



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-3 MARCH 2020

DATE: March 12, 2020

TO: Members, Board of Trustees

FROM: Lori Meloch, Program Director, Professional Support and Client Protection
Michelle Harmon, Program Supervisor, Lawyer Assistance Program

SUBJECT: Receipt and Filing of Annual Lawyer Assistance Program Oversight Committee
Report Pursuant to Business and Professions Code Section 6238

EXECUTIVE SUMMARY

Business and Professions Code section 6238 requires the Lawyer Assistance Program (LAP) Oversight Committee to report to the Legislature and the Board of Trustees each year on the implementation and operation of the LAP. Attached is the 2019 Lawyer Assistance Program Annual Report that was timely submitted to the Legislature in compliance with this requirement.

BACKGROUND

Business and Professions Code section 6238 requires the LAP Oversight Committee to report to the Legislature and the Board of Trustees by March 1 of 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."

DISCUSSION

The 2019 Lawyer Assistance Program Annual Report provides an overview of the program's activities in 2019. During 2019, LAP expanded its outreach and educational programming, including outreach to law schools and on social media. LAP continued to work toward

improving the program operation and design by evaluating LAP using new performance metrics and participating in the launch of the “Attorney Supervision and Assistance Redesign” (ASAR) project. The ASAR project will improve on both the current Alternative Discipline Program and the current Office of Probation processes by addressing the root problems that cause an individual attorney’s misconduct. As part of this redesign the LAP’s “mandatory” and “voluntary” components have been separated with the expectation that the “mandatory” part of the LAP will be fully integrated into the Office of Probation and a new collaborative court model intended to support those with substance use or mental health issues, while the “voluntary” portion will be transferred to a third-party entity. The report contains a narrative description of key activities undertaken this year to improve the program and implement the LAP Strategic Plan.

Key data points include:

- 164 new participants were admitted into LAP, an increase of 16 new intakes over 2018;
- The total number of LAP participants was 296;
- Of the 172 cases closed, 31 percent were closed with participants meeting their stated program goals, 17 percent were closed after the participant was not admitted to LAP, and two cases were terminated for noncompliance; and
- The reasons for participating in the LAP remained heavily weighted to substance use issues with 40 percent of participants entering the program to address a substance use disorder.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - compliance

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees receive and file the 2019 Lawyer Assistance Program Annual Report.

ATTACHMENT(S) LIST

- A.** 2019 Lawyer Assistance Program Annual Report



The State Bar of California

Title of Report: Lawyer Assistance Program 2019 Annual Report
Statutory Citation: Business and Professions Code section 6238
Date of Report: March 1, 2020

The State Bar of California has submitted a report to the Legislature in accordance with Business and Professions Code section 6238, which directs the Oversight Committee of the Lawyer Assistance Program (LAP) to submit a report each year to the Board of Trustees and the Legislature on the operation of the LAP, including key program statistics.

The following summary of the report is submitted in accordance with the requirements of Government Code section 9795.

The highlights of 2019 accomplishments include the following: expanding outreach and educational programming (which includes outreach to law schools and on social media), evaluation of the LAP's work using new performance metrics, and participating in the launch of the "Attorney Supervision and Assistance Redesign" (ASAR) project. The ASAR project will improve on both the current Alternative Discipline Program and the current Office of Probation processes by addressing the root problems that cause an individual attorney's misconduct and thereby reduce recidivism and better protect the public. As part of this redesign the LAP's "mandatory" and "voluntary" components have been separated with the expectation that the "mandatory" part of LAP will be integrated into a new collaborative court model, while the "voluntary" portion will be transferred to a third-party entity.

During 2019:

- 164 new participants came into the Program;
- The total number of LAP participants was 296;
- Of the 172 cases closed, 31 percent were closed with participants meeting their stated program goals, 17 percent were not admitted, and there were two cases terminated due to noncompliance; and
- The reasons for participating in LAP remained heavily weighted to substance use issues; 40 percent of participants entered to address a substance use disorder, 29 percent for a mental health issue, and 30 percent seeking support for both.

The full report is available for download on the State Bar's website at:

<http://www.calbar.ca.gov/About-Us/Reports>. A printed copy of the report may be obtained by calling 213-765-1190.



The State Bar *of California*

Lawyer Assistance Program 2019 Annual Report

Statutory Citation: Business and Professions Code section 6238

March 1, 2020

INTRODUCTION

Business and Professions Code section 6238 requires the Lawyer Assistance Program (LAP) Oversight Committee to report to the Board of Trustees and 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.”

AN OVERVIEW OF 2019 ACTIVITIES

2019 has seen the fruition of the previous years’ strategic planning¹ and implementation of recommendations from consultant Patrick Krill² and the National Center for State Courts.³ Two of the critical improvements that were planned for in 2018 were executed in 2019: the expansion of outreach and educational programming efforts and the creation of performance goals to aid in the effective evaluation of the impact of the LAP.

Outreach and Education

In 2019 the LAP fully implemented a robust outreach and education program for law schools, law firms, and bar associations. A new interactive presentation was developed that reviews the scope of mental health and substance use disorders in the attorney population, educates the audience in how to recognize common signs and symptoms of these disorders in themselves or a colleague, and how to intervene and access resources. The presentation also presents strategies for ongoing wellness and an overview of the Lawyer Assistance Program and the services the Program offers. This presentation is offered for no fee and satisfies the State Bar’s MCLE requirement on competence issues.

Outreach efforts included contacting all 62 campuses of California’s ABA accredited, CA accredited and unaccredited law schools and reaching out to a variety of bar associations to inform them of the State Bar’s desire to bring this important presentation to them. Specific effort was made to reach out to bar associations in rural areas and areas with high senior attorney populations. The LAP also had a presence at numerous conferences, staffing information tables at meetings of organizations including the California Lawyers Association Solo and Small Firm Summit, the California Lawyers Association Annual Meeting, and the Consumer Attorneys Association of Los Angeles conference which had over 3,000 attendees.

¹ Lawyer Assistance Program Strategic Plan 2017-2020

² The California Lawyers Assistance Program: Opportunities for Growth and Improvement in a Time of Need

³ National Center of State Courts Workforce Planning Report

The LAP instituted a 2019 goal of responding to any requests for presentations within two business days from the date of the inquiry. The LAP met this goal in all but one instance during the entirety of 2019, and in that instance, the request was responded to in four business days.

The LAP has also expanded outreach via social media this year. The LAP posts twice per week on each of the State Bar's social media platforms; Twitter, LinkedIn, and Facebook. Examples of the LAP's postings include publicizing the free MCLE presentation outlined above, services offered to law students, and reminders about the two free individual and career counseling sessions offered through the LAP's Transition Assistance Service. Posts also included links to assessments for depression and anxiety as well as to resources for attorneys over 65. During the weeks leading up to the bar examination, the LAP posted reminders about the importance of self-care and wellness for exam takers. Many of the social media posts received 3,000-5,000 impressions and up to 160 engagements.

Evaluating the Work of the LAP

One of the LAP's performance goals pertains specifically to educational programming. The target goal for 2019 was to provide a minimum of 30 presentations (20 at law schools, and 10 for bar associations or law firms). The popularity of this new LAP service exceeded expectations; as did staff's ability to deliver them. The LAP provided a total of 68 presentations in 2019 (24 at law schools and 44 at bar associations, law firms, government agencies, and other similar venues).

Another target goal that was set for 2019 was to increase the number of new intakes into the LAP by 10 percent over 2018. The LAP successfully met this goal, due in large measure to the increased outreach and educational programming outlined above. In 2018 the LAP had 148 new program participants. The LAP reached 164 new intakes in 2019; an increase of almost 11 percent.⁴ Combined with the LAP participants who remained enrolled from the previous year(s), the LAP served 296 participants in 2019. An additional 78 individuals accessed the Transition Assistance Services (individual and/or career counseling).

As noted in the LAP annual report for 2018, a new survey was created in an effort to understand and improve participant satisfaction. This satisfaction survey is distributed to all participants on a quarterly basis and it allows participants to voluntarily provide feedback on many aspects of the LAP, including the staff, Group Facilitators, outreach

⁴ For detailed data see "LAP intakes" under "Caseload and Program Data 2019" on page 5 of this report.

and specific program requirements. A target was set that 80 percent of respondents would report that they either “agree” or “strongly agree” with the following statements: “The information and services provided by LAP effectively and appropriately address my goals,” and, “Overall I am satisfied with my LAP experience.” The LAP exceeded the 80 percent target for both questions in every quarter of 2019. During the most recent survey administration, 90 percent of responders agreed or strongly agreed with the first statement above, and 87 percent agreed or strongly agreed with the second.

Program Design

A substantial portion of the LAP’s focus in 2019 was long-term planning for significant procedural and structural changes that will further the evolution of the LAP for years to come. The first goal of the State Bar’s Strategic Plan is to: Successfully transition to the “new State Bar” – an agency focused on public protection, regulating the legal profession, and promoting access to justice. With this goal in mind, in 2018 the Board of Trustees (Board) tackled the question of whether the “LAP is appropriately situated within the State Bar.” The Board resolved to have the State Bar continue to operate the LAP, but only for those “mandatory” participants who are referred by moral character or by the State Bar discipline system, while separating off all other “voluntary” participants. This course of action was determined to be the best way to support the program and the lawyers who need it while remaining consistent with the State Bar’s public protection mission. Although efforts to transition the “voluntary” participants could not be accomplished in 2019, the State Bar will continue to explore the viability of this effort again in 2020.

In 2019, in partnership with the State Bar’s Office of Probation, the LAP participated in the launch of the “Attorney Supervision and Assistance Redesign” (ASAR) project. The vision of the ASAR is to create a system that will improve on both the current Alternative Discipline Program for those with mental health or substance use issues, and the current Office of Probation processes for all probationers. The new program aims to address the root problems that cause an individual attorney’s misconduct and thereby reduce recidivism and better protect the public. As part of this redesign the State Bar hopes to create a collaborative court based on the “drug court” or “mental health court” model.

In the fall of 2019 three LAP staff members, two Clinical Rehabilitation Coordinators and one Administrative Assistant, were assigned to manage the cases of those participants referred by the Office of Admissions as part of their moral character review or by the State Bar discipline system (“Mandatory” participants). “Mandatory” participants continue to have access to the same professional monitoring and supportive services as those participants who have self-referred (“voluntary” participants.) While continuing to provide the “mandatory” LAP participants with the same high quality LAP services and case management, these staff members have also contributed their knowledge and

skills to assist with the development of the new planned Office of Probation processes and a collaborative court model. The expectation is that ultimately these staff will become fully incorporated into a redesigned probation system, as will the “mandatory” participants.

2019 CASELOAD AND PROGRAM DATA

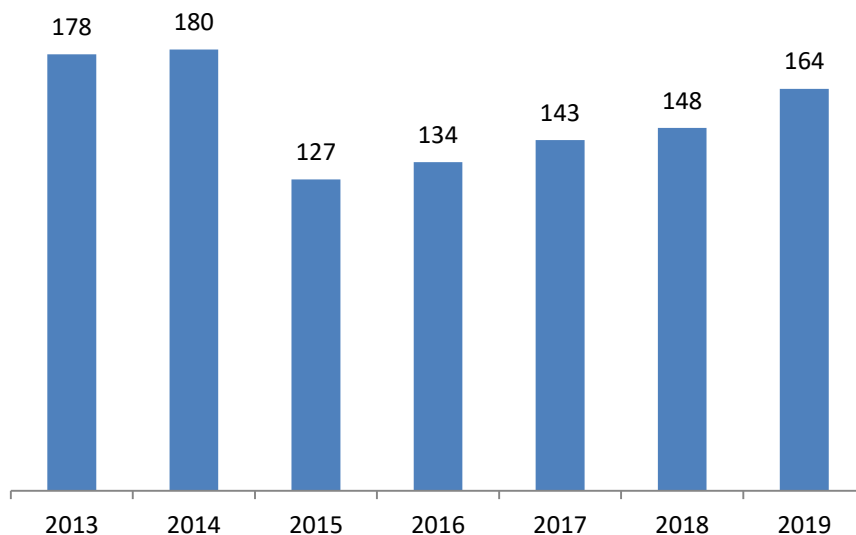
The following is a snapshot, by the numbers, of the work of the LAP for 2019.

LAP Caseloads

New Cases

The number of new intakes in 2019 rose over 10 percent from the previous year. 2019 intakes totaled 164 while there were 148 new intakes in 2018. This is the largest one-year percentage increase in the previous 6 years. The total number of current and former licensees, law students and applicants who participated in the LAP in 2019 was 296. This number includes both new enrollees and continuing participants. It does not include those who sought out the benefits of the Transition Assistance Service as they are not considered program participants and no formal intake or assessment is performed for such individuals.

LAP Intakes: 2013 – 2019



Case Closures

In 2019, the LAP closed 172 cases. The reasons for case closure varied. Thirty-one percent of individuals who left the LAP in 2019 did so because they met their stated program goals.

Program goals may be met in several ways. In some cases an applicant with a record of alcohol-related arrests may be referred to the LAP while his or her moral character application is placed in abeyance. During the period of abeyance the LAP staff monitor and document the applicant's recovery work. When the applicant has successfully demonstrated compliance with this requirement the applicant is considered to have met their program goals. Participants who enroll in the Support LAP⁵ have no time requirement attached to their program participation and they are able to determine when they have received sufficient Support services.

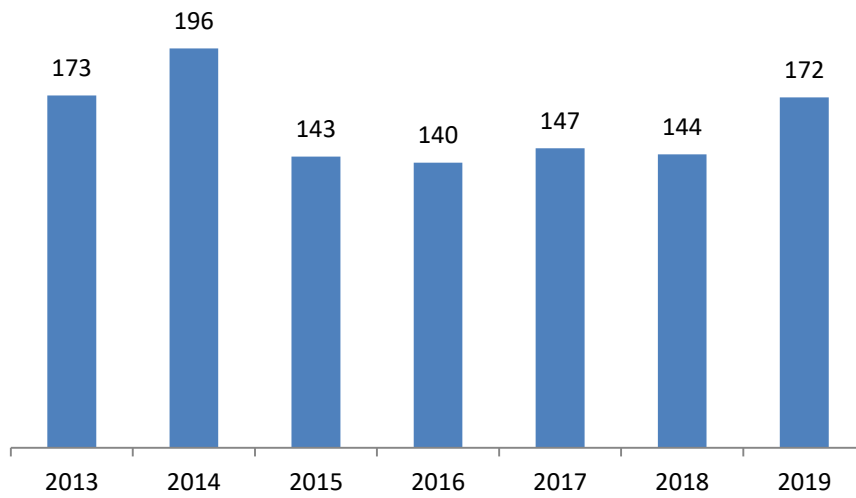
Participants are also considered to have met program goals if they enroll in and complete the Orientation and Assessment phase of the LAP, which includes an assessment by a licensed clinician, referral to external resources and treatment providers, and up to four sessions in a LAP-facilitated support 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.

Sixteen percent 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. This category also includes participants who were terminated from the program for issues of noncompliance. In 2019, two individuals were terminated from the LAP.

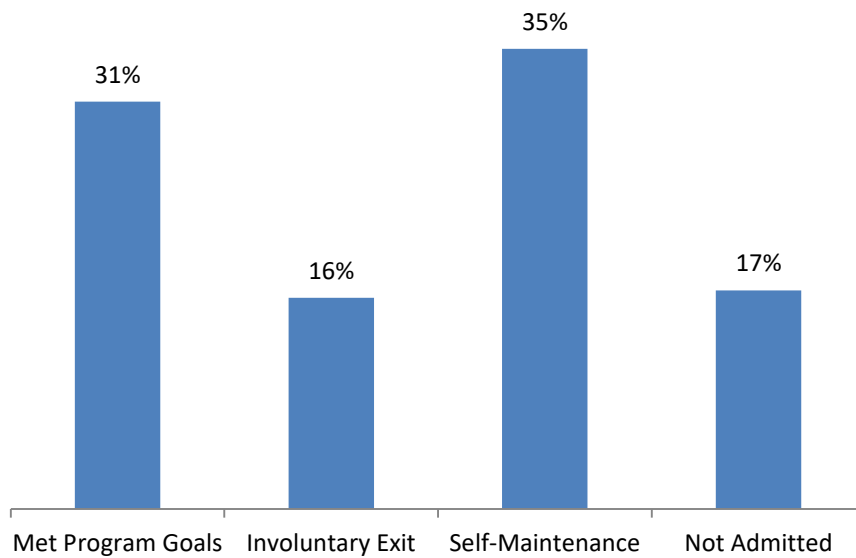
Individuals who expressed a plan to continue their support/recovery activities without LAP support are referred to as "self-maintenance." Thirty-five percent of case closures fell into the "self-maintenance" category. Finally, 17 percent of closed cases were closed because they did not meet the criteria for admission into the Monitored LAP.

⁵ Support LAP participants receive the same assessment, recommendations and support as those enrolled in Monitored LAP, however the LAP does not monitor their compliance with the recommendations.

LAP Cases Closed: 2013 – 2019



Reason for LAP Case Closure – 2019



Referrals

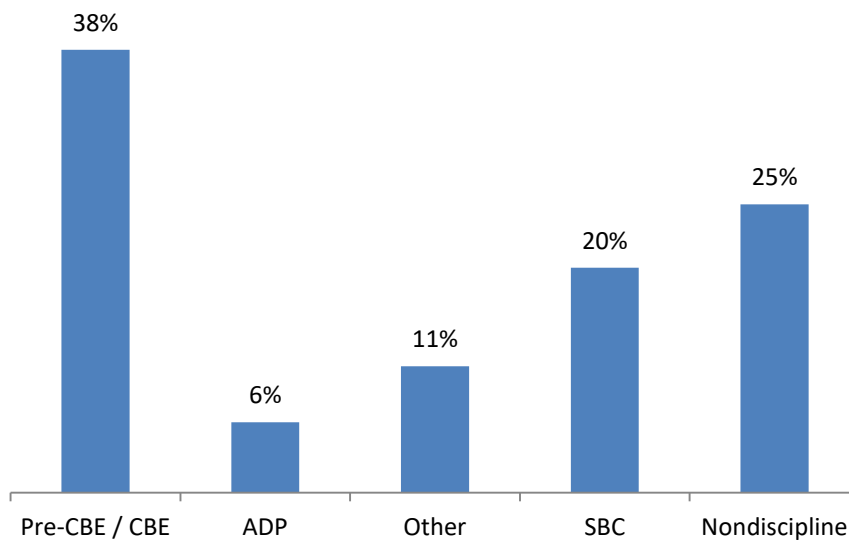
There are many ways that participants are referred to the Lawyer Assistance Program. As noted above, a State Bar applicant may be referred to the LAP by the Office of Admissions. His or her moral character application is placed in abeyance while

participating in the LAP⁶ and some law students self-refer.⁷ Thirty-eight percent of the LAP's intakes in 2019 fell into this category.

Participants who were enrolled in the State Bar's Alternative Discipline Program (ADP) comprised 6 percent of the intakes in 2019. Those who are involved in the standard discipline process through the State Bar Court (SBC) made up 20 percent of intakes. These SBC referrals are sometimes enrolling in the LAP with the intention of applying to the ADP at a later date. The 11 percent who fall in to the "other" category are generally enrolling for the LAP's professional monitoring to provide documentation of recovery to another state's LAP, licensing board, or the State Bar's Office of Probation.

Twenty-five percent of intakes in 2019 were "nondiscipline." The people in this category report enrolling in the LAP for the unique support provided by mental health professionals who specialize in working with attorneys. They may have learned about the LAP through LAP's outreach or MCLE program, or from a colleague or employer.

Source of LAP Referrals – 2019



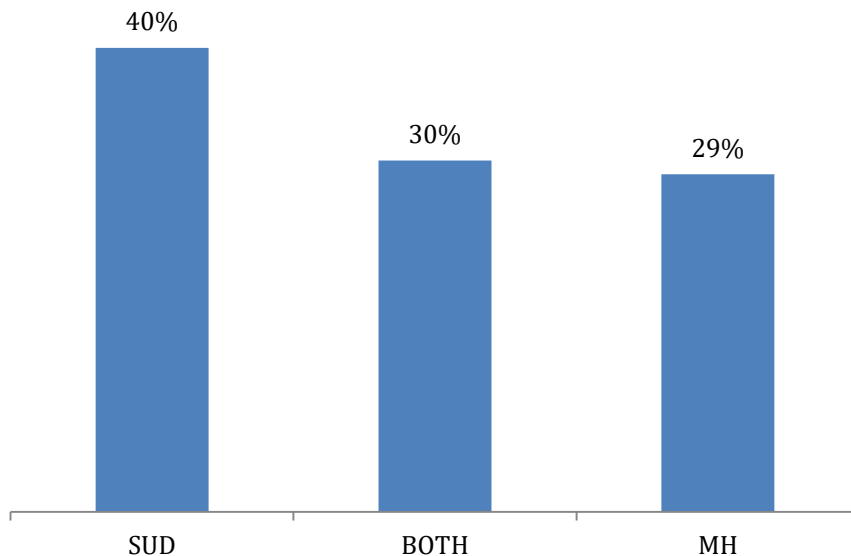
A tally of the presenting issue at intake shows that the large majority (70 percent) of participants present with a substance use disorder: 40 percent of participants present with solely a substance use disorder (SUD) and 30 percent have both a mental health

⁶ This population is captured in the Source of Referrals graph as "CBE" (Committee of Bar Examiners referral).

⁷ This population is captured in the Source of Referrals graph as "Pre-CBE" (pre-referral by the Committee of Bar Examiners, which can include law students and bar applicants).

(MH) and a substance use disorder. Only 29 percent of participants in the LAP are enrolled exclusively for mental health issues (note that percentages may not total 100 due to rounding).

Reason for LAP Participation – 2019



2019 EXPENDITURES

In 2019, the LAP expenditures were approximately \$2.1 million. Total revenue received in 2019 was \$2.19 million. The ending fund balance is \$3.65 million.⁸ Salaries and benefits plus administrative overhead amounted to 82 percent of the expenditures. The expenditures for professional services (which includes the Transition Assistance Services) made up 11 percent of the spending in 2019. The increase in spending on professional services from 2 percent in 2018 to 11 percent in 2019 is due to a transfer of funds to the Other Bar, pursuant to Business and Professions Code section 6140.9(b).⁹ The Office of Finance transferred approximately \$210,000 to the Other Bar in 2019. Travel and catering, facilitators' fees and miscellaneous expenditures made up 8 percent of the spending in 2019. The miscellaneous expenses include items such as telephone, office supplies, postage and one-time litigation expenses (note that percentages may

⁸ The financial information is approximate pending final audit and confirmation by the Office of Finance.

⁹ On and after January 1, 2019, one dollar (\$1) of the ten-dollar (\$10) fee paid by each active licensee pursuant to subdivision (a) [of Business and Profession Code §6140.9] shall be transferred by the State Bar to a statewide nonprofit corporation, established by attorneys that has, for the last 25 years or more, provided peer support to attorneys recovering from alcohol and substance abuse in a confidential and anonymous manner, to fund the support of recovery efforts of the nonprofit corporation.

not total 100 due to rounding). As a result of the high fund balance, in 2020 the only revenue coming to LAP from the fees paid by licensed attorneys is the one dollar per licensed attorney that is transferred to the Other Bar. A report from the Other Bar detailing its spending of the funding provided is due to the State Bar on March 1, 2020.

LAP Expenditures 2019 – \$2.1 Million

