

C L E A

Clinical Legal Education Association

COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON PROPOSED STANDARD 303

JANUARY 30, 2014

The Clinical Legal Education Association (CLEA), with more than 1000 dues-paying members the nation's largest association of law professors, writes in support of the Council for the Section of Legal Education and Admissions to the Bar's alternative proposal on Standard 303(a)(3), which provides that every J.D. student must complete fifteen credit hours in experiential courses, such as law clinics, field placements, or skills simulation courses. As the attached chart demonstrates, legal education lags behind education in every other profession, which require that at least one quarter, and up to more than one half, of a graduate's pre-licensing education be in role in supervised professional practice. Medicine, for example, consists of two years of classes and then two years of professional experience in clinical rotations. Dentistry requires students to spend over 57% of their time in actual patient care over the course of a four-year education. Pharmacy school students are required to spend no fewer than 300 hours in the first three years of their education and at least 1,440 hours (36 weeks) in the last year in clinical settings. And social work students must accrue at least 900 hours, or 18 of their required 60 academic credit hours, in field education courses, the "signature pedagogy" of social work professional education. Judged by comparison, fifteen credits of law school education, which amounts to about one-sixth of a law student's total credit hours, is a modest requirement.

The other professions mandate more substantial field experience because they recognize that professional education requires more than the acquisition of classroom knowledge; it requires education in the skilled application of that knowledge in real-practice situations. The education of lawyers requires no less. A long line of reports by ABA special committees, beginning with the 1979 *Report and Recommendation of the Task Force on Lawyer Competency: The Role of Law Schools* (Compton Report) and including the 1992 *Report of the Task Force on Law Schools and the Profession* (MacCrate Report), have urged much greater attention to professional experiences in law school curricula. The 2007 report on the professional training of lawyers by the Carnegie Foundation reached the same conclusion: law schools do a wonderful job of training the minds of new lawyers, but do far too little in developing their practice-based skills.

Some schools have been responding to the dearth of practice-based instruction in traditional legal education by expanding their experiential education curricula in a variety of creative ways, from first-year lawyering courses to capstone courses, semester-in-practice programs, and experiential third-year programs. But the minimal professional skills requirement in the current ABA accreditation standards permits law schools to graduate students with

virtually no professional skills education. As a result, ABA accreditation provides no reasonable assurance to the bench or the public that law school graduates are competent to enter practice.

State bar admissions authorities increasingly view this failing as a problem of public protection that requires additional regulation at the state level. In 2013, the Board of Trustees of the State Bar of California mandated that future applicants to the California State Bar must fulfill a pre-admission competency requirement, which can be met by showing that an applicant has completed at least fifteen academic credits of “practice-based, experiential course work” in law school. An implementation committee is in the process of hammering out the details of this new California requirement. More states are likely to follow suit, raising the real possibility that there will soon be, in large part because of the ABA’s failure to act, a patchwork of skills requirements that vary from state to state. The ABA’s proposal to require fifteen credits of professional skills courses for all JD graduates would centralize and coordinate the efforts of law schools and state bar admissions authorities to address the educational and public protection problems that inadequate professional education present.

Proposed Standard 303(a)(3) is not perfect, however. Several amendments should be adopted by the Council in order to clarify and improve it. We attach proposed language for these amendments and describe them below.

Proposal #1: *Amend the proposed 15-credit requirement in Standard 303 to count “practice-based” experiential coursework in courses that are not primarily experiential in nature in proportion to the amount of practice-based work in that course.*

As currently drafted, the Council’s proposal limits the experiential education requirement to law clinics, field placements, and simulation courses. Schools are experimenting with a wide range of experiential educational choices, including substantial practice-based components of courses that also focus on teaching legal doctrine. When the Standards Review Committee was developing its proposed definitions of the coursework that would count toward its professional skills requirement, it was debating a far more limited 3- or 6-credit requirement. While strict definitions are appropriate in the context of a 6-credit requirement, as the number of required credits expands from six to fifteen a more expansive definition of coursework is appropriate. For example, the Final Report of the California Task Force clarifies that its 15-credit “practice-based experiential course work” requirement can be completed either in stand-alone courses or in practice-based components of existing doctrinal classes. The ABA has permitted similar flexibility in “Consultant’s Memo 3” with respect to its current professional skills requirement. If Standard 303 is expanded to fifteen credits, it should be amended to permit a similar flexibility for schools to count, in proportion to the amount of experiential work in the course, practice-based experiential course work in other courses. In addition, Standard 303(a)(3) should use the term “practice-based,” as this makes clear that the experiential coursework must be related to the kinds of professional skills that lawyers use in the practice of law.

Proposal #2: *Clarify that courses cannot be “double counted” for multiple requirements in Standard 303(a).*

The Council has had several years of experience with defining and implementing its current professional skills requirement and, in the process, has clarified that there should be no “double dipping” among the professional skills requirement and other requirements, such as legal writing. For example, as ABA Consultant’s Memo 3 states, “a seminar paper used to satisfy the upper-class writing requirement . . . cannot also be used to satisfy the other professional skills requirement . . . [and] the typical first-year research and writing program will not satisfy [the other professional skills requirement].” The Final Report of the California Task Force followed the same spirit by clarifying that legal writing courses *in the first year* are specifically excluded from the 15 credits of practice-based experiential instruction, and that to count toward its requirement, advanced writing courses must be practice-based.

This concern about double counting can be addressed in two specific ways. First, the definition of experiential course work in Standard 303(a)(3)(i) should refer back specifically to “the professional skills identified in Standard 302(d),” not broadly to the skills in Standard 302, as it currently does. Second, a new interpretation to Standard 303 could clarify what is now spelled out in Consultant’s Memo 3: that double-counting is not permitted among the various curriculum requirements in Standard 303.

Proposal #3: *Require that at least one experiential course involve practice in a law clinic or externship.*

Notably absent from the current proposal is a requirement that at least some of the required practice education occur in a real practice law clinic or externship setting. In supervised real-world practice, students learn to integrate the legal theory they learn in the classroom into effective practice in ways that cannot be duplicated in a simulation course. Real-life experience is a critical and necessary step in embedding the values of our profession. Twenty-three law schools already mandate some form of clinical education, and fourteen more guarantee a clinical opportunity to all their students, without any measurable change in the tuition they charge. Notably, an analysis of publicly-available ABA data demonstrates that the vast majority of law schools are currently able to offer a clinical experience to every law student.¹

Proposal #4: *Retain the current Interpretation 302-3 requirement of faculty assessment of the professional skills performed by the student.*

Interpretation 302-3 currently requires that the required instruction in professional skills “must engage each student in skills performances *that are assessed by the instructor*” (emphasis added). For reasons that, to our knowledge, have never been stated or indeed even discussed by the Standards Review Committee, proposed Standard 303(a)(3) drops this important requirement for faculty evaluation of the skills performance. As currently proposed, skills performances by a student may be deemed sufficient under Standard 303(a)(3) even when the student gets no

¹ Almost 80% of law schools (158) currently have a combination of clinic slots and externship placements that exceed the number of students in their entering classes. Another 11 schools have capacity to provide these opportunities for at least 90% of their students. Therefore, although only 18% of schools currently require a clinical education experience, over 84% of schools have, or nearly have, the capacity to do so without additional cost.

Robert R. Kuehn, *Pricing Clinical Legal Education*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042

feedback on and no assessment of the performance. This is not only pedagogically indefensible but inconsistent with intent of proposed Standard 314 to ensure that students get appropriate assessment and feedback on their educational performances. The important phrase “that are assessed by the instructor” should be retained in the Standards relating to professional skills instruction by adding it to the end of proposed Standard 303(a)(3)(iii).

Proposal #5: *Insert the term “law clinic” in place of “clinical course” in Standards 303 & 304.*

As we noted in our July 8, 2013 comments and as Professor Robert Kuehn proposed in letters to Standards Review dated January 14, 2013, and January 10, 2014, Standards 303(a)(3), 303(b)(1), 304(b), and Interpretation 311-2(a)(2) should delete the phrase “clinical course” and instead use the term “law clinic.” The faculty who teach law clinic courses and those who teach externship courses are all clinical faculty. Therefore, the word “law clinic” should be used to refer to the type of practice-based experiential course described in proposed Standard 304(b), allowing the word “clinical” to continue to mean both law clinic and field placement courses and faculty.

Conclusion

It is time for the ABA to lead in the growing movement to insure the quality of the professional education of lawyers. The role of an accrediting body is to ensure a uniform standard of quality among the schools it accredits. In the absence of more rigorous accreditation requirements, law schools will continue to vary widely in the quality of preparation for practice they provide, and law students will be left with a growing patchwork of state licensing requirements to comply with. ABA accreditation will lose its value. Fifteen credits of practice-based experiential education, with at least one clinic or externship course, is the minimum necessary to ensure that law school graduates are competent to begin practicing law.

Appendix A - Practice-Based and Clinical Education Requirements for Professional Schools

Law	Medical	Veterinary	Pharmacy	Dentistry	Social Work	Architecture	Nursing
1 credit in prof'l skills; no clinical requirement ¹	2 of 4 years in clinical practica or clerkships ²	minimum 1 of 4 years in clinical settings ³	300 hours in 1st year & 1,440 hours (36 weeks) in last year in clinical settings ⁴	57% of education in actual patient care ⁵	900 hours (18 of 60 required credits) in field education courses ⁶	50 of 160 credits in studio courses (nat'l licensing board's calculation of minimum needed for licensure) ⁷	varies by state - e.g., California - 18 of 58 credits in clinical practice; Texas - 3 to 1 ratio of clinical to classroom ⁸

¹ AM. BAR. ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Std. 302(b)(4) (2012-13); Am. Bar Ass'n, *Consultant's Memo* # 3 (Mar. 2010).

² MOLLY COOKE, DAVID M. IRBY & BRIDGET C. O'BRIEN, EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY 21 (2010).

³ AM. VETERINARY MED. ASS'N, ACCREDITATION POLICIES AND PROCEDURES OF THE AVMA COUNCIL ON EDUCATION, Sec. 7.9, Std. 9 (2012).

⁴ ACCREDITATION COUNCIL FOR PHARMACY EDUC., ACCREDITATION STANDARDS AND GUIDELINES FOR THE PROFESSIONAL PROGRAM IN PHARMACY LEADING TO THE DOCTOR OF PHARMACY DEGREE, Guidelines 14.4 & 14.6 (2011).

⁵ AM. DENTISTRY ASS'N, ACCREDITATION STANDARDS FOR DENTAL EDUCATION PROGRAMS Stds. 2-8, 2-23 (2010); MASS. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW, THE ECONOMY, AND UNDEREMPLOYMENT - BEGINNING THE CONVERSATION 4 (2012).

⁶ COUNCIL ON SOCIAL WORK EDUC., EDUCATION POLICY AND ACCREDITATION STANDARDS, Policy 2.3., Std. 2.1.3 (2012).

⁷ NAT'L COUNCIL OF ARCHITECTURAL REGISTRATION BDS., NCARB EDUCATION STANDARD 24 (2012) ("The NCARB Education Standard is the approximation of the requirements of a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB).").

⁸ CAL. CODE REGS. tit. 16, § 1426(c) (2013); 22 TEX. ADMIN. CODE § 215.9(c) (2013).

APPENDIX B PROPOSED REVISIONS TO PROPOSED STANDARD 303

Standard 303. CURRICULUM

- (a) The law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

* * *

(3) ~~one or more experiential course(s) totaling at least six fifteen credit hours in practice-based experiential courses, or as a significant component of a student's coursework in another course, including at least one law clinic or field placement.~~ A ~~practice-based~~ experiential course or courses must be: (i) simulation course(s) as defined in Rule 304(a); or (ii) law clinic(s) clinical course(s) as defined in Rule 304(b); or (iii) field placement(s) that meet the requirements of Rule 305. To satisfy this requirement, ~~a course experiential instruction in a course must be the equivalent of at least one academic credit of work and must be primarily experiential in nature and must~~:

- (i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302(d);
- (ii) develop the concepts underlying the professional skills being taught;
- (iii) provide multiple opportunities for performance that are assessed by the instructor; and
- (iv) provide opportunities for self-evaluation.

* * *

Interpretation 303-4

For purposes of meeting the requirements of Standard 303(a), course work cannot be counted twice. If a course or a component of a course is counted toward fulfilling the requirements in one subsection of Standard 303(a), it cannot also be counted toward fulfilling requirements in any other subsection of Standard 303(a).