

# LAWYER ASSISTANCE PROGRAMS: ADVOCATING FOR A SYSTEMS APPROACH TO HEALTH AND WELLNESS FOR LAW STUDENTS AND LEGAL PROFESSIONALS

*by Linda Albert*

**D**on't get help, because someone will find out and it will have a negative impact." This message is one that Lawyer Assistance Programs (LAPs), law schools, bar admission agencies and bar examiners, lawyer regulation agencies, courts, and all parts of the legal profession need to join forces to alter. Early identification of mental health challenges or substance abuse problems, early response, and timely treatment universally produce better outcomes. Until recently there has been limited and dated research on the rates of substance abuse and mental health problems within the legal profession. Previous research cites substance abuse prevalence at twice that of the general population and prevalence of depression at two to three times that of the general population.<sup>1</sup> Current research reveals even higher percentages of substance abuse and mental health concerns.<sup>2</sup> Encouraging individuals at all stages of their legal education and professional lives to keep a focus on health and wellness is imperative; equally important is communicating that experiencing a problem is indicative of being human and therefore worthy of addressing in a proactive manner. An LAP is an excellent resource for learning how to maintain health and wellness and how to address and remediate a problem.

## THE ORIGINS OF LAWYER ASSISTANCE PROGRAMS

The first LAPs were established in the mid-1980s. These early programs focused on helping lawyers who were struggling with substance abuse and dependence, primarily alcoholism. Groups of lawyers, many of whom were in recovery themselves, volunteered to assist their colleagues in establishing recovery and stabilization. The dedication of these volunteers was an invaluable resource for lawyers and their families. Since the 1980s LAPs have grown in sophistication and size, and in their use of technology to offer services. They differ in size, organizational type, clients served, and services offered. Organizationally, LAPs are often housed within bar associations or are court-related agencies, but some are independent not-for-profit organizations. What they all share is a dedication to helping lawyers and the profession.

Initially, LAPs focused on practicing lawyers suffering from addiction. Later, many LAPs expanded to provide confidential assistance to all lawyers, judges, law students, and their families. LAPs now provide assistance not only with substance abuse problems but also with process addictions like gambling and sex addiction, mental health

challenges, physical illnesses such as cancer and diabetes, and other stressors that negatively impact the quality of life and the practice of law. LAPs are designed to help their clients build on their strengths, to provide support, and to direct legal professionals to services that promote physical, mental, and emotional health.

In 1988 the American Bar Association created the Commission on Impaired Attorneys, later renamed as the Commission on Lawyer Assistance Programs (CoLAP), whose charge is “to educate the legal profession concerning alcoholism, chemical dependencies, stress, depression and other emotional health issues, and assist and support all bar associations and lawyer assistance programs in developing and maintaining methods of providing effective solutions for recovery.”<sup>3</sup> Its goal is to ensure that every judge, lawyer, and law student has access to support and assistance so that they are able to recover, families are preserved, and clients and members of the public are protected.

## HOW DO LAWYER ASSISTANCE PROGRAMS HELP?

### **Screening, Evaluation, Counseling, and Referral**

LAPs get self-referrals, as well as referrals from law school faculty, mental health agencies, and families. In addition to helping those seeking support for themselves, an LAP offers a first stop for any person concerned about the health or well-being of a law student or legal professional. Many programs provide a place where a legal professional or the professional’s family can call or visit for a free, confidential consultation. Many LAPs provide 24-hour phone access to staff or credentialed hotline personnel. Programs are typically staffed by licensed professionals such as lawyers and clinicians who specialize in helping legal professionals determine the best steps to take to meet the challenges they

face. Following a screening or evaluation, a staff member will work with the client to assist him or her in connecting with appropriate resources. Some LAPs provide short-term counseling and ongoing support and guidance.

### **Peer Support**

LAPs often have trained volunteers who serve as peer assistants, monitors, or mentors. Volunteers are typically lawyers or judges who have experience or special training in mental health or substance abuse challenges. Peer support is often the core of an LAP and reflects the “lawyers helping lawyers” philosophy that started the programs. Many programs have expanded to include a judicial component with judges helping judges. LAP volunteers are in a unique position to offer support to their colleagues and law students because they know the challenges of negotiating law school, lawyering, and judging. Volunteers who are successfully managing their own recovery from substance abuse, mental illness, or physical illness offer particularly powerful support.

### **Working with Bar Admission Agencies and Providing Monitoring**

By making presentations at law schools, LAPs encourage law students to come to them with concerns regarding their admission documentation or character and fitness issues, or to find treatment resources or engage in monitoring. It is common for an LAP to work with its state’s bar admissions office on pre-admission evaluations, consultation, and post-admission monitoring. LAP staff members can work with bar admissions staff to provide professional assessment and interpretation of documentation that may flag an applicant for further evaluation, monitoring, or conditional admission (where available).

When applicants present a history of behavior that without consideration of mitigating factors may warrant denial, monitoring can be especially helpful. For example, if an applicant has a record of psychiatric hospitalizations along with associated obstruction of justice or disorderly conduct convictions, and had an undiagnosed and untreated mental illness but is now successfully being treated, monitoring can be beneficial to establish evidence of stability and removal of the impairment. Conditional admission with monitoring provides bar admission agencies with another alternative to the admission decision.

LAPs that have a monitoring component specialize in providing individualized programs that check for adherence to admission conditions according to the standards within the industry. Monitoring protects the public by enforcing accountability for conditionally admitted lawyers. Monitoring programs offer excellent support and guidance to newly admitted lawyers, who benefit from the mentoring aspects of these programs. Success stories highlight young lawyers who benefitted from being held accountable to their treatment programs, support programs, and conditions of admission, resulting in lawyers with an overall increased level of health and well-being. This increased level of health allows these lawyers to be more diligent and competent in their representation of their clients. A 2001 Oregon study demonstrated that malpractice and discipline complaint rates for impaired lawyers, before treatment, are nearly four times as high as those after treatment.<sup>4</sup> Nearly 75% of lawyers who sought help through the State Bar of California's LAP in 2008 were involved in disciplinary proceedings.<sup>5</sup> A healthy lawyer is a more competent lawyer.

LAPs offer education to bar admissions staff and their boards of bar examiners to help them further understand impairment due to mental illness or

substance abuse, treatment outcomes, and appropriate conditions and lengths of monitoring contracts. Not all jurisdictions offer conditional admission; currently just under half of jurisdictions have a conditional admission rule.<sup>6</sup> For those that do, some rules offer confidentiality of this status, while others render it public knowledge. In the quest to get law students to seek the help they may need, confidentiality of conditional admission is considered pertinent. Many factors play into the "don't get help" conviction that many law students adhere to; lack of confidentiality with conditional admission is cited as one factor. Proponents of making the status of conditional admission public, however, cite protection of the public and transparency of the system as important reasons.

Whether a jurisdiction offers conditional admission or not, the LAP and the bar admissions staff can work together. It is recommended that bar admission agencies provide an LAP brochure to all applicants simply for the purpose of outreach. LAPs are free, confidential programs that specialize in understanding the needs of legal professionals, especially recent graduates who are in a time of transition where support and guidance may be instrumental in smoothing out that next chapter of beginning to practice law. Additionally, LAPs have expanded beyond responding to impairment from substance abuse; many offer free continuing legal education and networking opportunities, which help young lawyers who struggle financially or are seeking a job. The sooner the connection to the LAP is made, the better.

### **Lawyer Regulation**

In some states, LAPs do not work closely with the lawyer regulation system, perhaps because of a fear that such an affiliation could produce a chilling effect on program utilization. However, LAPs in several states have an ongoing working relationship

with lawyer regulation. These programs may offer consultation to lawyer regulation staff regarding independent medical examinations, monitoring conditions, diversions, or informal referral. In some cases, staff from regulation and admission agencies serve on the LAP advisory committees and work on drafting rules pertaining to monitoring or conditional admission. When they work together, LAPs, bar admission agencies, and lawyer regulation agencies can effectively combine resources to increase the health and wellness of the lawyer population and protect the public.

### **Educational and Prevention Services**

LAPs are at the forefront in educating the legal community on the signs and symptoms of impairment from substance abuse, mental illness, stress, and other problems affecting the health and wellness of legal professionals. LAP training promotes early identification and remediation of problems impairing lawyer performance. LAP professionals provide presentations for local and state bar associations, law schools, and the courts. Training for bar admissions staff and those in the lawyer regulation system is conducted by some LAP programs. These training sessions highlight information about the interface between problematic conduct and mitigating factors such as untreated substance abuse or mental illness, treatment efficacy, structure and components of monitoring, how and when to make a referral, and systems approaches to increasing the health and wellness of applicants and legal professionals. LAP personnel also present at local, state, and national conferences.

Prevention efforts are an important part of the work of LAPs. Staff members and volunteers work with law schools to incorporate practices that promote character and fitness into their curricula, work to decrease the stigma of seeking assistance

for substance abuse or mental health problems, and teach stress reduction techniques such as mindfulness. CoLAP works to coordinate and share resources across the United States, Canada, and the United Kingdom, and equips LAPs with current research and educational materials to further their missions. CoLAP often draws from LAP personnel when presenting live webinars on topics pertinent to the health and wellness of legal professionals.

### **Confidentiality and Immunity**

Undoubtedly one of the most important issues for legal professionals working with an LAP, whether as a client or as a volunteer, is confidentiality. Volunteer lawyers are able to maintain confidentiality because they are exempt from reporting requirements to the lawyer regulation system. Across the country, states provide for confidentiality of LAP information and records by state statute or court order. Surveys have demonstrated that concerns about confidentiality are a primary barrier to legal professionals and law students seeking help. They are concerned that revealing their struggles to an LAP will have a negative impact on their reputation, election, application for admission, or general professional status. LAPs continue to work to educate the legal community that their services are confidential and can be trusted. Some states have also provided immunity from lawsuits to LAP personnel and volunteers when working within the guidelines of the program.

### **RESEARCH PROJECT UNDER WAY**


In an effort to update the research on the prevalence of substance abuse and mental illness among attorneys and in order to better inform the work of lawyer discipline and admissions agencies, as well as those providing treatment to the legal population, CoLAP and the Hazelden Betty Ford Foundation<sup>7</sup>

engaged in a landmark collaborative research project. The project was aimed at identifying the current rates of substance abuse, anxiety, and depression among legal professionals, barriers to treatment and assistance resources, and awareness and utilization of LAPs.<sup>8</sup> The widespread benefits expected from this research include the following:

- the establishment of a new baseline understanding of where the legal profession stands in relation to the substantial challenges presented by substance abuse and mental illness adversely affecting the ability to practice law
- an increased spotlight on these issues, which will present both the impetus and the opportunity to revisit and update profession-wide practices
- the potential for innovative reconsideration of cultural norms related to drinking, drug use, and psychological well-being
- knowledge to initiate, inform, and guide decision making and policy development in the following key areas: funding of LAPs, continuing legal education requirements, bar examination and admission requirements, discipline guidelines and procedures, malpractice, prevention, diversion, monitoring, early intervention, referral to treatment, strategies to reduce stigma, and increased career satisfaction and longevity among members of the bar
- the tools to commence a rehabilitation of the legal profession's image and public trust through an increase in attorney wellness, competence, and ethical behavior

Publication of the results is slated for the January/February 2016 issue of the *Journal of Addiction Medicine*.<sup>9</sup> Significant findings will include the relationship between age and years in practice and levels of problematic drinking, depression,

anxiety, and stress—along with levels of help-seeking behavior.<sup>10</sup> These findings will be compared to other professional groups, and implications for the legal profession will be discussed.

Having a mental health or substance abuse diagnosis does not in and of itself indicate impairment or fitness issues; however, the struggle and pain sometimes resulting from an undiagnosed or untreated behavioral health problem can negatively impact a law student, lawyer, or judge. In a recent study on law student well-being, law students demonstrated higher rates of behavioral health problems than the general population, coupled with significant concerns about seeking help or treatment.<sup>11</sup> This pattern runs the risk of undiagnosed and untreated behavioral health problems, which may progress and contribute to problematic behaviors, at-risk status for admission, or complaints to lawyer regulation agencies. When asked if their law school offered any courses on mental health or alcohol and drug topics, only 14% of lawyers answered affirmatively.<sup>12</sup> Working together through a unified approach endorsing health and well-being at the same level of importance as professional responsibility seems prudent. Law schools, bar admission and lawyer regulation agencies, and LAPs can join together with the goals of decreasing the prevalence of behavioral health problems among law students, lawyers, and judges and changing the culture from “don't get help” to “getting help is the smart and responsible thing to do.” 

## NOTES

1. C. Beck, B. Sales, and G.A. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns among a Sample of Practicing Lawyers*, 10(1) J.L. & HEALTH 1–60 (1995–1996); G.A. Benjamin, E. Darling, and B. Sales, *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers*, 13(3) INT'L J.L. & PSYCHIATRY 233–246 (1990); W. Eaton, J. Anthony, W. Mandel, and R. Garrison, *Occupations and the Prevalence of Major Depressive Disorder*, 32(11) J. OCCUPATIONAL MED. 1079–87 (1990).

2. P.R. Krill, R. Johnson, and L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns among American Attorneys*, J. ADDICTION MED. (forthcoming).
3. American Bar Association, Commission on Lawyer Assistance Programs, available at [http://www.americanbar.org/groups/lawyer\\_assistance.html](http://www.americanbar.org/groups/lawyer_assistance.html), which provides information about CoLAP and its educational programs and a list of LAPs by jurisdiction (last visited Oct. 15, 2015).
4. Oregon Attorney Assistance Program, *Lawyers in Recovery Have Low Claim Rates!*, 46 IN SIGHT (April 2002), available at <http://www.oaap.org/data/documents/insight/Lawyers.pdf>.
5. Wendy Patrick, *Dealing with Substance Abuse*, CAL. LAW. (July 2010); see 2008 Annual Report of the Lawyer Assistance Program of the State Bar of California (March 1, 2009), at 6–7, available at <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=pI3cxrt6rFQ%3D&tabid=1183>.
6. See NATIONAL CONFERENCE OF BAR EXAMINERS AND AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2015 (National Conference of Bar Examiners and American Bar Association 2015), Chart 2, available at <http://www.ncbex.org/pubs/bar-admissions-guide/2015/index.html#p=16> (accessed Nov. 4, 2015).
7. The Hazelden Betty Ford Foundation is the nation's largest nonprofit substance abuse treatment provider and includes the Betty Ford Center, founded in 1982. Its mission is to assist individuals, families, and communities affected by addiction to alcohol and other drugs by offering prevention, treatment, and recovery solutions for youth and adults.
8. For more information about the collaborative research project, see <https://www.hazelden.org/web/public/american-bar-association.page> (last visited Oct. 15, 2015).
9. See *supra* note 2.

10. *Id.*
11. J. Organ, D. Jaffe, and K. Bender, *2014 Survey of Law Student Well-Being* (submitted for publication). [Editor's Note: See page 8 of this issue for an article summarizing the results of this survey.]
12. See *supra* note 2.



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