Harder, Better, Faster Stronger: Regulating Illicit Adderall Use Among Law Students and Law Schools

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A little bit faster. A little bit stronger. A little bit lighter. A little bit longer. A cacophony of adjectives and objectives, law students aspire to be it all. As authors, students, and constant perfectionists, law students search for these adjectives during the weekday-turned-weekend-all-nighter projects that thrust themselves into lives of the “armchair philosophers’ vie quotidienne.” The desire, or perhaps the need to get better, to move faster can lead students to strange places: the self-help books at Borders for speed-reading, yoga classes for concentration, and ginko biloba for increased memory. But what if there something easier – a quick fix for the quick learning curve? Now, there is. Its name is Adderall.¹

The widespread illicit use of Adderall as a performance enhancer raises significant challenges for law schools and for law students entering the legal profession. Adderall, a stimulant-based performance enhancer prescribed for those with juvenile and adult attention deficit (ADD) and attention-deficit hyperactivity disorder (ADHD), increases a person’s ability to concentrate by stimulating the production of dopamine and

¹ The author would like to note that Adderall is one of many different types of prescription drugs available for abuse to the modern law student and the legal professional. In the same category of Adderall, drugs such as Ritalin, Focalin, Concerta, cocaine, and MDMA (pure ecstasy), to name a few, have all be studied for illicit use among college students and adults. See generally, Kristina M. Hall, Melissa Irwin, Krista Bowman, William Frankenerberger & David Jewett, *Illicit Use of Prescribed Stimulant Medication Among College Students*, 53 J. AM. CO. HEALTH 4, 16 (2005); Robert L. DuPont, et al., *Characteristics and Motives of College Students Who Engage in Nonmedical Use of Methylphenidate*, 17 AM. J. ON ADDICTIONS May-June, 167 (2008). This paper’s focus comes exclusively with the author’s personal experience and observation of Adderall usage as the stimulant drug of choice among fellow students. However, the ethical dilemmas posed by nonprescription Adderall use applies to all prescription drugs used to treat ADHD. The use of illegal drugs used as stimulant enhances, such as cocaine, are currently regulated by the California State Bar association and thus will not be discussed in this paper except as a comparison to prescription stimulant usage.
norepinephrine in the brain.\textsuperscript{2} Taken without a prescription for ADD or ADHD, Adderall over-stimulates the brain allowing for \textit{super-enhanced} focus with a simple pill. For law students, the allure of this Controlled Substances Act Schedule II drug is simple: efficiency. However, despite easing the time crunch many law students feel, the allure of Adderall lends itself to illegal buying and selling of the drug and risks the potential long-term physical and psychic effects of unregulated use.

Should law schools and state agencies charged with licensing lawyers take action? This paper explores the ethical dilemmas concerning the regulation of Adderall. First, this paper explores substance abuse and its current regulation in the legal profession, comparing Adderall as a controlled substance to other regulated drugs. Next, this paper surveys the evolution and medical identification of attention-deficit and hyperactivity diagnosis in adults over the course of the twentieth century and, the advent of Adderall as prescription treatment. In the following section, the paper will focus on the physical and ethical risks imposed by Adderall, targeting law students as off-label users. Ultimately, law students’ voluntary and illicit cognitive neuroenhancement undermine the ethics and social norms codified by law schools and the legal profession, thus requiring regulation. The final section posits regulatory options for bar applicants and law schools to deal with the social, political, and ethical issues surrounding cosmetic neurological enhancement through Adderall.

\textbf{I: The Last Call for Adderall: Substance Abuse and Lawyers}

A: The Ethical and Physical Problems of Substance Abuse

Ask a local fifth grader receiving her diploma from Drug Abuse Resistance Education (D.A.R.E) about drugs and you will receive a resounding shout. “Drugs are bad.” Inculcated since elementary school, children are taught that drugs are, simply and concisely, bad. Today, teachers can purchase “Say NO to Drugs” educational tools\(^3\) to use in the classroom. Continuing the “drugs are bad” mantra through youth and onward, the saying weaves itself through popular culture. Television programs, such as “Rehab with Dr. Drew” and the Emmy-Award Winning “Intervention” highlight the devastating consequences of substance abuse from the usual suspects of alcohol, cocaine, methamphetamine, and heroin to more unusual drugs like Percocet, Xanax, and computer dust remover.\(^4\) Given our social and pop-culture’s entanglement with anti-drug media campaigns, asking the question whether substance abuse is “bad,” seems trite and obvious.\(^5\) Of course substance abuse goes beyond “bad” into the realm of terrible, devastating, and life altering, but that does not answer one simple question – why? Why is substance abuse “bad?” More importantly, why is it uniquely “bad” for lawyers?

The legal profession manifests a higher proportion of substance abuse than other vocations. A potential combination of stress and unhappiness, “lawyers suffer higher rates of depression, anxiety, and other mental illness, suicide, divorce, alcoholism and drug abuse, and poor physical health than the general population or other occupations.”\(^6\)

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\(^5\) The author is using the terminology “bad” with quotation marks to underscore that no one word can truly define or encapsulate the ethical, legal, and physical side effects of substance abuse.
Three reasons, a triangle of causation, begin to answer why substance abuse so negatively impacts the legal community given the high levels of lawyers’ job and social anxiety. First, the physical side effects of substance abuse, from alcohol to prescription drugs, remain a well-documented result of alcohol and drug usage. Additionally, the omnipresence of addiction among lawyers and law students represents another grounds for vilifying substance abuse. Lastly, substance abuse undermines the good moral character of lawyers required to participate in the profession.

Substance abuse creates a lengthy list of physical side effects, shortening life spans and possibly ending in death. Two main substances abused by lawyers include alcohol and cocaine. Over the course of time, alcohol abuse can lead to weight gain, hallucinations, cancer, liver disease such as cirrhosis, high blood pressure, a depressed immune system, and heart failure. Short and long-term use of cocaine produces similarly devastating physical side effects. In the immediate future, cocaine users may see positive side effects of the drug, including decreased appetite, and increased levels of energy and mental alertness. However, long-term cocaine use may lead to addiction, as well as a host of major health complications like heart attack, coma, respiratory failure, strokes, and seizures. Often told as wary reminders of damages from substance abuse,

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13 Id.
the physical complications are but one of many reasons stressing the ills related to drug and alcohol use.

Breadth and depth of addiction among the legal profession underscores another reason why substance abuse remains a terrifying demon in lawyers’ closets. Looking at alcohol abuse alone, roughly ten percent of the general American population is diagnosed with alcoholism\(^{14}\) while eighteen percent of lawyers claim problems with alcohol abuse.\(^{15}\) Seventy-nine percent of lawyers in a Wisconsin study asserted they used alcohol as a stress reliever.\(^{16}\) Pervading lawyering life like alcohol, cocaine usage also dominates within the profession as well with twenty-six percent of lawyers admitting to use, more than double the percentage of non-lawyer Americans.\(^{17}\) Leading to professional ramifications, “anywhere from twenty-seven to seventy percent of attorney disciplinary cases involve some form of substance abuse.”\(^{18}\)

The common occurrence of abuse among lawyers does not start when after passing the bar or receiving a Juris Doctorate diploma, but begins much earlier. A 1994 study of law students sampled by the Association of American Law Schools found that almost thirty-one percent of law students abused alcohol in their lifetime while nearly twelve percent “confessed to abusing alcohol since they started law school.”\(^{19}\) Roughly


\(^{16}\) Benjamin, Sales & Darling, supra note 5, at 115.

\(^{17}\) Rick B. Allen, Alcoholism, Drug Abuse, and Lawyers: Are We Ready to Address the Denial?, 31 CREIGHTON L. REV. 265, 266 (1997) citing G. Andrew H. Benjamin, Elaine J. Darling & Bruce D. Sales, supra note 6, at 241.


\(^{19}\) Allen, supra note 15, at 266 citing Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools, 44 J. LEGAL EDUC. 35, 43 (1994).
five-percent of students disclosed they abused cocaine. Where “one in five lawyers has a problem with substance abuse [. . .] one of eight graduating law students exhibits signs of chemical dependency.”

From my own anecdotal law school experience, these numbers seem accurate if not slightly low as law students at Santa Clara seem plagued by abuse or binge indulgences. The University holds Alcoholics Anonymous meetings weekly aimed specifically at law students recovering from alcohol dependence. Social substance abuse at SCU was recently witnessed at one of the school’s year-end bashes, where students were caught snorting cocaine in the manager’s office of a local restaurant/club with professors nearby. Friends frequently medicate their law-school related stress with off-label prescription use of drugs like Vicodin, Xanax, and OxyContin. Although these tales remain unverifiable to a Dean or survey group looking for statistics, current law students need to just look up to see their cohorts knee-deep in self-medication.

Substance abuse and addiction may ultimately develop into the metal chisel, chipping away at the solid foundations of legal ethics. The legal profession faces many challenges that drive lawyers to untoward activities, whether to achieve specific work-related goals or to relieve the stress of competition exacerbated by the adversary system.

To protect against ethics violations, the American Bar Association (ABA) has created a

20 Id.


22 The serious ethical quandaries raised by substance abuse and its relationship to law students are discussed later in the paper.

23 See generally ANDREAS ESCHETE, THE GOOD LAWYER (David Luban, ed., Rowman and Allenhand 1984). The author argues that being a proficient lawyer requires performing “unsavory acts, acquiring unattractive taints, and developing dubious aspirations.” Id. at 274. Despite Eschete’s point that lawyering may require a breach of ethics, the moral and physical damage of substance abuse was never factored in to Eschete’s theory. If substance and alcohol abuse undermine effective advocacy, then drug and alcohol overconsumption goes beyond acquiring “unattractive taints” to bad lawyering.
code of professional conduct whereby lawyers must abide by certain ethics rules or face
censure, fines, or even disbarment. In order to become a certified lawyer, fifty-two
jurisdictions require that applicants pass the Multistate Professional Responsibility Exam,
consisting of sixty questions devoted to the study of the ABA’s model ethics questions. Locally, the California State Bar requires applicants to be certified of “good moral
character,” entailing a twenty-plus page application detailing all of the applicant’s
previous work experience, criminal history, addresses, references, and credit checks. Furthermore, ABA accredited law schools are required to instruct students in the “history,
structure, values, and responsibilities of the legal profession…” All of these conditions
of entering the kingdom of lawyers seek to hold members of the profession up to the
strictest code of ethics in their daily practice.

The social and ethical implications of substance abuse undermine the legal
community’s concept of professional responsibility. In the ABA’s Model Rules of
Professional Conduct’s preamble, a lawyer’s duties affirmatively include the obligation
to be an officer of the legal system, “zealous” representation of clients, honest dealings
with others, and serving as a client advisor. To be all that a lawyer should be, to satisfy
the minimal ethics required by the profession, requires a lawyer to be effective in the
duties outlined by the ABA. The effects of substance abuse in the workplace are far

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ranging and varied, but at the very least indicate a lack of efficient, useful work.\textsuperscript{30} Minimal effects of substance abuse can lead to absenteeism and drug or alcohol-related illness, hangovers, and withdrawals; the largest fiscal and efficiency costs of abuse stems from loss of productivity, health care, theft, tardiness, low morale, and poor decision making among others.\textsuperscript{31} In a profession reliant on deadlines and accurate, instinctive evaluations and choices, substance use and abuse weakens a lawyer’s ability to fulfill the needs of their client or firm. Additionally, the illegal purchase of substances such as cocaine directly violates ABA Model Rule 8.4(b) and (c), prohibiting civil and criminal conduct that reflect poorly on a lawyer’s trustworthiness, their fitness to practice, or involves dishonesty or fraud.\textsuperscript{32} The combination of possible disloyalty to a client or direct violation of the ABA model code proves that substance abuse undercuts the ethics of the legal profession.

\textbf{B: Regulations in Place for Dealing with Substance Abuse}

Preventative programs and postliminary disciplinary procedures help regulate alcohol and substance abuse among law students and lawyers. At a micro-level, individual universities, such as Santa Clara, have the ability to regulate individual groups of students. For broader regulations, the American Bar Association and state bars, exemplified in this section by the California State Bar, act in a regulatory preventative and disciplinary capacity for both law students and lawyers alike. Regulation needs to occur at all levels, beginning with the smallest and most intimate university setting.


\textsuperscript{31} \textit{Id.}

\textsuperscript{32} The Center for Professional Responsibility, Maintaining the Integrity of the Profession Rule 8.4 Misconduct, http://www.abanet.org/cpr/mrpc/rule_8_4.html (last visited Dec. 8, 2009).
Beginning at the collegiate level, universities can take a proactive approach for assisting students with substance abuse. As a pre-emptive measure, Alcoholics Anonymous (AA) brings open meetings to Santa Clara University’s campus on a weekly or biweekly basis to provide support for law students recovering from addiction.\footnote{Santa Clara Law, University Calendar, http://law.scu.edu/calendar/index.cfm?view=dayList&dayDisplayList=yes&eventType=1075,1006,1012,1009,1021,1089,1007,1008,1088,1002,1013,1109,1284,1720&&eventTypeLoc=&thisDay_D=13&thisDay_M=1&thisDay_Y=2010&startDayCal=8&endDayCal=20 (last visited Dec. 9, 2009).} Santa Clara Law’s Assistant Dean of Admission and Financial Aid, Jeanette Leach, noted that Santa Clara took a pro-active approach and invited AA to campus to help promote healthy lifestyles among students after numerous reports surfaced about heavy law student drinking.\footnote{Interview with Jeanette Leach, Assistant Dean of Admission and Financial Aid, Santa Clara University, in Santa Clara (Dec. 8, 2009).} Although student applicants’ histories of substance abuse are not mandatory disclosures required by Santa Clara for privacy reasons, Ms. Leach added that substance abuse problems among students remains a continual problem from law school administration, one that the California State Bar does not tackle.\footnote{Id. Although the California State Bar website asserts that “[d]rug and alcohol abuse and dependencies are considered major problems in today’s society…,” the bar suggests no pre-application regulations for applicants, despite the fact that many disciplinary cases are “directly related” to substance abuse and addition. See The State Bar of California, supra note 24.}

The ABA and California State Bar take precautionary actions for lawyers and bar applicants through voluntary disclosure rules and special exemptions for reporting misconduct. In California, if a received application presents a “problem” with alcohol abuse or drug dependency, the applicant may be asked to “undergo evaluation with a qualified professional” to see if s/he is fit to take the bar.\footnote{See The State Bar of California, supra note 23.} If deemed not fit to practice, the applicant will be asked to put his or her application on hold while submitting themselves to treatment and recovery.\footnote{Id.} Recently, the ABA adopted a new model rule...
that allows for “conditional admission” to a bar for applicants suffering from substance abuse problems and addiction.\textsuperscript{38} An additional precautionary measure taken by the ABA exempts reporting of ethical violations from lawyers participating in a “lawyers assistance program.”\textsuperscript{39} Recognizing the increased addiction rate for alcohol and illegal substances among the legal profession, lawyer assistance programs are dedicated to maintaining confidentiality and treatment for lawyers recovering from substance abuse and dependency without subjecting them to disciplinary action.\textsuperscript{40} These safeguards by the state bar and ABA along with recommendations for continuing legal education on addiction every three years,\textsuperscript{41} showcase the depth of substance abuse problems in the legal community and the preventative measures used to avert disciplinary action.

Once disciplinary action has been instituted against a lawyer, several alcohol or substance abuse dependency defenses may be used to lessen imposed sanctions.\textsuperscript{42} Approved in 1992, ABA model rule 9.2 allows for a “reduction in discipline” to be imposed where a lawyer has been medically classified as chemically dependent or if the dependence caused the misconduct at issue.\textsuperscript{43} Courts are open to considering these defenses where psychological stress, depression, or dependence on chemical substances may lighten a possible sanction, but they will not nullify discipline. \textit{Id.}

\begin{itemize}
\item \textsuperscript{38} Stephanie Lyerly, \textit{Conditional Admission: A Step in the Right Direction}, 22 \textit{Geo. J. Legal Ethics} 299, 299 (2009). Applicants suffering from substance abuse problems may be conditionally admitted to different state bars for a period ranging from two to five years in order to undergo professional treatment and/or psychiatric care for their addictions. \textit{Id.} at 309-310. The benefits of the model rule prohibit outright denial based on substance abuse and “signal that... addiction is a personal issue[] that can be overcome or managed.” \textit{Id.} at 315-316.
\item \textsuperscript{39} The Center for Professional Responsibility, Maintaining the Integrity of the Profession Rule 8.3 Misconduct, http://www.abanet.org/cpr/mrpc/rule_8_4.html (last visited Dec. 8, 2009).
\item \textsuperscript{40} American Bar Association Commission on Impaired Attorneys Report to the House of Delegates, http://www.abanet.org/legalservices/colap/downloads/guiding_principles_for_assistance.pdf (last visited Dec. 8, 2009).
\item \textsuperscript{42} STEPHEN GILLERS, \textit{REGULATION OF LAWYERS} 875 (6th ed. 2002). Although factors such as “psychological stress, depression, or dependence on chemical substances” may lighten a possible sanction, they will not nullify discipline. \textit{Id.}
\end{itemize}
debilitating problems when optioning discipline, but remain highly suspect of excuses, especially if a client is injured in the process.\textsuperscript{44} One court has held that where an attorney failed to adequately represent his client by mismanaging trust funds due to his alcohol abuse, but later joined Alcoholics Anonymous and began a path to recovery, disbarment was not required.\textsuperscript{45} However, later cases held that alcoholism was not a viable defense to mitigate disbarment.\textsuperscript{46} Moreover, where an illegal substance was the cause of attorney error, such as cocaine, courts have not allowed for disciplinary mitigation.\textsuperscript{47} Despite the overwhelming awareness of chemical dependency in the legal world, courts seem guarded in giving allowances for lawyers who have not taken preventative measures to protect themselves and their clients from self-imposed substance abuse.

C. Adderall as a New Means of Substance Abuse

Although the ABA acknowledges the inherent chemical dependency problems facing lawyers, the organization fails to define what substances can constitute “abuse.” Perhaps the broad definition remains all-inclusive so that any item purchased legally or illegally can be an abused substance if used improperly.\textsuperscript{48} Despite a theoretically all-encompassing definition of substance abuse, there are inherent kinks in defining substance abuse when dealing with dangerous, addictive substances, lawfully obtained and used; namely, the problem with prescription medications. Adderall, a prescription stimulant for performance enhancement among children and adults with attention-deficit

\textsuperscript{44} RObERT H. ARONSON, JAMES R. DEVINE & WILLIAM B. FISCH, PROFESSIONAL RESPONSIBILITY 137-138 (West Publishing Company, 1985).
\textsuperscript{45} See generally Attorney Grievance Com’n of Maryland v. Willemain, 297 Md. 386 (Md. 1983).
\textsuperscript{46} Attorney Grievance Com’n of Maryland v. Kenney, 339 Md. 578, 591 (Md. 1995) “[A]bsent truly compelling circumstances, alcoholism should not provide mitigation where an attorney has been found to have committed a violation which would ordinarily warrant disbarment”).
\textsuperscript{47} In re Marshall, 762 A.2d 530, 532 (D.C. 2000) (where attorney misused client funds to purchase crack/cocained).
\textsuperscript{48} See Tarko Hudson, supra note 16, at 913.
hyperactivity disorder, has become a much-abused substance among higher education
students.49 Both similar and distinct from cocaine and alcohol, substances documented by
the ABA, Adderall poses a new means for lawyers to engage in substance abuse.50

Like its fermented yeast counterpart, Adderall shares one major characteristic
with alcohol – its legality. Despite being listed by the Drug Enforcement Agency as a
Schedule II drug with a high risk for abuse, ranked alongside cocaine, PCP, and
methamphetamines,51 Adderall can be medically prescribed for children as young as
three-years old.52 Although the manufacturers of Adderall, Shire Pharmaceuticals, claim
the drug is safe for prescription use at such a young age, a string of twelve deaths among
seven to sixteen-year old American boys led Canada to take the drug off the market.53

49 See generally Barbara Prudhomme White, Kathryn A. Becker-Blease & Kathleen Grace-Bishop,
Stimulant Medication Use, Misuse and Abuse in an Undergraduate and Graduate Student Sample, 54 J. OF
AM. C. HEALTH 5, 261 (Mar.-Apr. 2006); Andrew Jacobs, Drug Abuse in College, N.Y. TIMES, July 31,
2005 available at http://www.psy.vanderbilt.edu/courses/hon182/The_Aadderall_Advantage_NYTimes_7_31_05.pdf;
Christian Teter, Sean McCabe, Kristy LaGrange, James A. Cranford & Carol Boyd, Illicit Use of Specific
Prescription Stimulants Among College Students: Prevalence, Motives, and Routes of Administration, 26
PHARMACOTHERAPY 10, 1501 (2006); Kristy Kaloyanides, Sean McCabe, James A. Cranford & Christian
Teter, Prevalence of Prescription Use and Abuse of Prescription Stimulates, Alcohol and Other Drugs
Among College Students: Relationship with Age at Initiation of Prescription Stimulants, 27
PHARMACOTHERAPY 5, 666 (2007); Sean McCabe, John Knight, Christian Teter & Henry Wechsler, Non-
Medical Use of Prescription Stimulants Among US College Students: Prevalence and Correlates From a
50 The author acknowledges that there are a variety of ways to define “abuse” in the prescription drug
context. The author favors a broad definition. This definition includes 1) valid prescription holders who
take more than the medically prescribed dose (on-label abuse) and 2) those who use prescription drugs
without a valid, medical prescription (off-label abuse).
52 Jason Freeden, Overview of Adderall – Best Known as ADD Medication, ASSOCIATED CONTENT, May
10, 2008,
53 Daniel J. Denoon, Sudden Death in 12 Kids on ADHA Drug Adderall, WEBMD HEALTH NEWS, Feb. 10,
news.
Notwithstanding the physical risks associated with Adderall, the drug can be legally purchased and used just like alcohol. The illicit non-medical possession, sale, and use of Adderall, also known as off-label or non-prescription usage, violate California state law. The “black market” sales of Adderall from prescription-user to non-medical user resemble sales of illegal substances because of its discreet and unregulated nature. Through the “black market,” non-medical use of Adderall steadily increases among higher education students, particularly those attending more selective institutions. The numerous possible physical side effects of Adderall, including but not limited to hallucinations, seizures, and uncontrolled shaking or body movements, resemble symptoms of cocaine usage. Bodily side effects, when combined with off-label use, ultimately mean that students are taking highly addictive medications without consulting a medical professional or even truly understanding the physical or mental risks associated with self-medication.

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54 The Author fully discusses the psycho-social, physical, and ethical risks associated with Adderall in Section III of this paper.
55 California has codified illegal possession and sale of controlled substances without a prescription. See WEST’S ANN. CAL. BUS. & PROF. CODE § 4060 (2009) (illegal possession of a controlled substance); WEST’S ANN. CAL. HEALTH & SAFETY CODE § 1110(j) (2009) (illegal to sell, transfer, or furnish a controlled substance without a license).
Separating Adderall from cocaine or alcohol – substances generally associated with chemical dependency – is the extent to which it has legitimate medical uses. Like many adult Americans suffering from ADHD, lawyers and law students previously unable to concentrate due to their attention defects can obtain a prescription to increase their daily productivity. Truly, Adderall works as a performance enhancer, allowing law students and legal professionals to accomplish the drudgery of homework or brief writing more efficiently without breaks or fatigue.  

As regulators looking to provide preemptive measures preventing substance abuse, where is the hard-drawn line between needed performance enhancement and off-label abuse? To better understand the medical use of Adderall and historical need for prescription stimulants, the next section details the annals and medical treatment of attention disorders. Only by comprehending the medical necessity to employ Adderall for patient diagnosis can one walk the thinly threaded tightrope between use and abuse, creating possible regulation for the future.

Section II: Psychosis Through the Eyes of the Beholder: An Evolutionary History of the ADHD Diagnosis in Adults and Treatment Using Adderall

A. The Origin of Attention Deficit Hyperactivity Disorder

The turn of the twentieth century brought new innovations, new wars, and new human rights to the citizens of the United States. As novel societal, political, and technological advances developed, so, too, did the field of psychiatry and mental illness. After the “era of system building” with the industrial revolution of the nineteenth century,

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the field of psychiatry, defined then as the “discipline of psychic illnesses and their
treatment,” became accepted and promoted in Europe and the United States.⁶³

In 1902, British doctor George Still unveiled a lecture series describing what was
to be the beginning of attention deficit hyperactivity disorder.⁶⁴ In his tri-fold series of
publications, Still followed forty-three children “having serious problems with sustained
attention and in the moral control of their behavior.”⁶⁵ Although Still’s diagnosis of
morality in relation to attention deficits has been rejected by current evaluative standards,
he was the first doctor to discuss the possibility that difficulties with maintaining
attention could carry through adulthood if possessed as a child.⁶⁶ Between 1917 to 1928,
children and adolescents patients were diagnosed with encephalitis lethargica,⁶⁷
characterized by “overactivity, lack of coordination, learning disability, impulsivity, and
aggression.”⁶⁸ These post-World War I diagnoses became the basis of symptoms
characterizing ADHD, focusing on the neurological and biological bases of the disorder.⁶⁹
Shortly after the diagnosis peak of encephalitis lethargica, amphetamines, (commonly
known as stimulants), were introduced into the daily prescription regime of local
psychiatrists.⁷⁰ However, despite the opening prologue of attention disorders and
stimulant-based medications inculcating themselves into American culture, the birth of
ADHD would not come for another thirty years.

⁶³ Id. at 187-189.
⁶⁴ Russell A. Barkley, ADHD in Adults: History, Diagnosis, and Impairments,
⁶⁵ Id.
⁶⁶ Id.
⁶⁷ National Institute of Neurological Disorders and Strokes, NINDS Encephalitis Lethargica Information
⁶⁹ Id.
⁷⁰ K. Graff Low & A.E. Gendaszek, Illicit use of psychostimulants among college students: a preliminary
study, 7 PSYCH. HEALTH & MED. 3, 283 (2002).
ADHD, known by a plethora of other names throughout the course of the twentieth century, developed into a diagnostic category in the 1950s.\textsuperscript{71} In its earliest stages, the grandparents of ADHD were known as Minimal Brain Dysfunction (MBD), Hyperactive Syndrome, Hyperkinesis, and Hyperactive Disorder of Childhood.\textsuperscript{72} The archetypal syndromes of the disorder were characterized similarly to symptoms of encephalitis lethargica, including “overactivity, restlessness, distractibility, and short attention span.”\textsuperscript{73} By 1968, the Diagnostic and Statistical Manual of Mental Disorders (DSM)-II was used to diagnosis “minimal brain damage” in children.\textsuperscript{74} In the late-sixties, it was widely held MBD and attention deficit problems waned with emergence into adolescence.\textsuperscript{75} Continued challenges for adults with attention deficit problems lingering without a diagnostic category prompted scientists in the mid-1970s to create studies focusing on adult MBD.\textsuperscript{76}

Over the twenty years from the mid-1970s to the mid-1990s, the biological and diagnostic criteria for evaluating adult ADHD evolved into today’s standards. Shelley and Reister and Pontius published the first two papers studying the neurological basis for a disorder affecting adult motor skills, memory, and rule-governed behavior as linked to attention deficit were in 1972 and 1973. After the publication of these two early pieces, the category of “adult hyperactives” emerged in the late 1970s as children “who did not outgrow their symptoms.”\textsuperscript{77}

\textsuperscript{71} Peter Conrad & Deborah Potter, \textit{From Hyperactive Children to ADHD Adults: Observations on the Expansion of Medical Categories,} 47 SOCIAL PROBLEMS 4, 562 (2000).

\textsuperscript{72} Id.

\textsuperscript{73} Id.

\textsuperscript{74} Id.

\textsuperscript{75} Id.; See Barkley, \textit{supra} note 62.

\textsuperscript{76} See Barkley, \textit{supra}, note 62.

\textsuperscript{77} See Conrad, \textit{supra} note 69, at 563.
Amidst the flurry of medical studies emerging during the 1970s concerning ADHD, the true birthplace of ADHD syndromes emerged in Utah. Dr. Wender of the University of Utah created the first diagnostic framework for identifying ADHD in adults, which would later become the basis for the rating scale present in DSM-III published in 1980. While analyzing adults with MBD, Dr. Wender considered the possibility of identifying ADHD in his adult patients. In a seven-symptom context, Dr. Wender proposed these symptoms for diagnosing ADHD in adults: “(1) Inattentiveness; (2) Hyperactivity; (3) Mood lability; (4) Irritability and hot temper; (5) Impaired Stress Tolerance; (6) Disorganization and (7) Impulsivity.” Using Wender’s initial diagnostic, the focus of ADHD was overactivity, not inattention. By the publication of the DSM-III-R in 1987, the diagnosis was officially named Attention Deficit Hyperactivity Disorder, revaluating Wender’s criteria to show “the condition of hyperactivity as one, by not mandated, symptom of the disorder.”

Driven by media support of television newscasts, popular articles in magazines such as Ladies’ Home Journal and Newsweek, and the publication of the best-selling book Driven to Distraction in 1994, adult ADHD cemented its place in the public sphere by the mid-1990s. In the fifteen years since popular cultural became aware of the disorder, ADHD has come to be known as a “significantly impairing disorder” affecting the “education occupation, social relationships, sexual activities, dating and marriage, parenting and offspring psychological morbidity, crime and drug abuse, health and

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79 Id.
80 See Adler et al., supra note 66, at 29.
81 See Conrad, supra note 69, at 564.
82 Id. at 566.
related lifestyles, financial management [and] driving” of adults.” The symptoms are known to be the “behavioral expressions associated with the disorder,” primarily affecting the education of adults. In general, ADHD is medically recognized as a neurological disorder possibly influenced by “environmental factors.”

The number of American adults with ADHD fluctuates from study to study, averaging between 4-5% of adults affected – upwards of 4.7 million Americans. However, the increasing prevalence of the ADHD diagnosis illustrating the excess of “‘normal’ people show[ing] ADHD behaviors” has led to the position that ADHD may not be a “true mental illness.” Despite these claims, the introduction of modern technology and the fast pace of contemporary society, characterized by up-to-the-minute data streams from RSS feeds, Facebook updates, and Twitter tweets have created environmental factors that require adults to multi-task virtually every second of the day. The evolution of modern society has “made ADHD symptoms more easily observable.” Emerging briefly at the turn of the twentieth century, ADHD continues to fortify its place in the medical, social, and education community of the Generation Me, X, and Y-ers of 2009.

B. Stimulating Our Minds: Psychostimulant Treatment of ADHD and Adderall

83 See Barkley, supra note 62.
84 Id.
87 Radu, supra note 84, at 2.
88 See Austin, supra note 83.
89 Id.
Just as Attention Deficit Hyperactivity Disorder in adults has undergone a transformation over the course of century, so too has the treatment evolved. Stimulants, as gear in the psychiatric tool belt, first appeared in the United States in the 1930s. By 1994, methylphenidate, the basis of today’s Ritalin, was created and suggested to control the behavior of children diagnosed with MBD in 1963. Concurrent with the development of ADHD diagnoses in the DSM in 1968, thirty different “prescription stimulant-type products” were manufactured to treat the symptoms of ADHD by 1970. Since the 1970s, “pharmacologic treatment,” or drug therapy, remains the dominant method for treating ADHD. Within the first five years of the 1990s, there was a “9-fold increase” in the population receiving ADHD-related stimulant prescriptions. Reviewing the past decade and a half since 1995, treatment of ADHD with prescription treatment has steadily increased.

Medicating ADHD in adults consists largely of using stimulants to increase the intensity and length of concentration. The two most prominent ADHD medications, Ritalin and Adderall, are based off of two separate chemical bases; Ritalin derives its compound from methylphenidate (an amphetamine-like substance) while Adderall is a

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90 See K. Graff Low, supra note 68, at 284.
92 Id.
93 Adler et. al., supra note 66, at 30.
methamphetamine. Despite the differences in production, both substances work in a similar manner to increase attention.

A complicated history, Adderall finds its chemical roots in diet pills. Created during the 1980s as a form of “diet control,” Obetrol is a dextroamphetamine, made of a combination of 75% of the D-isomer of amphetamine and 25% of the L-isomer approved by the FDA. Although first used for weight loss, Adderall was approved for unrestricted ADHD treatment in 1996. Adderall boosts concentration by increasing the endorphin levels of serotonin, dopamine, and norepinephrine. Essentially, the neurotransmitters, also known as monoamines, are enhanced by dextroamphetamine binding upon them, thus working to increase blood pressure and heart rate, increase glucose production, and opening up the respiratory system. Although the true biological basis for ADHD remains a mystery, increasing the production and uptake of dopamine is thought to play an “important role” by balancing the function of the prefrontal cortex of the brain, the area known to control the area of cognitive and behavioral functions. By increasing the dopamine levels, one theory of Adderall’s success posits that the drug works by create pleasure-inducing thoughts, allowing one to

97 Sussman et al., supra note 89.
concentrate for longer periods of time in a euphoric state. Despite some controversy over Adderall’s success and some health complications that stem from legitimate use, it continues to give adults struggling with ADHD the ability to focus and concentrate for longer periods of time.

III. Over the Adderall Edge: Physical and Ethical Risks Posed by Adderall Use and Abuse

A. Long and Short-Term Physical and Psychological Effects of Adderall Use

Approved for widespread use among children and adults, Adderall has been “judged safe enough” by the medical community for treatment of ADHD. Therapeutic use of Adderall, for children and adults alike, positively correlates to an individual’s increased focus, concentration, and a stabilization of hyperactivity. Notwithstanding its benefits, Adderall usage necessarily admits the risk of deadly side effects and has a high potential for abuse. As the non-medical use of Adderall rises, thereby allowing more young self-medicators to use without medical oversight, how much risk is too much risk? The long and short-term physical and psychological effects of Adderall, even when correctly taken, pose health problems for all adults suffering from ADHD. This section

107 U.S. Drug Enforcement Administration, Drug Scheduling, supra note 49 (labeling Adderall as a highly addictive substance schedule II drug).
108 Radu supra note 84 citing Wilens, et. al., supra note 84, at 21 (2008). Between 5-35% of college students have used non-prescription psychostimulants while upwards of 30% have been asked to sell their prescriptions.
attempts to reveal the physical side effects of supervised, prescription-based Adderall application.

Recognizing the inherent risks present in Adderall, the United States Drug Enforcement Administration (DEA) lists Adderall’s chemical base as a Schedule II drug.\textsuperscript{109} Under the Controlled Substances Act, the DEA has the power to regulate “controlled substances” based upon their based upon the substance’s medical use, potential for abuse, and safety or dependence liability."\textsuperscript{110} Any drug placed in the Schedule II category must meet the three definitional requirements of § 812, which are:

(A) The drug or other substance has a high potential for abuse.
(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence\textsuperscript{111}

Adderall, listed under this category, creates a risk for abuse and may lead to severe “psychological or physical dependence.” If these are the risks presented when used according to the label and as prescribed by a physician, what are the risks with nonprescription use bought from a friend, a colleague, or fellow go-getter to push oneself into the limits of a competitive workload?

To be fair, “virtually all medications have potential side effects that range from minor inconveniences to severe disability or death.”\textsuperscript{112} True for Adderall and Advil alike,

\begin{footnotesize}
\textsuperscript{109} See U.S. Drug Enforcement Administration, supra, note 49. Additionally, nearly 18% of non-ADHD diagnosed college students endorsed off-label use of psychostimulants, such as Adderall. Dr. Radu cites another study where off-label student psychostimulant users constitute five times the number of prescription users. See generally Amelia Arria, K. Caldeir, K. Vincent, K. O’Grady & E. Wish, Perceived Harmfulness Predicts Non-Medical Use of Prescription Drugs Among College Students: Interactions with Sensation Seeking, 9 PREVENTION SCIENCE 191 (2008).
\textsuperscript{110} U.S. Drug Enforcement Administration, supra note 49; See generally 21 U.S.C. 811 (West 2009).
\textsuperscript{111} 21 U.S.C. 812(b)(2) (West 2009).
\textsuperscript{112} Anjan Chattergee, Cosmetic Neurology: The controversy over enhancing movement, mentation, and mood, 63 NEUROLOGY 968, 970 (2004). Chattergee argues that in our “strong libertarian” culture, people are encouraged to take medications that may treat or increase performance difficulties at their own risk. Id.
\end{footnotesize}
users must inherently weigh the benefits of side effects controlling long and short-term bodily and psychological controls with the benefits of increased concentration. Like the public service announcements paid for by cigarette companies to warn users of its deadly possibly consequences, the label on Adderall clearly states its potential risks. Ranked in the high-risk category, Adderall may lead to

[F]ast, pounding, or uneven heartbeats; feeling light-headed, fainting, increased blood pressure (severe headache, blurred vision, trouble concentrating, chest pain, numbness, seizure); or tremor, restlessness, hallucinations, unusual behavior, or motor tics (muscle twitches).\(^{113}\)

Originally, the Adderall label stated in bold, capital letters that "AMPHETAMINES HAVE A HIGH POTENTIAL FOR ABUSE. ADMINISTRATION OF AMPHETAMINES FOR PROLONGED PERIODS OF TIME MAY LEAD TO DRUG DEPENDENCE."\(^{114}\) However, due to increased reporting of children and adults with cardiac and psychiatric problems such as Adderall-induced psychosis stemming from abuse, the label now also adds, “MISUSE OF AMPHETAMINE MAY CAUSE SUDDEN DEATH AND SERIOUS CARDIOVASCULAR ADVERSE EVENTS.”\(^{115}\) Federal government rankings, incidences of death, and drug-labeling changes amalgamate to expose the broad and intensely variable risks of correct Adderall use.

**B. Risks of Off-Label Use: Student Users, Increased Risks and Potential for Abuse**

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\(^{113}\) Drugs.com, Adderall, http://www.drugs.com/adderall.html (last visited Oct. 24, 2009). The lesser side effects of Adderall include “headache or dizziness; sleep problems (insomnia); dry mouth or an unpleasant taste in your mouth; diarrhea, constipation; loss of appetite, weight loss; or loss of interest in sex, impotence, or difficulty having an orgasm.” \(Id.\)


\(^{115}\) \(Id.;\) Surlves et al., supra note 96, at 498.
Without medical oversight, non-prescription ingestion of Adderall can increase the physical dangers of psychostimulant-use based side effects, easily transitioning from off-label “use” to “abuse.”\textsuperscript{116} Although doctor prescribed, medically regulated, and recommended doses of Adderall decrease the likelihood of physical side effects, off-label use increases the probability of experiencing physical risks and developing a substance abuse habit.\textsuperscript{117}

As prescriptions for psychostimulant treatment for ADHD multiplies so too does misuse among a very specific group of young, emerging professionals – higher education students.\textsuperscript{118} In 2006, a survey of 1,025 undergraduates found that sixteen percent of students admitted to misusing or abusing stimulant medication.\textsuperscript{119} Although a swell of reasons underline off-label psychostimulant use, students cited “partying, improving attention, reducing hyperactivity, and improving grades.”\textsuperscript{120} Another study showed that non-medical usage primarily stemmed from a desire to study, pure curiosity, or to “get high.”\textsuperscript{121}

Almost with the ease of buying a cup of “joe” at the campus coffee shop during a study break, Adderall’s uncomplicated accessibility creates an incentive for students to

\textsuperscript{116} Scott H. Kollins, A Qualitative Review of Issues Arising In the Use of Psychostimulant Medications in Patients with ADHD and Co-morbid Substance Use Disorders, 24 CURRENT MED. RES. AND OPINION 5, 1345 (2008). Treatment with psychostimulants creates a “pattern and risk of [substance abuse disorder] development.” \textit{Id.} When recommended doses of psychostimulants, such as Adderall, are taken, the likelihood for abuse decreases. \textit{Id.} Conversely and by implication, this necessarily means that non-regulated and non-recommended doses taken by self-medicators increases risk for substance abuse.\textsuperscript{117} \textit{Id.}; Judith G. Edersheim, Off-Label Prescribing, 26 PSYCHIATRIC TIMES 4 (2009) available at http://www.psychiatrictimes.com/display/article/10168/1401983?verify=0. “Opponents of unfettered off-label prescribing contend that failure to regulate off-label use leaves patients vulnerable to inadequately tested medications and undermines the public’s expectation that they will be given drugs with known safety and efficacy.”


\textsuperscript{119} Prudhomme et. al., \textit{supra} note 47, at 261.

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} Radu, \textit{supra} note 84, at 6 \textit{citing} Arria et. al., \textit{supra} note 107, at 191.
buy the drug off-label. Dr Radu, a physician and master’s candidate studying the ethical implications of psychostimulant use at the University of Pennsylvania, states, “Clearly, these drugs are available without a prescription for those who desire them.”

At Miami University, an undergraduate student article showcases easy access, outlining the demands and uses for off-label use. Jon Turpin, a double-major sophomore, explained that he “use[s] Adderall when I have a lot of studying to do in a condensed amount of time.” Defining the ease of obtaining Adderall, Turpin stated, "As far as accessibility, it's extremely accessible […] It's when you really need it, you can't get it. On a scale from one to ten, with ten being the easiest…obtaining Adderall is usually a 10, but plunges to a three during busy times like exam week.”

A cornucopia of competition, stress, and the desire to succeed, law students represent an extremely high-risk group for Adderall abuse. Although no studies exist detailing the specific uses of law students’ psychostimulant abuse, medical studies showcasing high-risk factors for abuse imply that law students necessarily take a greater gamble when they self-medicate.

Exhibiting the personality traits associated with Adderall abuse and requiring adequate marks to fend off the dreaded grade curve, law students concoct a recipe for psychostimulant misuse. Off-label psychostimulant abuse is associated with “being white, from a higher social status, and having perfectionist and sensation seeking personalities.”

Mirroring a racial factor contributing to abuse, white law students

122 Id. at 6. Dr. Radu shows that anywhere from sixteen to fifty-four percent of students with a psychostimulant prescription like Adderall or Ritalin are asked to sell, trade, or “divert” their prescription. Id. citing Wilens et. al., supra note 84, at 21; McCabe et. al., Non-Medical Use of Prescription Stimulants Among US College Students: Prevalence and Correlates From a National Survey, supra note 47 at 96-106 (2005).
123 Bowen, supra note 100.
124 Id.
125 Radu, supra note 84, at 6 citing Arria et. al., supra note 107, at 191.
represent roughly seventy-eight percent of the student population; similarly, nearly ninety-percent of lawyers are Caucasian. Additionally, law students are more likely to display self-assertiveness, persuasive leadership skills, and independence, which correlate to perfectionist tendencies. One legal, academic support blog perfectly articulates this point, writing, “I know a lot of law students who are perfectionists.”

Combining personality and ethnic risk factors with a stressful environment where grades determine rankings and possible job opportunities, Adderall is a quick fix for academic success. Positive correlations between academic success, user cognition, and Adderall usage, “a recent study reaffirmed that students taking stimulants like Adderall consistently performed better n school than their unmedicated counterparts.” Adderall evolves into the “academic steroid” awarding users a “super human ability to focus for long periods of time.” To lighten academic stress, law students turning to off-label Adderall use roll the dice in a dangerous game where non-medical ingestion heightens the physical risks of side effects and increases the possibility for chemical dependency in a profession already plagued by substance abuse. Portraying high-risk users, the next section specifically tackles the ethical dilemmas posed by off-label Adderall use among law students.

C. Ethical Jeopardy: The Ethical Implications of Adderall Use Among Law Students

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129 Pavisian, supra note 54, at 180 (2008).
A wonder drug for the twenty-first century, if Adderall allows competitive law students with a drive for success to compete better and more efficiently, what is the problem with a little spirited edge? After all, “we don’t stop people from giving their kids tennis lessons” to get ahead in country-club sporting matches. Unlike for-hire tutors and coaches in social and recreational arenas that provide mere instruction for better performance, widespread use of Adderall as a performance enhancer poses a plethora of ethical dilemmas for students, universities, and the greater legal profession, directly affecting the mental and physical abilities of its user.

This section attempts to outline three potential moral and ethical quandaries posed by illicit Adderall use among law students. The outright illegality of selling or possessing controlled substances without a license or prescription aside, non-therapeutic Adderall use may affect law students’ physical health, ethical character, and professional duties of responsibilities. First, this section examines moral questions encapsulating fears that cosmetic neurology, voluntary brain enhancement through neuropharmacology, may permanently alter the brain. Next, the paper queries whether illicit Adderall abuse constitutes cheating during law school examinations. Lastly, this note inquires whether off-label use undermines professional responsibility and character, often enforcing “dubious” professional and social norms.

133 Chatterjee, supra note 110, at 970.
134 Bailey, supra note 131. Bailey posits eight objections society and medical science should object to voluntary psychostimulant brain enhancement. His objections are: 1) Neurological enhancements permanently change the brain; 2) Neurological enhancements are anti-egalitarian; 3) Neurological enhancements are self-defeating; 4) Neurological enhancements are difficult to refuse; 5) Neurological
By boosting their academic performance through pill popping, non-medical Adderall users effectively cheat on law school exams. After ingesting the drug, the effects are immediate – superstar abilities to focus, write, think, and work without the pesky hindrances of lapses in concentration or a wandering mind. Take the exemplary first year law student spending hours in the library day in and day out, hunting for the perfect outline and memorizing endless legal rules and theorems. Perhaps the average student takes a study break every one or two hours to enjoy a leg stretch or refocus their memory. With the addition of Adderall, those breaks could be eliminated allowing for additional hours of study time.135 If taken before a law school exam, the students’ abilities to read questions and focus during test time are sharpened when compared to their less medicated classmates.136 Heightened senses during testing time combined with an increased ability to focus allows for off-label Adderall users to expend their learned knowledge faster and more efficiently than their peers, giving them a particular advantage during timed exams.

Opponents of neural enhancement regulation, neuroethicists challenge the concept of “cheating” as an ethical dilemmas posed by off-label Adderall usage. Traditional notions of fairness and valuing the means of production seem to play no role in evaluating the ethical implications of performance-based Adderall use. Contesting the proposal that neurological enhancements are anti-egalitarian, at least one scientist has suggested that access to and performance-enhancing use of Adderall merely reflects class

135 See generally Bowen, supra note 100.
136 Andrew L. Cohen & Stephen K. Shapiro, Exploring the Performance Differences on the Flicker Task and the Conners’ Continuous Performance Test in Adults with ADHD, 11 J. ATTENTION DISORDERS 49, 54-56 (2007) (explaining that increased concentration led to improved performances on reaction tests).
disparity, and does not the cause it. Focusing on the end results, Michael Gazzaniga, a neuroscientist from Dartmouth, compared psychostimulant use to a standardized prep class taken by high school students. “What is the difference between Ritalin and the Kaplan SAT review?...If both can boost SAT scores by, say, 120 points, I think it’s immaterial which way it’s done.”

Highlighting the ends rather the means of performance, opponents fail to recognize the differences between mental coaching and physical stimulation. While a Kaplan SAT prep course may groom examinees by loading them with tips and tricks before a standardized test, no Kaplan tutor will execute the exam for his or her students. In other words, it remains the test taker’s job to relay their knowledge, possibly increased or more easily accessed by Kaplan training, on the test and perform to the best of their ability. They are given no special physical aid during the examination. Unlike the tennis coaches and tutors of opponents’ queries, Adderall imparts a direct and immediate physical benefit to its user, allowing them to perform more efficiently.

Like any competitive athlete or standardized test taker, law students still must prepare for timed exams and continue to undergo intense study periods; however, their reaction time and ability to draw information from their mental capacities and transfer them to bubble sheets or bluebooks will be faster and without interruption with a psychostimulant. More like a steroid than a tutor, the direct effect of Adderall on a law student’s central nervous system provides a significant advantage on students’ test-taking abilities. Furthermore, as most first-year law student classes are based around one

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137 Radu, supra note 84, at 9.
138 Bailey, supra note 131.
year-end timed and standardized exam, increased performance could be the difference between top ten-percent status and sitting in the middle of a grade curve.\footnote{Romer, supra note 130, at158-159. Romer argues that the use of standardized testing compares similarly situated students whereby “anyone taking prescription stimulants are put at an unfair competitive edge vis-à-vis those who take the tests in a legal manner.” \textit{Id.} Therefore, the introduction of performance-enhancing drugs undermines nature of the standardized test as a method for measuring student ability and success. \textit{Id.} at 159.}

Adderall is not the only quick fix, legally available solution to improve concentration and focus. Opponents to regulation might query, “What’s the difference between popping Adderall and drinking a twenty-four ounce cup of coffee, laced with sugar and espresso shots or an energy drink.” Pushing the boundaries even further, wouldn’t a lifelong caffeine addict feeding an addiction for academic enhancement represent a deeper moral fissure than the one-time Adderall pill-popper? After all, both substances provide increased concentration and focus, stimulating the senses while enhancing reaction time.\footnote{G.A. Higgens et. al, \textit{The Effect of Caffein to Increase Reaction Time in the Rat During a Test of Attention is Mediated Through Antagonism of Adenosines A\textsubscript{2A} Receptors}, 185 BEHAVIOURAL BRAIN RESEARCH 32, 41 (2007).} Additionally, many Adderall users do not face the chronic addiction morning coffee-goers endure. However, despite the similarity in general effectiveness, Adderall’s illegality concerning off-label use and purchase set it apart from a coffee addicts easy access to morning java.\footnote{See \textit{West’s Ann. Cal. Bus. & Prof. Code} § 4060 (2009) (illegal possession of a controlled substance); \textit{West’s Ann. Cal. Health & Safety Code} § 1110(j) (2009) (illegal to sell, transfer, or furnish a controlled substance without a license).} Moreover, the intoxicating and long-lasting effects of Adderall surpass the average length of caffeine highs, complete with more possible physical risks to boot.\footnote{William E. Pelha, et. al., \textit{A Comparison of Ritalin and Adderall: Efficacy and Time-Course in Children with Attention-deficit/Hyperactivity Disorder}, 103 PEDIATRICS, 4, 11 (1999) (Adderall lasts at least five hours for recommended doses in children with ADHD).} Although caffeine addiction seems inevitable to daily users, it is not ranked alongside Adderall or other substances on the DEA’s
Scheduled Drug list reciting high potential for abuse and dependency. Comparisons between Adderall and caffeine may seem apt, but ultimately, the physical and legal risks of the prescription psychostimulant put it in a class far above caffeinated beverages.

An easy fix for short-term stress and an overly burdensome workload, off-label law student users slowly undermine their professional character and enforce dubious social values. The nation’s law students prepare for a career where competence, diligence, promptness, and preparation are so highly valued the traits have been codified into an ethical code for moral practice. Every law student is forced to become more creative, academically aggressive, and adaptable to remain competitive and desirable in an exceedingly cutthroat job market. All the while these students are asked to retain the values of their future profession. To obtain success, a three-step logical syllogism flows from “I am overburdened” to “Adderall helps reduce my burden by helping me work more efficiently,” leading many students to the pragmatic conclusion that widespread use will aid their productivity despite the effect on their individual personality, moral practice, or physical chemistry.

Off-label Adderall use may ultimately develop into a “last-ditch effort to stay afloat in a too-competitive academic or work environment.” Competitive pressures cultivate inside perfectionist law student, implicitly and explicitly coercing students to

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144 U.S. Drug Enforcement Administration, supra note 49 (labeling Adderall as a highly addictive substance schedule II drug).
145 Practising Law Institute, Electronic Discovery Guidance 2009: What Corporate and Outside Counsel Need to Know, San Francisco, Dec. 4, 2009 PLI Order No. 18252 804 PLI/Lit 229
146 Richard H. Dees, Slippery Slopes, Wonder Drugs, and Cosmetic Neurology: The Neuroethics of Enhancement, 63 NEUROLOGY 2004 951, 951-952 (2004). Dees states that “because our sense of identity is involved, we should never lightly dismiss concerns about whether drugs are safe and whether people are being subtly coerced into taking them.” Id. As law students’ identities inherently intertwine themselves to the study of law, ethical and physical concerns of performance-enhancing psychostimulant use should not be dismissed by law schools or professional regulators.
147 Radu, supra note 84, at 10.
take pills for academic success and measure up to the “explicit demand of superior performance by others.” Without regulation, universities and the legal profession reinforce a “quick-fix” culture of success that ultimately undermines the traditional notions of hard work and diligence inculcated in the legal profession.

IV: Regulating Off-Label Use: Challenges and Options for the Academic World

A: Privacy, Disability, and Security Concerns with Regulation of Off-Label Adderall Use

Proposed regulatory options standardizing non-medical Adderall use may run afoul of several federal laws and constitutional concerns. Two particular truths create regulatory challenges for universities. First, Adderall continues to be a useful medicinal treatment for patients suffering with ADHD. Second, as Adderall effects physical body chemistry to manifest success, the only way to test for usage would be through urinalysis, hair, saliva, or sweat samples. Given the continued medical need for ADHD sufferers and the intrusiveness of individualized testing, off-label use regulations might implicate the Constitution’s Fourth Amendment prohibition against unlawful search and seizure, the tort of intrusion upon seclusion, the Americans with Disabilities Act (ADA), and the Health Information Portability and Accountability Act (HIPAA).

To regulate off-label Adderall use, universities would necessarily have to

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148 Chattergee, supra note 110, at 971. Chattergee notes that “winner-take-all” competitive environments breed both implicit coercion in the desire for success and explicit coercion by superiors demanding it. In the age of cybertechnology, with Facebook, Twitter, and Google Alerts give us instantaneous up-to-the-minute feedback on the world, young students receive the message “Normalize and beat the competition.” Radu, supra note 84, at 13.

149 Pavisian, supra note 54, at 204-205 (advocating that sweat, hair, or saliva tests reduce the intrusiveness of randomized drug testing).

150 See generally Pavisian, supra note 54 (citing Fourth Amendment concerns); Romer, supra note 130 (citing Fourth Amendment and ADA concerns); Schieffelin, supra note 139 (citing Fourth Amendment concerns).
investigate which students medically require and utilize the drug. One method for
deciphering this information, physical testing for the presence of Adderall in a law
student’s body, invades an often-protected constitutional privacy interest.\textsuperscript{151} Protected
privacy interests are guarded by the Fourth Amendment prohibitions on illegal searches
for public law schools the tort of intrusion upon seclusion for private law schools.\textsuperscript{152}
Considered adults in the eyes of the law,\textsuperscript{153} law students are given full protections of the
Fourth Amendment.\textsuperscript{154} By mandating physical testing of law students before tests or
during an entire examination periods, public universities impinge on their privacy without
voluntary consent.\textsuperscript{155} For private universities, engaging in randomized or individualized
physical testing might violate the tort of intrusion upon seclusion if accepted within a
particular jurisdiction.\textsuperscript{156} Courts have consistently held that urinalysis, without consent,
violates the reasonable expectation of privacy protected by the tort.\textsuperscript{157} Furthermore,
physical testing might not adequately separate illicit use for the purpose of cognitive

\begin{footnotesize}
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\item[\textsuperscript{151}] \textit{Skinner v. Railway Labor Executives Ass’n}, 482 U.S. 602, 613-14 (1989) (The Fourth Amendment
“guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by
officers of the Government or those acting at their direction”).
\item[\textsuperscript{152}] U.S.C.A. CONST. AMEND. IV (West 2009). The Fourth Amendment requires state action to protect
fourth amendment guarantees. State universities have been held to be state actors. See \textit{generally Bakke v.
who receive no government funds are not state actors. See \textit{generally NCAA v. Tarkanian}, 488 U.S. 179
(1988) (Holding the NCAA as a private, non-government actor).
\item[\textsuperscript{153}] The author is presuming that the law students mentioned in this article are over the age of eighteen and
therefore fully vested in their Constitutional rights.
\item[\textsuperscript{154}] Pavisian, supra note 54, at 200-201 (2008) (“Many [college students] are old enough to enjoy the right
to vote”).
\item[\textsuperscript{155}] Id. Pavisian states that, in order to have constitutional testing of public university college students, the
drug-testing scheme must be either voluntary or “administered in a reasonable manner in furtherance of an
important government interest.” Id. at 201. Although safety and academic are legitimate school interests,
urinalysis, sweat, hair, or any physical testing without consent remain incredibly intrusive ways to gain
information obtainable through consent forms by individual reporting.
\item[\textsuperscript{156}] REST. 2D. TORTS § 652B (West 2009). The tort protects against an entity “who intentionally intrudes,
physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns.”
\item[\textsuperscript{157}] \textit{See generally Smyth v. Pillsbury}, 914 F.Supp. 97, 101 (E.D. Penn. 1996) (urinalysis implicates a
reasonable expectation of privacy among private employees from their employer); \textit{Borse v. Piece Goods
Shop}, 963 F.2d 611, 621 (3rd Cir. 1992) (the manner of collecting urinalysis samples and the monitoring of
the collection can be construed to be a cause of action under intrusion upon seclusion).
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neural enhancement of academic work from recreational activities, where legitimate university interests for non-residential students is at a minimum. Thus, obtaining the information necessary to create or maintain a regulation against off-label use faces Constitutional and tortious legal hurdles.

Separating legitimate from illegitimate medical needs for regulation, law schools may ponder requisite disclosure of student medical history or necessitate doctors’ notes for testing modifications. However, this approach to tackling illicit Adderall use undermines the purpose of the ADA and student medical accommodation. Preventing stigmatization against individuals suffering from physical or mental impairments, the ADA purports to protect Americans from inequity by “provide[ing] clear, strong, consistent, enforceable standards addressing discrimination.”158 Might discrimination actually be abetted by forcing law students as medical patients to identify their illnesses?

Chipping away at the challenges faced by disabled Americans, the ADA provides a statutory requirement that qualified individuals receive an accommodation at their school or work, aiding their ability to function.159 ADHD, as a “mental impairment” limiting a law student’s ability to focus and take examinations under standardized conditions would constitute a disability under Act.160 Under the clear ADA guidelines requiring accommodation for persons with disabilities during post-secondary and professional educations, ADHD sufferers and medically necessary Adderall users would qualify for test-taking accommodations under the therapeutic exemption for prescription

160 Id. at §12102.
stimulants.\textsuperscript{161} Forcing students to identify as “ADHD” or labeling them as disabled in order to receive accommodation ultimately creates the kind of stigma the ADA specifically seeks to avoid.\textsuperscript{162} Therefore, the practice of forcing students to self-identify with ADHD in order to obtain an “Adderall use” exception conceptually violates the ADA.\textsuperscript{163}

Universities seeking to regulate only non-medicinal Adderall use may not request disclosure of medical records from law students’ health insurances without violating the privacy standards under HIPAA. Effective April 14, 2003, HIPAA’s Privacy Rule does not allow for covered entities, such as health care providers and insurers, to disclose an individual’s “protected health information” (PHI) to universities unless for emergency situations or by consent.\textsuperscript{164} Medical records and medication history fall within to HIPAA’s protected health information, including all paper records handled by the insurance carrier.\textsuperscript{165} Guaranteeing the privacy of insurance-bearing students without voluntary consent for disclosure, schools could not seek to grant exemptions for legitimate use by compelling disclosure of students’ medical records.

Envisioning future law school regulation of illicit Adderall use must ultimately avoid the perils of constitutional, tortious, and statutory violations; only by respecting an individual’s medical privacy, shielding students from stigmatization with a “disability” label, and narrow tailoring to prevent enjoinment of recreational activities can any

\textsuperscript{161} 42 U.S.C. § 12189 (West 2009); Romer, supra note 130, at 173 (“Students with therapeutic use exemptions for prescription stimulants would be accommodated, and thus the direct requirement of the ADA should be satisfied”).
\textsuperscript{162} Romer, supra note 130 at 173.
\textsuperscript{163} Id.
\textsuperscript{164} 45 C.F.R. 164.501 (West 2009)(definition of a covered entity); 45 C.F.R. 164.502 (West 2009)(when disclosure is authorized).
B. Regulatory Options for Non-Medicinal Adderall Use

Despite the crushing legal problems associated with separating illicit and medically necessary Adderall usage amount law students, preventative and post-violation regulatory options remain available for universities. Education and substance abuse group meetings provide a preemptive measure for informing students about the physical risks and ethical implications of using non-preservation Adderall. Heightening disciplinary consequences in addition to the legal consequences for violating state laws for people purchasing and selling diverted prescriptions on campus provides incentives to limit use. Additionally, encouraging voluntary disclosure and providing a non-punitive peer committee for students who have taken or currently illicitly using Adderall “advance[s] the legal community's knowledge of health and work/life balance issues facing [law students] and its response to those issues.”\(^{166}\)

A comprehensive drug abuse prevention program aimed at law students targeting off-label psychostimulant use serves the dual purpose of educating the community while preventing possible future misuse.\(^{167}\) Educating law students begins with their immersion into the law school environment at university orientation. During these orientation periods, universities could create focus groups or panel presentations demonstrating the physical harms and ethical dilemmas posed by illicit psychostimulant use in academic enhancement. In addition to orientation groups, universities could maintain an


educational program about the harms of academic steroids by inviting speakers to campus throughout the year as part of a roundtable ethics initiative. Augmenting Alcoholics Anonymous group meetings, a general peer-based support group for people who have used or currently illicitly use Adderall provides a safe-haven for law students seeking physical and moral support from like-minded community members.

Imposing disciplinary consequences for on-campus buyers and sellers of non-medical Adderall may quell fears of developing a “black market” psychostimulant economy on university grounds. Universities might begin by adding illicit sales or use of off-label psychostimulants for academic enhancement as a violation of the law school honor code. Students would be forced to sign a memorandum of understanding for the academic integrity policy, explicitly promising not to engage in use or sale of the product for test enhancement. Consequences for either sales or purchase in violation of the honor code may include expulsion, reporting to the state bar association, or the inability to sit for the bar. Peers may voluntarily disclose forbidden sales or purchases witnessed by their fellow students, similar to reports of cheating or plagiarism. Once a suspected violation is referred to the correct university authority, the law school may proceed to conduct an investigation or initiate a hearing against the supposed violator in accordance with their academic integrity policy’s protocol.

Finally, universities can establish a student coalition, providing peer support students voluntarily disclosing prohibited psychostimulant use without academic

\[^{168}\] Pavisian, supra note 54, at 181 (“The sharp increase in demand for Adderall on college campuses has created a black market”); The author recognizes that imposing disciplinary consequences only for on-campus sales might not effectively curb illicit Adderall-gained academic enhancement. However, the author works with the assumption that universities cannot regulate off-campus sales of Adderall. \[^{169}\] Currently, the Santa Clara University academic integrity policy includes a prohibition on cheating by “obtaining an unfair academic advantage through any other means.” Santa Clara University, Academic Integrity Policy, http://www.scu.edu/bulletin/law/prof_responsibility.cfm (last visited Dec. 11, 2009). The policy might be changed to something more explicit, specifically defining illicit non-medical psychostimulant use as a way to gain an “unfair academic advantage.”
Similar to the Commission on Lawyer Assistance Programs (CoLAP) provided by the ABA and instituted by the California State Bar Association, law student peer groups can aid fellow cohorts by addressing issues of “stress, burnout, other personal issues… individual counseling, referral assistance, [and] consultations for rehabilitation.”

“Strict confidentiality” underlines the three main components of a student peer-support group, defined as short-term counseling, career counseling, and supportive recovery programs. Having a university assistance program for illicit psychostimulant use might focus on the third component of supportive recovery and education. Although not all users of Adderall represent addicts or suffer from chemical dependency, the group would allow past and present users to come together for moral support to prevent future use. Additionally, the group would allow present abusers to disclose their habit in a confidential environment free from legal or educational consequences.

V: Concluding Remarks

In the study of law, what laws control student conduct - the laws of nature, Darwinian success, or the guidance of an ethical code? Mark Twain commented that “Laws control the lesser man [. . ] right conduct controls the greater one.” What defines “right” conduct in the eyes of the law student? The line between right and wrong conduct becomes blurred for the average law student, brimming with the urge to compete and

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171 Id.
172 Universities can find an archetype for preventative peer support groups by contacting the ABA, who is in the midst of creating a Model Program for law students. American Bar Association, Commission on Lawyer Assistance Programs, http://www.abanet.org/legalservices/colap/lapactivity.html (last visited Dec. 11, 2009).
succeed, and drowning in an overworked and underpaid lifestyle. Joining a profession known for both its dedication to diligence and proneness to substance abuse, law students must balance the legal culture of success with the ethical and physical dilemmas posed by cognitive neuroenhancement.

Perhaps academic success is merely a game, one that Adderall or other psychostimulants have sullied in the name of fair competition.\textsuperscript{174} Or, perhaps there is an inevitability about the use of academic steroids in a culture that feeds on quick-fix success stories. Whether Adderall use is fated or just a mere scheme to bamboozle the academic system, the high rate of substance abuse among lawyers and law students signals that necessity for regulating illicit psychostimulants. The lethal combination of physical risks and ethical dilemmas for the legal profession require law schools to take immediate action. Sure to protect the privacy interests of their students while encouraging voluntary disclosure and peer support, universities must tread lightly but swiftly to institute academic honor code policies for off-label Adderall users. Educate. Stand up. Protect academic integrity so that we can light the “right conduct” govern law students.

\textsuperscript{174} Pavisian, supra note 54, at 207.