



The State Bar of California

OPEN SESSION AGENDA ITEM 50-4 MARCH 2023

DATE: March 16, 2023

TO: Members, Board of Trustees

FROM: Melanie J. Lawrence, Program Director, Office of Professional Support & 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 Lawyers 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 2022 Lawyer Assistance Program Annual Report submitted to the Legislature on March 1, 2023, 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 Lawyers Assistance Program 2022 Annual Report provides an overview of the program’s activities in 2022.

Key data points include:

- The number of new intakes totaled 172, down from 192 in 2021 but still generally

higher than past years.

- Of the 165 cases closed, 42 percent were closed with participants meeting their stated program goals, 7 percent were not admitted, and only one participant was terminated from the LAP in 2022.
- Almost half (48 percent) of participants presented with concerns about both a substance use and a mental health problem at the time of intake. Twenty-four percent of participants presented with symptoms of a substance use disorder and 27 percent enrolled for solely mental health concerns.
- The use of Transition Assistance Services (TAS) numbers decreased 24 percent in 2022, from 178 individuals accessing the service in 2021 to 135 users in 2022. The TAS provides two free remote individual or career counseling services.
- The LAP provided 89 presentations, including 8 at law schools and hosted a law student program and “State Bar Day” for law students, attended by students from 69 different law schools. Those provided to attorneys are free and satisfy the State Bar’s Minimum Continuing Legal Education requirement on competence issues.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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 Lawyers Assistance program 2022 Annual Report.

ATTACHMENT LIST

- A.** Lawyer Assistance Program 2022 Annual Report



The State Bar of California

Title of Report: Lawyer Assistance Program 2022 Annual Report
Statutory Citation: Business and Professions Code Section 6238
Date of Report: March 1, 2023

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 LAP, including key program statistics, the State Bar of California has submitted the report to the Legislature.

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

During 2022:

- The number of new intakes totaled 172, down from 192 in 2021 but still generally higher than past years.
- Of the 165 cases closed, 42 percent were closed with participants meeting their stated program goals, 7 percent were not admitted, and only one participant was terminated from the LAP in 2022.
- Almost half (48 percent) of participants presented with concerns about both a substance use and a mental health problem at the time of intake. Twenty-four percent of participants presented with symptoms of a substance use disorder and 27 percent enrolled for solely mental health concerns.
- The use of Transition Assistance Services (TAS) numbers decreased 24 percent in 2022, from 178 individuals accessing the service in 2021 to 135 users in 2022. The TAS provides two free remote individual or career counseling services.
- LAP provided 89 presentations, including 8 at law schools and hosted a law student program and "State Bar Day" for law students, attended by students from 69 different law schools. Those provided to attorneys are free and satisfy the State Bar's Minimum Continuing Legal Education (MCLE) requirement on competence issues.

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

<https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Reports>.

A printed copy of the report may be obtained by calling 213-765-1190.



The State Bar *of California*

Lawyer Assistance Program 2022 Annual Report **As Required by Business and Professions Code Section 6238**

March 1, 2023

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 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 2022 ACTIVITIES

In the summer of 2022, LAP was reorganized into two specialized components: monitoring and support services. Monitoring LAP remains in the Office of Professional Support and Client Protection and offers traditional professional monitoring services to those who are referred by the State Bar’s discipline system or the Office of Admissions. Support Services LAP is now housed in the Office of Professional Competence and conducts the outreach and education for LAP.

The State Bar’s five-year strategic plan developed in 2022 for years 2022–2027 includes a goal of protecting the public by regulating the legal profession. One strategy for effective regulation is to focus on proactive and preventative measures, not just reactive ones. To that end, Support Services LAP began developing a structure to offer new support services which will begin in 2023. These services will focus on overall attorney and law student wellness along with prevention of common problems faced by those in the legal profession. Some of these services will include an expanded attorney resources section of the State Bar website and new attorney education on behavioral health issues and other topics such as competency and practice management.

OVERSIGHT COMMITTEE

The program’s oversight committee oversees the operation of the Lawyer Assistance Program as necessary to establish policies, practices, and procedures to support the program goal of offering education and rehabilitative programs to attorneys, former attorneys, State Bar applicants, and law students suffering from substance use and mental health disorders.

At the conclusion of 2022, the committee determined to focus future efforts on examining costs related to the program’s services and requirements as well as how to best define successful completion of the program. That examination may lead to changes in the program structure and resources in the coming years.

OUTREACH AND EDUCATION

LAP offers free, one-hour presentations for law schools, law firms, bar associations, government agencies, and other organizations. These interactive presentations address mental health and substance use disorders among legal professionals, educate the audience on how to recognize common signs and symptoms of these disorders in themselves or a colleague, and provide information on how to intervene and access resources. The program presents

strategies for ongoing wellness and an overview of LAP and its services. In addition to being free of charge, the presentations to attorneys satisfy the State Bar's Minimum Continuing Legal Education (MCLE) requirement on competence issues. LAP, in conjunction with the State Bar's Office of Communications, publicizes information about these sessions using Facebook, LinkedIn, Instagram, and Twitter.

During 2022, LAP provided 89 presentations, including 8 at law schools. In addition, LAP hosted a law student program and "State Bar Day" for law students, attended by students from 69 different law schools. State Bar Day included presentations from LAP, Office of Chief Trial Counsel, Office of Admissions, and Office of Attorney Regulation & Consumer Resources. These programs covered areas particularly important to law students, such as dispelling myths about mental health, tools to determine if you have a substance use problem, and wellness and self-care strategies, as well as how mental health and substance use issues can impact entry into the profession and an attorney's license once practicing.

EFFECTIVE INTERVENTION

To understand and improve participant satisfaction, LAP administers a satisfaction survey that is distributed quarterly to all participants. The survey allows participants to voluntarily provide feedback on many aspects of the program, including staff, group facilitators, outreach, and specific program requirements. In each quarter of 2022, between 86 and 94 percent of participants reported that the information and services provided by LAP effectively and appropriately addressed their goals and that they were satisfied with their LAP experience. In addition, the program utilizes specific feedback received from the surveys to assess and improve the program.

To gain a more detailed understanding of the LAP participant population and potentially develop more targeted resources, for the first time LAP began distributing a demographic survey in 2022. This voluntary survey is being distributed at intake and solicits data on participant characteristics such as: age, race and ethnicity, gender, licensure status, participation in the State Bar discipline system, and area of practice. We expect to include this data in the 2023 report.

2022 CASELOAD AND PROGRAM DATA

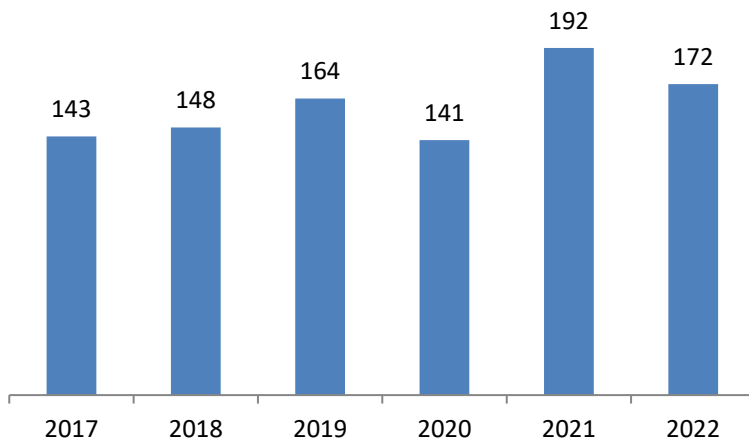
The following charts provide a snapshot of LAP's work in 2022.

LAP CASELOADS

New Cases

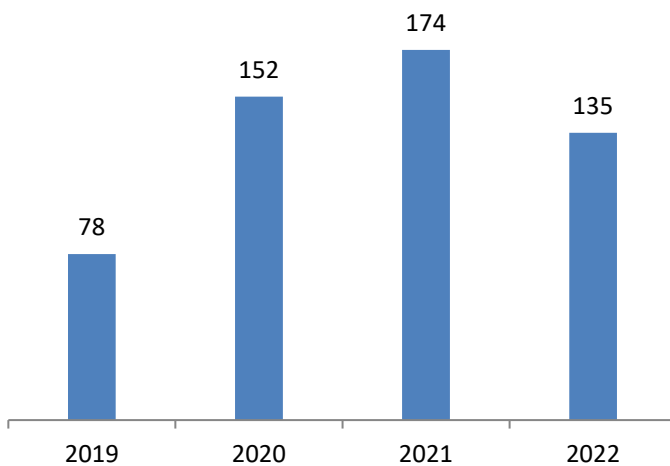
Enrollment in LAP both for support and for professional monitoring decreased in 2022 which is attributed to a stabilization in the numbers after the late-COVID surge in 2021. The total number of new LAP intakes in 2022 was 172.

LAP Intakes: 2017–2022



Through Support Services LAP’s Transition Assistance Service (TAS), attorneys, law students, and State Bar applicants are eligible for two free individual therapy sessions and two free career counseling sessions. TAS numbers decreased 24 percent in 2022, from 178 individuals accessing the service in 2021 to 135 users in 2022. In 2022, TAS users included 45 individuals who utilized the personal counseling sessions, 72 who utilized the career counseling sessions, and 18 who utilized both types of sessions.

Transition Assistance Service Usage: 2019–2022



Reasons for Participation

There are many reasons why participants enroll in LAP. A State Bar applicant with a record of alcohol-related arrests may be referred to LAP by the Office of Admissions while their moral character application is placed in abeyance. During the period of abeyance, LAP staff monitor

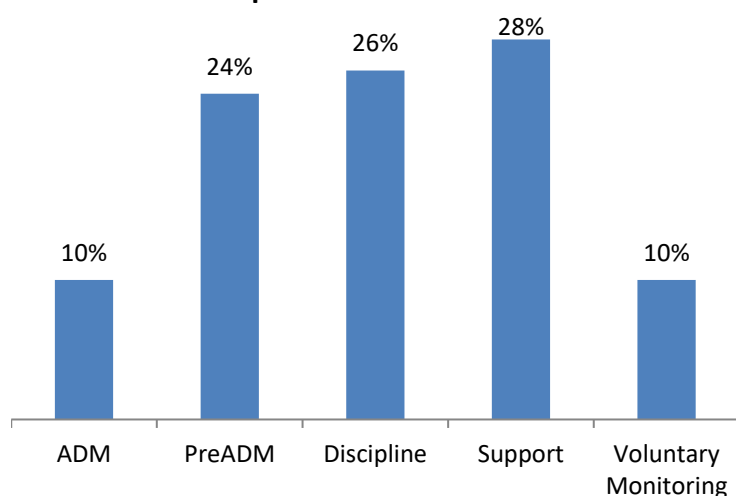
and document the applicant’s recovery work. This population is captured in the Reasons for Participation chart as “ADM.” Ten percent of intakes in 2022 were referrals from the Office of Admissions. Some law students and State Bar applicants (who may anticipate the Office of Admissions to have later concerns about alcohol- or drug-related arrests) self-refer. This population is captured in the Reasons for Participation chart as “Pre-ADM.” Twenty-four percent of intakes were in this category.

Participants who are involved in the State Bar’s discipline process made up 26 percent of intakes. These individuals were either referred to LAP by respondent’s counsel, State Bar Court judges or the California Supreme Court imposing discipline, or Trial Counsel. Admission to LAP is a prerequisite to qualify for the State Bar’s Alternative Discipline Program (ADP) therefore, many respondents enroll in LAP with the intention of applying to the ADP at a later date. A small number of this group participate in order to satisfy a condition of their State Bar probation requirements.

The 28 percent of intakes in the “Support” category represent those enrolling in LAP for the unique support provided by mental health professionals who specialize in working with attorneys. They may have learned about LAP through LAP’s outreach, the MCLE program, or from a colleague or an employer. These participants are not monitored; therefore they are free to avail themselves of the aspects of LAP they find the most helpful in a confidential environment.

The 10 percent who fall into the “Voluntary Monitoring” category are generally enrolling for LAP’s professional monitoring to provide documentation of recovery to another state’s LAP, licensing board, or for their own accountability.

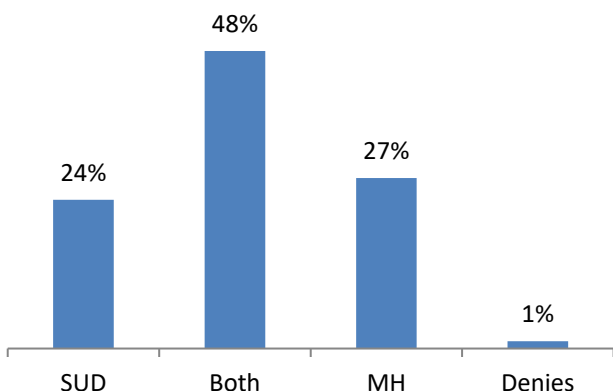
Reasons for Participation: 2022



A tally of the presenting issues at intake shows that almost half (48 percent) of participants presented with concerns about both a substance use and a mental health problem. Twenty-four percent of participants presented with symptoms of a substance use disorder (SUD) and 27

percent enrolled for solely mental health (MH) concerns. One percent enrolled in LAP because they were compelled to do so by another entity, but they denied having any substance use or mental health concerns.

Presenting Problems: 2022



Case Closures

In 2022, LAP closed 165 cases, 98 of which were opened in 2022, with the rest opened in prior years. The reasons for case closure varied. Forty-two percent of the individuals who left LAP in 2022 did so because they met their stated program goals.

Depending on the conditions of enrollment, program goals may be met in several ways. Those participants in the Monitoring program 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 the category "Met Program Goals." There were 11 individuals who successfully completed LAP in 2022.

Also, as noted above, a State Bar applicant may participate in LAP in order to demonstrate fitness for admission to the practice of law. These participants need only participate in LAP for the duration of an abeyance period, the length of which is set by the Office of Admissions or Committee of Bar Examiners, to determine fitness for admission to the practice of law. When the applicant has successfully demonstrated compliance with this abeyance requirement, the applicant is considered to have met their program goals. Fourteen applicants met their program goals by completing their abeyance.

Participants who enrolled in Support LAP¹ had no time requirement attached to program participation, and were able to independently determine when they received sufficient support services. Thirty-seven people met their program goals and accordingly withdrew from Support LAP in 2022.

¹ In 2022, Support LAP participants received the same assessment, recommendations, and support as those enrolled in Monitoring LAP; however, the LAP did not monitor their compliance with the recommendations.

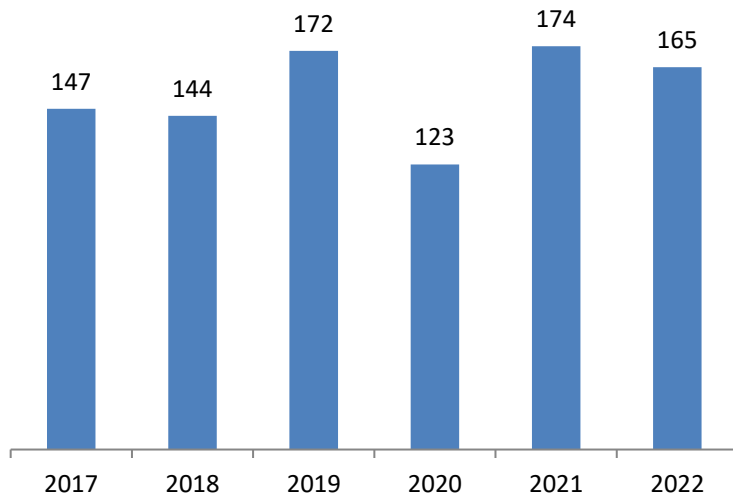
Similarly, participants who withdraw from LAP after completing the Alternative Discipline Program requirement are considered to have successfully met their program goals. Eight people withdrew from LAP in 2022 for this reason.

In summary, the areas of Successful Completion, completion of the Admissions abeyance, Support LAP participation, and ADP completion are all included in the “Met Program Goals” category, and represent 42 percent of all case closures.

Twenty-nine percent of case closures in 2022 were categorized as “Discontinued.” This category includes those who may have discontinued contact without expressing a reason, cited financial reasons for discontinuing, or are deceased.

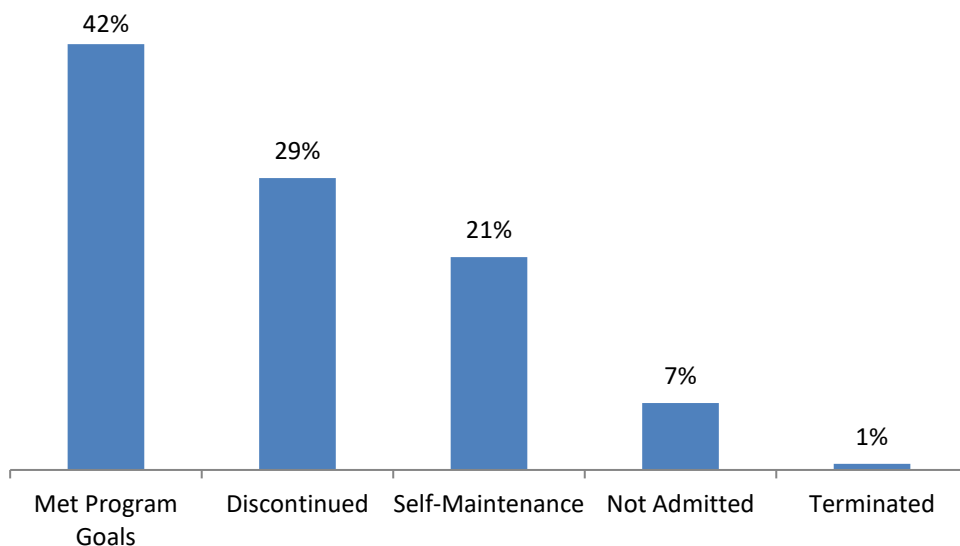
Individuals who expressed a plan to continue their recovery activities without LAP monitoring are referred to as “self-maintenance.” The majority of these individuals voluntarily chose to participate in the highly structured monitoring program, as opposed to being ordered to participate as a condition of admission or discipline, and later independently determined that they no longer needed that level of care. Twenty-one percent of case closures fell into the self-maintenance category. Seven percent of closed cases were closed because they did not meet the criteria for admission into the Monitoring LAP.² Finally, only one participant was terminated for issues of noncompliance in 2022.

LAP Cases Closed: 2017–2022



² Pursuant to rule 3.248(B) of the Rules of the State Bar, in order to participate in the Monitoring LAP program, an individual must have a diagnosed substance-related or mental health disorder.

Reason for LAP Case Closure: 2022



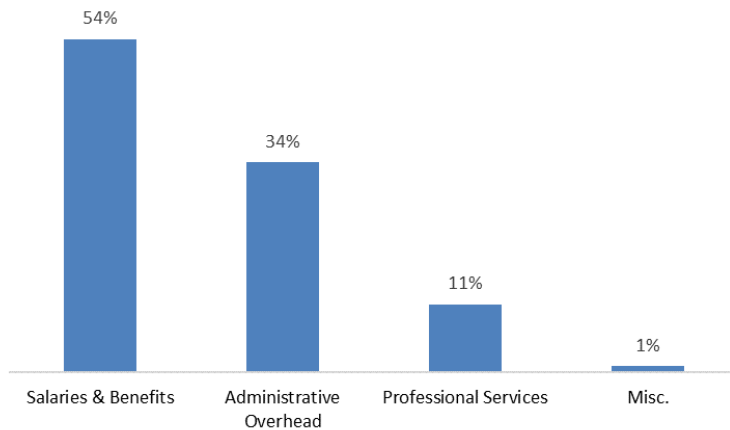
2022 EXPENDITURES

The total of LAP expenditures in 2022 was approximately \$2.3 million, which exceeded the approximate \$2.15 million received in revenue by \$150,000. As of the end of 2022, the reserve LAP fund balance was at \$1.43 million.

Salaries and benefits plus administrative overhead amounted to 88 percent of the expenditures. Expenditures for professional services comprised 11 percent of spending in 2022, including TAS contracts and the fund transfer of approximately \$195,000 to The Other Bar.³ A report from The Other Bar detailing its spending of the funding provided is due to the State Bar on March 1, 2023.

³ Pursuant to section 6140.9 of the Business and Professions Code, the State Bar is required to transfer \$1 of the \$10 fee paid by each active licensee 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.” Since this statute became effective in 2019, the State Bar has transferred these funds to The Other Bar.

LAP Expenditures 2022: \$2.3 Million



CONCLUSION

The LAP continues to work to increase its outreach and to provide supportive and professional monitoring services for the legal community. In 2023, the Lawyer Assistance Program Oversight Committee has established working groups to evaluate best practices for defining successful completion of the Monitoring program, and options for making both Monitoring and Support Services LAP more accessible and affordable to participants. Support Services LAP will also be expanding the services it offers and developing additional resources for a wider group of individuals to address wellness and behavioral health.