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INOCULATING THE NEXT GENERATION OF LAWYERS: MANDATING SUBSTANCE USE AND MENTAL HEALTH EDUCATION FOR LAW STUDENTS

*Janet Ellen Stearns**

“Education is inoculation against disruption.” — Robin Sharma

INTRODUCTION

Since early 2020, the United States has been focused on the critical mission of battling the COVID-19 virus; vaccinations, masking, and social distancing have all been critical elements of this battle to fight the virus and save lives. In very short order, vaccines were created, and public health campaigns were developed to allow us to manage our lives. While we are far from ending the COVID crisis, we have witnessed the success of scientific research and development at an amazing speed and engaged in a national legal and political debate on public health. This author would like to imagine a world where we can learn lessons from this pandemic and apply those to the mental health and substance use disorder crisis in the United States, especially in the legal profession.

Surveys of law students demonstrate significant levels of depression, anxiety, suicidality, and substance use disorders.¹ Results of the 2021 Survey of Law Student Well-Being, which are being reported in this Symposium Issue, recently confirm troubling levels of suicidal ideation, depression, anxiety, and alcohol use in law students.² As such, the Article highlights that 49.7% of law students believe that they have a better chance of being bar-admitted if they hide their substance use, and 39.9% similarly believe if they

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¹ See, e.g., Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *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*, 66 J. LEGAL EDUC. 116 (2016).

² David Jaffe, Katherine M. Bender & Jerome Organ, *“It is Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being*, 60 U. LOUISVILLE L. REV. 439 (2022).

hide their mental health challenges.³ These documented fears prevent many students from accessing needed resources despite many attempts at anti-stigma programming.⁴

Beyond the statistics, the battle against lawyer and law student suicide has become very personal for the author. Working in student affairs for the past twenty-two years, the author has worked with many students who have articulated serious thoughts of self-harm (“suicidal ideation”). The author has attended funerals of students and law graduates who have died of suicide or drug overdose. Colleagues at schools around the country also have shared many of these stories. The legal profession must take action to address this mental health crisis.

This Article focuses on the essential role of fundamental education around substance use and mental health (“SUMH”) for all law students. The first part of this Article reviews some of the approaches for mandating an educational requirement for all law students. Next, this Article evaluates how some of the commonly used professional responsibility (“PR”) textbooks attempt to address aspects of this curriculum. Finally, this Article provides some recommendations on best practices for SUMH education with a goal of facilitating a core curriculum at law schools nationally.

I. WHETHER TO MANDATE SUMH EDUCATION

Should providing basic education on SUMH be optional or mandated in U.S. law schools? Many institutions and deans argue for maximum flexibility in shaping their program of legal education. Mandates may be perceived as adding to the cost of legal education or limiting options to shape curriculum to local needs and priorities. However, the data on substance use and mental health issues justifies a core mandate for all students. These topics are fundamental to lawyer competence and professionalism and are thus deserving of special attention. In addition, these topics are “life and death” issues for our students and their careers in the legal profession.

The concept of the mandate was highlighted in the 2017 report titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive*

³ David Jaffe & Janet Stearns, *Conduct Yourself Accordingly: Amending Bar Character and Fitness Questions to Promote Lawyer Well-Being*, 26(2) A.B.A.: PRO. LAW. (Jan. 22, 2020), https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/26/2/conduct-yourself-accordingly-amending-bar-character-and-fitness-questions-promote-lawyer-wellbeing/ [https://perma.cc/R4CN-XGUL].

⁴ See *Law Student Mental Health Resources*, AM. BAR ASS'N (March 4, 2022, 1:45 PM), <https://abaforlawstudents.com/events/initiatives-and-awards/mental-health-resources/> [https://perma.cc/R6AA-TXK9].

Change,⁵ wherein the authors called upon law schools to expand SUMH education:

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.⁶

Since the Report was published in 2017, progress has been slow. In an effort to move the legal profession forward, this Article features four approaches to implementing a national curricular mandate.

A. ABA STANDARDS

As a general matter, the core curriculum for accredited law schools in the United States is set out in the Standards and Rules of Procedure for Approval of Law Schools, promulgated by the Council of the American Bar Association (ABA) Section on Legal Education and Admission to the Bar, and often called the “Standards.”⁷ Section 303(a) of the Standards outlines three basic curricular mandates for all accredited law schools:

- (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 304.⁸

⁵ NAT’L TASK FORCE ON LAWYER WELL-BEING, A.B.A., *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 39 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> [https://perma.cc/H4HF-QUNA].

⁶ *Id.*

⁷ 2021–2022 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (AM. BAR ASS’N 2021–22), https://www.americanbar.org/groups/legal_education/resources/standards/ [https://perma.cc/9PTC-KSL4] (offering the most recent version of the Standards).

⁸ STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARD 303(A) (AM. BAR ASS’N 2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_

The Section in Legal Education announced some significant changes to the Standards in February 2022.⁹ Every accredited law school now “shall” provide “substantial opportunities” for “the development of professional identity.”¹⁰ This term is defined in Interpretation 303-5 and includes “the values, guiding principles and well-being practices considered foundational to successful legal practice.”¹¹ The 2022 revisions also now require education on “bias, cross-cultural competency and racism” at least twice during the law school experience.¹² The revised standards also now require “information on law student well-being resources” be provided to all students.¹³ Finally, in Interpretation 508-1, well-being resources are defined:

Law student well-being resources include information or services related to mental health, including substance use disorders. Other law student well-being resources may include information for students in need of critical services such as food pantries or emergency financial assistance. Such resources encompass counseling services provided in-house by the law school, through the university of which the law school is a part, or by a lawyer assistance program. Law schools should strive to mitigate barriers or stigma to accessing such services, whether within the law school or larger professional community.¹⁴

The author of this Article, together with representatives from the ABA Commission on Lawyer Assistance Programs (“CoLAP”) and the ABA Law Student Division, has advocated for some time that the ABA standards should make some specific reference to the requirement of two-to-four hours of SUMH education as part of the curricular mandates for law schools. While the 2022 revisions to the ABA Standards did not embrace this explicit mandate, some of the changes recently adopted will create impetus for additional SUHM training and content. Two main “hooks” for integrating this material into the curriculum could be either through the mandated PR course, or as part of other teaching on professional identity, which could take

bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-3.pdf [https://perma.cc/5TLV-RGWC].

⁹ AM. BAR. ASS’N, REVISIONS TO THE 2021–2022 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (Feb. 2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/21-22-standards-book-revisions-since-printed.pdf [https://perma.cc/8DMJ-BQ8W].

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.*

place in live client clinics, field placements, extracurricular activities, well-being programming, or other opportunities that may arise.

B. State Bar Regulation

An alternative approach is for the state bars to mandate some basic education as a prerequisite to bar admission. Each state has discretion to set its requirements for bar admission, including the format of the exam administered and the requirements for the character and fitness evaluation. Each state acts independently, often under the direction of the state supreme court. The Conference of Chief Justices, which does not hold any direct power, has been one avenue for advocating for reform on lawyer and law-student well-being.¹⁵ This Conference has generally been supportive in recent years of initiatives to support law student well-being.¹⁶

The model approach to implement SUMH education through state bar regulation is the state of Ohio. Since January 1995, Ohio has required all applicants for the Ohio Bar Exam to submit “[a] certificate from a law school or a continuing legal education sponsor, certifying that the applicant has received at least one hour of instruction on substance abuse, including causes, prevention, detection, and treatment alternatives.”¹⁷

The presence of this requirement thus requires each law school to have a system for providing this education and certifying compliance for all graduates who are applicants to the Ohio Bar.¹⁸ While it would be better if the definition of required training were broader to include mental health (and two-to-four hours of education instead of one), this is a great model for other states to follow.

Thus, at present time, in all states (outside of Ohio) and in most law schools, absent some internal faculty requirement, SUMH education is a “best practice” but not mandated. While the author remains committed to the notion that mandating such education would elevate its importance and

¹⁵ See CONF. CHIEF JUSTS., RESOLUTION 6: RECOMMENDING CONSIDERATION OF THE REPORT OF THE NATIONAL TASK FORCE ON LAWYER WELL-BEING, https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_conference_of_chief_justices_resolution_6.authcheckdam.pdf [<https://perma.cc/9L8Q-LJBR>] [hereinafter RESOLUTION 6]; CONF. CHIEF JUSTS., RESOLUTION 5: IN REGARD TO THE DETERMINATION OF FITNESS TO PRACTICE LAW, https://www.ncsc.org/_data/assets/pdf_file/0021/23484/02132019-determination-of-fitness-to-practice-law.pdf [<https://perma.cc/WT58-Y5HG>] [hereinafter RESOLUTION 5] (urging revisions to the character and fitness process).

¹⁶ See RESOLUTION 6, *supra* note 15; RESOLUTION 5, *supra* note 15.

¹⁷ OHIO SUP. CT., SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO, RULE 1, ADMISSION TO THE PRACTICE OF LAW § 3(E)(2), <https://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf#page=3> [<https://perma.cc/WNF4-X952>].

¹⁸ *Id.*

consistent delivery to all law students, professors and administrators must continue to work within the legal framework to encourage SUMH education as a best practice. Law school administrations, working in partnership with the state bar associations and lawyer assistance programs (“LAPs”), should continue to advocate for educational programming on SUMH.

C. Bar Examination Content

Even if not mandated by the ABA Standards, or by the state bars, an alternative approach to signal the importance of SUMH education would be to test it on one of the mandatory licensing exams. The most obvious choice would be the Multistate Professional Responsibility Exam (MPRE), drafted and administered by the National Conference of Bar Examiners.¹⁹ At present, the MPRE is required by all jurisdictions other than Wisconsin and Puerto Rico,²⁰ and thus has a significant impact on the core curriculum. Integrating a question on SUMH ethical issues and including this topic on the coverage summaries provided on the National Conference of Bar Examiners’ website would send a powerful message to professors and students of PR on this topic as a core concept worthy of study and consideration in the classroom.

D. Other National Mandate

In 2011, the Obama Administration’s Department of Education issued a “Dear Colleague Letter” which articulated a number of basic standards for all school districts, colleges, and universities receiving federal aid.²¹ Among these requirements were “preventive measures” to define sexual harassment and violence; the school’s disciplinary processes; and information aimed at encouraging students to report incidents.²² Most universities indeed followed the guidance of this Dear Colleague Letter and now offer mandatory Title IX

¹⁹ *Multistate Professional Responsibility Examination*, NAT’L CONF. BAR EXAM’RS, <https://www.ncbex.org/exams/mpre/> [<https://perma.cc/5H7T-2QCK>].

²⁰ *Id.*

²¹ Letter from Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Dep’t Educ. Office for Civil Rights, to Colleague (Apr. 4, 2011), https://titleixreference.weebly.com/uploads/7/8/8/5/78856372/dear_colleague_letter_2011.pdf [<https://perma.cc/A5MP-T9C9>]. See Letter from Candace Jackson, Acting Assistant Secretary for Civil Rights, U.S. Dep’t Educ. Office for Civil Rights (Sep. 22, 2017), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term= [<https://perma.cc/N384-9RUJ>] (explaining this letter was later rescinded by Secretary of Education DeVos in 2017 and superseded by federal regulations issued in 2017 implementing Title IX).

²² Letter from Russlynn Ali to Colleague, *supra* note 21, at 6.

sexual assault and violence orientation to all new students.²³ Although this “Dear Colleague Letter” approach has since been replaced by regulations,²⁴ there is now precedent for the federal government mandating essential curriculum in areas of national importance, whether by statute or administrative regulations, and this approach could be implemented for SUMH education.

II. PROFESSIONAL RESPONSIBILITY: SHINING A POSITIVE LIGHT ON SUMH EDUCATION

One of the most important strategies outlined in the *Path to Lawyer Well-Being* Report is to allocate at least one class session of the required PR class to topics on Mental Health and Substance Use. According to Recommendation #30:

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.²⁵

PR is a required course for all law students, and thus an important home for core topics on professionalism and professional identity. Because students take these courses in their 2L or 3L year at many law schools, PR is not a replacement for some introduction to this topic at the beginning of the law school journey. However, integrating substance use and mental health education as a core topic will send powerful signals to our law students. These signals come from law professors, including the language used and the materials incorporated in the classroom. A close evaluation of the ways that major textbooks are currently addressing these fundamental topics is a critical step in the path to promoting education on SUMH for all law students.

²³ See, e.g., *Everfi Online Education Course Information*, UNIV. MIAMI, <https://doso.studentaffairs.miami.edu/sandler-center/campus-clarity/index.html> [<https://perma.cc/PWE8-C3YS>]; *FAQ's Regarding Sexual Violence Prevention Training*, UNIV. LOUISVILLE, https://louisville.edu/titleix/resources/titleix/faq_sv_prevention [<https://perma.cc/L84V-G8V4>].

²⁴ 34 C.F.R. § 106 (2022).

²⁵ NAT'L TASK FORCE ON LAWYER WELL-BEING, *supra* note 5.

This Article will thus review four of the major textbooks used in law schools and coverage on SUMH topics. Some of the author's ideal benchmarks in a textbook include:

- 1) Normalizing the struggle. SUMH is critically important, and, as data shows, quite common.
- 2) Providing "real world" examples of the applicability of SUMH to law school and law practice. Discussion questions that engage students on these topics are important and helpful.
- 3) Educating students on pathways for appropriate bystander interventions for friends, supervisors, and colleagues is necessary, including services delivered by LAPs, and the ways in which bystander interventions are essential in our self-regulating profession.
- 4) Ensuring that students understand the importance of accessing resources and providing accurate information during the character and fitness process, as well as potential impact of disclosure (which can vary very significantly from state to state).
- 5) Referencing the growing canon of literature, podcasts, and other resources on positive psychology.

A. *Regulation of Lawyers: Problems of Law and Ethics (12th Edition)*

Professor Stephen Gillers has been a professor at New York University since 1978, and his textbook, *Regulation of Lawyers: Problems of Law and Ethics*, was first published in 1985.²⁶ Now in its 12th edition,²⁷ the textbook is broadly used in law schools. While comprehensive on many critical ethical issues, the coverage on SUMH is scant. Professor Gillers tackles topics relating to bar admission in Chapter 12, which is titled "Control of Quality: Reducing the Likelihood of Professional Failure."²⁸ His section on "Frequently Cited Grounds for Delaying or Denying Admission to the Bar" covers six areas, and one among them is "Mental Health."²⁹ In two paragraphs, this section discusses mental health inquiries in relation to bar admission.³⁰ He appropriately discusses the Americans with Disabilities

²⁶ *Stephen Gillers: Elihu Root Professor of Law*, N.Y.U. LAW, <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=19943> [<https://perma.cc/S9X2-TGLE>].

²⁷ STEPHEN GILLERS, *REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS* (Rachel E. Barkow et al. eds., 12th ed. 2021).

²⁸ *Id.* at 501.

²⁹ *Id.* at 514.

³⁰ *Id.*

Act's challenges to these questions, and he focuses on a 1995 Virginia case addressing the relevance of mental health history to bar admission.³¹ Professor Gillers notes that two jurisdictions had removed mental health questions from their bar applications in 2020, referencing them as "intrusive."³² Professor Gillers also touches on relevant material twice in Chapter 13, which is titled "Control of Quality: Remedies for Professional Failure."³³ In a section called "Why do Lawyers Violate the Rules," he dedicates a paragraph to substance use and depression, and he quotes from one national study on lawyer well-being.³⁴ Discussing defenses to bar discipline cases, Professor Gillers dedicates two paragraphs to the question of whether depression, alcoholism, or other mental health disorders should be considered mitigating or absolving in cases of bar discipline.³⁵ He concludes that they will likely not absolve a lawyer of sanctions but may affect the sanction in some jurisdictions.³⁶

The concerns with Professor Gillers' textbook are two-fold. First, in 700 pages of text, he dedicates no more than two pages to important lessons on SUMH challenges in the profession.³⁷ Further, within those pages are some seriously lost opportunities to destigmatize treatment and recommend paths to access resources. The discussion of these matters, if not handled appropriately, may be triggering or further stigmatizing for students.

³¹ *Id.* (focusing on *Clark v. Va. Bd. of Bar Exam'rs*, 880 F. Supp. 430 (E.D. Va. 1995)).

³² *Id.* In fact, in 2020 four states removed mental health questions from the bar application process: New York, Michigan, New Hampshire, and Indiana. Melissa Heelan Stanzione, *Bar Mental Health Questions Deter Treatment, Advocates Say*, BLOOMBERG L. (Oct. 30, 2020, 4:46 AM), <https://news.bloomberglaw.com/us-law-week/bar-mental-health-questions-deter-treatment-advocates-say> [<https://perma.cc/EK9C-JVAU>]; Kayla Rivas, *New Hampshire removes mental health questions from bar application*, FOX NEWS (June 23, 2020, 10:24 AM), <https://www.foxnews.com/health/new-hampshire-removes-mental-health-questions-from-bar-application> [<https://perma.cc/YU34-B6GN>]. Well-being advocates from other jurisdictions have reached out to the author and Washington College of Law Associate Dean of Student Affairs David Jaffe to consider reform. *See generally* Hon. Paul Reiber & Bree Buchanan, *Change is Coming: The Institute for Well-Being in Law Sets Out to Transform the Legal Profession*, 90 BAR EXAM'R 34 (Summer/Fall 2021), <https://thebarexaminer.ncbex.org/article/summer-fall-2021/change-is-coming/> [<https://perma.cc/67TA-8GF6>]; *see also*, Jaffe & Stearns, *supra* note 3.

³³ GILLERS, *supra* note 27, at 575 (citing Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46 (2016)); Eilene Zimmerman, *The Lawyer, the Addict*, N.Y. TIMES (July 15, 2017) <https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html> [<https://perma.cc/2Y6X-ZWAJ>].

³⁴ GILLERS, *supra* note 27, at 574.

³⁵ *Id.* at 597.

³⁶ *Id.*

³⁷ *Id.* at 514–15.

B. Ethical Problems in the Practice of Law (Fifth Edition)

The textbook titled *Ethical Problems in the Practice of Law* was first published in 2005 and is authored by Professor Emerita Lisa Lerman, Catholic University of America, Columbus School of Law; Professor Philip Schrag, Georgetown University Law Center; and Professor Robert Rubinson, University of Baltimore School of Law.³⁸ Chapter 1 of this textbook provides an overview of the bar admission process, including detailed discussion of character and fitness.³⁹ This section identifies that most states ask questions about “abuse of drugs or alcohol and/or treatment for substance abuse.”⁴⁰ Lerman, Schrag, and Rubinson adopt a “problem” based approach to the material and, indeed, Problem 1-1 in this first chapter, entitled “ADDERALL,” involves how to respond to a question on the Iowa bar admission form as to illegal use of drugs by a law student who used Adderall without being diagnosed with attention-deficit/hyperactivity disorder (ADHD).⁴¹ This problem is incredibly relevant and important for discussion, particularly as it is known that many law students do turn to various “study steroids” during their studies.⁴² The next section of the text discusses mental health law questions on the National Conference of Bar Examiners (“NCBE”) questionnaire in some detail, both the full text of the questions and some related commentary that requires students to ponder deeply the importance of these questions.⁴³ The authors appropriately invite students to examine whether the questions are sufficiently clear or overbroad.⁴⁴ This section further includes discussion of the conditional bar admission process as an option for some students but “may stigmatize applicants with disabilities as potential second-class lawyers.”⁴⁵

Chapter 2 of *Ethical Problems in the Practice of Law* focuses on regulation, discipline, and liability and dedicates three pages to the question: To what extent can disciplinary violations be traced to substance abuse and other addictive behaviors by lawyers?⁴⁶ The text provides a page of detailed

³⁸ LISA LERMAN, PHILIP SCHRAG & ROBERT RUBINSON, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* (Rachel E. Barkow et al. eds., 5th ed. 2020).

³⁹ *Id.* at 18–39.

⁴⁰ *Id.* at 24.

⁴¹ *Id.* at 33–34.

⁴² Organ et al., *supra* note 1, at 134–36.

⁴³ LERMAN, SCHRAG & RUBINSON, *supra* note 38, at 36.

⁴⁴ *Id.*

⁴⁵ *Id.* at 37 (referencing Stephanie Denzel, *Second-Class Licensure: The Use of Conditional Admission Programs for Bar Applicants with Mental Health and Substance Use Histories*, 43 CONN L. REV. 889 (2011)).

⁴⁶ *Id.* at 104–06.

data from the 2014 Survey of Law Student Well-Being.⁴⁷ The text goes on to cite that many students do not reach out for help due to fear about the impact on bar admission, and the authors discuss the availability of resources through the LAP.⁴⁸ Here, the authors could be more direct in urging students to address issues of substance use and mental health. The authors could also clarify that the bar admissions process in a number of states has been amended to delete the overbroad inquiry into such diagnosis or treatment.

Chapter 13, titled “The Changing Landscape of Law Practice,” provides a broad overview of practice settings and trends in the profession.⁴⁹ This chapter concludes with a discussion on professional satisfaction.⁵⁰ These materials are integral to the larger causes of mental health and stress among law students and lawyers, and hopefully will be covered by those using the book. This textbook provides several significant opportunities to open up discussion with students and have them begin to explore critical questions of professional identity as related to substance use and mental health. With a skillful teacher, perhaps guided or supported by a member of the relevant LAP, these discussions could be profoundly educational.

C. The Legal Profession: Ethics in Contemporary Practice (Second Edition)

The textbook titled *The Legal Profession: Ethics in Contemporary Practice* is the newest of the group of textbooks discussed in this Article.⁵¹ It is also the longest. Authored by Ann Southworth of University of California, Irvine, and Catherine Fisk of University of California, Berkeley, this text is over 1,000 pages long. At this length, it would be a daunting task to teach the entire textbook in a one semester, three credit hour course.

However, assuming great stamina, the materials in Chapters 36 and 37 of the textbook are quite comprehensive. Chapter 36 addresses bar admission and frames the debate over the current mental (and physical) health and substance use questions.⁵² This chapter includes two problem questions which explore the relationship of alcohol, problematic conduct, mental health, and bar admission.⁵³ The problems are challenging, real-world, and

⁴⁷ *Id.* at 105 (referencing Organ et al., *supra* note 1).

⁴⁸ *Id.* at 105–06.

⁴⁹ *Id.* at 765.

⁵⁰ *Id.* at 816.

⁵¹ ANN SOUTHWORTH & CATHERINE L. FISK, *THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE* (2d ed. 2018).

⁵² *Id.* at 976.

⁵³ *Id.*

provocative. One explores an applicant who had a DUI during his first year of law school with a history of bipolar disorder and places the student or reader in the seat of a state supreme court justice who needed to rule on the issue.⁵⁴ This section also cites to three law review articles which question the breadth of the character and fitness analysis.⁵⁵

While the teacher's manual of this textbook gives an excellent big-picture framing of the challenges of the character and fitness process, there was no discussion or guidance on how a professor who is not closely trained on these topics would approach address the questions in a class discussion. This was disappointing. The teacher's manual also noted that this entire chapter could be "covered in a single class hour,"⁵⁶ which was also disappointing. If professors want to really have a discussion on challenging, complex issues like substance use and mental health with our students, professors had best be prepared to do so in more than a single hour.

Chapter 37, entitled "Lawyer Satisfaction and Well-Being," is an excellent overview of the topic with reference to much of the current literature.⁵⁷ This chapter includes an important discussion of Krieger and Sheldon⁵⁸ and reference to the ABA Task Force on Lawyer Well-Being.⁵⁹ The chapter concludes with reference to the 2014 Survey of Law Student Well-Being, which will help law students normalize their own struggles and challenges.⁶⁰ This author is curious as to how many readers of this particular text actually make their way to Chapter 37, but the materials are extremely accessible and balanced nonetheless.

⁵⁴ See *id.* at 976–77.

⁵⁵ See *id.* at 971–77. Jon Bauer, *The Character of the Questions and the Fitness of the Process*, 49 U.C.L.A. L. REV. 93 (2001); Anna Stolley Persky, *State Bars May Probe Applicants' Behavior, but Not Mental Health Status, says DOJ*, ABA J. (June 1, 2014, 9:00 AM), https://www.abajournal.com/magazine/article/state_bars_may_probe_applicants_behavior_but_not_mental_health_status [<https://perma.cc/AL6L-9CJ4>]; Leslie Levin et al., *The Questionable Character of the Bar's Character and Fitness Inquiry*, 40 YALE L. & SOC. INQ. 51 (2015).

⁵⁶ ANN SOUTHWORTH & CATHERINE L. FISK, *TEACHER'S MANUAL TO THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE* 227 (2d ed. 2019).

⁵⁷ SOUTHWORTH & FISK, *supra* note 51, at 993.

⁵⁸ *Id.* at 1009–10 (discussing Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015)).

⁵⁹ *Id.* at 1011 (citing NAT'L TASK FORCE ON LAWYER WELL-BEING, *supra* note 5).

⁶⁰ *Id.* at 1012 (citing Organ et al., *supra* note 1).

*D. Professional Responsibility: A Contemporary Approach (PRACA)
(Fourth Edition)*

The textbook titled *Professional Responsibility: A Contemporary Approach (PRACA)* was initially written by three Fordham professors: Russell Pearce, Daniel Capra, and Bruce Green; now in the Fourth Edition, it has six other collaborators.⁶¹ Consistent with the “less is more” approach to life, this author was pleased to see that the fourth edition is three hundred pages shorter than the first edition, but with some expanded coverage of important topics. This textbook is organized into nine chapters, with the final chapter called “The Special Privileges and Responsibilities of Lawyers.”⁶²

This latest edition now includes Section E on “Mental Health and the Legal Profession.”⁶³ The final three pages of the text are now dedicated to two excerpts from articles highlighting alcohol, drug abuse, and the mental health “problem” in the profession.⁶⁴ While these articles are touching on critical issues, the text itself leaves professors and students without any framing of these issues or any approaches to address them either in their individual lives or through structural change in the profession. This author appreciates the effort to include the topic in the coverage of professional responsibility topics, yet the coverage could be more robust.

III. CREATING A MODEL SUMH EDUCATIONAL PROGRAM

Envision the world where the model law school is seeking to implement a two-to-four-hour SUMH unit in the curriculum. There is an array of factors that should be considered in shaping an effective program, and they are explained below.

⁶¹ RENEE KNAKE JEFFERSON ET AL., *PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH* (West Academic Publishing., 4th ed. 2020).

⁶² *Id.* at 807.

⁶³ *Id.* at 699–701.

⁶⁴ *Id.* (citing James C. Gallagher, *Drugs, Alcohol, Mental Health and the Vermont Lawyer*, 32 VT. BAR J. & L. DIGEST 1, 5 (2006)); Neil Graffin et al., *The legal profession has a mental health problem— which is an issue for everyone*, CONVERSATION (Apr. 18, 2019, 8:48 AM), <https://theconversation.com/the-legal-profession-has-a-mental-health-problem-which-is-an-issue-for-everyone-113224> [<https://perma.cc/M68R-49VZ>].

A. When

Developing an effective SUMH program is significantly impacted by “when” we do it.⁶⁵ Professors and the administration have multiple touchpoints with students during their law school careers, starting with law school orientation. Orientation is a tremendously important time for introducing students to the cultural norms and values of the law school. It is a time when the administration and professors talk about well-being strategies and resources. It may also be a time filled with such anxiety, and perhaps insufficient trust, to get deeply into conversations about SUMH. Some law schools hold a spring “re-orientation program” or 2L or 3L orientation programs. This model is an appealing approach to address students and reframe their concerns, as well as communicate resources available to support them in their law school journey.

Many universities, including the University of Miami, require all incoming students to complete a mandatory online module relating to sexual assault and violence.⁶⁶ The University of Miami presently uses a course developed by Everfi called “Sexual Assault Prevention Course for Graduate Students” that requires roughly one hour to complete.⁶⁷ The institution announces this course just prior to the first day of orientation, and students are encouraged to complete it as soon as feasible; many complete it in advance of orientation in the early weeks of the semester. The students have the flexibility to do the course at their own time and pace. Additionally, the program includes feedback assessments, and the school tracks and monitors completion.

Miami Law has a mandatory meeting with the Florida Board of Bar Examiners (“FBBE”) about one month into the school year. At this meeting, the bar examiners address professional identity and character and fitness topics, including the relevance of mental health and substance use to bar admission determinations. While the author is not in complete agreement with the FBBE on the approach to SUMH topics in the character and fitness evaluation, the author agrees that the legal profession should seize every opportunity to highlight and integrate SUMH resources in programming or core courses on bar preparation for graduating students. The moment of

⁶⁵ See generally DANIEL H. PINK, *WHEN: THE SCIENTIFIC SECRETS OF PERFECT TIMING* (2018).

⁶⁶ See, e.g., *Everfi Online Education Course Information*, *supra* note 23; *FAQ's Regarding Sexual Violence Prevention Training*, *supra* note 23.

⁶⁷ *Configuring Sexual Assault Prevention for Graduate Students*, EVERFI, <http://info.everfi.com/rs/410-YCZ-984/images/Configuring%20SAPG.pdf> [https://perma.cc/3R82-T3NX].

maximum stress for every law student will be the bar examination, and thus presents the greatest challenges of mental health, grit, and resilience.⁶⁸

A tremendous opportunity for messaging and framing around these topics is the annual Mental Health Day initiative, now held each year on October 10, promoted by the American Bar Association Law Student Division and the CoLAP.⁶⁹ Many, if not most, law schools in the country now leverage Mental Health Day into other campus-based programming, health fairs, or wellness weeks to draw attention to mental health resources. The ABA has significant information available online to assist with planning.⁷⁰ Additionally, the author of this Article is happy to talk and strategize with any readers.

Some law schools now offer stand-alone courses that address Mindfulness in Law, Positive Psychology and Law, Emotional Intelligence, Mental Health Law, Disability Law, or other courses that may address these topics.⁷¹ Some schools are beginning to explore a mandatory curriculum for all students.⁷² While this may become the “gold standard” for integrating these brave conversations into the legal academy, many schools will not have the faculty, time, or commitment to dedicate entire courses that will reach all students. For these reasons, one of the most natural homes for a core curriculum on SUMH remains in the mandatory course on professional responsibility.

A model program likely needs to ensure that there are multiple touchpoints on these topics both as students enter law school and as they encounter stress and frustration through the journey.

B. Who

We need to think critically about who should be delivering messages about substance use and mental health to our law students. There are a variety of approaches to implement SUMH education, and law school professors and administrations need to consider finding ways for the content to be shared

⁶⁸ CHAD NOREIUL, *THE ZEN OF PASSING THE BAR EXAM* (1st ed. 2011).

⁶⁹ The author has been a member of the COLAP and an organizer of Mental Health Day programming since 2016. See Jaffe & Stearns, *supra* note 3.

⁷⁰ See, e.g., *Mental Health Awareness*, AM. BAR. ASS'N., https://www.americanbar.org/groups/lawyer_assistance/resources/world-mental-health-day/ [<https://perma.cc/AX83-RZZR>].

⁷¹ Jordana Alter Confino, *Where Are We on the Path to Lawyer Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650, 663–68 (2019).

⁷² See, e.g., *Penn Law to launch unique pilot program incorporating attorney well-being into Professional Responsibility curriculum*, PENN L. (Nov. 29, 2018), <https://www.law.upenn.edu/live/news/8696-penn-law-to-launch-unique-pilot-program> [<https://perma.cc/B8J3-VAD9>].

effectively. Across law schools in the United States, there may be law professors who are comfortable addressing these topics, hearing student concerns, responding, and referring students appropriately. However, some faculty will not want to tackle these topics without additional training or backup.

There are several partners available to help and support professors in leading these important conversations. The LAP is a very valuable partner. Each state has a LAP with lawyers and other staff who see their mission as supporting lawyers, judges, and law students with mental health and substance use challenges.⁷³ The Florida Lawyers Assistance program has visited Miami Law to speak in classes, join Mental Health Day programs, and meet with students for one-on-one advising. Campus counseling centers or law school-based counselors can also be very effective partners in a presentation. Additionally, please keep in mind your law school's student affairs team. While some members of the team may already be teaching in the classroom routinely, others will welcome an invitation to guest lecture on topics that may be within their expertise.

We routinely receive requests from lawyers who have been sanctioned by the bar and want to come to tell their story to our students. In some cases, their story of sanctions may have involved substance abuse, trust account abuse, or other significant lapses in professionalism. This author has mixed views on how these types of presentations are received by our students. There is value to the presenter in sharing and processing their journey of recovery. But in a world where professors or the administration may be fighting for one-to-two hours of dedicated content, this is not, in the author's view, the best use of this time.

C. What

Framing an effective SUMH program requires some careful consideration of the medium and the message. There is an array of resources that are available to shape an SUMH module.

Enjoy Success & Drop the Stress in Law School and Law Practice by Lawrence Krieger⁷⁴ is an efficient and affordable thirty-six-page booklet. Professor Krieger distributes this book to law schools, who often share this with students during orientation or Mental Health Day activities. The book

⁷³ See *Directory of Lawyer Assistance Programs*, AM. BAR. ASS'N, https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/ [<https://perma.cc/P7NW-M8KK>].

⁷⁴ LAWRENCE S. KRIEGER, *ENJOY SUCCESS & DROP THE STRESS IN LAW SCHOOL AND LAW PRACTICE: APPLYING THE NEW SCIENCE FOR A FULFILLING LIFE AND CAREER passim* (2021).

reviews research on the sources of law school stress, concrete strategies for developing a positive mindset, and poor coping mechanisms, such as partying, depression, and distractions.⁷⁵ The second half of the book includes some powerful strategies for the job search with a focus on satisfying career choices, and the book concludes with some brief meditation “pause” and journal exercises.⁷⁶

A wonderful introduction to mindfulness is Scott Rogers’s book *Mindfulness for Law Students: Using the Power of Mindful Awareness to Achieve Balance and Success in Law School*.⁷⁷ In just over 100 pages, this book is designed to engage law students in the benefits of a mindfulness practice with concrete examples and exercises.⁷⁸ This book can be part of a workshop or course on mindfulness or integrated into other discussions of law student well-being.

A new contribution to the canon is Shailini Jandial George’s book *The Law Student’s Guide to Doing Well and Being Well*.⁷⁹ Professor George’s book speaks to the well-being challenges of today’s student with regular reference to the pandemic as well as Zoom fatigue and technological distractions.⁸⁰ She gives concrete suggestions for exercise, sleep, and nutrition.⁸¹ One of Miami Law’s legal writing professors has made this book available to his students, and Miami Law is currently exploring other uses of the book in the upcoming academic year.

Today’s law students are familiar with technology and accustomed to receiving news and other information via social media or other online interfaces. One outstanding and brave video on suicide is *Just Ask: How We Must Stop Minding our Own Business*, produced by the Texas Lawyer Assistance Program.⁸² This video involves interviews with lawyers and

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ SCOTT L. ROGERS, *MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFULNESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL* *passim* (2009).

⁷⁸ *Id.*

⁷⁹ SHAILINI JANDIAL GEORGE, *THE LAW STUDENT’S GUIDE TO DOING WELL AND BEING WELL* *passim* (2021). Note that there are a series of books about life stories of lawyers who faced addiction or mental health challenges. While they profile and perhaps normalize struggles, they may not provide practical strategies or approaches for law students facing similar stresses in today’s world. *See, e.g.*, BRIAN CUBAN, *THE ADDICTED LAWYER: TALES OF THE BAR, BOOZE, BLOW, AND REDEMPTION* *passim* (2017); LISA F. SMITH, *GIRL WALKS OUT OF A BAR: A MEMOIR* *passim* (2016); ELYN R. SAKS, *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* *passim* (2008).

⁸⁰ GEORGE, *supra* note 79.

⁸¹ *Id.*

⁸² Texas Lawyers’ Assistance Program, *Just Ask: How We Must Stop Minding Our Own Business in the Legal World*, STATE BAR TEX., <https://texasbar-wo4m90g.vids.io/videos/4d9dd9b11b17ebc1c4/final-short-version-tlap-suicide-prevention-video-8-5-2021-1-> [<https://perma.cc/92FV-FEE5>].

judges who have faced suicide themselves or in their families, and it includes some honest discussion of circumstances that can lead to suicide and specific strategies for effective bystander interventions.⁸³ The video is just under thirty minutes and is a powerful conversation starter on a difficult topic.

In addition, law students enjoy accessing information through podcasts. There are a number of podcast resources including a series produced by the ABA CoLAP⁸⁴ and several relevant TED talks⁸⁵ on topics ranging from well-being, happiness, suicide prevention, mental health, and growth mindset. Using podcasts and other short online media opens up the opportunity for significant asynchronous delivery of information to students.

Law students are likely accessing a number of resources for health and well-being through a variety of “apps” or applications on their phones. Some popular meditation apps include Calm, Ten Percent Happier, and Headspace. While none of these are a replacement for a robust SUMH education module, they may be an appropriate supplement for those who complete the course.

The author uses the *PRACA* textbook in teaching PR and has been teaching the class since Fall 2012. This author does a deep dive into these topics in Chapter 6, which addresses “The Lawyer’s Duties to the Legal System and Nonclients.”⁸⁶ A full two-hour class is dedicated to the Duty to Report Misconduct, which will typically include both a discussion of *In re Himmel*⁸⁷ and *In re Michael Riehlmann*.⁸⁸ This topic then opens the important lesson of our self-regulating profession and our duty to step up, even in tough

⁸³ *Id.*

⁸⁴ *Lawyers’ Voices of Recovery*, A.B.A. COMM’N ON LAW. ASSISTANCE PROGRAM, https://www.speaker.com/show/lawyers-voices-of-recovery?utm_source=podnews.net&utm_medium=web&utm_campaign=podcast-page [<https://perma.cc/XG5V-46LG>].

⁸⁵ See, e.g., Renee Cherry, *15 Wellness-Focused TED Talks That Will Inspire You to Live Your Happiest (And Healthiest) Life*, SHAPE (Aug. 10, 2017), <https://www.shape.com/lifestyle/mind-and-body/best-ted-talks-fitness-health-and-happiness-inspiration> [<https://perma.cc/J53P-Q9JY>]. See also Rhonda Magee, *The inner work of racial justice | Rhonda Magee | TEDxMarin*, TED (Sept. 2020), https://www.ted.com/talks/rhonda_magee_the_inner_work_of_racial_justice?language=en [<https://perma.cc/3HVY-TQZZ>]; Matt Walker, *Sleep is your superpower*, TED (Apr. 2019), https://www.ted.com/talks/matt_walker_sleep_is_your_superpower?language=en#t-106549 [<https://perma.cc/TAM8-6RSM>]; Amisha Jha, *How to tame your wandering mind*, TED (Mar. 2017), https://www.ted.com/talks/amishi_jha_how_to_tame_your_wandering_mind?language=en [<https://perma.cc/3L56-DJA4>]; Elyn Saks, *A tale of mental illness -- from the inside*, TED (June 2012), https://www.ted.com/talks/elyn_saks_a_tale_of_mental_illness_from_the_inside?language=en [<https://perma.cc/3TSW-AVXG>]; Angela Lee Duckworth, *The strongest predictor for success | Angela Lee Duckworth*, YOUTUBE (Apr. 30, 2021), <https://www.youtube.com/watch?v=GfF2e0vyGM4> [<https://perma.cc/39AQ-ZHLM>].

⁸⁶ JEFFERSON ET AL., *supra* note 61, at 477.

⁸⁷ *In re Himmel*, 533 N.E.2d 790, 790 (Ill. 1988).

⁸⁸ *In re Michael Riehlmann*, 891 So. 2d 1239, 1239 (La. 2005).

cases.⁸⁹ In recent years, this author has assigned Eilene Zimmerman's compelling *New York Times* article, *The Lawyer, the Addict*, which describes her former's husband's death by drug overdose.⁹⁰ In this author's class, students have the opportunity to address some questions in advance of class on a "message board." Students are asked to react to the article, and address the following two questions which this author considers fundamental to their basic competency:

- 1) In the state you wish to practice, would you know where to refer a friend in need of help or support? Please list the website/email/phone.
- 2) If a colleague's actions rose to the level of misconduct, where in your state would you make a report of misconduct? Please list the website/email/phone.

The message board posts from the students invite some significant sharing, and in many cases more than would happen in a class discussion. Many students are experiencing alcohol and drug challenges or know people in their lives who are. They are worried about knowing what to do in these cases. They will ask questions and raise issues of concern. Addressing head on their duties to refer colleagues, bosses, or even judges to a LAP in their jurisdiction should be discussed as part of our core law school curriculum, thus preparing students for the real world.

One can approach the SUMH discussion from many perspectives. This author recommends the integration of live instruction with some opportunity for reflection and comment through an online message board that allows students to share and communicate more openly than in exclusively live-class discussion.⁹¹

⁸⁹ This author strongly emphasizes the *Riehlmann* case, which involves the wrongful incarceration of Mr. John Thompson due to prosecutorial misconduct. Riehlmann learned of the misconduct from the prosecutor but failed to report for nearly five years. The case drives home that these are not victimless acts; Mr. Thompson sat on death row for these years when Riehlmann had the knowledge to report.

⁹⁰ Eilene Zimmerman, *The Lawyer, the Addict*, N.Y. TIMES, (July 15, 2017), <https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html> [https://perma.cc/3536-R4NL]. This article has since been expanded into Eilene Zimmerman's book *Smacked*.

⁹¹ Conversations with the Symposium Editors and University of Louisville Law Review members confirmed that students value opportunities to connect and share outside of formal class time on issues that were deeply personal and relevant to these topics.

CONCLUSION

This Article reflects the author's passionate belief that law students would benefit from some fundamental and dedicated education around SUMH challenges. This would alleviate and normalize some of the well-documented experiences that students have in law school, and better prepare students for law practice following graduation. Addressing these issues are core elements of professional identity and deserve focused attention during the law school experience.

In a perfect world, comprehensive SUMH education would include: (1) pre-orientation and orientation foundation, possibly in the form of an online module; (2) incorporating these topics into all required PR classes; (3) ensuring that all professional identity touchpoints have information on essential resources around SUMH, including the LAPs in each jurisdiction; and (4) some end of study certification to the bar or MPRE testing to signal the core importance of these topics.

These issues are of paramount importance, and thus a core educational program should be mandated, whether through the law school accreditation process or through the bar admission process. To date, this is not the case in most jurisdictions in our country.

Absent such a requirement, this author recommends and is confident that we can develop best practices and teaching materials to facilitate SUMH education. This Article is a part of the process of developing these best practices. The goals for this endeavor are: (1) lawyer professionalism, which includes the ability to take care of oneself and address well-being as broadly defined; (2) assisting lawyers facing SUMH issues who may have significant limitations on their ability to practice law competently; (3) communicating that all lawyers should be prepared to intervene as bystanders with colleagues, clients, and family members who may be confronting SUMH challenges; and (4) explaining that the legal academy has the obligation to confront these topics bravely.⁹²

While this author continues to hope that law schools across the country will dedicate needed resources to these critical issues, the demands by our law students for resources are rapidly overwhelming the current resources in place. Accordingly, this author believes that, in the short term, the legal academy should develop an online foundational course for all law students that would address essential information on substance use, mental health, and appropriate paths for seeking assistance. Education is a critical element of a

⁹² Laura P. Graham, "Safe Spaces" and "Brave Spaces": The Case for Creating Law School Classrooms That Are Both, 76 U. MIA L. REV. 84, 151 (2021).

multi-faceted strategy, and the starting point for us to seize the opportunity to make change in our profession.

