

OPEN SESSION AGENDA ITEM

54-122.1 NOVEMBER 2018 REGULATION AND DISCIPLINE COMMITTEE ITEM II.C.1.

DATE: November 15, 2018

TO: **Members, Regulation and Discipline Committee
Members, Board of Trustees**

FROM: Michelle Harmon, Program Supervisor, Lawyer Assistance Program

SUBJECT: Proposed Rule Amendment Reflecting Elimination of Evaluation Committees –
Return From Public Comment and Request for Approval

EXECUTIVE SUMMARY

In March of 2018, the Lawyer Assistance Program Oversight Committee adopted a motion to eliminate the Evaluation Committee process for all LAP participants. The Evaluation Committees have been replaced by a Clinical Review Team meeting, which is a process of case consultation in which LAP clinical staff are responsible for acceptance into LAP, termination of LAP participation and all other decisions previously made by the Evaluation Committees. At the July, 2018 meeting, the Regulation and Discipline Committee (RAD) approved circulating for a 45-day public comment period proposed amendments to State Bar Rules to eliminate now obsolete and incorrect references to the Evaluation Committee, and to clarify that these responsibilities belong to the Clinical Review Team. The public comment period ended on September 8, 2018. No public comments were received on this proposal.

BACKGROUND

Several State Bar Rules make reference to the Evaluation Committees. Rule 3.242(C) gives the oversight committee the authority to establish Evaluation Committees. The Rule reads, “(t)he committee may establish one or more Evaluation Committees in both the Northern and Southern regions of the state.” The Rule also outlines the make-up of the Evaluation Committees and authorizes the Evaluation Committee to accept or deny applications, and to determine completion of and termination from LAP. Rule 3.246 outlines the specific criteria under which the Evaluation Committee may deny an application to the Program. Rule 3.249 specifies the criteria the Evaluation Committee will use to determine successful completion from the Program. Finally, Rule 3.250 outlines the conditions under which the Evaluation Committee may terminate LAP participation.

On May 19, 2018, the LAP Oversight Committee (LAP OC) approved a recommendation to seek amendments to Rule 3.242 (Duties of oversight committee), Rule 3.246 (Application), Rule 3.249 (Completion of LAP) and Rule 3.250 (Termination from the LAP). On July 19, 2018, RAD approved the recommendation to make available for public comment the proposed revisions to

the Rules of the State Bar. The 45-day public comment period closed on September 8, 2018. No comments from the public were received.

DISCUSSION

The new Clinical Review Team process has proven to be more efficient and flexible than the previous Evaluation Committee process had been. It has significantly reduced the amount of staff time and effort required to schedule and prepare for the Evaluation Committees. It has also eliminated the lag time between a participant's intake and formal acceptance into LAP which in turn allows them to provide more timely notice of admission to the referral source (e.g. The State Bar Court or Admissions).

In the new process that has been developed to replace the Evaluation Committees, the Clinical Review Team will meet regularly to admit or deny an applicant to LAP, determine if completion criteria have been met, and if a participant's termination is warranted. The Clinical Review Team is comprised of members of the LAP clinical staff, including the Program Supervisor and Clinical Rehabilitation Coordinators. The Group Facilitator (the clinician who runs the weekly LAP support groups) also participates in Clinical Review Team meetings either via written report, telephonically or in person. Elimination of Rule 3.242(C) which establishes the Evaluation Committees, and modification of the Rules of the State Bar, rules 3.246, 3.249 and 3.250 are necessary to clarify that the Clinical Review Team is fully empowered to deny an application for LAP, determine if a participant may successfully complete LAP or determine if a participant meets criteria for termination from LAP.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Title 3, Division 2, Chapter 5, Rule 3.242, Rule 3.246, Rule 3.249 and Rule 3.250

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATION

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that following the 45 day public comment period, the Board of Trustees hereby adopts the revisions to State Bar Rules, Rule 3.242, Rule 3.246, Rule 3.249 and Rule 3.250 as set forth in Attachment A; and it is

FURTHER RESOLVED, that the revisions to State Bar Rules, Rule 3.242, Rule 3.246, Rule 3.249 and Rule 3.250 are effective immediately.

ATTACHMENT(S) LIST

- A. Proposed amendment to Rules of the State Bar, Rules 3.242, 3.246, 3.249 and 3.250

Attachment A

Proposed amendment to Rules of the State Bar, Rules 3.242, 3.246, 3.249, and 3.250.

Rule 3.242 Duties of oversight committee

- (A) The committee is to meet regularly at locations within California. Special meetings may be called by the chair or vice chair and must be held at the State Bar offices in San Francisco or Los Angeles. Meetings must comply with State Bar requirements.²
- (B) The committee may authorize subcommittees of two or more members of the committee to transact business on its behalf.
- ~~(C) 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,³ to determine completion of the LAP,⁴ and to terminate individuals from LAP participation.⁵~~
- ~~(D)~~(C) The committee must maintain records that enable it to respond promptly to State Bar requests for information regarding financial assistance loans and collections and must report annually to the Board and Legislature on the operation of the LAP.

Rule 3.242 adopted effective January 9, 2010; amended effective March 2, 2012.

Rule 3.246 Application

An eligible member, former member, or candidate for admission who wishes to continue participating in the LAP must apply for either the Support LAP or the Monitored LAP. The ~~Evaluation Committee~~ LAP's Clinical Review Team reviews the applications and may deny an application if it determines that

- (A) the applicant does not meet eligibility criteria;
- (B) the applicant will not substantially benefit from the LAP; or
- (C) the applicant's participation would be inconsistent with public protection.

Rule 3.246 adopted effective January 9, 2010.

² See State Bar Rules 6.60-6.65

³ ~~Rule 3.246~~

⁴ ~~Rule 3.249~~

⁵ ~~Rule 3.250~~

Rule 3.249 Completion of LAP

A participant is deemed to have completed the LAP when the ~~Evaluation Committee~~ LAP's Clinical Review Team determines that the participant:

- (A) has maintained three years of continuous sobriety or, in cases of mental health, stability;
- (B) has made lifestyle changes sufficient to maintain ongoing sobriety or stability; and
- (C) has satisfied the terms of the participation agreement.

Rule 3.249 adopted effective January 9, 2010.

Rule 3.250 Termination from the LAP

A participant may be terminated from the LAP if the ~~Evaluation Committee~~ LAP's Clinical Review Team determines that:

- (A) the participant will not substantially benefit from the LAP;
- (B) further participation would be inconsistent with the LAP's mission of public protection; or
- (C) the participant failed to satisfy the terms of the participation agreement.

Rule 3.250 adopted effective January 9, 2010.