

By **Avi Z. Kestenbaum** & **Joy Spence**

# From the Legal Bar to the **Health** Bar

The greatest (and least discussed) internal and external threat to an estate plan and our careers

**A**lmost 10 years ago, I met with an elderly and very successful new client who today is one of my closest friends. Within the first 30 minutes of our initial meeting, he asked me if I consistently exercised. He then asked me if my parents were living, and if they weren't, how old they were when they died. After hearing that my parents were still living, he then asked me how old my grandparents were when they passed away. And, he inquired about my family's general health histories. I was somewhat taken aback by these questions, especially at an initial client meeting, but the more I understood the rationale behind his inquiries, the more that I appreciated how much thought and insight my new client was putting into his estate planning and selection of his attorney and family advisor. A few weeks after hiring me, this client had a state of the art exercise bike delivered to my office with the stipulation that I use the bike frequently.

Now, several years later, I've drafted many dynastic trusts for the benefit of this client's grandchildren and for his future generations, including trusts that will hold real estate and business assets. The client wanted to make sure that the advisor, whom he was choosing to design and implement a very complex estate plan, would most likely be living to see it through to fruition and advise his grandchildren someday. So, his questions about my family's health and longevity were actual-

ly very appropriate, because continuity in his estate plan and ensuring that his family understood his well thought-out wishes and carried out his legacy were of paramount importance to him.

In the world of estate planning, our focus is generally directed towards perfecting wealth preservation strategies associated with various tax, trust and entity structures. Let's adopt my client's point of view and address two of the most vital components in the practice of trusts and estates: a sound mind and body.

### Of Sound Mind and Body

For attorneys, prioritizing health and well-being is critical, as the legal profession has consistently demonstrated the highest rates of stress, anxiety and depression. While attorneys may take the gold medal in low mental and emotional health, they might end up winning the race to an early grave. If being an effective estate-planning attorney means being available, both physically and mentally for our clients and their descendants, we must assume a duty to maintain our health with the same conviction and vigor that we apply to the practice of law itself.

**Stress, depression and anxiety.** Attorneys have historically reported some of the highest rates of stress, anxiety and depression. In a 1990 study that focused on 30 occupations, the legal profession was shown to have the highest rates of depression and anxiety.<sup>1</sup> According to a more recent 2016 study, 61% of lawyers reported concerns with anxiety at some point in their careers, and 46% reported concerns with depression.<sup>2</sup> That's almost 10 times the rate found in the general population.<sup>3</sup>

**Substance abuse.** Harmful alcohol use has been an ongoing concern in the legal profession and has even increased in the past 30 years. A 2016 study reported that attorneys' harmful alcohol use is almost

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double that of the general educated workforce.<sup>4</sup> Even in comparison to other professions that experience similar levels of stress, attorneys report much higher rates of developing an alcohol use disorder.<sup>5</sup> In a study of alcohol abuse and dependence, 36.4% of attorneys screened as positive, while a much lesser 15% of physicians and surgeons tested positive on the same scale.<sup>6</sup> Although it's not clear what factors may contribute to the high rates of alcohol abuse in the legal profession, there appears to be a positive correlation between reduced mental health and increased alcohol use. Studies show that attorneys demonstrated high rates of substance abuse that was manifested on a similar trajectory to mental health concerns, where those who experienced reduced mental health were more likely to report harmful alcohol use, and vice versa.<sup>7</sup>

Some attribute high rates of substance abuse and decreased mental health to lawyers' strenuous workloads, long hours and high pressure work.<sup>8</sup> Firm culture and years of experience may also play a role in attorney satisfaction and well-being, as attorneys working in private firms experience some of the highest levels of problematic alcohol use compared to other work environments, and junior associates are shown to have the highest rates of alcohol abuse.<sup>9</sup> This trend is further reinforced by a study showing that the majority of attorneys who report having an issue with alcohol use indicated that the problem started during the earlier stages of their careers.<sup>10</sup>

**Poor physical health.** Attorneys reportedly demonstrate higher rates of poor physical health than any other white collar profession.<sup>11</sup> This isn't surprising, as long-term stress can cause a variety of symptoms that affect an individual's overall well-being, including high blood pressure (which creates higher risk of stroke or heart attack), overeating, alcohol abuse, social withdrawal, irritability, anxiety, depression, headaches, insomnia and a weakened immune system. High rates of poor mental health may also explain the rise in reduced physical health because mental well-being is shown to have a significant effect on heart health. "Job strain," which is defined as high demands coupled with low decision-making latitude, is associated with increased risk of coronary disease.<sup>12</sup> This theory is

further reinforced by a 10-year study reporting that the rate of heart disease dropped by approximately 22% for every one-point increase (on a five-point scale) of feelings like happiness, joy, contentment and enthusiasm.<sup>13</sup>

### Attorney, Heal Thyself

Over the years, as my practice has matured, I've come to realize that perhaps the most potentially destructive force to our careers and families' well-being is physical and mental health issues. As attorneys, we spend so much time focusing on promoting and protecting the futures of our clients and their families, yet the foregoing

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statistics suggest that we're neglecting our own well-being. If we're not of sound mind and body, we won't be as effective assisting our clients. Putting it in a different context, we must first put on our own oxygen masks to successfully help with other people's oxygen masks. In the spirit of surviving into perpetuity (think South Dakota and Delaware), there are many ways that we, as attorneys, can lead by example and take simple steps to improve our mental and physical health, and in turn, the health of our clients.

**Mental well-being.** The above statistics demonstrate that the legal profession is facing staggering rates of depression, anxiety and harmful alcohol use, all of which can have detrimental effects on our physical health. On the flip side, it turns out that focusing on our physical health can have some of



the greatest benefits on enhancing mental well-being.<sup>14</sup> In fact, simply walking was associated with a 17.7% reduction in mental health burdens, relative to not exercising.<sup>15</sup> Biking regularly is shown to result in 21.6% less “bad days” for those dealing with depression, stress or emotional problems.<sup>16</sup> This doesn’t necessarily mean you need an exercise bike in your office (unless your client sends you one), as mood enhancement is shown to persist up to 12 hours following aerobic exercise (which should equate to about six billable hours).<sup>17</sup> Exercise coupled with social interaction has an even greater effect because those participating in team sports reported 22.3% fewer “bad days.”<sup>18</sup>

We should be mindful that our own careers and our clients’ carefully tailored estate plans could be derailed by health and mental issues.

**Physical well-being.** Many of us spend the majority of the day sitting at a desk. It turns out that the hourly trips to and from the coffee station may be saving your life, as studies show that a sedentary lifestyle is worse for your health than smoking, diabetes and heart disease.<sup>19</sup> Exercise is associated with numerous health benefits, including reductions in coronary artery disease,<sup>20</sup> hypertension,<sup>21</sup> diabetes,<sup>22</sup> stroke<sup>23</sup> and cancer.<sup>24</sup> In fact, researchers conclude that when comparing those with a sedentary lifestyle to the top exercise performers, the risk associated with death is 500% higher.<sup>25</sup> For those of us who aren’t Serena Williams or Zion Williamson, there’s a more relatable statistic, showing a 390% reduction of risk of death when comparing someone who doesn’t exercise with someone who exercises regularly.<sup>26</sup> Standard notions of “exercise” aside, it appears you don’t need to sign up for boot camp to experience the foregoing benefits, as simply walking is shown to improve cardiac risk factors.<sup>27</sup>

### Clients’ Health-Related Issues

As illustrated on the current HBO television show “Succession,” perhaps the greatest obstacle to the success of an estate plan is health-related issues. In an early episode, the patriarch of the family, who rules his global media empire and his children with an iron fist, has a stroke that causes him cognitive impairment. Seizing on the opportunity, one of his children immediately seeks to wrestle control of the business from him, thus ensuing a fight for control of the media empire. The patriarch’s legacy and ruthless direction of his company could have been thwarted solely due to a health issue and his cognitive impairment. Even if he’d proactively planned with proper legal documents for a mental deficiency, often it’s unclear, as it was on the show, how impaired he actually was and whether he could still make sound decisions. In fact, in my experience, this is a common occurrence. A child and his parent could be at odds regarding the parent’s ability to properly control and manage his affairs, and often, it could end with the parent and child in a bitter and sad legal dispute over this very issue, including contested guardianship proceedings. This seems to be happening more and more as people are living longer through modern medicine, but with diminished cognitive abilities later in life.

### Proactive Steps

While some health issues are out of our control, there are proactive steps that both we and our clients can take to mitigate the risks of cognitive impairment, including daily exercise, better eating habits and even exercising our brains more regularly, especially as we get older. So much time and energy is focused on complicated tax planning and expensive legal documents, but not enough time and effort seems to be exerted advocating that our clients take better care of themselves.

**Matter over mind.** Some cognitive impairment is preventable. Studies show that one in three cases of Alzheimer’s disease was preventable through lifestyle changes.<sup>28</sup> Reducing experiences of depression, poor physical health and substance abuse are particularly important when it comes to avoiding cognitive impairment. One study found that participants who consumed five or more bottles of beer or one bottle of wine in one sitting during midlife were three times more likely than people who didn’t binge drink to have dementia by the time they turned 65.<sup>29</sup> Further, depression and excess



weight have each been reported to double the risk of dementia, while high blood pressure may triple the risk, and obesity can quadruple the risk.<sup>30</sup> Further, those who experienced depression and had suffered from a stroke were five times more likely to suffer from dementia.<sup>31</sup>

We often think of “mind over matter” in using mental willpower to overcome physical challenges, but in the case of warding off dementia, it’s the physical challenge that may keep the mind intact. The World Health Organization recommends that individuals aged 65 and above engage in 150 minutes of moderate intensity aerobic exercise every week or 75 weekly minutes of vigorous intensity aerobic exercise to keep Alzheimer’s at bay.<sup>32</sup> Merely taking a walk three times a week can prevent normal brain atrophy.<sup>33</sup> The study of participants ages 55-80 who walked for just 40 minutes three days a week took two years off the “age” of their hippocampus. That is, walking improves memory function.<sup>34</sup> When considering the above statistics that excess weight has the potential to quadruple the odds of suffering from dementia, general physical activity will assist the young and the wiser alike in keeping the mind sharp.

Further, physical activity is especially important as an intervention to reduce the risk of falling for elderly adults because muscle weakness and poor balance have been well established as risk factors for falls.<sup>35</sup> This may be critical in maintaining good health as falls are the leading cause of both fatal and nonfatal injuries for people aged 65 and over, resulting in more than 2.8 million injuries treated in emergency departments annually, including over 800,000 hospitalizations and more than 27,000 deaths.<sup>36</sup> Exercises that strengthen muscles and improve balance include walking, cycling and stretching.<sup>37</sup>

For those who would prefer to trade in their gym membership for a lifestyle of leisure, there’s still hope. Leisure activities such as hobbies, dancing, gardening, groups, cultural activities and conversation can reduce the prevalence of Alzheimer’s disease.<sup>38</sup> Studies also show that older adults who participate in more intellectually challenging daily activities show less mental decline over time.<sup>39</sup> Such activities include reading, listening to the radio, taking a course, learning a new language, playing an instrument, visiting a museum, having artistic hobbies, playing board games and doing puzzles.

We should be mindful that our own careers and

our clients’ carefully tailored estate plans could be derailed by health and mental issues. We should take better care of ourselves and advise our clients of the proactive measures they can take to minimize the risks of cognitive and physical ailments. We can and should lead by example. As people are living longer through the miracles of modern medicine, it’s even more vital that we take better care of our mental and physical well-being, and there are affirmative actions we should be taking to help ourselves so we can continue to help others, including our families and our clients. We should bring this up with each of our clients and at estate-planning conferences, as physical and mental issues and methods to prevent and minimize them might be the least discussed but the most vital components in the success or failure of an estate plan. 🌐

## Endnotes

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### SPOT LIGHT

#### Balancing Act

*Red Ball and Silver Moon* by Masaru Shichinohe sold for HK \$112,500 at Phillips 20th Century & Contemporary Art & Design Day Sale in Hong Kong on May 26, 2019. A Japanese artist, Shichinohe is known for his somewhat bizarre characters painted on small wood panels with acrylic paint.