



THE STATE BAR OF CALIFORNIA

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Report title: 2013 Annual Report of the Lawyer Assistance Program of the
State Bar of California

Statutory Citation: Business and Professions Code Section 6238

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The State Bar of California has submitted a report to the Legislature in accordance with Business and Professions Code Section 6238. Pursuant to Section 6238, the State Bar shall report, each year by March 1, to the Legislature on the implementation and operation of the Lawyer Assistance Program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance (completed) or noncompliance, and annual expenditures related to the program.

The following summary of the report is provided per the requirements of Government Code Section 9795.

During 2013 the LAP provided effective early intervention consistent with the program's mission of enhancing public protection while supporting recovering attorneys in their rehabilitation and competent practice of law. Specific initiatives addressed during the year included:

1. Encouraging more law students with histories of substance-related offenses to be evaluated by the LAP prior to applying for membership. In terms of protecting the public through prevention of future attorney misconduct, the work of the LAP with applicants to the Bar may have the greatest impact.
2. Continuing to expand education to the membership regarding the problems addressed by the program, including cognitive issues commonly encountered in later life. The program has explored strategies for addressing competency issues in the senior lawyer population, including being available to advise concerned colleagues and family members.
3. Completing two videos that use moving testimonial statements from graduates of the program to explain the components and benefits of the LAP experience.

The Program conducted 176 intakes with attorneys during 2013. Nineteen attorneys completed three years of participation in the Monitored LAP in addition to meeting all of the criteria for successful completion. Four attorneys were denied acceptance into the LAP as a result of not meeting the acceptance criteria. Two attorneys' participation in the Monitored LAP was terminated due to one or more of the reasons identified in the termination criteria.

The full report is available for download on the State Bar's web site at
<http://www.calbar.ca.gov/AboutUs/Reports.aspx>

A printed copy of the report can be ordered by calling 916.442.8018.

LAWYER ASSISTANCE PROGRAM
STATE BAR OF CALIFORNIA
2013 Annual Report

MARCH 1, 2014

LAWYER ASSISTANCE PROGRAM

State Bar of California

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Message From the Chair

As the Lawyer Assistance Program (“LAP”) begins its 13th year, it is appropriate to reflect on where we have come from and where we are heading. It bears noting that the LAP continues, as an integral part of the State Bar of California, to adapt to the changing forces in the practice of law. To put this in proper context, it is important to recall the program’s origins.

The Board of Governors (today referred to as the Board of Trustees) of the State Bar of California established a Lawyer Assistance Program to carry out a mandate of the California Legislature. The legislation was designed to enhance public protection by supporting and facilitating the rehabilitation of attorneys who are impaired by abuse or dependency on alcohol or other drugs, or by mental illness or emotional distress, so that they are able to practice law competently. Since the LAP became operational in March of 2002, it has met this goal of assisting attorneys who voluntarily sought its services or were referred for support and monitoring —including 176 new participants during 2013. Additionally, the program once again provided consultation and education services to a host of entities throughout California.

Greater Emphasis on Early Intervention

The LAP of today is very different from the program that was in place several years ago when I became Chair of the LAP Oversight Committee. While today’s program is smaller and more streamlined in operation, it is also more flexible in design and in the forms of assistance available to the membership. The population of participants in the LAP today is on average much younger than it was during the early years of the program; thus, we have greater opportunities to help arrest the progression of substance abuse, chemical dependency, and other mental illnesses at earlier stages of the disease. By helping attorneys and applicants to the Bar along the path of recovery early on, the program helps prevent the more serious consequences that are usually associated with later stages of these diseases. More information on how the LAP assists applicants to the Bar is available in the “Preventing Future Harm to Clients” section on [page 6](#).

The LAP is working to protect the public while assisting members of the Bar at all stages of their careers.

A New Focus on Competency Concerns and the Needs of Senior Lawyers

During 2013, the State Bar identified a complementary role for this program. Last June, the Board of Trustees' Senior Lawyers Working Group heard testimony from medical and legal experts on ways to safeguard the public and encourage lawyers with otherwise unblemished records to retire with dignity. The Group intends to help lawyers avoid ending a career in disgrace because of misconduct caused by age-related disabilities. The panel explored how to help evaluate whether an attorney is cognitively impaired and in need of professional help and concluded that the strategies recommended by the experts were similar to the lawyer assistance model already employed by the LAP. State Bar Deputy Executive Director Robert Hawley told the Group that the "model is already there," referring to the LAP.

LAP Acting Director Richard Carlton has worked closely with Mr. Hawley and with the Chair of the Board's Senior Lawyers Working Group to explore a number of strategies for addressing competency issues in the senior lawyer population. Mr. Carlton was identified as an internal resource for other departments within the State Bar when concerns regarding cognitive issues are brought to the attention of the Bar. Other proposals included finding ways to encourage lawyers to adequately prepare (financially and otherwise) for transitioning out of their law practice in a manner that does not endanger their clients, should a time come when they are no longer able to practice competently. Toward achieving this goal, the LAP will be offering a series of free workshops designed to help our members adequately prepare for a possible retirement. More information on these planned services is available in the "Helping Our Members Plan for Their Future" section on [page 9](#).

Not a Treatment Program, But Support and Monitoring

A commonly held misconception is that the LAP is a treatment program. Rather, our program is an adjunct to the various forms of treatment and self-help recovery available in communities throughout California. Our program is an evolution of the employee assistance program (EAP) model that emerged during the 1980s. Employee assistance programs came into existence because employers discovered that their employees entered treatment sooner, returned to full work productivity sooner, and maintained long-term recovery longer when they had a consultant (an EAP case manager) to manage and guide them through the process—and to encourage follow-through with aftercare services.

This "case management" model of support and monitoring has been the mainstay of the LAP since its inception. The premise for this model of assistance was that treatment

services were widely available in the community, but that individuals seeking help had difficulty determining exactly which services were appropriate for their needs, locating those services, and continuing to engage with those services consistently enough to receive the long-term benefits. Case management was a strategy to fill this gap—i.e., to connect people seeking help with sources of individually appropriate treatment and self-help groups and to encourage and monitor long-term, consistent participation.

Participation in our program begins with a thorough assessment of what prior treatment, if any, the applicant to the program has received and a determination of what additional care or support the individual needs to best support long-term recovery. This assessment process may take as long as 120 days, after which the applicant to the program meets with an evaluation committee that makes recommendations regarding the applicant's recovery plan going forward. LAP case managers then monitor compliance with the treatment recommendations made by the LAP evaluation committees through the balance of participation in the program. Attendance at weekly LAP group meetings (a core component of the program) is also intended to support attorneys in their recovery but not replace the recovery work they are recommended to do outside the program. A more thorough description of how the program works begins on [page 5](#).

Meeting the Budgetary Target

Continuing a trend begun in 2009, the program operated below budget during the 2013 fiscal year. Further details are provided on [page 10](#).

Continuing Progress

The Lawyer Assistance Program continues to actively encourage attorneys to seek assistance before their problems negatively affect their practice of law and lead to public harm. With an eye to the future, we anticipate continued progress among attorneys who participate in the program. In keeping with our mission, we envision their smooth transition into activities that will bolster and support their continued recovery and enhance public protection.

Philip Belleville, JD, PsyD
Chair, LAP Oversight Committee

— **Mission Statement** —

The mission of the Lawyer Assistance Program is to support recovering attorneys in their rehabilitation and competent practice of law, enhance public protection, and maintain the integrity of the legal profession.

How the Program Works

Attorneys may enter the LAP during a pending disciplinary proceeding or voluntarily by self-referral. All participation in the LAP is voluntary and strictly confidential. An attorney who calls the LAP is assigned to a local Case Manager who is a licensed clinician experienced in the areas of substance abuse and mental health. The Case Manager immediately addresses any life-threatening issues, handles medical needs and provides emotional support.

A new participant immediately begins attending the closest LAP professionally-facilitated support group and other self-help groups as appropriate. Shortly thereafter, the newcomer completes a comprehensive assessment with the Case Manager and is referred to medical and psychiatric professionals for further evaluation if indicated.

Experience shows that these early interactions are essential to helping break through the denial that often characterizes these disorders, fostering the formation of critical personal alliances and friendships to lessen the isolation and shame that is typical in those afflicted, and reinforcing central elements of early recovery.

The participant meets regularly with the Case Manager, weekly with a professionally facilitated support group, and more frequently with other self-help groups. Inpatient or outpatient treatment begins if indicated. The attorney meets with an Evaluation Committee (clinicians and attorneys experienced in recovery) which has reviewed reports from the Case Manager, Group Facilitator, and often reports and assessments from other service providers. The individualized components of a recommended long-term recovery plan are then determined and proposed to the participant.

The Case Manager, Group Facilitator, and Evaluation Committee follow the participant throughout his or her program of structured recovery, and the Committee eventually determines when the participant has successfully completed the program. This unique process ensures continuity of treatment and provides a multidisciplinary perspective. The process avoids some of the challenges faced by a sole clinician providing assessment and monitoring, which may include perceived power struggles, personality clashes and resistance to authority. It also invites the participant to work actively with the multidisciplinary team on his or her recovery.

The LAP also offers all State Bar members two sessions of short-term counseling free of charge with a local therapist who specializes in working with legal professionals. This counseling service addresses common problems such as stress, burnout, relationship

conflicts, and career concerns, and is intended to identify and treat potential problems at the earliest possible stage.

Preventing Future Harm to Clients

In terms of protecting the public through prevention of future attorney misconduct, the work of the LAP with applicants to the Bar may have the greatest impact. The Moral Character Subcommittee of the Committee of Bar Examiners frequently makes a determination that the nature of an applicant's history of misconduct indicates that the applicant might benefit from participating in the LAP in order to further their recovery from the personal problems that likely contributed to the misconduct. The Committee of Bar Examiners will typically offer such applicants an opportunity to have their application held in abeyance while they participate in the LAP. During the period of abeyance, the LAP assesses applicants' recovery progress, recommends any additional activities needed to further that recovery, provides support while in the program, monitors participation and reports applicants' compliance with their LAP Participation Plan to the Committee of Bar Examiners.

Additionally, some applicants who have a history of substance abuse and have applied for membership to the Bar will voluntarily join the LAP while waiting for their moral character application to be reviewed by the Committee of Bar Examiners. These applicants to the Bar seek to document their recovery work and to further indicate to the Committee of Bar Examiners their commitment to recovery. Altogether, at the end of 2013 there were 52 applicants to the Bar participating in the LAP.

2013 Activity

The program conducted 176 intakes during 2013.

Nineteen attorneys completed three years of participation in the Monitored LAP in addition to meeting all of the criteria for successful completion.¹

Four attorneys were denied acceptance into the LAP as a result of not meeting the acceptance criteria.²

Two attorneys' participation in the Monitored LAP was terminated due to one or more of the reasons identified in the termination criteria.³

¹ *Rule 3.249 Completion of LAP:*

A participant is deemed to have completed the LAP when the Evaluation Committee 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 recovery or stability; and
- (C) has satisfied the terms of the participation agreement.

² *Rule 3.244 Eligibility*

The LAP is open to active, inactive, and former members of the State Bar and current candidates for admission to the State Bar who have submitted an Application for Registration. To participate in the LAP, an applicant must:

- (1) voluntarily agree to participate;
- (2) provide medical information and disclosure authorizations as required; and
- (3) sign a participation agreement that includes a promise to comply with all LAP recommendations.

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 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.

³ *Rule 3.250 Termination from the LAP*

A participant may be terminated from the LAP if the Evaluation Committee 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.

New Participants in Structured Recovery

- There were 202 new participants in 2010.
- There were 174 new participants in 2011.
- There were 179 new participants in 2012.
- There were 176 new participants in 2013.

New Participant Diagnoses

- Mental Health Issues 39%
- Substance Abuse Issues 37%
- Dual Diagnoses 24%

Education and Outreach Activities

The Attorney Diversion and Assistance Act directs the State Bar to develop continuing legal education courses and materials related to the prevention, detection and treatment of substance abuse. During 2013, the LAP completed two promotional videos that use moving testimonial statements from graduates of the program to explain the components and benefits of the LAP experience. To view the videos, go to www.YouTube.com and type “State Bar of California Lawyer Assistance Program” in the search window.

As it has since 2006, the Lawyer Assistance Program during 2013 offered a free one-hour self-study MCLE package that was available to all California attorneys via download from a free-standing educational website: www.calbarlap.com. This is a popular resource for attorneys who appreciate the convenience of affordable, approved self-study material on this required topic.

In addition, the program continued to offer free MCLE presentations covering substance abuse, depression, stress and the services of the LAP to local, statewide and specialty bar associations as well as to law firms. Satisfaction with LAP presentations is reflected in the favorable comments received and by the large number of requests for LAP staff to speak before the same associations and firms year after year. The organizations listed below received presentations from the LAP during 2013 (partial list):

Organizations Receiving LAP Presentations

- Association of Corporate Counsel
- Association of Defense Counsel of Northern California & Nevada
- Bingham McCutchen LLP
- Burbank Bar Association
- Business Law Section of the State Bar (two presentations)
- East Bay Trust and Estates Lawyers
- Ford & Harrison
- Lawyers Club of San Diego (two presentations)
- Los Angeles County Bar Association
- Los Angeles County Public Defender
- McGeorge School of Law Alumni Association
- Napa County Bar Association
- Nixon Peabody
- Orange County Bar Association (three presentations)
- Practicing Law Institute
- San Mateo County Bar Association
- Santa Barbara Barristers
- Sonoma County Bar Association
- Sonoma County District Attorney
- Whittier School of Law Alumni Association
- Winston & Strawn

Helping Our Members Plan for Their Future

Medical and legal experts told the Board of Trustees' Senior Lawyers Working Group on June 24, 2013 that far too many members of the State Bar are inadequately prepared—financially and otherwise—for transitioning out of their law practice in a manner that does not endanger their clients, should a time come when they are no longer able to practice competently.

In response, the LAP will be offering a series of free workshops during the fall of 2014 designed to help our members adequately prepare for their financial future and the possibility of retirement. Lifestyle choices for later life, healthcare and other financial needs, and preparing adequately for the possibility of non-income producing years will be discussed. These programs will also address the elements of an effective practice transition plan and the option of appointing an alternative practice administrator to assume responsibility for the practice temporarily or permanently, should the need arise.

The workshops will be offered multiple times in both the San Francisco and Los Angeles offices of the State Bar. Members will also be able to view the program via live webinar.

Financial Summary

Due to streamlined operations, spending by the LAP has trended downward during the past five years as shown below.

Five Year Comparison: Budgeted vs. Spent (in millions)

- 2009: \$3.1 million budgeted; \$2.8 million spent
- 2010: \$2.7 million budgeted; \$2.1 million spent
- 2011: \$2.5 million budgeted; \$2.0 million spent
- 2012: \$1.4 million budgeted; \$1.4 million spent
- 2013: \$1.8 million budgeted; \$1.4 million spent

2013 Operating Expenses by Category

- Employee Expenses59%
- Internal Allocation28%
- Professional Services7%
- Travel and Catering4%
- Supplies/Postage/Telephone/Outside Services.....2%

Lawyer Assistance Program Oversight Committee and Staff

2013 Members of The Oversight Committee

- Philip Belleville, JD, PsyD, *Chair*
- Robert Burchek, MD
- Richard Carrillo
- Kellie M. Condon, PhD
- Alicia Fowler, JD
- Stewart Hsieh, JD
- Robert Lehner
- Philip Spiegel, MD
- Honorable Lawrence F. Terry
- Sandra Wood

2013 LAP Staff Roster

- Richard Carlton, MPH, *Acting Director*
- Alex Yufik, JD, PsyD, *Case Management Supervisor*
- Michelle Harmon, LCSW, *Case Manager*
- Louis Buchhold, MFT, EdDCP, *Case Manager*
- Kara Fletcher, LCSW, *Case Manager*
- Robert Gastelum, MFT, *Case Manager*
- Jennifer Cantore, *Program Coordinator*
- Matt Adams, *Administrative Assistant*