



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-5 MARCH 2021

DATE: March 18, 2021

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 Board of Trustees and the Legislature each year on the implementation and operation of the LAP. Attached is the 2020 Lawyer Assistance Program Annual Report submitted to the Legislature on March 1, 2021, in compliance with this requirement.

BACKGROUND

Business and Professions Code section 6238 requires the LAP Oversight Committee to report to the Board of Trustees and the Legislature 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 Lawyer Assistance Program 2020 Annual Report provides an overview of the program's activities in 2020. The predominant task of 2020 was to meet the challenges presented by the global pandemic to continue to provide quality services, including professional monitoring, while at the same time, not compromising the physical health or safety of the LAP's participants. Outreach was conducted via social media and direct emailing to assure attorneys,

law students, and State Bar applicants that all the LAP services continued to be safely offered. The LAP's MCLE presentation was adapted to a webinar format, the LAP support groups were moved to an online platform and at-home oral-fluid testing was arranged as an option for substance use monitoring. Additionally, there was a surge of interest in LAP's Transition Assistance Service (individual and career counseling) in 2020.

Key data points include:

- 141 new participants were admitted into LAP.
- The total number of LAP participants was 265.
- Of the 123 cases closed, 37 percent were closed with participants meeting their stated program goals, and 15 percent were closed after the participant was not admitted to LAP, but no participants were terminated for noncompliance.
- The reasons for participating in the LAP remained heavily weighted to substance use issues with 36 percent of participants entering the program to address a substance use disorder, 18 percent for a mental health issue, and 45 percent seeking support for both.

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 Lawyer Assistance Program 2020 Annual Report.

ATTACHMENT(S) LIST

- A.** Lawyer Assistance Program 2020 Annual Report



The State Bar of California

Title of Report: Lawyer Assistance Program 2020 Annual Report
Statutory Citation: Business and Professions Code section 6238
Date of Report: March 1, 2021

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 overriding priority for 2020 was to meet the challenges presented by the global pandemic to continue providing quality services, including professional monitoring, without compromising the physical health or safety of the LAP's participants. Outreach was conducted via social media and direct emailing to assure attorneys, law students, and State Bar applicants that all the LAP services continued to be safely offered. The LAP adapted its MCLE presentation to a webinar format, moved its support groups to an online platform, and arranged for at-home oral-fluid testing as an option for substance use monitoring. Additionally, there was a surge of interest in LAP's Transition Assistance Service (individual and career counseling) in 2020. Usage increased 95 percent from 78 individuals accessing the service in 2019 to 152 users in 2020.

During 2020:

- 141 new participants entered the program.
- The total number of LAP participants was 265.
- Of the 123 cases closed, 37 percent were closed with participants meeting their stated program goals, and 15 percent were not admitted, but no participants were terminated from the LAP in 2020.
- The reasons for participating in the LAP remained heavily weighted to substance use issues, 36 percent of participants entered to address a substance use disorder, 18 percent for a mental health issue, and 45 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 2020 Annual Report

Statutory Citation: Business and Professions Code section 6238

March 1, 2021

INTRODUCTION

Business and Professions Code section 6238 requires the Oversight Committee of the Lawyer Assistance Program (LAP) 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 2020 ACTIVITIES

Like most other organizations, 2020 presented unique challenges for the LAP. The global pandemic required quick responses and creative thinking to meet a variety of previously unanticipated challenges. The hard work of the LAP staff and the LAP Oversight Committee allowed the program to meet the needs of its participants and to continue to reach new attorneys and State Bar applicants experiencing their own unprecedented challenges.

The overview that follows organizes the activities of the LAP using the principal categories of work prioritized in the LAP Strategic Plan: Outreach and Education, Program Design, and Effective Intervention.

Outreach and Education

The LAP offers a free, one-hour presentation for law schools, law firms, and bar associations. The interactive presentation reviews the scope of mental health and substance use disorders in the attorney population, educates the audience on how to recognize common signs and symptoms of these disorders in themselves or a colleague, and on how to intervene and access resources. The presentation also provides strategies for ongoing wellness and an overview of the Lawyer Assistance Program and the services the program offers. In addition to being offered free of charge, the presentation satisfies the State Bar’s MCLE requirement on competence issues.

In March of 2020, many organizations began canceling their conferences and in-person seminars, including their scheduled LAP presentations due to social distancing requirements. The LAP adapted the presentation to a webinar format within weeks and began to reschedule virtual outreach presentations. In keeping with the LAP’s strategic plan objectives, a focused effort was made to schedule presentations for minority and culturally diverse bar associations, bar associations in rural areas, legal aid foundations/organizations, and geographical areas with a large number of senior attorneys.

The LAP continued to work with the State Bar’s Office of Communications to assure attorneys, law students and State Bar applicants that all of the LAP services continued to be safely offered even while other businesses were closing due to COVID-19. The State Bar conducted outreach using Facebook, LinkedIn, and Twitter to publicize the free MCLE presentations outlined above as well as services offered to law students, and reminders about the two free individual and career counseling sessions offered through the LAP’s Transition Assistance Service (TAS).

With the cooperation of the Office of Admissions and the Office of Communications, on June 3, 2020, LAP sent an email outlining its services directly to over 25,000 law students and State Bar applicants. A total of 17,268 opened the email, with an additional seven thousand forwards. The program received a surge of calls inquiring about LAP services that began the day the email was sent out and continued throughout the month. To reach as many people as possible, information about LAP is now being included in attorney fee statements, the State Bar's quarterly newsletter to all licensees, and the quarterly law school deans newsletter from the Office of Admissions.

Over the course of 2020, the LAP provided a total of 55 presentations: 11 presentations were for law schools and 44 were for bar associations, law firms, government agencies, and other organizations.

Effective Intervention

Despite the outreach efforts described above, LAP intakes did not increase in 2020. As described below in the "2020 Caseload and Program Data" section, there was a drop in enrollment during the spring of 2020 which is attributed to fears about COVID-19 and social distancing requirements. However, as the pandemic stretched into the summer of 2020, the usual intake numbers resumed. Additionally, in the summer of 2020 there was a surge of interest in LAP's Transition Assistance Service (TAS) which continued through the rest of the year. The TAS provides two free career counseling or personal counseling sessions to law students, State Bar applicants, attorneys, and former attorneys. Usage increased 95 percent from 78 individuals accessing the service in 2019 to 152 users in 2020.

To understand and improve participant satisfaction, the LAP developed a satisfaction survey that is now distributed to all participants on a quarterly basis. The survey allows participants to voluntarily provide feedback on many aspects of the LAP, including staff, group facilitators, outreach, 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 2020.

Program Design

Remote Delivery of Services

The pandemic required reimagining the way many LAP services were provided. The goal was to continue providing quality services, including professional monitoring, while at the same time not compromising the physical health or safety of LAP's participants. The first pivot was to move all of LAP's in-person support/monitoring groups, a core function of the LAP, to virtual, online groups.

Group facilitators and group participants were quickly able to adjust to the new format and some have since reported preferring it to the in-person groups. Switching to online groups had

the unintended consequence of expanding the days and times that groups are available to those who have mobility constraints and who are in remote areas of the state.

Similarly, Clinical Rehabilitation Coordinators (CRCs) began conducting initial intake assessments via telephone and video conferencing, making those appointments more convenient for many participants. The LAP also ensured that all contractors who provide the TAS (individual and career counseling) switched to telehealth sessions.

The LAP worked with its alcohol and drug monitoring contractor to offer at-home video-monitored oral fluid collection as an option for drug and alcohol testing in addition to the traditional urine testing. Finally, as noted above, the LAP continued to conduct outreach through social media, presentations, and email to offer much-needed services to help licensees, students, and applicants deal with the stresses of this extraordinary year.

Organizational Transformation

As described in the Lawyer Assistance Program 2019 Annual Report, the State Bar's Board of Trustees 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 the voluntary functions away from the State Bar. While 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, the best way to accomplish the separation is still being evaluated and has not yet been fully implemented.

The voluntary and the mandatory portions of the program have been separated, but the LAP continues to operate both portions of the program. The mandatory portion is now housed in the Office of Case Management & Supervision (OCMS). Mandatory participants continue to have access to the same professional monitoring and supportive services as those participants who have self-referred (voluntary participants). This report discusses the accomplishments of both segments of the program as directed by Business and Professions Code section 6238.

The State Bar's focus on the mandatory component of LAP has allowed for an evaluation of how best to integrate LAP into the other, supervisory functions managed within the OCMS. As OCMS works to reevaluate the efficacy of attorney supervision, Mandatory LAP and the case specialists who supervise attorneys on probation continue working to integrate their resources and provide support to one another.

The Attorney Supervision and Assistance Redesign (ASAR) project is working 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. The expectation is that ultimately the mandatory participants will become fully incorporated into a redesigned probation system.

2020 CASELOAD AND PROGRAM DATA

The following charts provide a snapshot of the work of the LAP for 2020.

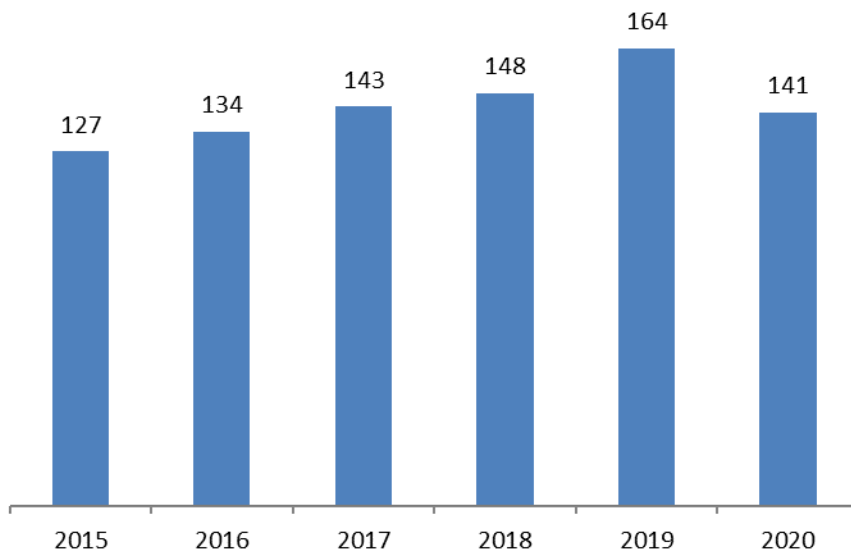
LAP Caseloads

New Cases

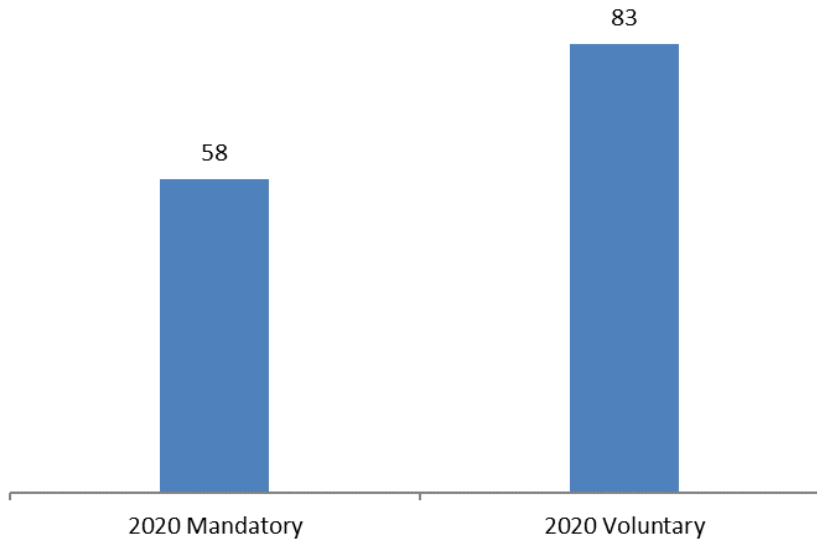
The number of new intakes in 2020 totaled 141, a decrease of 14 percent compared to the 164 new intakes in 2019. This drop is attributed to the steep drop in enrollment in the spring of 2020 at the start of social distancing. The total number of current and former licensees, law students, and applicants who participated in the LAP in 2020 was 265. This number includes both new enrollees and continuing participants. It does not include those who sought out the benefits of the Transition Assistance Services. TAS numbers increased 95 percent in 2020, from 78 individuals accessing the service in 2019 to 152 users in 2020.

As indicated above, 2020 was the first year that participants were divided into mandatory and voluntary caseloads. At the time of intake, 41 percent of participants enrolled in the Mandatory LAP and 59 percent entered the Voluntary LAP.

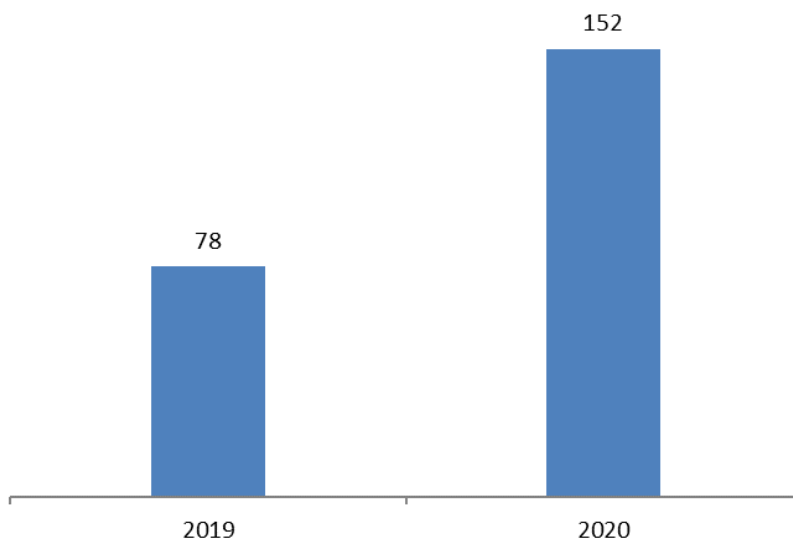
LAP Intakes: 2015–2020



Mandatory LAP and Voluntary LAP Intakes – 2020



Transition Assistance Service Usage: 2019–2020



Case Closures

In 2020, the LAP closed 123 cases. The reasons for case closure varied. Thirty-seven percent of individuals who left the LAP in 2020 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 their moral character application is placed in abeyance. During the period of abeyance, 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

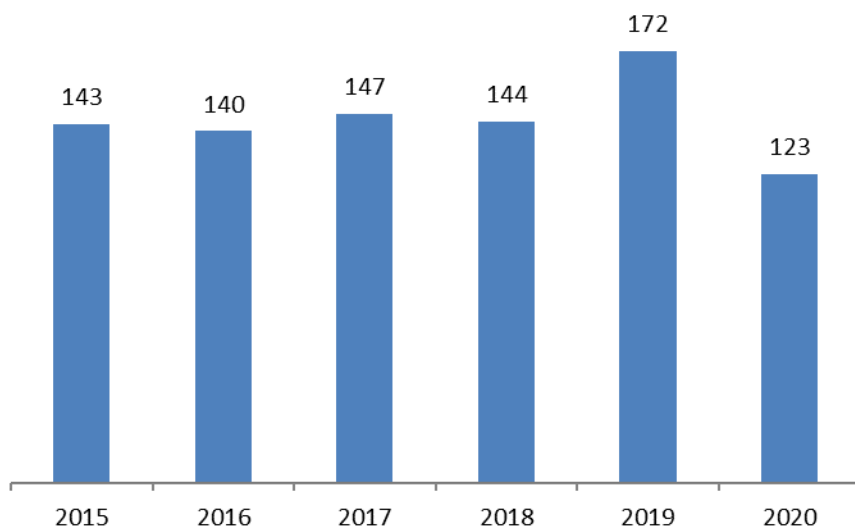
enroll in the Support LAP¹ have no time requirement attached to their program participation and they are able to determine when they have received sufficient support services.

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.

Fifteen 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 would also include participants who were terminated from the program for issues of noncompliance, however no participants were terminated from the LAP in 2020.

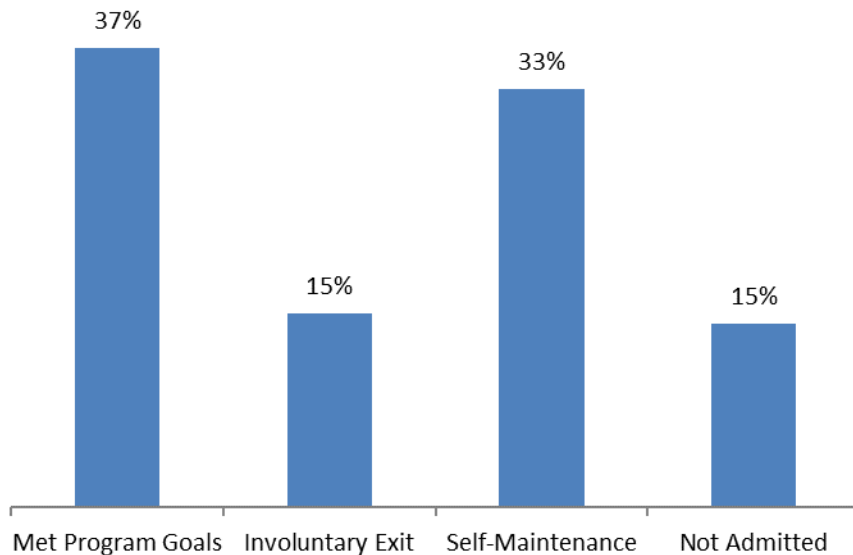
Individuals who expressed a plan to continue their support/recovery activities without LAP support are referred to as self-maintenance. Thirty-three percent of case closures fell into the self-maintenance category. Finally, 15 percent of closed cases were closed because they did not meet the criteria for admission into the Monitored LAP.

LAP Cases Closed: 2015–2020



¹ 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.

Reason for LAP Case Closure – 2020



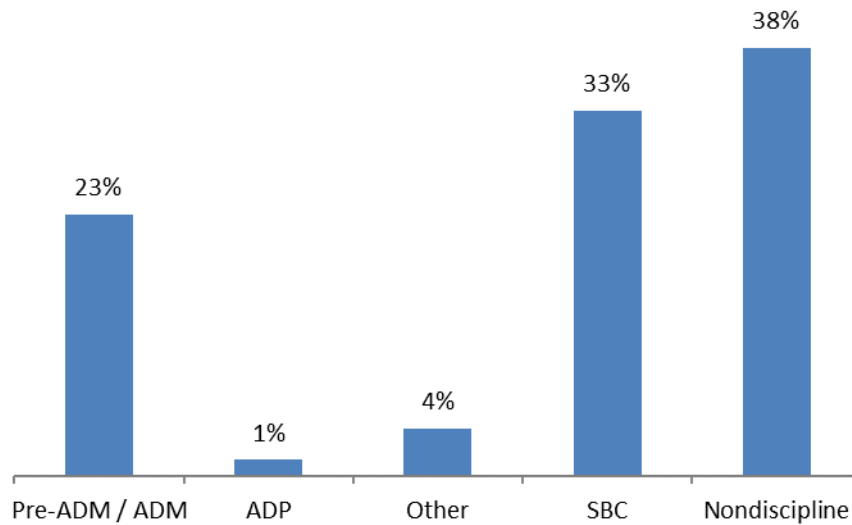
Referrals

There are many ways that participants are referred to the LAP. As noted above, a State Bar applicant may be referred to the LAP by the Office of Admissions. Their moral character application is placed in abeyance while participating in the LAP (this population is captured in the Source of Referrals chart as ADM) and some law students self-refer (this population is captured in the Source of Referrals chart as Pre-ADM, which can include law students and State Bar applicants). Twenty-three percent of the LAP's intakes in 2020 were ADM or Pre-ADM.

Participants who were already enrolled in the State Bar's Alternative Discipline Program (ADP) comprised 1 percent of the intakes in 2020. Those who are involved in the standard discipline process through the State Bar Court (SBC) made up 33 percent of intakes. Admission to the LAP is a prerequisite to qualify for the ADP, therefore many SBC referrals are often enrolling in the LAP with the intention of applying to the ADP at a later date. The 4 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.

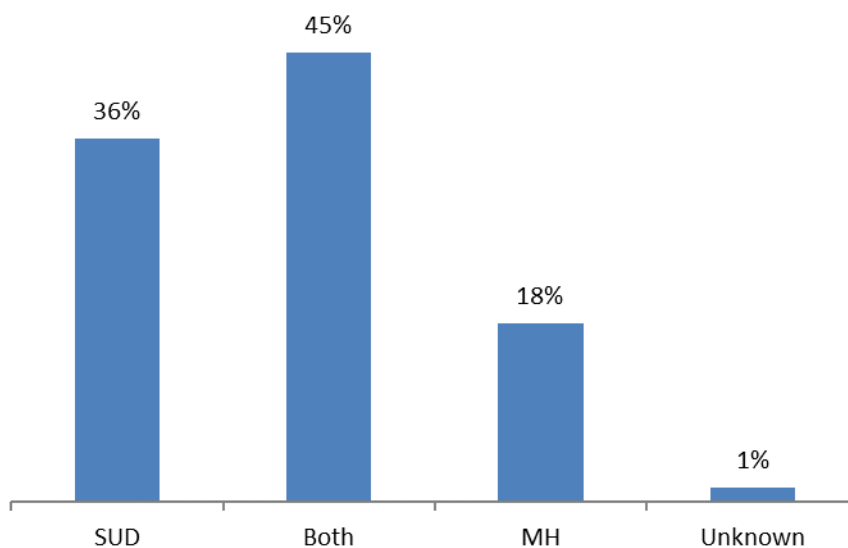
Thirty-eight percent of intakes in 2020 were nondiscipline. The people in this category report enrolling in the LAP for the unique support provided by mental health professionals who specialize in working with attorneys. They may have learned about the LAP through LAP's outreach or MCLE program, or from a colleague or employer.

Source of LAP Referrals – 2020²



A tally of the presenting issue at intake shows that the large majority (81 percent) of participants present with a substance use disorder: 36 percent of participants present with solely a substance use disorder (SUD) and 45 percent have both a mental health (MH) and a substance use disorder. Only 18 percent of participants in the LAP are enrolled exclusively for mental health issues. The 1 percent in the unknown category did not identify either a SUD or MH problem at intake and are generally enrolling to obtain the LAP assessment.

Reason for LAP Participation – 2020³



² “Pre-ADM” refers to law students and State Bar applicants who enroll prior to referral by the Office of Admissions. “ADM” refers to State Bar applicants referred by the Office of Admissions. “ADP” refers to attorneys already accepted into the Alternative Discipline Program. “SBC” refers to attorneys involved in the standard discipline process.

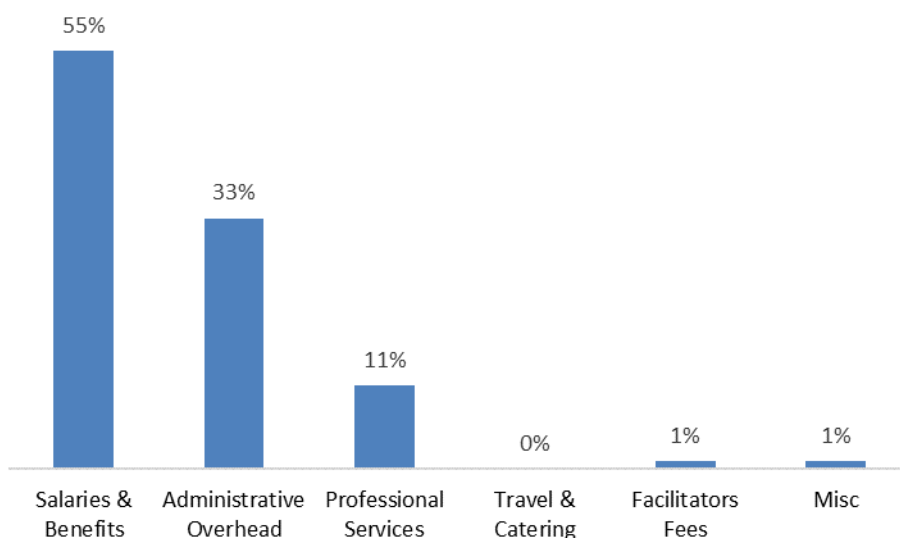
³ “SUD” refers to substance use disorders. “MH” refers to Mental Health problems.

2020 EXPENDITURES

In 2020, the LAP expenditures were approximately \$2.14 million. As a result of the high fund balance at the end of 2019, in 2020 the only fees collected for the LAP was the \$1 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, 2021. Total revenue received in 2020 was approximately \$261 thousand leaving a year-end fund balance of \$1.81 million.⁴

Salaries and benefits plus administrative overhead amounted to 88 percent of the expenditures. The expenditures for professional services, which includes both the Transition Assistance Services and the fund transfer to The Other Bar made up 11 percent of spending in 2020.⁵ The Office of Finance transferred approximately \$172 thousand to The Other Bar in 2020. Travel and catering, facilitators' fees and miscellaneous expenditures made up 2 percent of the spending in 2020. The miscellaneous expenses include items such as telephone, office supplies, and postage (note that percentages may not total 100 due to rounding).

LAP Expenditures 2020 – \$2.14 Million



⁴ The financial information is approximate pending final audit and confirmation by the Office of Finance.

⁵ On and after January 1, 2019, \$1 of the \$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.