney has gambling disorder.<sup>325</sup> In October 2015, for example, multiple news outlets reported that Michigan attorney Michael Kennedy misappropriated \$1.2 million in client trust funds to "fund expensive trips, college tuition for his children and the purchase of a horse . . ."<sup>326</sup> Publicly available information regarding Kennedy's case does not suggest that Kennedy had gambling disorder, yet Kennedy was still disbarred.<sup>327</sup> If Kennedy had gambling disorder and he was disbarred following his misappropriation, yet other attorneys without gambling disorder were not disbarred following their appropriations in similar amounts, one might conclude that Kennedy was treated unfairly due to his gambling disorder. However, research reveals that all attorneys who misappropriate client trust funds, even in small amounts, are disciplined harshly compared to attorneys who commit other ethical violations.<sup>328</sup>

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324. LAS VEGAS REV. J., *Treatment for Problem Gamblers a Long Shot in Las Vegas Courts* (Aug. 1, 2015) <http://www.reviewjournal.com/news/crime-courts/treatment-problem-gamblers-long-shot-las-vegas-courts> [<https://perma.cc/APU7-2C6N>].

325. See, e.g., *Iowa Supreme Court v. Reilly*, 708 N.W.2d 82, 84 (Iowa 2006). ("[T]he misappropriation of a client's funds by a lawyer [is] . . . particularly reprehensible and, almost universally, call[s] for a revocation of license.").

326. See John Agar, *Attorney Uses Client's \$1M Trust for College Tuition, Horse, Trip to Bora Bora, Indictment Says*, MICHIGAN LIVE (Oct. 9, 2015), [http://www.mlive.com/news/grand-rapids/index.ssf/2015/10/attorney\\_uses\\_clients\\_1m\\_trust.html](http://www.mlive.com/news/grand-rapids/index.ssf/2015/10/attorney_uses_clients_1m_trust.html) [<https://perma.cc/E5EJ-2M2F>].

327. See *id.*; *Orders of Discipline and Disability*, MICH. B. J., May 2015, at 70 (stating that Kennedy was disbarred on March 13, 2015).

328. In *In re Reilly*, for example, the Iowa Supreme Court reasoned that license suspension was appropriate for attorney Michael Reilly not because he had gambling disorder but because trust fund misappropriation was a "particularly reprehensible" ethical violation that "almost universally" called for license revocation. See *Reilly (Iowa)*, 708 N.W.2d at 84. According to the Iowa Supreme Court, the only prior trust fund misappropriation cases that had not resulted in license revocation were cases in which the attorney had a colorable claim to the client funds at issue, such as in earned fee disputes, as well as cases in which the attorney had not taken the funds for his or her own use. *Id.*

#### IV. PROPOSALS

The previous Part identified several themes that emerge out of four professional disciplinary actions involving individuals who misappropriated client trust funds to finance their gambling. This final Part makes five specific proposals that are designed to ensure that individuals with gambling disorder are treated fairly and equitably in future professional disciplinary proceedings. First, reinstatement criteria should incorporate the concepts of treatment, recovery, and remission, not just cure and removal.<sup>329</sup> Amendments should be made to language in supreme court rules that requires a suspended attorney with gambling disorder or any other mental health condition to be “cured” or to have his or her disorder “removed” before the attorney may apply for reinstatement. Corrections to Louisiana law, including strike-through deletions and italicized additions, are set forth below as a guide for all states to consider:

If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, ~~including alcohol or other drug abuse, the disability or infirmity has been removed.~~ *the lawyer has (1) obtained treatment or rehabilitation, as appropriate; (2) is, in the opinion of a mental health professional, in sustained remission or recovery, if applicable; and (3) abstains (and is likely to continue to abstain) from any substance or behavior of addiction and/or the socially disruptive behavior or illegal conduct associated with the physical or mental health condition.*<sup>330</sup>

Second, reinstatement criteria should incorporate the concept of physical and mental illness generally, not just the substance-related disorders.<sup>331</sup> Language in reinstatement criteria specifically referring to alcohol and drug abuse but not other physical or mental health conditions should be amended. Again, corrections to Louisiana law, including strike-through deletions and italicized additions, are set forth below as a guide for all states to consider:

~~Where alcohol or other drug abuse~~ *a physical or mental health condition* was a causative factor in the lawyer’s misconduct, the lawyer shall not be reinstated or readmitted unless . . .<sup>332</sup>

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329. See *supra* Part III.B (making this argument).

330. See LA. SUP. CT. R. XIX § 24(E)(3) (2015).

331. See *supra* Part III.C (making this argument).

332. See LA. SUP. CT. R. XIX § 24(E)(3) (2015).



Third, for both constitutional and clinical reasons, disciplinary boards and supreme courts should not recommend or require that attorneys with gambling disorder attend GA (and only GA) as a condition of license reinstatement.<sup>333</sup> Instead, attorneys with gambling disorder should be offered a range of evidence-based treatment options and/or mutual support programs and the attorney's mental health professional should select one or more interventions based on the attorney's clinical needs and religious preferences.<sup>334</sup> Language in disciplinary board recommendations and supreme court orders stating otherwise should be amended. Corrections to the Supreme Court of Nevada's June 18, 2015, Order of Reinstatement in *In re Crawford* are set forth below as a guide:

However, this court imposes the additional condition that Crawford continue his gambling recovery efforts including ~~through completion of or regular attendance at Gamblers Anonymous, alumni, and aftercare meetings~~ *one or more evidence-based medical treatments (including pharmacological therapies, cognitive behavioral therapy, and individual, group, or family counseling)* and/or mutual support programs, as selected by Crawford's treating mental health professional based on his clinical needs and religious preferences. Crawford's compliance with this condition shall be included in his semi-annual reporting to the State Bar.<sup>335</sup>

Fourth, the four case studies presented in this Article suggest that some disciplinary boards and supreme courts operate under medical misunderstandings of gambling disorder at best or stigma and prejudice at worst. Disciplinary boards and supreme courts should not use medically inappropriate language such as "bad habit," "moral failing," "character weakness," "terrible and despicable," or "black stain." Although disciplinary boards and supreme courts should identify socially disruptive and illegal conduct that violates rules of professional responsibility, language attacking an attorney based on his or her mental health condition is unprofessional and inappropriate. Corrections to the Southern Nevada Disciplinary Board's April 24, 2008, order in *In re Crawford* are set forth below as a guide for other disciplinary boards and supreme courts to consider:

~~[It] was the pressures of the practice of law which caused him to succumb, the first time, into these terrible and despicable~~

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333. See *supra* Parts III.D and III.E (making these arguments).

334. See *supra* Part III.E (making this argument).

335. Crawford Order of Reinstatement, *supra* note 7, at 3-4.

~~depths . . . . if this were to happen even one more time to an innocent client whose life savings were lost due to an act of Mr. Crawford, it would be a black stain upon the State Bar and the attorneys who abide, on a daily basis, to the professional ethics of that organization that could never be erased. Until Mr. Crawford obtains treatment for and enters sustained recovery from his mental disorders, he should not be allowed to practice law. Attorneys are not permitted to misappropriate client trust funds to finance substance or behavioral addictions.~~<sup>336</sup>

Fifth, the public needs to be educated regarding gambling disorder, including its status as a diagnosable and treatable disease of the brain. This education begins with federal and state court judges who decide cases (and disciplinary boards who make recommendations to such judges) involving individuals with gambling disorder. For example, the National Center for State Courts provides educational programs to judges across the U.S. on many current issues, including adult drug courts, firearms and domestic violence, elder abuse, and methamphetamine addiction, just to name a few.<sup>337</sup> Research reveals that the National Center for State Courts has not provided one judicial education program relating to gambling disorder. National and state centers of judicial education should create and implement programming relating to gambling disorder.

Lawyers, in addition to judges, also need to be educated regarding gambling disorder so that they can provide competent counsel to clients with gambling disorder. Although some states require attorneys to take continuing legal education (CLE) regarding addiction, most of these programs are geared towards individual with alcohol and drug addiction. Effective 2014, for example, the Nevada Supreme Court amended the Nevada Supreme Court Rules to require all active Nevada attorneys to take a minimum of one CLE hour once every three years on the topic of “substance abuse, addictive disorders and or mental health issue[s].”<sup>338</sup> Historically, these CLEs tended to focus almost exclusively on alcohol use disorder and one or more of the drug use disorders.<sup>339</sup> States should

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336. 2008 Panel Decision, *supra* note 136, at 3, lines 2–12 (italicized emphasis added).

337. See *Online Courses*, NAT’L CTR. ST. CTS, <https://courses.ncsc.org> [<https://perma.cc/7L7E-4ZLY>] (offering judicial education programs including, “Essential Elements of Adult Drug Courts,” “Firearms and Domestic Violence,” “Justice Responses to Elder Abuse,” and “Treating and Supervising Methamphetamine Addicts in Drug Courts”).

338. See *Recent Updates*, NEV. BD. OF CONTINUING LEGAL EDUC., <https://www.nvcleboard.org> [<https://perma.cc/DD6Z-9BAK>].

339. See, e.g., *CLE: Substance Abuse in the Legal Profession and the Affordable Care Act: Clinical and Legal Issues*, UNLV WILLIAM S. BOYD SCH. OF L., <http://law.unlv.edu/event/cle->

amend their supreme court rules to specifically require education on the topic of substance addictions, behavioral addictions, and other physical and mental health conditions.

Law students, in addition to currently practicing lawyers, also need to be educated regarding gambling disorder so that they can provide, after graduation from law school, competent counsel to clients with gambling disorder. Although several law schools across the U.S. offer gaming law courses,<sup>340</sup> most of these courses focus on the legal requirements applicable to casinos and other gaming establishments, not the health of individuals with gambling disorder. In addition to the comprehensive list of gaming law classes offered at the author's own law school that examine the legal responsibilities of casinos and other gaming establishments, the author has proposed a Gambling Disorder and the Law course that will provide students with additional cases and materials addressing a wide range of civil, administrative, and criminal issues faced by individuals with gambling disorder.

## CONCLUSION

This Article has carefully assessed the legal treatment of four attorneys with gambling disorder in professional disciplinary proceedings that occurred in Iowa, Nebraska, California, and Nevada. Themes that emerge from these case studies include judicial and disciplinary board misunderstanding of gambling disorder, stigma against individuals with gambling disorder, statutory recognition of the substance-related disorders but not behavioral addictions, and mandatory attendance at GA as a condition of license reinstatement.

In response to these themes, this Article has made five specific proposals and has offered draft language implementing these proposals. If adopted by disciplinary boards, supreme courts, and other institutions,

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substance-abuse-legal-profession-and-affordable-care-act-clinical-and-legal-issues-0 [https://perma.cc/56W3-YMEE] (offering an addiction CLE on November 22, 2013, that discussed alcohol and other substance-use disorders but not gambling disorder).

340. See, e.g., WILLIAM S. BOYD SCHOOL OF LAW, UNIVERSITY OF NEVADA, LAS VEGAS, MASTERS OF LAW (LL.M.) IN GAMING LAW AND REGULATION 2 [https://law.unlv.edu/sites/default/files/LLM\\_Onesheet\\_2016\\_01.pdf](https://law.unlv.edu/sites/default/files/LLM_Onesheet_2016_01.pdf) [https://perma.cc/HME8-K2D3] (listing the school's gaming law courses); *Equine & Gaming*, ALBANY L. SCH. (June 22, 2015), <http://www.albanylaw.edu/academic-life/concentrations/Pages/equine.aspx> [https://perma.cc/9WYD-4YKX] (“[We offer] an array of courses covering equine law, racing regulations and gaming industry law, coupled with courses such as administrative, insurance, employment and tax law . . . .”); *Keith Miller Profile*, DRAKE U. L. SCH. <http://www.drake.edu/law/facstaff/directory/keith-miller/> [https://perma.cc/NRH9-6TVU] (noting that Professor Miller teaches Gaming Law).

the proposals set forth in this Article may make individuals with gambling disorder less vulnerable in future professional disciplinary proceedings.

