

THE LAWYER ASSISTANCE PROGRAM

STATE BAR OF CALIFORNIA
2017 ANNUAL REPORT



THE STATE BAR OF CALIFORNIA
MARCH 1, 2018

Message from the Chair of the Lawyer Assistance Program Oversight Committee

2017 was an exciting year for the Lawyer Assistance Program (LAP). The year was a call to action after two large-scale studies addressing the scope of substance use and mental health issues in the attorney and law student population revealed alarmingly high rates of stress, depression, anxiety and substance use disorders.

In late 2016 the Journal of Legal Education published the results of its most recent survey of law student well being which found that more than 25% have suffered from mental health or substance abuse issues.¹ 2016 also saw the publication of a study entitled “*The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*”, published in The Journal of Addiction Medicine. There, the authors concluded that, “[a]ttorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations. Mental health distress is also significant. These data underscore the need for greater resources for lawyer assistance programs, and also the expansion of available attorney-specific prevention and treatment interventions.”²

The growing recognition that attorney well-being is integral to both competent client service and public trust energized and inspired our work. The knowledge that the problems of substance abuse and mental health issues in attorneys often begins during their law school education informed our expansion of the Lawyer Assistance Program services to the law student population. The Lawyer Assistance Program Oversight Committee is motivated by the critical goals of enhancing well-being and of preventing professional misconduct due to substance use and mental health disorders by both California attorneys and by the law students who will become the attorneys of the future.

Stewart Hsieh, JD

Chair, LAP Oversight Committee

¹ Jerome M. Organ, David B. Jaffe & Katherine M. Bender, Ph.D., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. Legal Educ., Autumn 2016, at 1, 116–56.

² Krill, Patrick R. JD, LLM; Johnson, Ryan MA; Albert, Linda MSSW, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J Addict Med. 2016;10: at 46.

Introduction

Business and Professions Code §6238 requires the Lawyer Assistance Program (LAP) Oversight Committee to report to the Legislature each year on the implementation and operation of the LAP. The report must include “information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.” This report builds on information reported in last year’s annual report, including implementation of the LAP Strategic Plan, as well as implementation of Workforce Planning Recommendations. To avoid repetition, less detail behind those plans is incorporated in this year’s report than in last year’s annual report.

An Overview of 2017

LAP began a process of self-assessment and evolution in 2016. That process has further accelerated throughout 2017 as the State Bar has worked to create a more focused and effective Lawyer Assistance Program. Building on the 2016 recommendations from the National Center for State Courts (NCSC) Workforce Planning study, in March of 2017 the LAP Oversight Committee adopted a 3-year strategic plan that addresses the goals of both improving the LAP outreach and education efforts, as well as improving the overall program design and effectiveness.³

The Strategic Plan goals for outreach and education focus on identifying the members of the legal community that are most at risk, and disseminating educational content about substance use and mental health disorders. Educational materials will raise awareness of these issues, reduce stigma, promote healthy lifestyle choices and provide information about services available through LAP. To achieve these goals, at the end of 2017 the Program created, and began to recruit for, a new full time staff position that will be dedicated to outreach and education. It is anticipated that this position will be filled by the middle of March, 2018. Additionally, the LAP contracted with a leading authority on substance use and mental health issues in the attorney population, Patrick Krill, to develop an interactive learning module that will be available as part of the new ten hour educational requirement for all new attorneys. The module is titled, “Lawyer Well-being: The Bedrock of Competence,” and it delves into substance use and mental health disorders as they relate to the unique challenges in the legal profession. The module is expected to be online in March of 2018.

The Strategic Plan goals for program design and effective intervention identify several areas of focus, including: LAP’s relationship with the State Bar’s discipline system in order to effectively identify attorneys who could benefit from LAP participation; promoting legislation that would allow bar applicants to participate in the LAP; and tracking and evaluating data. The goal of promoting legislation that

³ The 2017 Lawyer Assistance Program Strategic Plan is included as Appendix C.

would allow bar applicants to participate in the LAP was achieved with the passage of Senate Bill 36 which amended Business and Professions Code §6232 to extend eligibility for the LAP to applicants who are in law school or have applied for admission to the State Bar.

This change went into effect on January 1, 2018, and on January 5, 2018, the LAP Oversight Committee approved a recommendation to the Board of Trustees of the State Bar to amend the Program rules to conform to the change in statute. The Board of Trustees approved that recommendation at their next meeting, on January 27, 2018.

To continue to advance the Strategic Plan goals, the LAP contract with Patrick Krill also included a comprehensive program evaluation. Mr. Krill submitted his report in October of 2017 and it has provided a framework for further program improvements. The Krill report is included as Appendix A. Some key recommendations in the report include setting goals for program utilization and metrics for measuring program efficacy and client satisfaction. The Krill report also recommended engaging in efforts to promote Transition Assistance Services offered free of charge in advance of formal LAP participation, as well as providing self-screening tools on the LAP website to help individuals self-identify mental health disorders and substance use issues. All of these improvements are expected to be completed in 2018. Consistent with the NCSC workforce planning recommendations discussed below, Mr. Krill recommended eliminating or restricting the use of the Evaluation Committees to determine program eligibility. The use and purpose of the Evaluation Committee was thoroughly reviewed and on December 9, 2017, the Oversight Committee directed staff to eliminate the Evaluation Committee process for all but the Alternative Discipline Program (ADP) cases, which are referred through the State Bar Court. A pilot process to replace the Evaluation Committees has been developed and a preliminary rollout is anticipated in March of 2018. The process, and whether it can be made applicable to ADP participants as well, will be discussed at the LAP Oversight Committee's March 3, 2018 meeting.

Progress on NCSC Workforce Planning Recommendations

The 2016 Lawyer Assistance Program Annual Report included a discussion of recommendations related to LAP that were made by the National Center for State Courts in its 2016 Workforce Planning Report for the State Bar. With one exception, which requires the procurement of a new case management system, all recommendations have been fully or partially implemented, with the majority moving swiftly toward full implementation. LAP's progress implementing the recommendations can be found in Appendix B.

2017 Program Activity

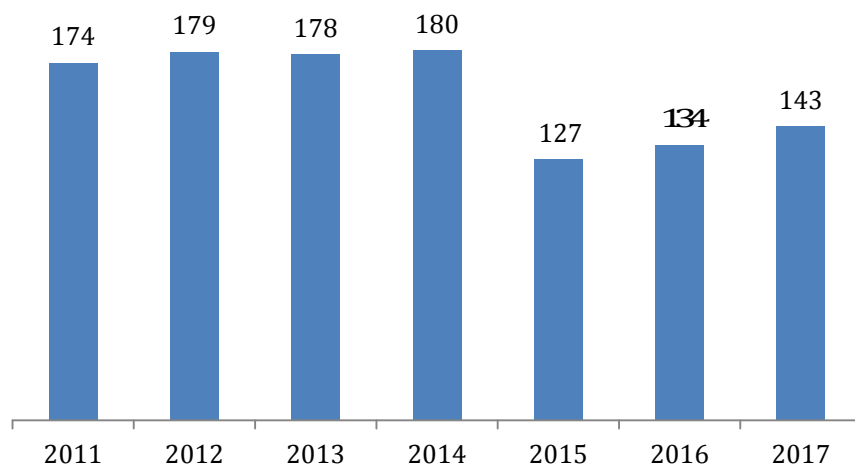
LAP Caseloads

New Cases

The number of new intakes continued to rise in 2017. There were 143 new intakes in 2017 which is an increase from both 2016 (134) and 2015 (127) intake numbers. When all the newly enrolled 2017 participants are added to the existing number of applicants and licensees who continue to participate from previous years, the overall number of individuals who participated in LAP in 2017 totals 277.

It is anticipated that with planned outreach in 2018 the Program utilization numbers will continue to grow, if only incrementally in 2018 while the new outreach efforts are in their early stages.

LAP Intakes: 2011 - 2017



Case Closures

In 2017, the LAP closed 147 cases. The reasons for case closure varied. Nearly half (over 48%) of individuals who left LAP in 2017 did so because they met their stated program goals.

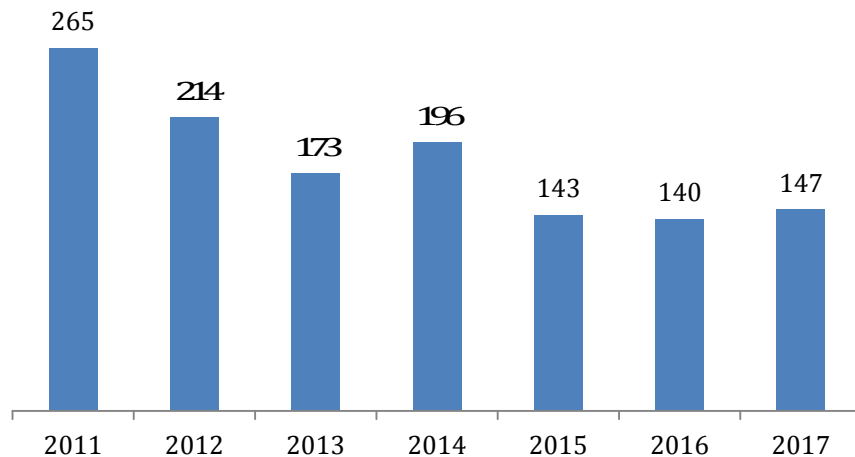
Program goals may be met in several ways. In some cases, a Bar applicant with a record of alcohol-related arrests may be referred to the LAP while their moral character application is placed in abeyance. During the period of abeyance, the LAP staff monitor and document the applicants' recovery work. When the applicants have successfully demonstrated compliance with this requirement, the abeyance is lifted by the Subcommittee on Moral Character and, upon withdrawal from LAP, the applicants are considered to have met their program goals. Participants who enroll in the Support LAP have no time requirement attached to their Program

participation and they are able to determine when they have received sufficient Support services.

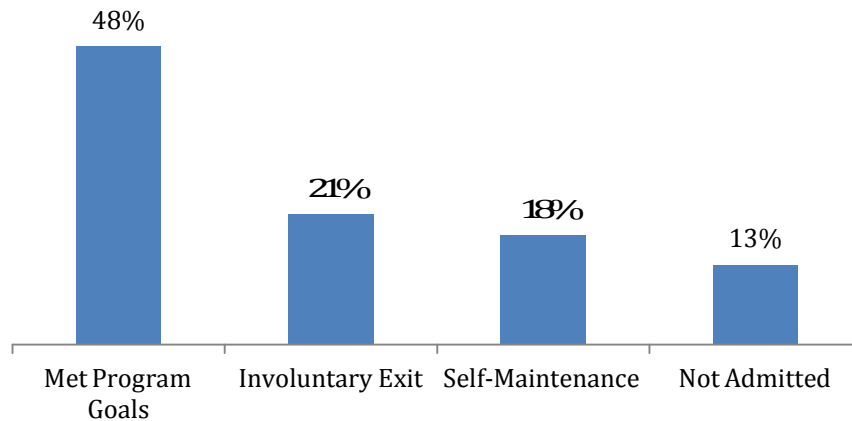
Participants are also considered to have met program goals if they enroll in, and complete, the Orientation and Assessment phase of LAP, which includes an assessment by a licensed clinician, referral to external resources and treatment providers, and up to four sessions in a LAP-facilitated support group. Additionally, those participants who meet the Program's criteria for Successful Completion (which includes a minimum of three years of continuous sobriety or mental health stability) are included in this category.

21% of case closures were considered to be an "Involuntary Exit" by the participant. This category includes those who may have discontinued contact without expressing a reason, disagreed with Program recommendations and thus chose to end their relationship with the program, moved out of state or are deceased. Individuals who expressed a plan to continue their support/recovery activities without LAP support are referred to as "self-maintenance." 18% of case closures fell into the "self-maintenance" category. Finally, 13% of closed cases did not meet the criteria for admission into the Monitored LAP. In 2017, no participants were terminated from the Program due to noncompliance.

LAP Cases Closed: 2011 - 2017



Reason for LAP Case Closure - 2017

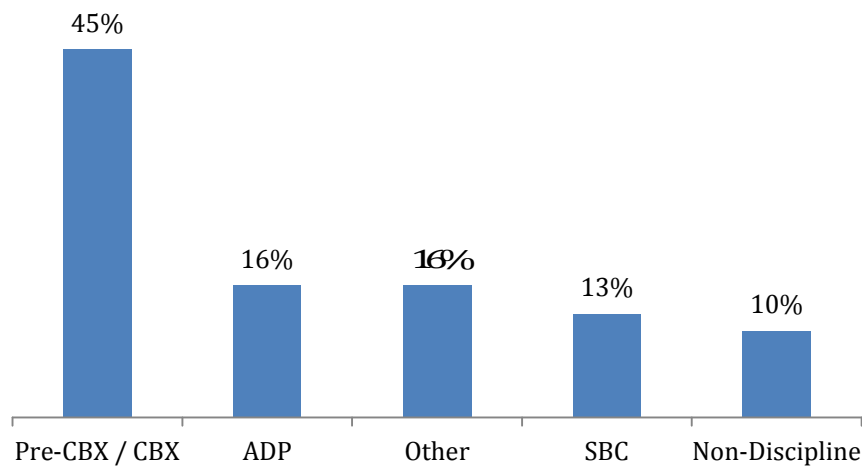


Referrals

There are many ways that participants are referred to the Lawyer Assistance Program. As noted above, a State Bar applicant may be referred to the LAP while his or her moral character application is placed in abeyance⁴ and some law students self-refer with the expectation that their LAP participation will demonstrate to the Subcommittee on Moral Character their dedication to a program of recovery.⁵ Almost half (45%) of LAP intakes in 2017 fall into one of these two categories.

Referrals from the State Bar's discipline system reached 29% in 2017. This number includes individuals who are enrolled in the Alternative Discipline Program (ADP) and those who are involved in the standard discipline process through the State Bar Court (SBC).

Source of LAP Referrals - 2017

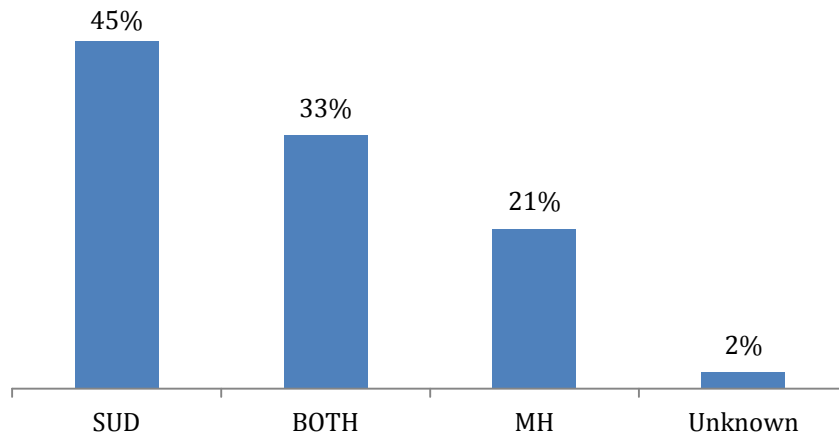


⁴ This population is captured in the Source of Referrals graph as "CBX."

⁵ This population is captured in the Source of Referrals graph as "Pre-CBX."

A tally of the presenting issue at intake shows that the majority (78%) of participants present with a substance use disorder: 45% came to the LAP with solely a substance use disorder (SUD) and 33% have both a mental health (MH) and a substance use disorder. 21% of participants in the LAP are enrolled exclusively for mental health issues. 2% did not identify an issue at intake.

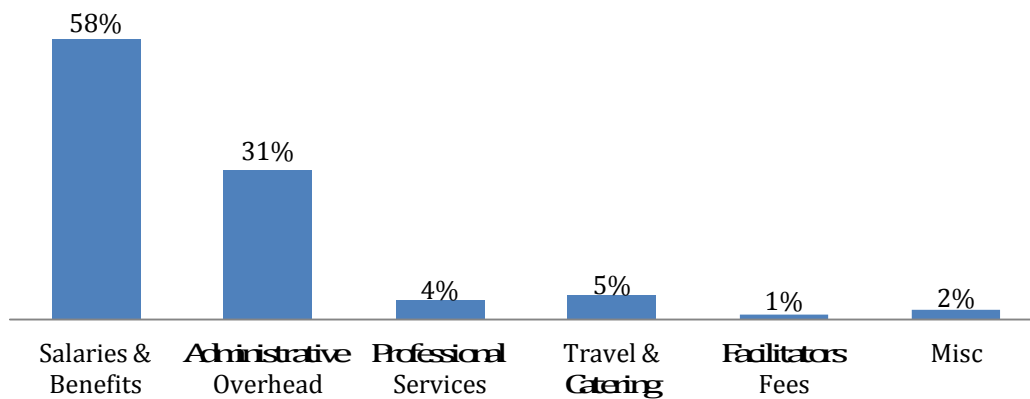
Reason for LAP Participation - 2017



2017 Expenditures

In 2017 LAP expenditures were approximately \$1.5 million. Salaries and benefits plus administrative overhead amounted to 89 percent of the expenditures. The remaining expenditures included professional services, travel and catering for both Oversight Committee meetings and Evaluation Committee meetings, facilitator fees and miscellaneous expenses such as telephone, office supplies, and postage. (Note that percentages may not total 100 due to rounding.)

LAP Expenditures 2017 - \$1.51 Million





KRILL STRATEGIES
TRANSFORMING THE LEGAL PROFESSION

The California Lawyers Assistance Program: Opportunities for Growth and Improvement in a Time of Need

A review of current processes for Monitored and Support LAP



I. Introduction:

As part of the LAP's efforts to implement the Strategic Plan adopted in March 2017, Krill Strategies was hired for the purposes of developing and producing educational content, and to conduct a process review of the Monitored and Support LAP programs. The purpose of the process review was to assess the efficacy of the current program design and to offer, as warranted, concrete recommendations for improvement of functioning, enhancement of services, and increased program utilization. As part of this undertaking, I reviewed a comprehensive binder of materials provided by LAP staff which included policy and operations documents for the LAP, intake and assessment forms, and informational materials about the purpose, scope, and structure of the LAP. I also reviewed the three most recent annual reports of the LAP, as well as the LAP-specific pages of the State Bar website, and conducted in-person interviews of staff members Doug Hull and Michelle Harmon. This report outlines the key findings of that review and the recommendations that emerged as a result.

Although the various components of the Monitored and Support LAP programs subject to review were clearly defined and neatly delineated, and thus the scope of the review seemingly well-bounded with clear parameters, any meaningful evaluation of the program's functioning was not possible without consideration of broader issues related to the LAP's overall purpose, history, goals, and mission. Similarly, consideration of best practices and national trends in both the legal and behavioral health fields was essential to developing recommendations that will best serve the LAP now and in the future. In other words, the various components of the LAP programs do not exist in a vacuum, and therefore could not be properly evaluated in isolation, as either freestanding concepts or independent practices unrelated to broader contexts and implications. As such, this report incorporates ideas and considerations that may extend beyond the historically perceived ambit of the LAP, and the way it has both inwardly viewed and outwardly presented itself. In a sense, therefore, several of the recommendations that

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follow should be rightly understood as a call for the LAP to reimagine and reorient itself, to aim higher and ultimately perform better.

From a timing perspective, the LAP's efforts around implementing a new Strategic Plan and generally improving its level of functionality could not be more opportune. Beginning in early 2016, the spotlight on attorney addiction, mental health problems, and general lack of well-being has increased significantly as the result, primarily, of the publication of the first [national study](#) of the issues in *The Journal of Addiction Medicine*. That study, in tandem with a smaller but significant study of [law student well-being](#) also published in 2016, made clear that the rates of personal dysfunction in the legal profession are both alarming and widespread. Beginning in law school and continuing into all phases of practitioners' careers, problem drinking, depression, and anxiety are plaguing would-be and current members of the bar at levels which have prompted heightened attention and increased action on both the national and state levels. Among the steps being taken at the national and state level are changes to CLE requirements, revisions to ethics guidelines, and the formation of working groups, committees, and task forces to search for solutions and implement change.

At the forefront of the new and growing momentum to reduce addiction and mental health distress in the legal profession, a National Task Force on Lawyer Wellbeing was formed by a collection of entities including the American Bar Association, the National Conference of Chief Justices, the National Conference of Bar Examiners, the Association of Professional Responsibility Lawyers, and numerous other key groups. In August of 2017, the Task Force published a [groundbreaking report](#) of recommendations for all stakeholders in the profession, which included a focus on the pivotal role and primary importance of lawyer assistance programs in addressing the profession's addiction and mental health problems. As one of the largest, most visible, and important State Bar Associations in the country, it is crucial that California not fall further behind other states' ongoing efforts to augment and more highly prioritize the work, funding, and overall profile of their lawyer assistance programs.

II. Overarching Considerations

A. Identity of the LAP

Chief among the “big-picture” considerations with which the LAP must grapple is, essentially, a question of identity. Currently, the LAP is situated as a resource for those members of the State Bar who either independently wish to avail themselves of support for addiction, mental health, and other problems, or those who have been directed to seek such support and provide documentation of its receipt. This mixed constituency presents a threshold, and potentially irreconcilable, tension between housing discipline-related LAP participants and referrals under the same roof as voluntary self-referrals. Experience and research demonstrate that fear of disclosure and discipline keeps many legal professionals and those close to them from seeking help from agencies that may be perceived to be court or bar related.

To overcome this fear for the purposes of attracting voluntary self-referrals to the LAP, the LAP must not only guarantee confidentiality, but that confidentiality must be widely advertised. Even presented with such guarantees of confidentiality, however, many lawyers will still not trust an agency that is part of the State Bar to help them with private matters such as addiction or mental health disorders. In short, the intensely personal and potentially embarrassing nature of their problems make many lawyers skeptical that firewalls between the LAP and the State Bar are adequate for preventing a breach of confidentiality and the damage to their professional reputation that could ensue. Irrespective of the merits of such fears, they are real, pervasive, and dis-incentivizing for many in the legal community to step forward and get help.

This dichotomy between being a resource for voluntary self-referrals and the entity responsible for monitoring discipline-related referrals also highlights the fundamental tension between being a consumer-focused agency and one focused on serving the State Bar as its client. In everything from marketing materials and strategy, to overall philosophy and ethos, to the mechanics of service delivery and metrics for performance evaluation, there is a significant

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difference between an agency that is “public” - facing and one that is geared more towards the goals, priorities, and culture of intra-organizational clients.

Further examination and evaluation of these tensions and potential conflicts is recommended, with an eye towards seeking greater alignment between seemingly divergent interests. In the interim, my recommendation is to outwardly de-emphasize the relationship between LAP and the State Bar Court, ADP, and OCTC, and greatly increase focus on the voluntary, self-referral aspect of the program. An additional interim recommendation is for the LAP to view itself more as a consumer-focused agency, and to place greater emphasis on customer service, performance, and accountability. Part of this shift will include viewing its services and processes through the eyes of their “customers” (who are likely experiencing significant fear, shame, and guilt) and developing a more welcoming, user-friendly image along with strategies aimed at positive outcomes and client satisfaction.

B. Telehealth, apps, and the future of behavioral health services.

With the growing emergence of telehealth products, providers, and services, substance use and mental health treatment is undergoing transformation of sorts, as an increasing number of Americans turn to their computer screens or smartphones to help them overcome behavioral health problems. In recent weeks, an app for treating substance use disorders was approved by the FDA for the first time, joining scores of mental health apps that are already available or coming to market soon. Additionally, highly interactive websites, secure patient/client portals, and video conferencing are all increasingly common in the behavioral health field. Though the full and long-term impact that technological advances will have on addiction and mental health treatment remains to be seen, it is clear that, on the whole, treatment methods and service delivery mechanisms are changing. It is imperative that the LAP remain as current and abreast of technological trends as possible if it is going to emerge and subsequently remain as a viable and appealing option for struggling and impaired lawyers to seek help in the years to come.

C. Stigma

Recent years have brought a far greater national emphasis on ending the social stigma associated with mental health and substance use disorders. Mental health advocates and advocacy campaigns have been growing in number and visibility, and we are closer to a normalization of help-seeking than we have ever been. Unfortunately, nothing in LAP program design or materials speaks directly to that issue, or seeks to actively eliminate the stigma associated with addiction and mental health problems in the legal profession. While this topic is generally beyond the scope of this report, I note it as something that should be closely examined. The LAP should look for ways to be at the forefront of reducing addiction and mental health stigma for lawyers, judges, and law students. Clearly, there is a line between functioning as a lawyer assistance program and functioning as an advocacy group, but it is less clear where that line in fact is, and it is likely further into the realm of advocacy than the LAP may currently perceive. Many state lawyer assistance programs are working diligently to change the legal culture in their jurisdictions as it relates to stigma and help-seeking for addiction and mental health problems, and the California LAP should seek to emulate and replicate many of those efforts.

III. Specific Recommendations

1. The LAP needs clearly defined goals and targets. There do not appear to be any set goals for program utilization, or any benchmarks or metrics for measuring program efficacy, success, and client satisfaction. To achieve better results, these goals and targets should be developed in a timely manner, and the program's success in reaching them regularly monitored.
 - a. A comparative analysis is useful in this regard, and the recommendation is for the LAP to assess how its program utilization rate compares to other states around the country that are similarly situated in terms of state attorney population, program budget, staff, etc., though few states approximate the same

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density of attorney population as California. For purposes of this initial report, a rough comparison was made to Illinois, a state with a mix of a large urban, suburban, and rural attorney population. Overall, Illinois has approximately 40% as many attorneys as California, yet served more than twice as many LAP clients last year. The majority of those (55%) were self-referrals, another 30% were referred by colleagues or family members, and only 5% were discipline-related referrals.

- 2** The LAP should be conducting ongoing program evaluations to measure client progress and satisfaction, and to better understand program strengths and weaknesses and implement modifications as appropriate. There does not currently appear to be any such ongoing feedback mechanism, and instead LAP participants are only asked for feedback upon graduation from program. Not only would such evaluations allow LAP staff to make substantive program improvements as needed, they would also demonstrate to LAP participants that the program is committed to providing the best possible service and being responsive to participant needs. Finally, the therapeutic value of allowing clients in this sort of setting to “feel heard” can be significant.
 - a. For example, it is difficult to meaningfully evaluate the efficacy of groups or group facilitators in the absence of some survey data. Anecdotal evidence of how well groups are working is not adequate. The groups seem like a valuable resource, and indeed are valuable in concept, but their ongoing execution needs to be evaluated.
 - b. BSI. (Brief symptom inventory). This instrument is currently administered at intake only, whereas it was intended to track participants’ progress. Ideally this or a similar instrument could be used to assess progress, program efficacy, and symptom remission.

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- 3.** The Transition Assistance Services component of the LAP’s services should be more widely advertised and promoted. Short-term and career counseling services are highly valuable resources for attorneys, and could conceptually be viewed as “loss leaders” for the LAP to attract clients and familiarize more California attorneys with the organization’s services, structure, and staff. Providing short-term and career counseling can also serve a prophylactic purpose, functioning as an early intervention for people who may be in the first stages of dysfunction or otherwise facing short-term challenges that have not yet grown into significant or diagnosable mental health or substance use disorders. Helping these individuals early will ultimately reduce the number of impaired attorneys in the state and therefore provides an important public protection function.
- 4.** The Lawyer’s Assistance Program *must* have its own website that is not part of the broader State Bar site.
- 5.** Brief screenings (for both mental health disorders and problematic substance use) should be available on the LAP’s website. These would not be diagnostic instruments, but rather simple screens or quizzes to help individuals understand whether their behaviors and symptoms warrant further evaluation from a licensed professional. Additionally, potential LAP applicants should be able to initiate the intake process or request an appointment online. It is important to allow people to begin engaging/interacting with the LAP from the comfort and privacy of their iPad.

 - a. It is also important to note that younger attorneys have been making up a greater percentage of referrals, and research shows that they are also at the highest risk for problem drinking and mental health distress. The LAP should strive to be “on their page” with current and technologically adequate resources, including a more interactive website, and a social media presence that regularly disseminates articles of interest and other resources.

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- 6.** The fee structure for the LAP should be evaluated for both value and competitiveness. (\$250 month, plus lab fees, all medical fees). Participants complain about the fees, and a determination should be made as to the fee structure's necessity and appropriateness. Furthermore, the LAP should attempt to better understand the extent to which fees have been or are a barrier to greater participant enrollment.
- 7.** The Evaluation Committee should be eliminated entirely, or its use restricted to those who are in the LAP as the result of some involvement with discipline. As currently structured and executed, the Evaluation Committee process is cumbersome, opaque, and inefficient, all without adding a corresponding level of value to offset its drawbacks. Furthermore, the mere existence of such a process, in and of itself, sounds daunting (the need for participants to "go before an evaluation committee") and participants lack clarity about what to expect from the committee process. Furthermore, as has been discussed, fears about program confidentiality are significant barriers for lawyers who may need help. The prospect of having one's intimate and personal struggles "aired" to a committee of volunteers (and complete strangers), with whom no rapport or therapeutic alliance exists, would likely be horrifying to many lawyers, judges, or law students exploring voluntary participation in Monitored LAP. A chilling effect on voluntary, self-referrals to the LAP is all but certain as a result, and has likely been occurring for as long as the Committee structure has been in place. Such a chilling effect must be avoided at all costs, due not only to the already low levels of program utilization, but also because monitoring has been proven to significantly improve outcomes related to addiction recovery. To the extent that prospective participants are "scared off" from the Monitored LAP program due to its current structure, the potential for more positive outcomes is diminished, as fewer people will avail themselves of an otherwise highly efficacious tool for their recovery.

 - a. Additionally, the lack of trainings, standards, and accountability for the Evaluation Committee is very concerning. All members are volunteers who

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receive an orientation packet, but no formal training. A determination should be sought as to whether this lack of training and ultimate lack of “ownership” over Committee decisions raises administrative due process concerns for any LAP participant who faces career, licensure, or financial consequences because of an Evaluation Committee decision.

- i. Of particular concern are the facts that: recommendations made by the Evaluation Committee are effective immediately; in cases where the Evaluation Committee terminates participation, the same Committee determines the requirements for future application to the LAP; while there is a review process, it does not delay the termination decision.

8 The LAP should unofficially collaborate or otherwise develop relationships with treatment providers and mental health professionals who specialize in or regularly treat lawyers. The lack of such relationships deprives the LAP of countless potential referrals, as therapists and treatment providers frequently seek to include additional resources (especially profession-specific resources) in their patients’ continuing care recommendations or overall treatment plan. (Here, again, it is essential to have an approachable and thoughtfully-designed monitoring program that providers could incorporate into their continuing care recommendations to help their patients maintain the recovery and stability that may have been initiated during treatment/therapy.)

9 Similarly, the LAP should develop and maintain an approved list of treatment providers and vetted resources that is available to members of the State Bar. The LAP could develop a survey that could be circulated to treatment providers and mental health professionals to vet them and solicit key program information to determine if certain criteria are met, thereby allowing them to be added to the LAP list of preferred providers. Obviously, the LAP will want to avoid the practice or appearance of partiality

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to one treatment provider; the goal is to develop a comprehensive list and be able to provide lawyers with as many quality options as possible.

10. The LAP should offer additional drug and alcohol testing options. Currently, all Monitored LAP participants are required to use the same company for drug and alcohol testing, a company which relies primarily (if not exclusively) on urine testing. Many options exist for accurate and reliable drug and alcohol testing beyond urine sampling, and more of those options should be available to Monitored LAP participants. For example, Soberlink is a portable breathalyzer test that is both convenient and accurate, and could present an appealing, affordable, and non-disruptive testing option for LAP participants struggling with or requiring testing for alcohol only.

11. The LAP should develop more targeted resources for solo practitioners, especially those in outlying or rural areas who cannot easily attend facilitated groups. Solo or small firm practitioners make up a disproportionate percentage of LAP participants (nationwide, not just in California) and the organization should be more directly responsive to their needs. Not only do solo and small firm practitioners have less available resources than their counterparts in larger firms, government, or corporate settings (such as extensive benefit plans or employee assistance programs), they also face far more barriers to treatment as a result of lacking the same level of backup or support as lawyers in those other settings might. For many solo practitioners, seeking treatment means abandoning their practice and their clients for a period, and potentially causing catastrophic damage to their finances. It is not hard to understand why so many attorneys in that situation choose to forego seeking help for as long as possible. Finally, most discipline-involved attorneys tend to be solo or small firm practitioners, and many of them struggle with substance use or mental health disorders. By reaching more solo practitioners and providing them with greater resources, the LAP will in effect be performing an important public protection function.

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- 12** The 102-question, 21-page intake form is excessive and tedious. This document should be shortened and streamlined, with any redundancies and non-essential questions eliminated.
- 13** The intake assessment and other documents require a general refresh/update in order to be current with contemporary clinical terminology. All documents should then be reviewed to ensure internal consistency throughout. (For example, “substance abuse” is no longer a preferred term of art; Axis I and II are no longer current terminology. etc.)
- 14** The use of well-being monitors should be revived and reinvigorated. This concept offers significant value for newly recovering attorneys and could, in theory, provide the type of extra accountability and support that would help such individuals avoid relapse in those critical first 12-18 months of abstinence. It is not clear to me why the well-being monitor component of the program became defunct, but efforts should be made to resuscitate it and, if necessary, retool any aspect of the process that was not previously successful.
- 15** A better working relationship and stronger alliance between the LAP and the Other Bar would be highly advantageous. Peer support is very important in the recovery process. To the extent that LAP participants have access or are otherwise introduced to a broader pool of other attorneys in recovery, the better their chances of experiencing less stigma, fear, shame, and guilt. The fellowship and camaraderie that some LAP participants would experience through involvement with the Other Bar would likely enhance their odds of maintaining their recovery and successfully completing any LAP programs in which they may be participating.

IV Conclusion

The California Lawyers Assistance Program is in a period of transition as it seeks to implement and fully realize a new Strategic Plan. Although faced with many dilemmas, including low levels of utilization, the Program has many existing attributes and characteristics which provide a strong foundation upon which to grow and realize its full potential. Stable and adequate funding, clearly articulated goals and targets, an ongoing commitment to self-improvement, and an emphasis on removing outdated or unnecessary barriers to greater utilization will all be key ingredients to the LAP's future success. By redoubling their focus on improving the LAP's functionality and performance, the State Bar and the LAP Oversight Committee can ensure that the LAP rises to the many challenges that substance use and mental health disorders continue to pose to the profession, and ultimately the public they serve.

By: Patrick R. Krill, JD, LL.M, MA, LADC

Date: October 6, 2017

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Details of Workforce Planning Recommendations

Recommendation	Detail	Status
1. The Bar should engage in a strategic planning process for the LAP to determine whether LAP is to be reactive, responsive, and corrective to issues faced, or proactive, by advertising services and sponsoring workshops and orientations about attorneys' stress, addiction, and mental health issues. This planning process should include an assessment of the current monitoring approach undertaken by the program, which is more administrative than clinical. Lastly, a determination regarding the target client population for the program is needed.	<p>The strategic planning process is complete. The Strategic Plan (attached as Appendix C) identifies two main prongs of activity for the LAP: 1) education and outreach focused on law students, young attorneys and those at the end of their careers and; 2) program evaluation and ongoing program improvement using evidence-based models for the treatment of attorneys with substance abuse and mental health issues.</p> <p>An assessment of the monitoring program was completed by Patrick Krill in October of 2017.</p>	Implemented
2. Once program purpose is established, reassess delivery model to include analysis of feasibility of contracting out LAP services. This would entail determining which functions should go to one or more contracted providers for program operations, participant oversight, ongoing monitoring, and reporting to a designated Bar manager. It would also require clear definition of which administrative and support tasks would remain within the Bar, if any. If clear performance expectations are embedded in a contract, it may make it easier for the Bar to hold contracted staff to a performance standard. A full risk assessment and review needs to occur, coupled with a cost-benefit analysis, and determination to what degree Bar executive leaders will be able to oversee work of one or more LAP contractors.	Discussions on the delivery model took place at several Oversight Committee meetings, including the public meeting to hear testimony from stakeholders. In 2017, the Governance in the Public Interest Task Force recommended a review of various State Bar sub-entities. With regard to the LAP Oversight Committee, the Taskforce specifically recommended that the Bar review whether LAP is appropriately situated within the Bar. This review, along with the review of all other sub-entities recommended by the Taskforce, will be completed by the end of August, 2018.	Partially implemented
3. Adjust staffing based on caseload requirements.		
3A. Application of drug court staffing standards suggests that the recommended range for a Case Manager caseload is 45 to 50 cases. These caseload levels can be achieved by reducing one Case Manager position. In lieu of elimination, however, this position should be converted to a Case Manager Supervisor. The Supervisor position should be based in Los Angeles.	In February of 2017, one Case Manager position was converted to a Case Manager Supervisor based in Los Angeles. Staffing levels will be evaluated by management on an ongoing basis as Program needs require.	Implemented
3B. The size of the program does not warrant both a Supervisor and a Director; the Director position should be eliminated or re-purposed accordingly.	Initially, the Bar put in place a single Director/Manager over both Probation and LAP. With the overall reorganization of the leadership of the State Bar, both LAP and Probation were organized into a single office – Case Management and Supervision. Both	Implemented

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Recommendation	Detail	Status
	report to the Chief of Programs. As a result, the Director/Manager position was eliminated, and both LAP and Probation are headed by supervisor positions, reporting to the Chief of Programs.	
3C. In addition, one Case Manager position should be redeployed to San Francisco to address delays in serving clients in the Northern part of the state.	One Los Angeles Case Manager position was moved to San Francisco and was filled in May of 2017.	Implemented
4. Identify what within LAP is clinical and what is monitoring, ensuring that Case Managers perform clinical, as opposed to monitoring, activities wherever possible. If the program design does not require the current level of clinical staffing, transition away from a requirement that all Case Management staff hold clinical degrees.	Strategic plan includes a major component devoted to the on-going evaluation of program efficacy. This will be monitored by the LAP Oversight Committee on an ongoing basis. As a component of the Classification and Compensation analysis, the position formerly titled "Case Manager" was re-classified as "Clinical Rehabilitation Coordinator". The Clinical Rehabilitation Coordinator position does not include a clinical license as a minimum qualification.	Implemented
5. LAP should evaluate the differences in monitoring actions required for cases in various phases, and consider establishing differentiated monitoring practices. A three tiered program is specifically recommended as follows: A Expedited LAP (or "LAP light") – a simplified and expedited program to provide information and resources for those applicants with less risk. Include initial intake and personal meeting, and referral for self-directed support, with no ongoing staff interaction. Key objective of this track: simple information provision. B Modified LAP – a program to provide information, resources and support activities (e.g., group meetings, program referrals) with minimal LAP oversight. Key objective of this track: summary oversight. C Monitored LAP – a program to provide the full array of LAP support and monitored functions to include ongoing group participation, testing and reporting. Key objective of this track: structured oversight and accountability by the participant. For Modified and Monitored LAP, the duration of time in the program should be identified based on assessed needs; a blanket participation period of three years should be discontinued."	LAP currently operates a three tiered program, starting with the Orientation and Assessment (O&A) which offers a professional mental health assessment, referrals, and an opportunity to experience participation in the LAP without making a longer-term commitment to the program. The next tier is Support LAP which also provides a professional mental health assessment and referrals, and includes open-ended Program participation. Although not formal monitoring, Support LAP involves a component of oversight by LAP staff and the ongoing support of a LAP Group Facilitator. The final tier is Monitored LAP which provides the full array of LAP support and monitoring functions (including testing and reporting). Monitored participants are regularly reviewed by the staff so that monitoring recommendations may be adjusted based on assessed need. Neither Support nor Monitored LAP require participation for a specified duration of time.	Implemented
6. Combine processes and forms for LAP intake, interviews, and program plans. Move manual	A review of clerical and clinical duties was done with staff to eliminate duplicative work.	Partially implemented

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process to automated actions. Program administrative and clerical support functions should be evaluated to determine which are best conducted by the Case Managers, which are best conducted by the Program Coordinator, and which are best conducted by the Administrative Assistant.	Specific process reevaluation is part of the strategic plan regarding program design and development.	
7. In addition, technological solutions are needed. For example, a quality assurance report should be developed in LAPIS in which cases with approaching or elapsed deadlines are automatically flagged for action by the Case Manager.		Implementation requires the development or procurement of a new case management system
8. A thorough review should be conducted of the use of the Evaluation Committee, to determine if it is needed as a review entity, or whether it can be eliminated, including: <ul style="list-style-type: none"> •Assessment of whether the time and preparation activity required to support it justifies its use and demonstrates a return on investment for program operations; •To what degree it performs a role of review and monitoring support for program participants; •The need to have the Committee provide a level of gravity and seriousness to approval for program participation; •The degree to which it is following clear policies and objectives; and •The level to which the Evaluation Committee has any direct ownership or responsibility for participant outcomes. 	Discussions about the Evaluation Committee took place at several Oversight Committee meetings. Although the Oversight Committee expressed general support for the Evaluation Committee model, it also recommended that the use of the Committee be evaluated along with the overall review of program delivery. In December of 2017, the Oversight Committee adopted a motion to phase out the Evaluation Committee process for all participants, with the exception of those who are enrolled in the Alternative Discipline Program (ADP). A pilot program to replace the function of the EC has been proposed with expected implementation estimated in March of 2018. Additionally, it has been recommended to expand the elimination of the ECs to include those participants who are enrolled in ADP. The Oversight Committee will consider this expansion at the March 3, 2018 meeting.	Implemented
9. Data on the number of Evaluation Committee meetings held and the number of cases heard at each meeting should be tabulated and published along with the number of cases with sufficient information for program conclusion and the number of cases in which the Evaluation Committee requested or required further action by a) the program participant, b) the Case Manager, or c) some other requested follow up.	With the elimination of the Evaluation Committee process, this recommendation is no longer applicable.	N/A
10. Data Collection and Reporting		
10A. Specific case issues should be tracked, including the reasons for referral (substance,	Specific case issues are being tracked as indicated and additional metrics regarding	Implemented

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<p>mental health, crisis), the numbers of incoming calls to the LAP phone lines, the sources of referral to LAP (voluntary-Bar member, voluntary-Bar applicants, SBC ordered, CBX referred) senior or elder lawyer needs, needs by active/inactive/suspended status, and the number of cases assigned to each case manager and to any contract case management staff, as well as any additional categories related to client needs identified by staff.</p> <p>10B. Performance targets for task completion should be developed (e.g., case manager return call to applicant within one hour, conduct of face-to-face intake meeting within one week, referral to weekly support meeting with participant attendance within one week of intake meeting).</p> <p>10C. Information on outreach activities should be documented and published (e.g., presentations and briefings for parties external to the Bar) to include the number of events, the audiences, and the nature of inquiries and topics discussed."</p>	<p>outreach activities will be documented when the new outreach commences.</p> <p>Strategic plan includes a major component devoted to the on-going evaluation of program efficacy. This will be monitored by the LAP Oversight Committee on an ongoing basis.</p>	
<p>11. Improve payment compliance. Attentiveness to financial assistance program payment compliance should be increased through a quality assurance program to run reports on cases either coming due or with upcoming payment deadlines.</p>	<p>Analysis of LAP debt has been conducted concurrent with work that the Bar is doing to improve payment compliance on reimbursement to the Client Security Fund and Court-ordered obligations of respondents. The confidentiality of the LAP makes it impossible to treat this debt in the same manner as other debt obligations (for example, placing liens on property).</p> <p>In July of 2017 LAP's contract with a collection agency was cancelled in order to shift to internally managed collections. Additional work will be done in 2018 to re-evaluate methodology and to improve compliance.</p>	<p>Partially implemented</p>

THE LAWYER ASSISTANCE PROGRAM

STRATEGIC PLAN

FROM MARCH 2017 TO MARCH 2020



THE STATE BAR OF CALIFORNIA
ADOPTED MARCH 4, 2017

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STRATEGIC PLAN DEVELOPMENT

This Strategic Plan was developed and adopted by the Lawyer Assistance Program (LAP) Oversight Committee to guide the work of the LAP and ensure that the LAP functions as intended under Business and Professions Code 6230. The LAP was established “to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency” and to see that “attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.”

Members of the Oversight Committee adopting this plan are:

Stewart Hsieh, J.D., Chair
Andy Besser
Robert Burchuk, M.D.
Kellie M. Condon, PH.D.
Justin Delacruz
Sara Ramirez Giroux
Jason Kletter, PH.D.
Tracy LeSage, J.D.
Terry Lewis
Philip M. Spiegel, MD
Hon. Judge Lawrence Terry, Retired
Sandy Wood

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VISION STATEMENT

The Lawyer Assistance Program (LAP) provides support to attorneys who are struggling with substance abuse and/or mental health issues. The LAP provides a range of services and levels of support that are tailored to the circumstances of each participant. the goal of the LAP is to protect the public through outreach and education about the dangers of substance abuse and mental illness in the legal community and rehabilitation of attorneys who struggle with these issues.

- LAP provides outreach services, training, and continuing legal education regarding substance abuse, stress, mental illness and dementia in the legal profession;
- LAP makes confidential referrals to counseling and free assessments for attorneys who are experiencing stress, mental illness or are struggling with substance abuse;
- LAP collaborates with the Office of the Chief Trial Counsel, State Bar Court, Office of Probation and others to monitor and support attorneys who participate in the LAP as a condition of their discipline;
- LAP works with the Office of Admissions at the State Bar to assist with the evaluation of applicants to the bar who have been referred to LAP as a condition of their moral character review.

OVERVIEW OF THE LAP

Introduced by Senator John Burton, the Attorney Diversion and Assistance Act (SB 479, 2001) became effective January 2002. The act added language to the Business and Professions Code (6230 et seq.) requiring the State Bar of California to create a program to assist attorneys with substance abuse and/or mental health issues. As a result of the legislation, the State Bar of California created the Lawyer Assistance Program (“LAP”). The State Bar collects \$10.00 from every active attorney, and \$5.00 from inactive attorneys, to operate the program. statute requires that participants are responsible for all expenses related to treatment and recovery, but no member will be turned away due to lack of ability to pay.

LAP has three main components: transitional assistance service, support LAP and monitored LAP.

- Transitional assistance services provide attorneys with the opportunity to be referred to outside personal or career careers counselors. Participants can get two free sessions with counselors.
- Support LAP provides attorneys with orientation and assessment of their substance abuse and/or mental health issue. The assessment is completed by one of LAP’s licensed clinicians. Staff provides referrals to resources and the opportunity to participate in facilitated group sessions with other legal professionals.
- Monitored LAP is the most rigorous form of support offered by the LAP. In Monitored LAP, participants receive an assessment from a licensed clinician, similar to support LAP. In addition, the participant receives an evaluation plan recommending a course of treatment for the participant. Evaluation plans generally include recommendations for participation in other abstinence-based meetings, referrals for more detailed evaluations and random testing. Other requirements are incorporated into evaluation plans as appropriate, depending upon the participant’s situation. In order for attorneys to be involved in the State Bar Court’s Alternative Discipline Program, they must participate in Monitored LAP.

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THE PLAN

The Strategic Plan that follows is divided into two broad sections.

- Outreach and education focuses on disseminating information broadly to members of the legal community and their families and proactively identifying those members of the community that are most at risk for substance abuse and mental health issues by:
 - developing educational content about the risks of substance abuse and mental illness to attorneys and promoting healthy life-style choices;
 - ensuring the broadest possible dissemination of materials to the target audience including the families of attorneys;
 - raising awareness among these same audiences about the services available through the LAP and in the community.
- program design and effective intervention focuses on specific components of the LAP especially in those areas related to the discipline system:
 - Establishing and sustaining collaborative relationships with representatives of the Office of the Chief Trial Counsel, State Bar Court, and respondents' counsel to develop policy and procedures for effective case management and treatment of attorneys who come before the discipline system;
 - improving the identification of attorneys in the discipline system who would benefit from participation in the LAP and/or Alternative Discipline Program;
 - promoting legislation that would allow bar applicants to participate in the LAP;
 - tracking data and evaluating the impact of the LAP for purposes of reporting to the LAP Oversight Committee and for on-going program monitoring and improvement.

MONITORING THE PLAN

The Oversight Committee of the LAP views this plan as a living document. The Committee commits to:

- developing and tracking operational goals to advance the strategic goals articulated in the Plan;
- monitoring progress toward achieving these goals at its quarterly meetings;
- periodically modifying the plan as needed but no less than every three years to ensure that the LAP functions effectively and efficiently.

EDUCATION AND OUTREACH

Research on the prevalence of substance abuse in the legal community has shown that younger attorneys are especially at risk. In addition, mental health disorders, co-morbid disorders and issues related to aging or cognitive decline are likely to have a significant impact on the growing number of older attorneys practicing law in California.

An effective response to these challenges will require targeted outreach that includes educational materials tailored to specific audiences. Wherever feasible, outreach should include the families of attorneys and extend from law school through retirement preparation focusing on wellness and seeking to de-stigmatize those who suffer from addiction, mental illness, or other forms of cognitive impairment.

During the period that this strategic plan is in effect, the LAP Oversight Committee should focus its attention on the following goals related to Education and Outreach:

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- I. Determining the target audiences, content and types of outreach for education of the legal community regarding substance abuse, mental illness, and age-related cognitive impairment.
 - A. Working with the Committee of Bar Examiners on outreach to law students and their families with substance abuse as the primary focus:
 1. developing targets for the number of schools at which to give presentations, conducting other forms of outreach and seeking to institutionalize the delivery of information on substance abuse and mental illness as part of general wellness material that each school provides;
 2. developing lists of contacts at all law schools including ABA, CAL and unaccredited schools.
 - B. Working with local bar associations on outreach to members with the primary focus on mental health issues and cognitive impairment that affects elder attorneys:
 1. evaluating the demographic profiles of different regions of the state to develop targets for local bars at which to give presentations, conduct other forms of outreach and seek to institutionalize the awareness of mental health issues and substance abuse as part of general wellness materials that local bars provide;
 2. developing lists of contacts at local bars.
 - C. Developing guidelines and training for the Office of the Chief Trial Counsel to assist attorneys and investigators identify signs of substance abuse, mental illness and cognitive decline where these may be contributing factors to a discipline case.
 - D. Working with the Bar to ensure the inclusion of wellness / self-care materials in the recently mandated 10 hours of CLE requirements for newly admitted lawyers;
 1. Working with California Young Lawyers Association (CYLA) to establish a cadre of young lawyers who conduct outreach and education on wellness;
 2. Institutionalizing the relationship between the LAP and CYLA so that it is not disrupted by member turn-over in either organization;
- II. For each of the areas above, tailoring educational and training content to the target audience including assessment of the appropriate medium for content delivery – e.g., hard copies, online, mobile applications, videos, etc.
- III. Developing self-assessment tools targeted to the attorney populations most at risk for substance abuse and mental illness.
- IV. Evaluating the “brand” of the LAP and returning to the Oversight Committee with recommendations for ensuring that the connection of the LAP to the State Bar not become a deterrent to attorneys and their families who might otherwise seek assistance from the program.
 - A. Developing a strategy to collaborate with other volunteer organizations or individuals to provide outreach and support promoting the services of the LAP;

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- B. Conducting a marketing analysis to survey attorneys in various settings such as Law firms, large employers and small practices on what needs they have and the best way to disseminate information
- V. Collecting, evaluating and reporting to the Oversight Committee on key metrics of the outreach and education efforts.

PROGRAM DESIGN AND EFFECTIVE INTERVENTION

In recent years, enormous strides have been made in documenting and disseminating best practices in probation and drug courts for the monitoring and treatment of defendants struggling with substance abuse and mental illness. While the attorney discipline system is distinct from the superior courts where therapeutic courts have flourished, there are, nonetheless, important lessons that may be borrowed from the experience of therapeutic courts.

To begin, effective treatment of attorneys whose addiction or mental illness has brought them to the attention of the discipline system will require a *collaborative* approach. In addition, the LAP will benefit from paying close attention to the data on the program and utilizing that data to modify the program.

Specific aspects of the LAP related to Program Design and Effective Intervention on which the Oversight Committee should focus its attention during the period of this Strategic Plan include:

- I. Establishing a formal structure of on-going collaboration with the State Bar Court, Office of the Chief Trial Counsel, and respondents' counsel to clarify the treatment and monitoring modalities for attorneys who come before the discipline system.
 - A. Establishing a regular, formal schedule of meetings to be held no less than monthly to coordinate OCTC, SBC and LAP policy in a number of areas including:
 - 1. Identifying the types of discipline issues that should be assigned to LAP for evaluation;
 - 2. Developing a "response matrix" that specifies the incentives and sanctions to be used to ensure compliance with OCTC, SBC and LAP orders;
 - 3. Clarifying the respective roles of LAP, Probation, OCTC, and SBC in different types of cases and where each of these entities can best contribute to improving the likelihood of recovery and wellness.
 - B. Working with the other bar, treatment providers, community-based organizations, and others whose work may be complementary to that of the LAP.
 - C. Completing the integration of LAP with the Office of Probation to ensure that the evaluation and monitoring of probationers with substance abuse and mental health problems are tailored to meet the individual needs of Probationers and LAP participants.
 - D. Evaluating terms and conditions of probation and working with the State Bar Court to include probation conditions that address the substance abuse and mental health issues of attorneys on probation.

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II. Evaluating the various components of the LAP including:

- A. Assessing the intake / evaluation process and associated instruments used by LAP case managers to determine whether an attorney has addiction, mental health, or cognitive impairment issue and the severity;
- B. Reviewing current policy documents and updating / developing process-flow diagrams to clarify participant options, along with decision points and policies for case management;
- C. Reviewing current policy, practice and the outcomes related to the work of the Evaluation Committee and determining whether there are cases that should be handled through a different modality of treatment / oversight;
- D. Reviewing current policy, documentation and practices related to guidelines for handling reviews, relapse and termination and providing recommended updates as necessary;
- E. Reviewing current policy, documentation and practices related to the utilization of facilitated groups, evaluating the efficacy of the facilitated group model and exploring whether county-certified treatment providers are viable alternatives.

III. Integrating the various tools that are used by the LAP and the data collected by:

- A. engaging in on-going assessment of the success of the program and improvement where applicable;
- B. developing metrics that align with the mission of the LAP and tracking outcomes for participants in the program;
- C. providing regular reports and recommendations to the Oversight Committee and LAP management regarding basic indicators of program utilization and program success.
- D. determining appropriate and realistic indicators of “successful program completion” and using these to guide day-to-day management of the program and on-going program development by the LAP Oversight Committee.