

Response to the Louisiana
Judges and Lawyers Assistance
Program, Inc.'s Performance
Audit,
July 22- October 26, 2015,
New Orleans, LA.

Submitted by:

The Board of Directors and
Operations Committee of the
Louisiana Judges and Lawyers
Assistance Program, Inc.

October 24, 2017

INTRODUCTION

The 2015 Performance Audit of JLAP, Inc. generated a tremendous amount of valuable information including specific written recommendations for JLAP by the Expert Audit Team, focused in four general categories:

- 1) Clinical;
- 2) Administrative;
- 3) Marketing and Education; and,
- 4) Relationships.

JLAP is very grateful for the remarkable effort and industry that the Expert Audit team dedicated to the Performance Audit of Louisiana's JLAP, and JLAP's Board of Directors, Operations Committee, and Professional Staff have all carefully reviewed the Audit Report and all of its recommendations.

Many of the recommendations endorse JLAP's updated policies that were already in place at the time of the Performance Audit, such as JLAP's utilization of the American Society of Addiction Medicine's (ASAM's) clinical criteria for persons in safety-sensitive occupations (such as lawyers and judges), and JLAP's appropriate adherence to professionals' programming guidelines such as utilizing profession-specific specialized treatment facilities.

Other recommendations by the Expert Audit team have been implemented upon receipt of the recommendations, while still others, due to the nature and complexity of the issues involved, will require additional time and/or consideration to process. JLAP's Board, Operations Committee, and Professional Staff are all dedicated to an unflagging mission of continually improving JLAP's services to provide the finest life-saving services possible.

The Expert Audit Team's Recommendations are presented in their entirety herein below, with **JLAP, Inc.'s Board of Directors' and Operations Committee's Response to each in bold:**

I. RECOMMENDATIONS-CLINICAL

1. Design a protocol for the management of COBA/ODC cases allowing for sufficient latitude to offer various levels of evaluation, treatment, and monitoring based upon thorough assessment of the current clinical situation rather than upon past conduct or a past medical condition.

JLAP RESPONSE: JLAP continues to work with COBA and the ODC to ensure that JLAP has sufficient latitude on a case-by-case basis to facilitate JLAP-approved referrals to various levels of evaluation, treatment, and offer JLAP monitoring based upon a thorough assessment of the current clinical situation.

The American Society of Addiction Medicine's Treatment criteria for persons in safety-sensitive occupations should be utilized, elaborating on the key qualities of this sub-population as well as the rationale for an initial multi-disciplinary evaluation and for profession-specific therapy in specialized treatment centers with qualified therapists. In formulating this protocol, incorporate, to the extent applicable to the legal profession, the:

- Federation of State Physician Health Programs Guidelines
- American Society of Addiction Medicine Public Policy Statements on impairment, appropriate evaluation and treatment, discrimination based on illness, and confidentiality
- ASAM's detailed position statements on impairment and length of monitoring

Implementation of the protocol should incorporate enough flexibility to reflect individualized care as opposed to a rigid one-size-fits-all approach.

JLAP RESPONSE: Before this Performance Audit, JLAP had already implemented use of the majority of these clinical criteria and will continue to review and refine its policies and protocol to ensure that JLAP, on a case-by-case basis, continues to render clinical recommendations that are appropriate in safety sensitive occupations.

2. There is no legal precedent in Louisiana, state or federal, that holds that a referral to AA (or any other 12 Step Program) is violative of any

law. However, there are a handful of cases in other federal jurisdictions which state that in some circumstances mandating AA participation is violative of the Establishment Clause of the First Amendment of the US Constitution under current case law.

Therefore, it is recommended that JLAP does not MANDATE attendance at 12 Step type meetings. Instead, the best practices in national LAPs would suggest that recommendations to the various 12 Step Programs such as, AA, NA, Al-Anon, ACOA, ACA, can be RECOMMENDED in monitoring contracts but also reference to “community support,” “mutual-help,” or “mutual support” meetings is appropriate for those candidates who may object to 12 step meeting attendance on religious grounds. JLAP participants who voice a legitimate 1st Amendment objection to AA as a religion should be given the choice of other alternative abstinence-based groups, such as SOS (Secular Organization for Sobriety), RR (Rational Recovery), or SMART (Self-Management And Recovery Training).

JLAP RESPONSE: JLAP is aware of this issue and has now implemented clinically appropriate JLAP-approved procedures going forward.

3. Establish a “Diagnostic Monitoring” category (contract) for:
 - so-called “gray zone” cases, e.g. “intermittent or episodic abuse”
 - treatment occurring years ago with no interval documented recovery
 - chemical dependency diagnosis made years ago with no interval documented recovery
 - treatment received at a non-JLAP approved center
 - alcohol/drug-related past conduct with no interval treatment or documented recovery

This contract should read “not to exceed 2 years with reassessment at the end of the first year.” These clients should have a peer monitor, and have the same urine drug screens (UDSs) as others, but NOT necessarily be required to attend any support groups.

JLAP RESPONSE: JLAP has produced a Diagnostic Monitoring Agreement that meets the expert’s recommendations and

diagnostic monitoring is now available through JLAP in clinically appropriate cases.

4. Greatly expand local evaluator resources. Consider utilizing even out-of-state evaluators. It is not uncommon for a client to fly to another state, participate in a half-day evaluation, and return home the same night at less expense than a 3-day inpatient evaluation. The latter should be reserved for the more complex cases which are better assessed in an inpatient 24 hour setting. The JLAP clinical staff should conduct initial screening triage for further evaluations, possible treatment, and/or monitoring. The JLAP staff should NOT perform its own in-house full evaluations in order to avoid even the perception of a conflict-of-interest or accusations of any preconceived bias. Communicate to the evaluator any and all clinical data relevant to the current situation, and relay additional information as it becomes available. However, the JLAP should not share any of its diagnostic opinions that may color the evaluator's subsequent judgment and the JLAP should abide by the evaluator's opinion even if it disagrees with it.

JLAP RESPONSE: In 2017 JLAP added 5 local evaluators to its resources within Louisiana for a total of 8 options for local low-level JLAP evaluations. JLAP will continue to expand these resources across the state.

5. Expand residential treatment resources. JLAP currently uses six acceptable residential treatment programs. Develop a protocol for centers to apply for JLAP approval, and develop assessment criteria including but not limited to:

- Willingness and ability to conduct a forensic evaluation
- Familiarity with JLAP operations
- Significant experience with medical and legal professionals
- Understanding of the unique attributes of professionals in safety-sensitive positions
- Utilizing a multidisciplinary approach
- Follows FSPHP guidelines for assessment and treatment as applicable to legal professionals.

Many state Physician Health Programs approve approximately 20 of

these centers several of which are also approved by JLAP:

JLAP RESPONSE: JLAP has expanded its approved treatment centers to 10 and expects to have 12 approved centers by the end of 2017.

6. Presently JLAP does 14 UDSs per year*, add at least one PETH test. The frequency of testing should be commensurate with the severity of the illness and its current presentation.

Note: *Most PHPs test at least 36 times a year.

JLAP RESPONSE: This recommendation has been implemented.

7. Create a "Clinical Advisory Committee" whose composition might include some of the following depending upon availability: an Addiction Psychiatrist, a regular Psychiatrist, or an Addiction Medicine Specialist; the JLAP Clinical Staff; and the JLAP Executive Director. This new Committee could meet regularly in person or as needed by phone to assist the JLAP Staff with the more complex cases.

JLAP RESPONSE: JLAP is currently in the process of forming a Clinical Advisor Committee.

8. Increase peer monitor training to twice a year incorporating concepts used in the Michigan LJAP. **(See section on: Peer Monitoring Model)**

JLAP RESPONSE: This recommendation has been implemented.

9. Insure that evaluators and treatment centers offer 2nd opinion diagnostic or alternative treatment centers to everyone by written documentation that is sent back to the JLAP.

JLAP RESPONSE: This recommendation has been implemented.

For voluntary clients who do not complete their JLAP contract, track them to see if they are subsequently referred to the JLAP as

an involuntary client.

10. Track relapses by:
- Type of law practice
 - Referral source
 - Type of treatment
 - Treatment provider
 - Return to work

JLAP RESPONSE: This recommendation has been implemented.

12. Eventually expand your services to include stress, burnout, and behavioral issues, BUT do not do so until you are able to assign one Staff Clinician solely to this arena and until you have readily available a consulting Psychiatrist or Psychologist. Provide education to the ODC, COBA, LSBA, and the Supreme Court about the drastic differences in the underlying assumptions in managing chemical dependency vs. mental illness using Ms. Vincent's excellent treatise on this subject (**See section on:** *Mental Illness & Addiction Differences*)

JLAP RESPONSE: This recommendation has been implemented.

II. RECOMMENDATIONS -ADMINISTRATIVE

1. Clarify the scope and function of the Operations Committee and examine its composition. None of the members has any clinical expertise. This Committee has met only once or twice. Is it providing a valuable service to JLAP, or is it just another “Advisory-type” Committee with no meaningful purpose? Its role is unclear to the Audit Team.

JLAP RESPONSE: JLAP’s present governance structure is currently being restructured.

2. Hire a Health Law Attorney to deal with recalcitrant lawyers and defense counsel.

JLAP RESPONSE: This recommendation is being considered.

3. Finalize the merger of the double Excel sheet data base with the partial Affinity data base.

JLAP RESPONSE: This recommendation has been implemented.

4. Provide the JLAP Board Chair with all keys and computer passwords in case of Executive Director disability or death.

JLAP RESPONSE: JLAP has a succession plan in place.

5. Implement adequate safeguards against employee theft, forgery, computer fraud, and insure that bank accounts are reconciled by someone not authorized to deposit or withdraw funds.

JLAP RESPONSE: This recommendation has been implemented.

Hire an Administrative person to handle all aspects of the JLAP’s business affairs.

JLAP RESPONSE: This recommendation has been implemented.

Consider adding to the Board of Directors a Physician with Addiction and/or Mental Illness expertise such as an Addiction Psychiatrist; a business person with fund-raising experience who might also be a member of another non-profit Board; an Academician from one of the Law Schools; and a non-Lawyer public member to ameliorate even the perception of the “fox (all Lawyers)

guarding the henhouse.” Having a public member deflects criticism from citizen advocacy groups. Some PHP Boards also have a former PHP participant on its Board, that is, a Physician who has successfully completed the 5 year contract and who demonstrates substantial recovery. Ideally there should be a balance between recovering and non-recovering members of the Board.

JLAP RESPONSE: JLAP’s present governance structure and the composition of its Board are currently being analyzed.

6. The Board should perform all the usual and customary functions including but not limited to long-range strategic planning, developing a mission statement, a vision statement, a values list, goals and objectives, plus strategies and tactics. Other goals could include: instituting a standard Executive Director performance appraisal instrument, approving Policy and Procedure manual revisions, conducting periodic stakeholder surveys, and developing a Board member self-appraisal. At each meeting, end with an Executive session dismissing the Executive Director and any other nonvoting guests; do this whether or not there is any business to conduct at this private level. Effective Boards are governance oriented as opposed to just functioning in an oversight capacity.

JLAP RESPONSE: The JLAP Board of Directors is considering these recommendations and will make changes which it deems appropriate.

III. RECOMMENDATIONS- MARKETING/EDUCATION/NETWORKING

1. Immediately contact Judge Ben Jones, Chair of the JAC, to encourage full funding of the proposed fall meeting, and request inclusion of an in-depth educational program by Buddy. Emphasize the importance of capitalizing on this moment to introduce the Judiciary to the concept of a joint Judges and Lawyers LAP. All resources, financial and otherwise, should be used to insure a high quality roll-out, perhaps supplementing the conference with outside experts from Addiction Medicine and/or Physician Health Programs.

JLAP RESPONSE: JLAP will continue to work with its Board of Directors and all of its Judicial Members thereon to develop high quality educational programs for the Judiciary.

2. Convene a forum, perhaps with an informal Liaison Committee, to meet with designated representatives from the Supreme Court, COBA, ODC, and the LSBA on a quarterly basis. Utilize this opportunity for education, ongoing communication, and conflict resolution. Topics could include:

- Description of a flow chart from entry to discharge with all the stops in-between.
- The concept of addiction as a brain disease
- Relapse as a spectrum of activity, its causes, and disposition of cases
- Dual-diagnosis cases
- Evaluator and treatment center criteria (ASAM safety-sensitive information and FSPHP Guidelines)

JLAP RESPONSE: This recommendation is being implemented.

3. Continue to support your Staff attending the annual CoLAP and FSPHP meetings. Each year encourage attendance by a couple of your Board and Operations Committee members as well.

JLAP RESPONSE: This recommendation has been implemented.

4. Devote one hour at each Board of Directors meeting for education, e.g., presenting topics as in #2 above.

JLAP RESPONSE: JLAP Board's education is a top priority and is ongoing.

5. Have one Staff Clinician per year attend the Florida PRN evaluator training session that the Executive Director attended this year.

JLAP RESPONSE: This recommendation has been implemented.

6. Continue the excellent *BAR Journal* articles. Try and get an article in every issue.

JLAP RESPONSE: This recommendation was already implemented.

7. Do NOT publish your approved treatment provider list. Clients looking for an "easier, softer way" will be tempted to do an end-run and by-pass the LAP. Furthermore, center staffs change often and the quality of their health care changes as well. Lastly, all centers are not equal just because they are on your approved list; some do better in certain areas than others. Treatment center recommendations should be individualized based on clinical considerations.

JLAP RESPONSE: This recommendation was already implemented.

8. Consider modifying your annual seminar to include a two day session. Either before or after the first day session on ethics and professionalism, consider having an appreciation dinner for all JLAP volunteers such as peer monitors, Ops Committee, Clinical Advisory Committee (if established) and JLAP Board members. On day 2, follow with a "JLAP Reunion" for clients only. This meeting promotes camaraderie and mutual support. It eventually morphs into a mini-ILAA or mini-IDAA type meeting, and it is great "public relations" for the LAP. Utilize expert outside speakers. This weekend can also be used as one of the training sessions for peer monitors. Entice them to come by subsidizing their costs.

JLAP RESPONSE: This recommendation is being implemented.

9. Encourage the LSBA to establish a 501(c)(3) "scholarship" fund for financially bereft Lawyers. Through this vehicle, provide no interest loans to pay for evaluations, UDSs, and, perhaps, part of their treatment costs. Establish criteria for granting such loans.

JLAP RESPONSE: JLAP's Board of Directors and the LSBA's Leadership are working in unison toward accomplishing this recommendation.

10. Market the Louisiana branch of the Association of Legal Administrators and the Paralegal section of the LSBA.

JLAP RESPONSE: This recommendation is being implemented.

11. When appearing before first year law students, take along one of your recovering clients to tell his/her mini-story.

JLAP RESPONSE: This recommendation will be implemented.

12. Conduct a truly anonymous client survey. **(See section on: Anonymous Client Survey)**

JLAP RESPONSE: This recommendation is being implemented.

13. Other than at the annual seminar where CLEs are awarded for professionalism and ethics, do not conduct other joint educational sessions with ODC in order to avoid the perception that the JLAP is merely an arm of or an extension of that disciplinary body.

JLAP RESPONSE: JLAP is fully evaluating how best to implement positive measures as necessary to help ameliorate misperceptions.

IV. RECOMMENDATIONS-RELATIONSHIPS

JLAP GENERAL RESPONSE: As to all Recommendations on Relationships herein below, members of JLAP's Board and Operating Committee have initiated a dialog with the Louisiana Supreme Court and its Committee on Bar Admissions in order to address the recommendations.

CHANGES TO LANGUAGE AND RELATIONSHIPS

- In light of the Settlement Agreement between the United States of America and the Louisiana Supreme Court under the Americans with Disabilities Act the Louisiana Supreme Court Rules on Admission to the Bar and the section on Character and Fitness have been reviewed.
- A review of Conditional Admissions Rules in other jurisdictions has been conducted.
- The ABA Model Rule on Conditional Admission has been reviewed. This review has been conducted with an emphasis on best practices for addressing substance abuse and alcohol abuse of any individual who is an Applicant for Admission to the Louisiana State Judges and Lawyers Assistance Program, the Committee on Bar Admissions, and the Supreme Court was necessary.

Some of the recommendations will be focused on the effect that the change in the NCBE questions will have on future applicants. It is the understanding of the audit team that, in the future, because of the change in the NCBE application which occurred as a result of the settlement with the Louisiana Supreme Court, any actual diagnosis of either a mental health issue or a substance use/abuse disorder will place an applicant under extra scrutiny for admission ONLY if there is recent conduct related to the diagnosis. Historically this has not been the case. From the body of complaints presented to the audit team for their consideration it appears that some individuals have been sent to JLAP for the purpose of conditional admission based on conduct that occurred many years prior to their application. It also appears that individuals have been sent to JLAP based only on their admission of a history of a substance use disorder that was denoted as severe but that has been in full remission for years.

Bearing all this in mind, the audit team offers the Louisiana Lawyers Assistance Program, Louisiana State Bar Association, Supreme Court of Louisiana, and the Committee on Bar Admissions the following recommendations:

I. JLAP's Supportive Role for Impaired Attorneys/Applicants

Because the audit team is of the opinion that applicants to the Louisiana State Bar, as well as a number of these applicants' attorneys, have typically viewed the Lawyers Assistance Program as a wing of discipline and as a probation department that is punitive and controlling, it is recommended that the Judges and Lawyers Assistance Program carve out and protect a relationship with Bar applicants and applicants for readmission that is separate from the Committee on Bar Admissions and the Office of Disciplinary Counsel. The recommendations on changes in the language of the rules governing both Conditional Admission and Discipline, as outlined below, and along with other recommendations in this report governing certain policies and procedures, will hopefully assist the JLAP in beginning to address this perception.

II. Changes in Rules Language for Conditional Admission

- A) Character and Fitness LASC Rule XVII §5 (E)16 reads: "Evidence of drug or alcohol misuse, abuse or dependency" - should read **"evidence of any substance use disorder"**. ii
- B) Character and Fitness LASC Rule XVII § 5 (F) the passage [*If the applicant is found to have engaged in conduct which at that time would have constituted grounds for an unfavorable recommendation, then the applicant must show by clear and convincing evidence that his or her character has been rehabilitated and that such conduct, inclination or instability is unlikely to recur in the future. The mere fact that there has been no repeat of any such conduct, instability or inclination shall not in and of itself be sufficient to constitute rehabilitation or proof of good moral character and fitness*] **should be changed to reflect that the standard of proof should be applied to conduct only, not to a diagnosis of a substance use disorder that is in full remission.**
- C) Character and Fitness LASC Rule XVII § 5 (M) (6) should read "If the Court approves the conditional admission, the conditionally admitted lawyer's compliance with the terms of the consent agreement shall be supervised by a compliance monitor **assigned by the Office of Disciplinary Counsel. In cases involving substance use disorders or mental, physical or emotional disability the Judges and Lawyers Assistance Program will report compliance or noncompliance with the JLAP monitoring agreement to the Compliance officer assigned by the Office of Disciplinary Counsel.** Cooperation with the JLAP monitor is required and failure of the conditionally admitted lawyer to cooperate may be grounds for the revocation of the conditional admission.

III. **Changes in Procedure for Conditional Admission**

- A) It is recommended that the Committee on Bar Admissions utilize the service of investigators with a background in Criminal Justice who can investigate each applicant and identify those applicants who may need a higher level of scrutiny before being admitted to the Louisiana State Bar. The investigation of background and prior conduct by a bar applicant should not be within the responsibilities of JLAP staff.
- B) It is recommended that the Committee on Bar Admissions establish a pool of volunteer attorneys to sit on hearing panels to review those bar applicants that have been flagged by the investigators. The hearing panel will review the file provided by the applicant, the materials gathered by the investigator, and then meet with the applicant to determine from the face to face encounter whether this applicant meets criteria to be granted admission. During this process JLAP will provide evidence of the applicant's compliance or non-compliance with their monitoring agreement.
- C) For applicants who do not pass at the first level of hearings it should be made clear to the applicant that they have a right to an appeal to the Committee on Bar Admissions. If the applicant fails to be granted admission upon that appeal that there is a further right to appeal such determination to the Louisiana Supreme Court. Under no condition should an applicant's right to the appellate process be discouraged by JLAP staff, COBA Staff, or LSC staff.

IV. **Disciplinary Rules**

Disciplinary Rule LSAC XIX § 24 (E) (3) Reads at present:

3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless:

- (a) the lawyer has pursued appropriate rehabilitative treatment;
- (b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and
- (c) the lawyer is likely to continue to abstain from alcohol or other drugs.

Recommended changes as follows:

3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been **diagnosed, treated, and is in remission**. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless:

(a) the lawyer has pursued **and complied with the treatment recommendations of the LA-JLAP and has complied with the conditions of the monitoring contract**

(b) the lawyer **has offered evidence of sustained abstinence from addictive substances or processes and/or has offered evidence of compliance with recommended healthcare regimen prescribed by provider(s) that meet LA-JLAP standards.**

(c) **A healthcare provider or team of providers that meet LA-JLAP standards who has been involved with the care of the lawyer indicates in writing that the applicant's prognosis is sufficiently good to predict that they will continue to manage any condition or disability effectively.**

Since the audit team's impression and experience of the Louisiana JLAP is that it conducts its work in both a professional and appropriate manner, and is dedicated to providing support and accountability to those attorneys and Bar applicants who need their services, we offer these recommended rule changes to also make it clear to the legal profession that it is not JLAP which controls who is admitted to the Bar with or without conditions, but that such authority lies firmly within the purview of the Louisiana Supreme Court with the recommendations of the Committee on Bar Admissions and the Office of Disciplinary Counsel which may or may not rely on the opinions and recommendations of the Louisiana Judges and Lawyers Assistance Program staff.

It will take time for this reputation to change. It is recommended that the above changes be adopted to place an obvious boundary between the mission of COBA and the JLAP and a similar obvious boundary between ODC and the LAP.

JLAP's RESPONSE: Any changes in Conditional Admission and Disciplinary Rules and procedures fall within the purview of the Louisiana Supreme Court.

V. ADDITIONAL CHANGES TO LANGUAGE AND RELATIONSHIPS

- Enhance direct communication with all clients, especially when making any changes such as the new protocol for the Affinity website client progress reports. Issue clear instructions verbally and utilize Affinity literature to warn clients about dilute urines and other false positives. Provide each client with a list of alcohol-containing foods and liquids, including so-called “non-alcohol” beer and wine, as well as personal care products such as hand sanitizers or denture rinses. Clients should be warned to “read all labels.”

JLAP RESPONSE: This recommendation is being implemented.

- Endeavor to explain the rationale for any new policies. Enhance confidentiality by double screening the primary and copied recipients of any emails.

JLAP RESPONSE: This recommendation is being implemented.

- The Executive Director is generally known as a strict “trust but verify” guy, and he is viewed very favorably in general, e.g., “He saved my life.” He is also highly regarded in the “LAP world.” The Audit Team Leader was recently in West Virginia lecturing at an addiction conference, and the LAP Director there stated that his program was about to be dissolved, but Buddy Stockwell’s *BAR Journal* article saved it and the WV LAP program was subsequently funded. However, the Executive Director’s communication style is perceived in some quarters as being “dictatorial,” “rigid,” “aggressive,” “adamant” and the like. We suggest that he implement measures to ameliorate this perception.

JLAP RESPONSE: This recommendation is being implemented.

- The JLAP Board should endeavor to solidify all current and potential JLAP funding sources in order to establish stable sources of revenue.

JLAP RESPONSE: This recommendation is being implemented.