

# **OPEN SESSION AGENDA ITEM**

**DATE:** March 20, 2018

**TO:** Members, Lawyer Assistance Program Oversight Committee

**FROM:** Michelle Harmon, Acting Program Manager I

**SUBJECT:** Pilot Process to Replace Evaluation Committees

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## **EXECUTIVE SUMMARY**

At the December 9, 2017, meeting of the Lawyer Assistance Program Oversight Committee, the 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. Staff were directed to work with the LAP's consultant to address issues implicated by the elimination of the Evaluation Committees. After staff discussions, consultation with Patrick Krill, consultation with a representative of the State Bar Court, feedback from Group Facilitators and selected current and former participants, staff developed a process in which the clinicians who interact with the participants on a regular basis will make the decisions about a participant's recommended recovery plan, whether a participant meets the criteria for Program admission, and how to manage special circumstances such as relapse and noncompliance. Staff believes this process is more efficient and at least equally effective as the Evaluation Committee meetings.

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## **BACKGROUND**

As described in rule 3.242 (C). Rules of the State Bar:

The committee may establish one or more Evaluation Committees in both the Northern and Southern regions of the state. Each three-member Evaluation Committee consists of a physician, a clinician, and a local member of the State Bar experienced in recovery. Evaluation Committees are authorized to accept or deny applications for admission to the LAP, to determine completion of the LAP, and to terminate individuals from LAP participation.

The current duties and responsibilities of the Evaluation Committee include:

1. Evaluating those applicants who are referred to or request acceptance into the Program;
2. Receiving and reviewing information, including reports from professional evaluators and treatment providers, regarding applicants and participants;
3. Establishing the terms of the participation agreement for each participant in the Monitored LAP; and

4. Evaluating participants in the Monitored LAP to determine completion or termination from the Program.

Additionally, participants are required to meet with the Evaluation Committee in the following circumstances:

1. Relapse;
2. Review for termination (unless determined by the Director (or designee) and Evaluation Committee Consultant to be too urgent to wait for a meeting);
3. Elimination of lab testing requirement; and
4. Elimination of requirement to attend group.

In the May 2016 Workforce Planning Report produced by the National Center for State Courts (NCSC) for the California State Bar, NCSC recommended that the Lawyer Assistance Program review “the use of the Evaluation Committee, to determine if it [sic] needed as a review entity, or whether it can be eliminated.” (See p.38.) Relevant pages of the NCSC Workforce Planning Report are included as Attachment A.

Similarly, in his 2017 report, “The California Lawyers [sic] Assistance Program: Opportunities for Growth and Improvement in a Time of Need”, Patrick Krill recommends that 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.” (See p.9.) Relevant portions of the Krill report are included as Attachment B.

Specific concerns that were expressed by both the NCSC and by Patrick Krill include: the significant amount of staff time and effort required to schedule and prepare for the Committee; the concern that it is unclear whether the work of the Committee has any concrete impact on individual Participation Plans or outcomes; the observation that the process is likely daunting and intimidating for participants, which may result in a “chilling” effect on voluntary participation; as well as the possibility that it stokes fears about program confidentiality as the participants have no rapport or relationship with Evaluation Committee members.

## **DISCUSSION**

Consistent with the direction of the LAP Oversight Committee, the following process was developed to replace the use of Evaluation Committees for those Monitored participants who are not enrolled in the Alternative Discipline Program while ensuring that the duties and responsibilities previously assumed by the Evaluation Committees, will continue to be properly handled. It is a living process and will be reviewed at least quarterly in order to evaluate effectiveness and make revisions, if necessary.

Key elements of the process are as follows:

One plan, the Monitoring Plan (MP), will be created and used throughout participation. This Plan will replace both the current Evaluation Plan and the current Participation Plan.

At intake assessment, the Monitoring Plan will be created by the Case Manager (CM). Once the Plan is signed by the participant, the CM will submit the Plan to the lead clinician (LAP Manager or LAP Supervisor) for signature with a cover sheet. The cover sheet information will be used to determine whether or not the participant meets criteria for acceptance. The CM will

indicate whether or not the participant has met criteria for admission and the lead clinician will either endorse the recommendation and Monitoring Plan, or schedule the file for review at the next case consultation. With both the CM's recommendation of acceptance and the lead clinician's endorsement, the participant will be considered to have been formally accepted into the Program and the Welcome letter will be sent.

Case consultation will be a regularly scheduled meeting with all CM staff and the lead clinician to discuss cases that a CM feels might need a change to the Monitoring Plan or further intervention. Additionally, at this meeting, a determination will be made by the staff to "not admit" those who do not meet program criteria (i.e., no diagnosis), to approve graduations, to issue letters of insight, and to make recommendations on special circumstances such as relapse and termination. Case consultation meetings initially will be scheduled every other week, but the frequency may be altered as needed.

If recommended at the case consultation meeting, telephonic or in-person meetings with the participant, the Group Facilitator (GF), and LAP clinical staff (CM and lead clinician) may be convened on an as-needed basis to make determination on topics previously reserved for the EC (relapse, review for termination, elimination of lab testing requirement, and elimination of requirement to attend group).

Procedure for relapses:

1. CM recommends change in level of care.
2. Participant accepts recommendation.
3. Changes to Monitoring Plan are made accordingly.

If participant does not accept recommendation:

1. CM will review the relapse and recommendations in the case consultation meeting and will develop a plan to engage the participant in his/her recovery recommendations.
2. Plan conference call/skype/in-person meeting with the participant/GF/CM/lead clinician in order to engage the participant, set deadlines, and if necessary, outline possible consequences of noncompliance. Follow with written correspondence to the participant with a summary of meeting outcome.
3. If the participant fails to accept recommendations, schedule full in-person termination meeting (with participant, GF, CM and Manager).

Procedure for extended noncompliance:

1. CM and GF will meet with participant.
2. Lead clinician will be consulted and will contact participant.
3. Conference call with will be held with participant/GF/CM/lead clinician.
4. In person termination meeting with participant/GF/CM/lead clinician.

Other new processes/resources needed:

Staff will update the Monitoring Plan, Participant Quarterly Report, Participant Information Packet, and other forms as necessary to reflect the procedural changes.

## **Eliminating ECs for those Enrolled in ADP**

After developing this process, staff has concluded that continuing the EC process for the small numbers of ADP participants is not viable, and not in the best interest of the ADP. In order to have sufficient ADP participants to merit conducting an EC, it may take 6-8 months after enrollment to schedule the EC. This delay necessarily delays the development of the Monitoring Plan and ability of the participant to meet the requirements of that Plan and provide proof of completion to the State Bar Court.

Since the December LAP Oversight Committee meeting, staff solicited feedback about the EC process from LAP's ADP participants and from representatives of the State Bar Court and learned that the two most valuable aspects of the ECs are the expertise of the clinician members and the ability of the EC to modify Plan recommendations. Both of these aspects will at least be maintained, and likely improved, in the new process. The staff (CMs and lead) and the Group Facilitators involved in determining the recovery recommendations are all licensed clinicians who are familiar with the participant. Participants will also retain the option of obtaining an assessment and recommendations from an outside clinician that will be considered by the Program when reviewing the Monitoring Plan. Additionally, in the new process it will be possible to modify a Monitoring Plan after review by the relevant clinicians, without convening a committee, which enables LAP to be more responsive to changing needs.

As a result, staff believes that the purpose served by the ECs can be satisfactorily achieved by the new EC replacement process, and that maintaining the ECs for the small population of those enrolled in ADP is inefficient and cannot be sustained.

## **FISCAL/PERSONNEL IMPACT**

Annual cost savings estimated to be between \$21,581-\$30,785 on travel reimbursement for Evaluation Committee members and for Group Facilitators, on meeting catering and on postage for meeting materials.

Overall staff time spent to accommodate the new process is anticipated to increase initially. As the new process becomes routine, it is expected to reduce the amount of time clinical staff spend per participant preparing for and attending meetings, and will reduce the time support staff spend on meeting planning.

## **RULE AMENDMENTS**

None

## **BOARD BOOK IMPACT**

None

## **RECOMMENDATION**

The Staff recommends that the Lawyer Assistance Program Oversight Committee approve the following motion:

MOVED, that,

- 1) The motion approved at the December 2017 LAP Oversight Committee meeting to eliminate the Evaluation Committee process extend to ADP participants as well as non-ADP participants;
- 2) The elimination of the Evaluation Committee process and its replacement by the Pilot Process outlined in this agenda item are contingent on the Clinical Rehabilitation Coordinator, Program Supervisor, or both being clinicians. If only one of the two are clinicians, the perspective of the clinician in the decisions and recommendations outlined in this agenda item shall prevail. If either the Clinical Rehabilitation Coordinator or Program Supervisor are not clinicians, LAP may contract with a clinician to participate in this process.

## **ATTACHMENT(S) LIST**

- A. NCSC Workforce Planning Report pages 38 – 39.
- B. The California Lawyers Assistance Program: Opportunities for Growth and Improvement in a Time of Need, Patrick Krill, pages 9 – 10.

2. 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.
3. 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.

**OBSERVATION: *Streamlining of Forms and Processes.*** Initial intake is currently handled in two stages. First, an Administrative Assistant obtains demographic and background information regarding a client; the client is then referred to a Case Manager for additional intake-related activity. LAP Case managers prepare an LAP Evaluation Plan for clients during the intake interview. Subsequent to consideration by the Evaluation Committee, a Participation Plan is completed.

**RECOMMENDATION: *Combine processes and forms for LAP intake, interviews, and program plans.*** Move manual 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.

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.

**OBSERVATION: *Committee Structure.*** The Evaluation Committee has served as the LAP review and approval entity. Staff report that the Evaluation Committee provides a needed level of seriousness to LAP; a significant amount of time and effort is needed to prepare materials for the Committee accordingly, an effort shared by the LAP Director, Case Managers, Program Coordinator, Administrative Assistant, and contract clinical consultant. It is unclear what concrete impact the work of the Evaluation Committee has on individual participant plans or outcomes.

**RECOMMENDATION: *A thorough review should be conducted of the use of the Evaluation Committee, to determine if it needed as a review entity, or whether it can be eliminated, including:***

- 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.

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.

**OBSERVATION: *Data Collection and Reporting.*** The current set of metrics used by the LAP is a useful beginning however additional work in this area is needed.

**RECOMMENDATION: *Data Collection and Reporting.***

- Specific case issues should be tracked, including the reasons for referral (substance, mental health, crisis), the numbers of incoming calls to the LAP phone lines, the sources of referral to LAP (voluntary-Bar member, voluntary-Bar applicant, 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.
- 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).
- 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.

**RECOMMENDATION: *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.

## ATTACHMENT B

- 1.** 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.
- 2.** 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



## ATTACHMENT B

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.

- 3.** 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.)

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