August 12, 2019

Mary Kearin
Council of the Section of Legal Education and Admissions to the Bar
ABA Section of Legal Education and Admissions to the Bar
321 N. Clark Street, 21st Floor
Chicago, IL  60654
Via email: mary.kearin@americanbar.org

Dear Ms. Kearin,

On behalf of the ABA Commission on Lawyer Assistance Programs, The National Task Force on Lawyer Well-Being, and the ABA Law Student Division, we are jointly writing and requesting that the Council consider revisions to the ABA Standards on Legal Education.

Law students are experiencing significant challenges in the areas of substance use (including alcohol) and mental health. These needs were confirmed with the publication of *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns* (the “Law Student Survey”) by Jerome Organ, David Jaffe and Kate Bender in the Journal of Legal Education (2016). In the same year, a separate study documented the challenges that attorneys, and particularly young attorneys, were confronting in the profession. *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys* (the “Hazelden Study”) (P.R. Krill, R. Johnson, & L. Albert, 10 J. Addiction Med. 46 (2016). Throughout this time period, national media coverage of some high-profile deaths from suicide has continued to dramatize the urgent and compelling need for action.

In response to these serious and well-documented trends, a national task force of relevant stake-holders convened to discuss next steps. Those deliberations resulted in *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (August, 2017). This comprehensive report, available at lawyerwellbeing.net, outlines an ambitious agenda for institutional changes throughout the legal profession. The ABA House of Delegates, at the 2018 Midyear Meeting in Vancouver, adopted a resolution urging stakeholders to consider the recommendations of the report. These recommendations included the following proposals relating to law schools:
30. INCLUDE WELL-BEING TOPICS IN COURSES ON PROFESSIONAL RESPONSIBILITY.

Mental health and substance use should play a more prominent role in courses on professional responsibility, legal ethics, or professionalism. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues. Until students learn from those assessing them that seeking assistance will not hurt their bar admission prospects, they will not get the help they need.

31. COMMIT RESOURCES FOR ONSITE PROFESSIONAL COUNSELORS.

Law schools should have, at a minimum, a part-time, onsite professional counselor. An onsite counselor provides easier access to students in need and sends a symbolic message to the law school community that seeking help is supported and should not be stigmatized. Although the value of such a resource to students should justify the necessary budget, law schools also could explore inexpensive or no-cost assistance from lawyer assistance programs. Other possible resources may be available from the university or private sector.

We write to urge the Section on Legal Education to consider the following recommendations that recognize the importance of law student well-being in the ABA Standards. Our request includes:

(1) articulating professional well-being as a fundamental learning outcome in Section 302;
(2) urging by an Interpretation to Section 303 that two hours in the Professional Responsibility course be dedicated to education on substance use and mental health;
(3) ensuring that law school student services as defined in Section 508 include the substance use and mental health counseling desperately needed on every campus in this era.

The Commission on Lawyer Assistance Programs works with state and local lawyer assistance programs around the country whose mission is to serve lawyers, judges, and law students who are struggling with alcoholism, substance and mental health challenges. Many LAPs around the country are already working closely with law schools to provide needed education and counseling. Many law schools are working closely with central University Counseling Centers to provide on-campus services, and in some instances have hired dedicated staff to provide on-site services. These revisions require that every law school have a plan to address these needs but would not require the expenditure of additional funds.
Task Force members, working with multiple sections of the American Bar Association and the Conference of Chief Justices, continue to advocate for institutional change on many fronts, including the bar admission process, continuing legal education requirements, law firm leave policies, and burdens faced by the judiciary. At a time when the entire profession is moving forward on this national agenda for Lawyer Well-Being, we urge the Council to take action on these proposed revisions.

Sincerely,

Bree Buchanan
ABA Commission on Lawyer Assistance Programs

Bree Buchanan, Chris Newbold, William Slease
National Task Force on Lawyer Wellbeing

Johnnie Nguyen
ABA Law Student Division
Proposed Changes to the ABA Standards for Approval of Law Schools
Submitted on Behalf of the ABA Commission on Lawyer Assistance Programs,
the National Task Force on Lawyer Well-Being, and the ABA Law Student Division

Standard 302. LEARNING OUTCOMES
A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:
(a) Knowledge and understanding of substantive and procedural law;
(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
(c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
(d) Other professional skills needed for competent and ethical participation as a member of the legal profession including the tools needed to promote personal and professional well-being.

Standard 303. CURRICULUM
(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
   (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
   (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
   (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement as defined in Standard 304.

Interpretation 303-5

Mental health and substance use should play a more prominent role in the required course on professional responsibility. A minimum of two hours should be dedicated to the topic of substance use and mental health issues, during which professional responsibility professors collaborate with lawyer assistance program representatives, bar examiners or other qualified bar representatives to address the issues.

Standard 508. STUDENT SUPPORT SERVICES
A law school shall provide all its students, regardless of enrollment or scheduling option, with basic student services, including maintenance of accurate student records, academic advising and counseling, financial aid and debt counseling, substance use and mental health counseling, and career counseling to assist students in making sound career choices and obtaining employment. If a law school does not provide these student services directly, it shall demonstrate that its students have reasonable access to such services from the university of which it is a part or from other sources.
MEMORANDUM

To: Pam Lysaght and Stephanie Giggetts
From: Barry Currier
Re: Consideration of including training on stress and well-being in the Standards
Date: August 6, 2019

This memorandum reports on a discussion that took place at the recent meeting of the Professionalism Committee of the Conference of Chief Justices and, flowing from that discussion as you will see below, suggests that the Council add to its Standards and Rules work agenda for the 2019-2020 year a consideration of whether the Standards should be amended to include as a graduation requirement that law schools include coverage of substance abuse, stress, and well-being as it relates to law school and the legal profession in the required course in professional responsibility [Standard 303(a)(1)] or elsewhere in the Standards.

The meeting of the CCJ Professionalism Committee included an agenda item titled “Consideration of a Resolution in Support of Requiring Applicants for Admission to the Bar to Have Instruction on Substance Abuse.” The topic was offered by David Jaffe, Associate Dean at American University. David has been a volunteer in the site visit process and has long been involved in research, study, and discussions about problems of substance abuse, stress, and well-being in legal education and the profession. He was part of a national task force supported by the ABA and others, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change (2017). The Council heard a report from David and his colleagues who worked on the report at a recent Council meeting.

The draft resolution would put into place a CCJ policy that would encourage jurisdictions to amend their current law school education requirement to sit for the bar examination to require law school graduates to have received at least one hour (that is one 50- or 60-minute hour, not one credit hour) of instruction on “stress, well-being, mental health and substance abuse disorders, including causes, prevention, detection, and treatment alternatives.” While the material presented by Dean Jaffe also referenced the possibility that a law school graduate could present a certificate of some sort from a CLE provider or other source that certified that this instruction had been received outside the law school, the idea behind the resolution seemed clearly to be that this requirement would be fulfilled by the inclusion of this instruction in law school, and that it would be part of the dean’s certification that the graduate would present to the jurisdiction where admission was being sought.
The discussion at the committee meeting accepted that stress, substance abuse, and well-being were important issues for the profession and for legal education to address. Further, the discussion acknowledged that it made sense that the discussion begins in law school. Dean Jaffe reported that many schools had already taken steps to raise these matters with students, whether in orientation or somewhere along the way in a course. That said, not all schools were doing so.

Some concerns were raised, including how much work it might be for schools and jurisdictions if the requirement were not in the Standards, but rather were in each of the 50+ jurisdictions’ bar admissions rules. We have seen this issue in other contexts.

As the discussion was drawing to a close and the committee members focused on whether the committee should make a recommendation to the full conference on the matter, and my sensing that, given the importance of the topic there was some sentiment that something should be done, I offered to raise the matter with the Council to see if the Council was interested in addressing this in some way, to avoid the issue of different rules in different jurisdictions. I am following through on that representation with this memo.

Scott Bales and David Byers were also in attendance at this meeting and can offer the Council their views on the discussion.
August 15, 2019

Mr. Fernando Mariduena
Council of the Section of Legal Education and Admissions to the Bar
321 N. Clark Street 21st Floor
Chicago, IL 60654

Dear Mr. Mariduena,

In response to the Council’s invitation to submit ideas and suggestions regarding issues related to the ABA Standards and Rules of Procedure for Approval of Law Schools, I write to offer an amendment to Standard 508: Student Support Services.

Lawyers and law students both struggle with substance use and mental health disorders. A national study (2016) on attorney substance use and mental health, conducted by the Hazelden Betty Ford Foundation and published in the Journal of Addiction Medicine surveyed 12,825 licensed, employed attorneys and found substantial rates of behavioral health problems, with 20.6% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking. Further levels of various mental health disorders were significant, with 28% experiencing depression, 19% experiencing anxiety, and 23% experiencing stress.¹ These challenges were also present for law students. Jerome Organ, David Jaffe and Kate Bender (2016) surveyed students enrolled in Juris Doctorate (JD) programs at fifteen participating ABA-accredited law schools and found both alcohol consumption and drug use had increased significantly in the last twenty years amongst law students.² The researchers also found that 17% of respondents screened positive for depression and 37% of respondents screened positive for anxiety. At Yale School, a study conducted by the Yale Law School Mental Health Alliance found 70% of survey respondents (206 students in a 296 student sample) reported having struggled with mental health while at Yale Law and of the respondents who experienced mental health challenges, 16% stated they sought but were unable to access treatment.³

Given the demonstrated need, law schools should focus on prevention and access to mental health services. To gain an understanding of the current availability of mental health services at law schools across the country, I conducted an exploratory study of 81 randomly selected ABA-accredited institutions. After schools were contacted by phone, they were placed in one of four categories (Poor, Fair, Good or Excellent) based on a number of factors, including:

- Whether or not they had exclusive counseling available for law students, or whether it was only offered through the connected undergraduate institution
- If counseling was only offered through the undergraduate institution, how close was the counseling center to the law school?
- Did the undergraduate counseling center offer any exclusive services at the law school (e.g. a Let’s Talk program, drop in counseling, groups, etc.)?
- How supportive was the person on the phone at the counseling center?
- How many sessions were available to law students?

• How long was the wait time for a counseling appointment? Was the intake paperwork completed with a front desk person (e.g. administrative assistant) or with the therapist?
• Was it difficult to find information about counseling services (either by phone or on the website)?

I selected these criteria in order to gain an understanding of how it would feel to be a student seeking mental health services. Of the 81 school participants, 11 were considered Excellent, 21 were considered Good, 40 were considered Fair and 8 were considered Poor. The most prevalent issues in the Fair and Poor categories were (1) long wait times for a first counseling session, (2) a far distance between law schools and undergraduate counseling centers (over ten minute drive, with little or no information on accessibility), (3) counseling center phones not being answered or inaccurate information being presented (i.e. the person on the phone stating there were no services available when the website indicated otherwise), and (4) “cut off” dates for new intakes (i.e. in the Spring, before finals began, a student could not start counseling until the next Fall).

Given the data from repeated studies, it is time for the ABA to add a specific standard regarding mental health services as part of the accreditation process. Specifically, I recommend the standard used by the Liaison Committee on Medical Education, which recognizes the needs of students under immense pressure in programs of professional education (Standard 12.3): “A law (medical) school has in place an effective system of personal counseling for its students that includes programs to promote their well-being and to facilitate their adjustment to the physical and emotional demands of a legal (medical) education.” As a result of this explicit standard, medical schools must demonstrate to the accrediting board how they are staying in compliance, for example by collecting data on the type and quality of services they are offering.

If an individual calls a counseling center and is told he or she cannot been seen for two weeks, or is hung up on, what will happen next? How much of the burden can we put on students who are depressed, anxious, or potentially facing issues of addiction, while under the pressures of law school? As the Lawyer Well-Being Report (2017) concluded after a comprehensive list of recommendations: “We have ignored this state of affairs long enough. To preserve the public’s trust and maintain our status as a self-regulating profession, we must truly become ‘our brothers’ and sisters’ keepers,’ through a strong commitment to caring for the well-being of one another, as well as ourselves.” Having no standard for law schools is no longer acceptable practice. I urge the Council to consider these recommendations, and thank you for your time in reading the proposal.

Sincerely,

Hannah Jellinek

Hannah Jellinek, JD/LCSW

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4 Liaison Committee on Medical Education (March 2019). Functions and Structure of a Medical School Standards for Accreditation of Medical Education Programs Leading to the MD Degree. Retrieved from http://lcme.org/publications/# Standards and http://lcme.org/about/
5 For example, the Elson S. Floyd College of Medicine of Washington State University published a report about how students will access support services when they are enrolled at a geographically distributed campus (i.e. visits from central campus personnel, personnel located on the geographically distributed campus, e-mail or tele/videoconference, student-travel to central campus, etc.) See Elson S. Floyd College of Medicine of Washington State University (2015-2016). 2015-2016 Data Collection Instrument for Preliminary Accreditation. Retrieved from shorturl.at/nmCF8
August 16, 2019

Mr. Fernando Mariduena  
Council of the Section of Legal Education and Admissions to the Bar  
ABA Section of Legal Education and Admissions to the Bar  
321 N. Clark Street, 21st Floor  
Chicago, IL 60654

Dear Mr. Mariduena,

I write in support of the proposal for an amendment to ABA Standard 508 that has been submitted by Hannah Jellinek. Ms. Jellinek is a 2019 graduate of Boston College Law School and the Boston College School of Social Work, and I am pleased to be able to offer a few thoughts in support of her proposal.

I have been a legal educator for close to 30 years. I began my teaching career at Loyola University Chicago in 1991. In that time period, two issues related to wellness among law students and lawyers have become very clear to me. First, mental health and substance abuse problems have been glaring problems among lawyers throughout my time as a member of the legal profession. Thirty years ago, the tendency was to look away or to attribute some physical or character weakness to those who suffered from these problems. Nevertheless, it was an open secret that many lawyers were deeply unhappy, and many others suffered mental health and substance abuse issues that often destroyed friendships, family relationships, and careers. Law students, while clearly more highly stressed and anxious than students in other disciplines, did not appear as prone to these problems while in school. Law schools certainly did not see a need to provide significant resources to deal with student wellness issues at that time.

Thirty years later, the world, and the conditions within law schools, are very different, which leads to the second observation that I would make regarding change since that time. The issues of mental health disorders and substance abuse within the profession continue to be serious, but more attention is being paid to addressing them. What has changed dramatically are the circumstances
of law students. The manifestations of serious mental health disorders, substance abuse, and deeply anti-social behavior have become concerns not only in law schools, but across the realm of higher education. Over the past decade, law schools have had to deal with more issues related to mental health, and we have not always been well-equipped to do so. Yet, despite the challenges we face in addressing these issues, we must respond. The legal profession is too important to a properly functioning democracy for us to continue to ignore the centrality of lawyer wellness to both the quality of legal services that lawyers offer, and the impression of the legal profession that is perpetuated among the general public.

As a bar association and as the accreditor of American law schools, the ABA would make a crucial statement about the importance of lawyer wellness to a properly functioning legal system by offering a modest incentive to law schools—and to the universities of which most of them are a part—to provide a basic level of wellness support. The medical profession and medical schools seem an apt comparison in this regard. If it is important for medical schools to promote well-being for medical students so that they can better meet the demands of a rigorous medical education, the same seems to be no less true for law students. The medical school standard appears also to have met the test of not being so specific or demanding as to be unenforceable in the context of accreditation. At the very least, it could serve as a model for something similar as part of the accreditation of law schools.

Sincerely,

[Signature]

Vincent D. Rougeau

Dean