

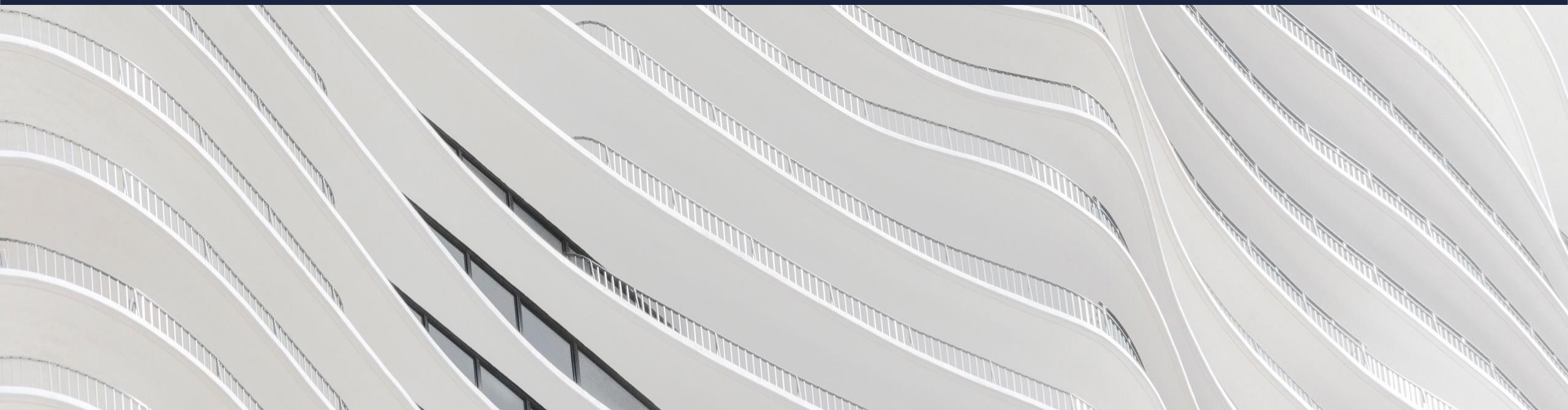


# **Cracking the code of neurological causation in product liability litigation**

By Chris Gismondi



# Neurological injuries



# Claimed injuries include subjective feelings...



Depression



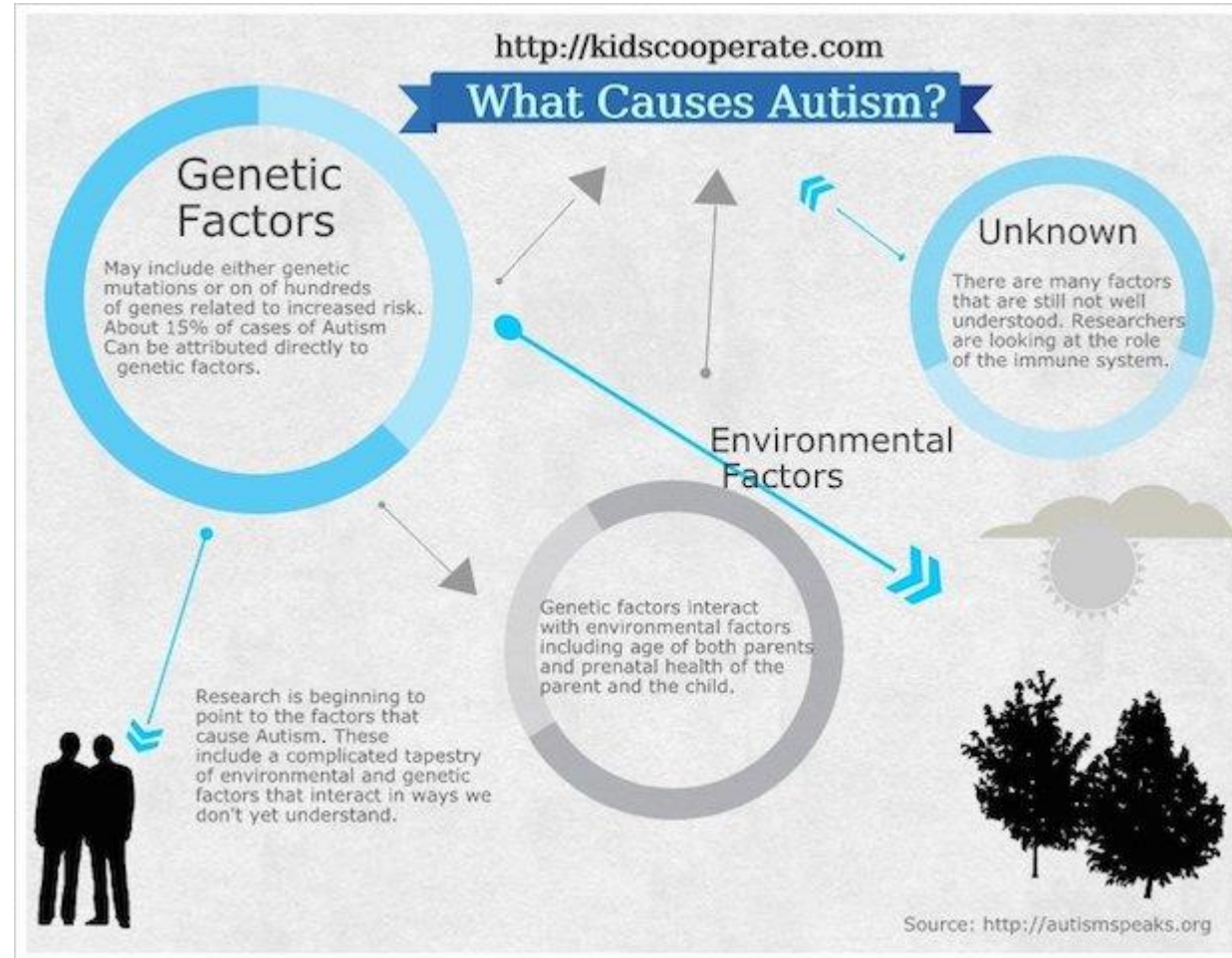
Anxiety



Addiction



# ...and objective conditions with unknown etiologies



# Such lawsuits are not theoretical

Social Media Addiction Lawsuit

## Who qualifies for a lawsuit?

**Eligibility criteria for a social media addiction lawsuit:**

- Use of social media 3 or more hours daily
- Proof of extensive social media use prior to turning 24
- Diagnosed with psychological or physical conditions, including:
  - Depression/Anxiety
  - Self-harm/Suicidal behaviors/loss of life
  - Eating disorders
- Proof of treatment for injuries related to social media use



## TYLENOL AUTISM LAWSUITS

**USE OF TYLENOL DURING PREGNANCY CAN CAUSE:**

- AUTISM SPECTRUM DISORDER (ASD)
- ADHD (ATTENTION DEFICIT HYPERACTIVITY DISORDER)
- NEURODEVELOPMENTAL PROBLEMS
- IQ LEVEL DEFICITS
- BEHAVIORAL ISSUES
- SLEEP PROBLEMS
- EARLY PUBERTY IN GIRLS
- MALE FERTILITY PROBLEMS




## Video Game Addiction Class Action Lawsuit

**FILE A FREE CLAIM TODAY**

You May Be Eligible For Compensation  
No Proof of Purchase Necessary

THL TorHoerman Law, LLC  
People for Justice. Justice for People.

## BABY FOOD Autism Lawsuit

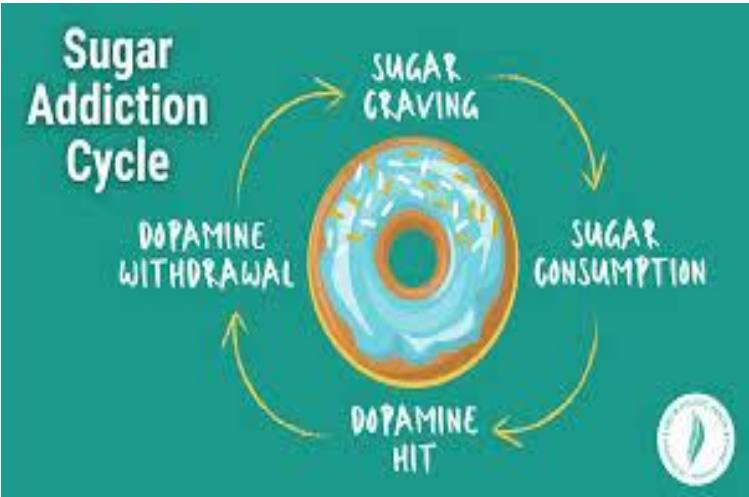






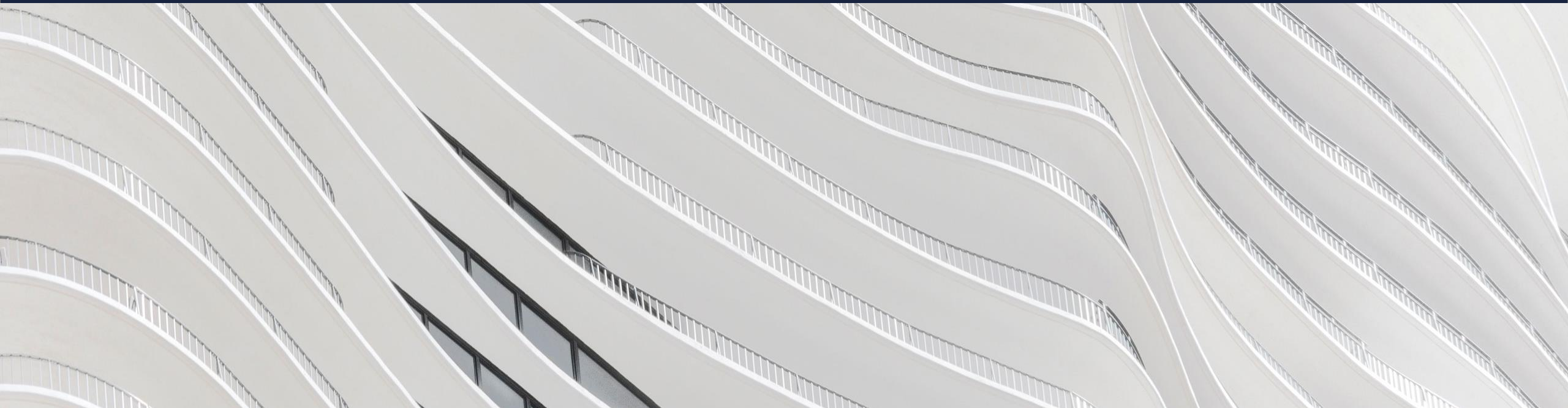
Future plastics, PFAS, and heavy metal lawsuits will likely focus on neurological impacts of exposure

Behavioral addiction claims are increasing



# Causation

*The last line of defense against frivolous neurological-based litigation*



# Plaintiffs may try to avoid traditional causation analysis through:

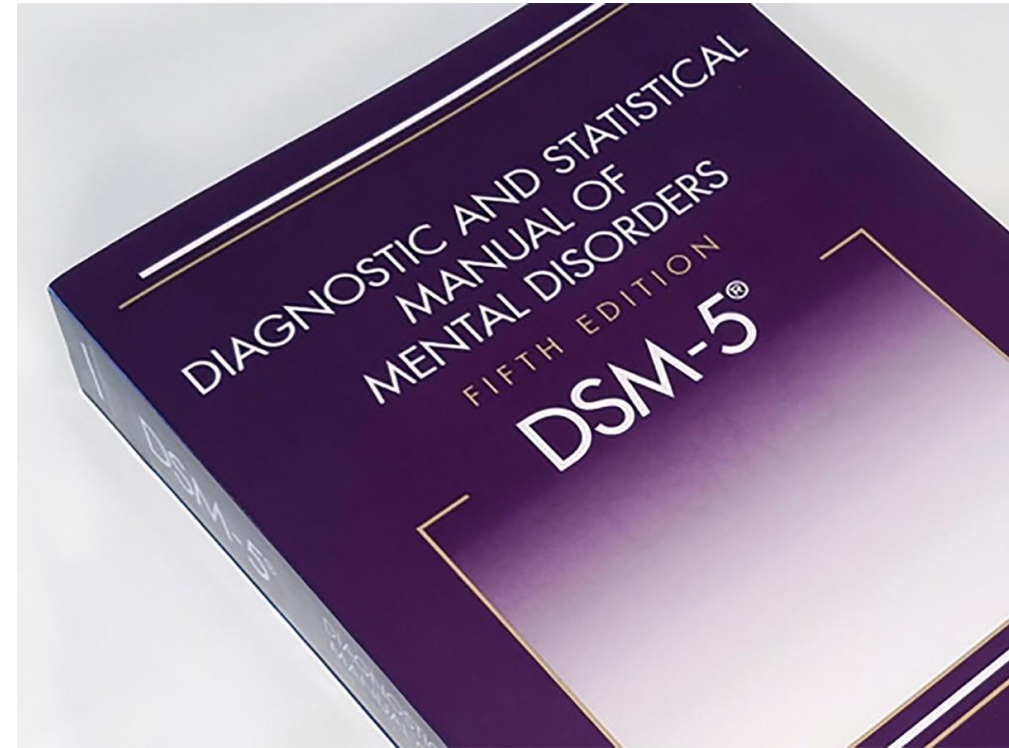
- ❖ A transdiagnostic approach
  - ✓ Emphasizes cognitive and emotional processes that underlie a variety of mental health disorders
  - ✓ Permits plaintiff to cite more studies
- ❖ Differential etiology
  - ✓ Applies the process of ruling out potential causes to achieve the desired result
- ❖ Public health standards
  - ✓ References government agency protective health standards (eg, CDC stating that there is “no safe level” of lead exposure)
  - ✓ References government action (eg, warnings about effects of social media on teens)
- ❖ Extending the “eggshell plaintiff” doctrine
  - ✓ States that the plaintiff was genetically susceptible to disease and that exposure caused it
- ❖ Weight of the evidence
  - ✓ Considers all relevant scientific evidence and draws conclusion based on majority of studies



# Challenging causation: Address failure to use clinical end point

❖ *In re Acetaminophen – ASD-ADHD Prods. Liab. Litig.*, 707 F. Supp. 3d 309 (SDNY 2023)

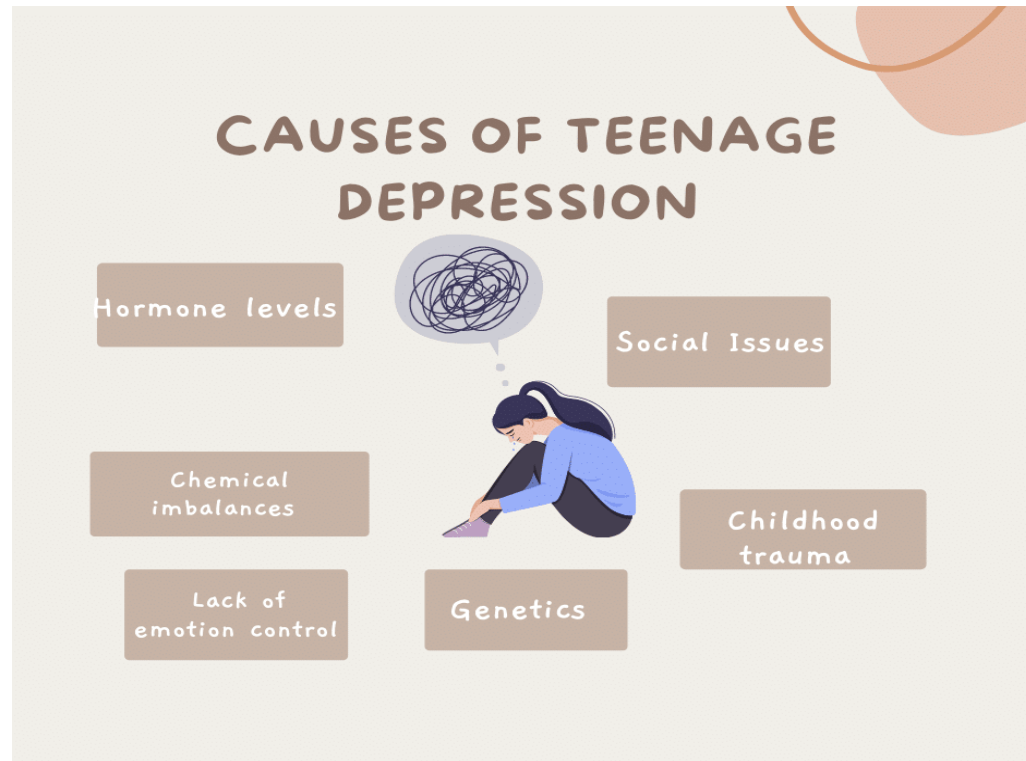
- ✓ Rejected use of transdiagnostic approach because autism is a specified disease with its own diagnostic criteria
- ✓ Criticized plaintiffs' experts for discounting some transdiagnostic studies, while accepting others



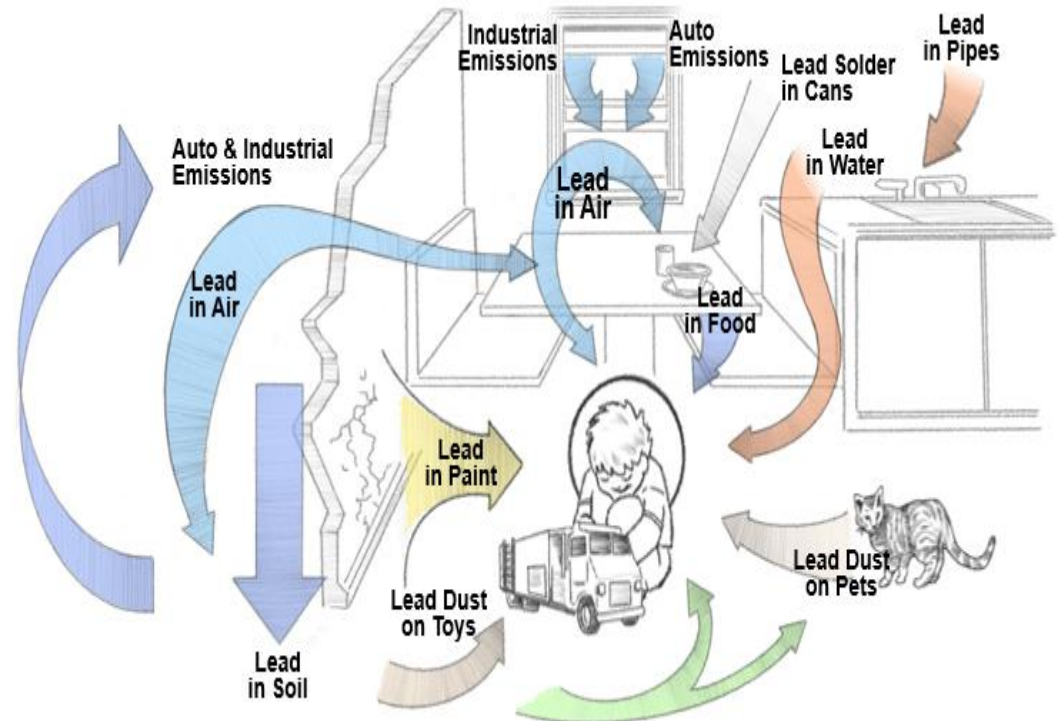
The *Diagnostic and Statistical Manual of Mental Disorders* provides separate diagnostic criteria for each identified mental health condition

# Challenging causation: Address alternative causes and exposures

- ❖ Alternative cause: Caused the injury
  - ✓ Genetics underlie many neurological conditions
  - ✓ Other causes: content, hormones, social issues, parents, and trauma



- ❖ Alternative exposure: Another source of similar exposure
  - ✓ eg, heavy metals are ubiquitous in the environment



# Challenging causation: Address exposure

## ❖ Baby food litigation

- ✓ *NC v. Gerber Products Company, et al.*
  - “It goes without saying that notions of dose are profoundly central to this case.”
  - “And the problem, the court finds, is that . . . in the absence of data, levels of heavy metals in the baby food products, which assumptions were unjustified, .... And I guess I should note, biased, dramatically upwards, the exposure”
- ✓ *Palmquist v. Hain Celestial*
  - Dismissing action after plaintiff failed to produce evidence that ingestion of baby food caused heavy metal toxicity
  - *Reversed on other grounds*



Paracelsus

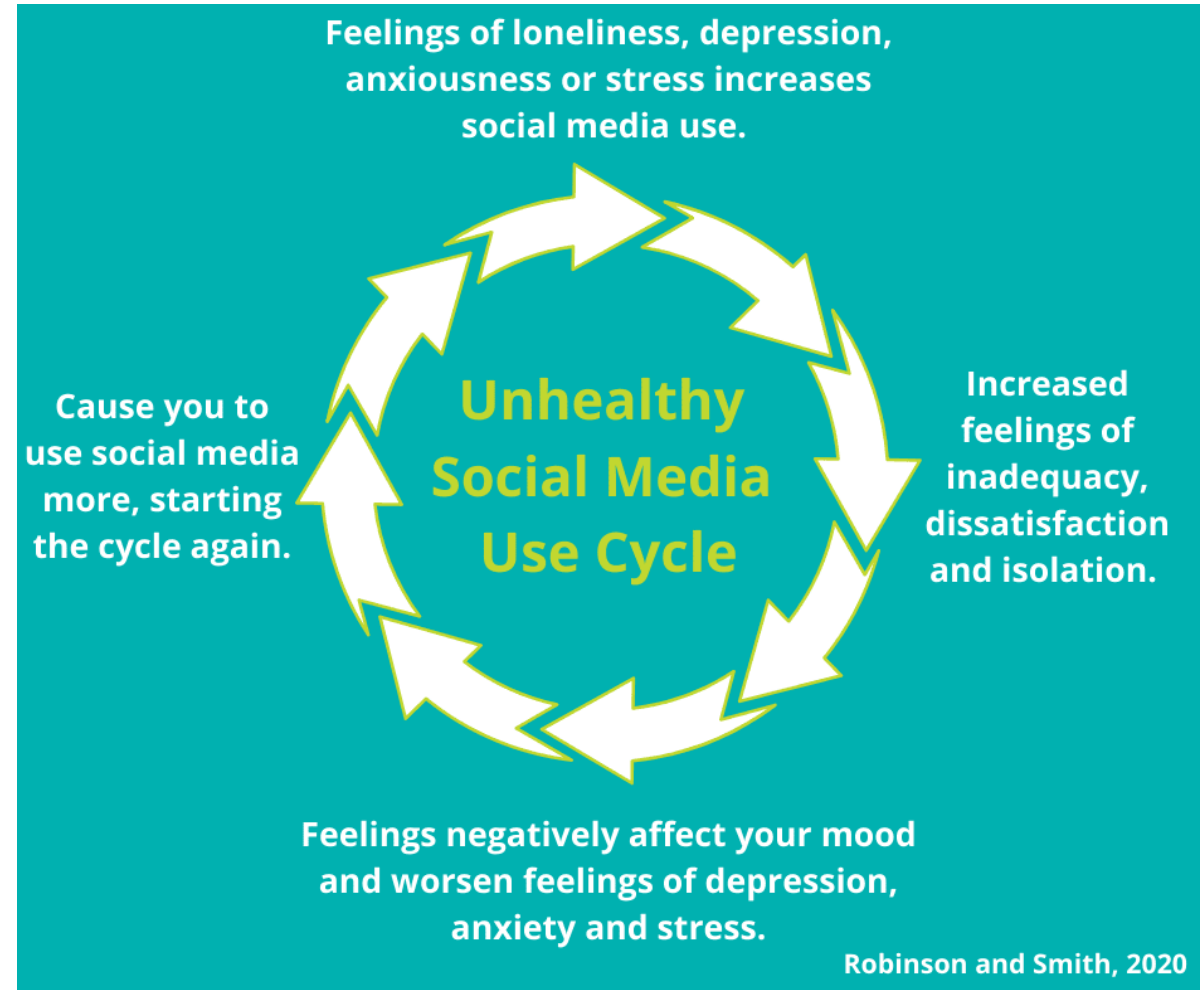
“The dose makes the poison”



# Challenging causation: Address timing of condition development

❖ What came first: the condition or the use?

- ✓ The claimed condition often predates exposure or product use
- ✓ eg, depression or anxiety may lead to lengthy use of social media and/or video games

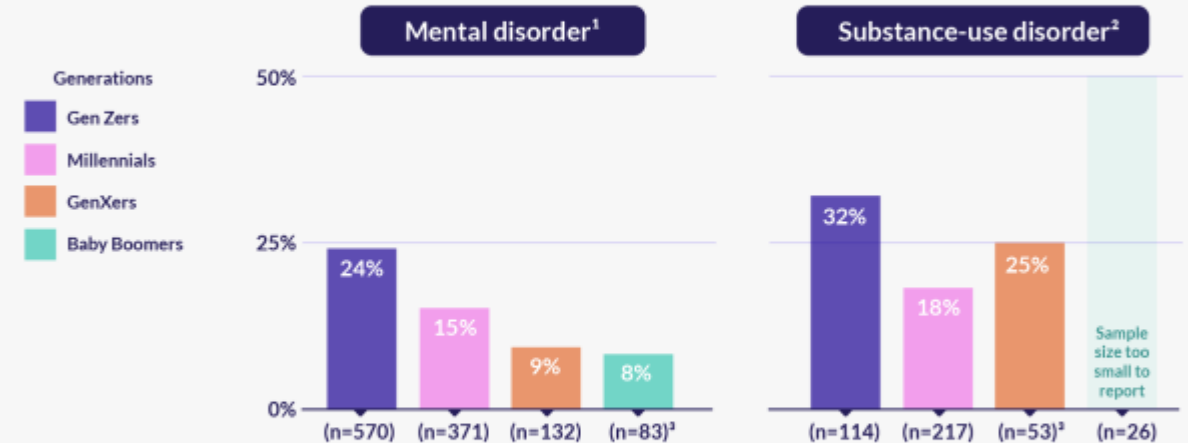


# Challenging causation: Overpathology

## ❖ What is overpathology?

- ❖ The tendency to view normal human behaviors, like depression and anxiety, as mental health symptoms
- ❖ This may occur when diagnostic criteria is applied too liberally or misapplied
- ❖ Many young people are self-diagnosing mental health conditions
- ❖ Social media and video game addiction are not recognized mental health conditions, in part because of the significant risk of overpathology

## Gen Z with self-reported behavioral-health diagnosis were less likely than those from older generations to report seeking treatment



<sup>1</sup> Eg, attention-deficit-hyperactivity-disorder, anxiety, autism spectrum disorder, bipolar disorder, depression, eating disorder, obsessive-compulsive disorder, post-traumatic stress disorder, schizophrenia, other compulsive disorders.

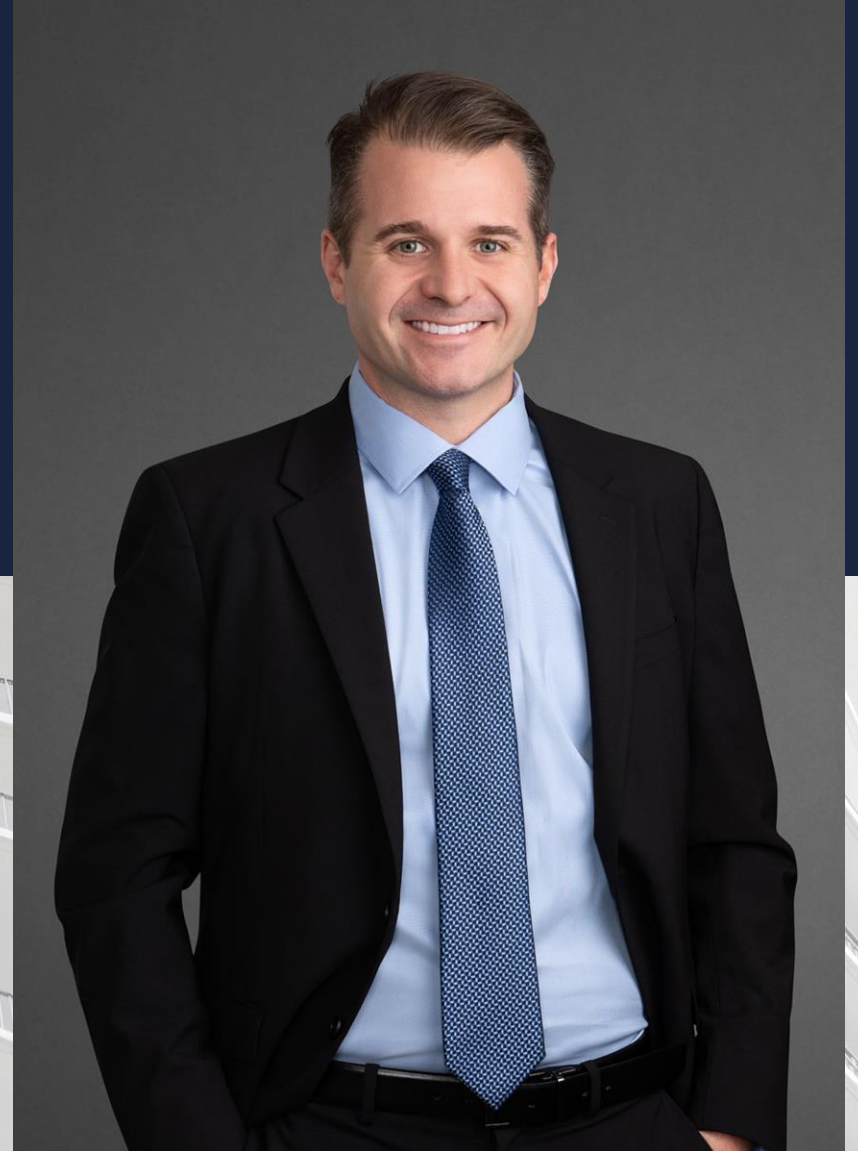
<sup>2</sup> Only respondents aged ≥21 were surveyed

<sup>3</sup> Small sample size, results directional.

Source: 2020 Healthcare Consumer Behavioral Health Survey, Nov 30-Dec 18

✚ HealthMatch

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# Thank you