

Louisiana JLAP 2015 Audit Supplement

February 22, 2018

CLINICAL RECOMMENDATIONS

“Diagnostic Monitoring Contract”

The Louisiana Judges and Lawyers Assistance Program (JLAP) was established and is maintained to serve a number of purposes. It provides confidential assistance to members of the Louisiana State Bar Association (LSBA) who are experiencing problems with alcohol or drugs. JLAP screens members of LSBA that seek help and sends those who meet certain criteria for assessment. When the assessment process identifies an individual with qualifying diagnoses, treatment is recommended. When treatment is successfully completed, a monitoring agreement is offered. The staff at JLAP provides case management services to a program participant. All counseling and clinical work is done by independent providers to whom a participant is referred.

To become a JLAP participant an individual must be screened and assessed. This process is required to determine if a potentially impairing condition exists and if treatment is required. JLAP serves as a monitoring entity that reports to the monitoring authority in the State of Louisiana, which is the Louisiana Supreme Court through the Office of Disciplinary Counsel (ODC).

JLAP offers accountability and support to participants. Conditions are carefully explained so that would-be participants understand the services received, expectations of them, and the duty on the part of JLAP to report to ODC when the participant has been referred by discipline.

JLAP has an organizational plan modeled on the Physician Health Programs (PHP). This model requires:

- An administrative staff with a director who is a member of the profession to be monitored
- A staff of fully licensed, appropriately credentialed providers with experience treating safety sensitive professionals
- Legislation that grants JLAP the authority to monitor professionals and report non-compliance to the appropriate licensing bodies

Challenges to the above process:

- Defense attorneys representing clients with some questionable conduct that is related to the use of psychoactive substances are requesting:
 - Clients to be “monitored” by a licensed professional counselor who does not work for a Lawyers Assistance Program, **or:**
 - JLAP offer a level of involvement that consists only of random drug testing

The arguments offered by Dane Ciolino are:

- This level of involvement “can do no harm”
- This would allow his clients to “plead the fifth” about their questionable conduct
- If the individual can test negative for psychoactive substances for a year that will be “a good thing”

STEPS THAT MUST OCCUR FOR AN INDIVIDUAL TO PARTICIPATE IN JLAP

1. In order to participate in JLAP's monitoring program, a lawyer must have a firm diagnosis or be highly suspect of having a diagnosis
2. Eligibility for JLAP is determined by an initial screening assessment that requires clinical expertise. This triage process will result in one of the following pathways:
 - An obvious diagnosis exists and treatment is recommended
 - A diagnosis is probable and further evaluation is recommended
 - A diagnosis is possible and a further comprehensive multidisciplinary evaluation is recommended
 - No diagnosis exists and nothing further is recommended
3. The defense Bar suggested allowing the client to choose different options, e.g., the cancer patient choosing only radiotherapy, but not chemotherapy and/or surgery or a diabetic choosing diet alone, but no oral medications nor insulin. It should be noted that in these cases, the patient is fully aware of the pros and cons of all options and can make an informed decision and consent. However, an alcoholic or addict has a distorted perception of reality and engages in a multitude of defense mechanisms such as minimizing, rationalizing, projecting, and blaming. For the most part, the chemically dependent patient is ignorant, i.e., does not grasp the causal relationship between the drinking/drugging and the problems of unmanageability. This is called denial, a subconscious defense mechanism that protects the mind from receiving a bunch of bad news. If not in denial, the client will lie because the last thing he or she wants is for you to discover that he or she is indeed an alcoholic or addict. This is fueled by immense guilt, shame, and remorse. None of these exists when dealing with other medical diagnoses because there is no stigma attached to most other medical conditions.
4. By the time addiction or other disorders show up in the workplace or in the community, we are dealing with advanced disease. This fact makes it incumbent to clarify the situation as soon as possible before the disease progresses to later stages where it is more difficult to treat. Just doing drug testing for 6-12 months would be doing a disservice to the individual.
5. **The 2015 JLAP Audit revealed that of all the evaluations recommended by JLAP, 80% were done by local psychiatrists and psychologists; only 20% were done at residential centers over multiple days.**
6. **The 2015 JLAP Audit further noted that of all the voluntary referrals to JLAP, 80% got a further evaluation after the initial screening assessment and of those, 60% required treatment.**

DRUG TESTING

Drug testing alone is not a diagnostic test. A positive urine does not necessarily mean a diagnosis exists; similarly, a negative test does not rule out a diagnosis. These clients often can remain abstinent for varying periods and they invariably invest lots of energy in trying to beat the urine drug testing system. Even if abstinent, the distorted thinking is still operative and therefore perpetrating harm is possible. When dealing with safety sensitive clients, extra precautions are necessary.

DIAGNOSTIC MONITORING

Mr. Ciolino construes the 2015 JLAP Audit clinical recommendation of adding a Diagnostic Monitoring Agreement as a criticism of JLAP. He suggests that allowing individuals to submit to random drug screening alone would serve as a form of diagnostic monitoring agreement.

To clarify diagnostic monitoring, this is a category for clients who:

- Are so called “gray zone” cases whose signs and symptoms don’t fully match diagnostic criteria, but are very highly suspect
- Received treatment years ago with no interval of documented recovery
- Received treatment at a non-JLAP approved facility
- Have had alcohol/drug related past conduct with no documented interval of recovery

The 2015 Audit Team recommended adding a Diagnostic Monitoring Agreement to expand JLAP’s services and therefore, offer more options to clients. This was **NOT** a criticism of existing programming.

INDEPENDENT MEDICAL EVALUATIONS

Twenty and six-tenths percent (20.6%) of the 12,825 licensed, employed attorneys who responded to the Hazelden Betty Ford ABA CoLAP research study published in 2016 indicated that they were “positive for hazardous, harmful, and potentially alcohol-dependent drinking.” Twenty-eight percent (28%) of the respondents indicated they experienced significant depression. Nineteen percent (19%) indicated they experienced significant anxiety, while 23% reported significant symptoms of stress.¹

It is clear that many attorneys may have difficulties during their career. When professionals appear to have medical or psychiatric problems that may be potentially impairing or are impairing in the workplace, they often tend to minimize their issues for fear of losing their job, their family, or their license to practice. In order to fully assess the professional, they must have a comprehensive multidisciplinary evaluation.

A comprehensive multidisciplinary evaluation consists of:

- An addiction assessment
- A psychiatric assessment
- A detailed medical history
- Laboratory testing
- A complete physical exam (If indicated)
- Neurocognitive testing (If indicated)

The evaluation will result in:

- A firm diagnosis requiring treatment
- A highly suspect diagnosis requiring diagnostic monitoring
- No diagnosis

¹ Krill, P., Johnson, R., and Albert, L. *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*. Journal of the American Society of Addiction Medicine. Feb. 2016.

AUDIT TEAM DISCUSSION AND RESPONSE

The Judges and Lawyers Assistance Program has the administrative structure, professional staff, and relationship with the licensing authority in the state to refer for assessments, receive recommendations from evaluators and decide to offer a monitoring contract. The authority to decide the requirements of any monitoring contract rests with the JLAP, not with possible participants nor their defense attorneys.

The JLAP offers assistance to lawyers to establish and maintain recovery that restores their fitness to practice. The only defense it offers to attorneys in trouble with their regulatory bodies is evidence of their compliance with a comprehensive monitoring agreement.

Mr. Ciolino is proposing a different service from JLAP. It is a service that falls short of the goal of rehabilitation since there is no assessment process that can develop a monitoring agreement. It also removes knowledge of any misconduct the lawyer may have engaged in secondary to a diagnosis. Harm can certainly be done if the regulators, the courts, or the public see the requested drug screening by JLAP as evidence that they have established recovery. In the language of recovery, “we are as healthy as we are honest.” Mr. Ciolino’s proposed plan removes the honesty and transparency needed for recovery.

The 2015 Audit Team advises the Louisiana Judges and Lawyers Assistance Program to deny this request. In summary, the Audit Team rejects the concept of drug testing only and recommends that JLAP not deviate from its current procedures.

AUDIT TEAM OPINIONS AND RECOMMENDATIONS

1. The authority to decide the requirements of any monitoring contract should rest with the JLAP
2. The 2015 JLAP Audit Team does not feel that a screening outpatient assessment by the monitoring entity or a non-doctoral, non-forensic qualified professional evaluator is adequate to formulate a monitoring contract. A thorough forensic quality evaluation by a doctoral professional needs to be done with resulting recommendations from that evaluation, before any lawyer or judge enters into a monitoring contract.
3. Monitoring should consist of more than just drug testing of the lawyer or judge, even in diagnostic contracts. Issues such as workplace reports and collateral information, at a minimum should be included. The 2015 JLAP Audit Team recommends that more than a screening evaluation on an outpatient basis along with drug testing needs to be done for monitoring of attorneys and judges.
4. Evaluations need to be done by professionals “outside” of the structure of the monitoring entity.
5. Diagnostic contracts are essential to the success and integrity of any monitoring program.

Respectfully submitted,

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