

**CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA)
SECOND COMMENT TO CALIFORNIA STATE BAR
TASK FORCE ON ADMISSIONS REGULATION REFORM**

May 30, 2013

The Clinical Legal Education Association (CLEA) writes in support of the proposal of California State Bar Task Force on Admissions Regulation Reform to require at least fifteen academic units following the first year of law school in practice-based, experiential courses, such as law clinics, field placements, or skills simulation courses. Fifteen hours of experience in professional settings (representing about one-sixth of a law student's total credit hours) are certainly the minimum necessary to ensure that law school graduates are competent to practice law. Every other profession requires that at least one-quarter, and up to one half, of a graduate's pre-licensing education be in role in supervised professional practice. The professional education training and licensing of lawyers falls very far behind the other professions.

CLEA provides this comment for consideration at the Task Force's June 11, 2013 meeting. CLEA is the nation's largest association of law teachers. Many of our 1,000 members teach in California law schools, and almost all of us teach at schools with graduates who apply for the California bar. Founded in 1992, CLEA's mission is to establish clinical legal education as a fundamental component of the education of lawyers. For over 20 years, CLEA and its members have worked with the American Bar Association (ABA), the American Association of Law Schools (AALS), state bars and committees, and individual law schools to reform law school curricula, accreditation standards, and bar admission rules in order to improve the professional abilities of law school graduates.

The Task Force's proposal that bar applicants have at least fifteen academic units out of more than eighty in practice-based courses is long overdue. Repeated ABA studies have shown the need for such a requirement. As we noted in our April 17, 2013, comments, the ABA's 2004 *After the JD* survey found that professional skills training was rated by new lawyers as the most helpful law school experiences in successfully transitioning to practice. 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 well-publicized 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 ABA's law school accrediting agency, the Council of the Section of Legal Education and Admissions to the Bar, has done little to heed these persistent calls for reform. Today, twenty years after the MacCrate Report, students can still graduate from an ABA-approved law school and sit for the bar having met only the minimum ABA Accreditation Standard 302(a)(4) requirement of a single credit in professional skills.¹ The ABA's Standards Review Committee has been discussing an increase in that requirement – to three credits out of a total of required 84

¹ ABA Consultant's Memo # 3 (Mar. 2010) ("What is "substantial instruction" in other professional skills? . . . At least one solid credit (or the equivalent) of skills training is necessary.") (emphasis in original).

credits -- but that would still represent less than four per cent of the graduate's three-year course load. Those who urge the Task Force to leave to the ABA the decision about the minimum professional skills work to require of law students do so without reference to the ABA's actual experiential learning provisions. The Task Force should look instead at the facts: the ABA's present and even proposed requirement for experiential learning -- less than five percent of a student's education -- falls very short of the norms among professional schools.

A comparison with the experiential requirements in other professions demonstrates the modesty of the Task Force's proposal. As detailed below, even with the adoption of the Task Force's proposed standard, law schools would still lag behind all other professions in pre-licensing professional skills education.

Medicine: Medical school education consists of two years of classes and then two years of professional experience (one-half of each student's medical education) in clinical rotations.² To become licensed in California, medical school graduates must also spend another year of accredited post-graduate training in an internship.³

Veterinary: The required curriculum for all veterinarian students must include a minimum of one academic year (or at least one-quarter of a student's veterinary medical education) in hands-on clinical education.⁴

Pharmacy: 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.⁵ To later become licensed in California, a pharmacy school graduate must complete an additional 1,500 intern hours of pharmacy practice experience.⁶

Architecture: Architectural school students must take at least 50 of their 160 total required semester credit hours (approximately one-third) in design studio courses.⁷ In addition to these skills education requirements, the California Architects Board requires completion of 5,600 hours of practice experience (140 weeks) through the national "Intern Development Program" before becoming eligible to apply for a license.⁸

Social Work: Masters of Social Work students must accrue at least 900 hours, or 18 of their required 60 academic credit hours (approximately one-third), in field education

² Molly Cooke, David M. Irby and Bridget C. O'Brien, "A Summary of *Educating Physicians: A Call for Reform of Medical School and Residency*" (2010).

³ Medical Board of California, "License Information for U.S. or Canadian Medical School Graduates."

⁴ "Accreditation Policies and Procedures of the American Veterinary Medical Association," Section 7.9, Standard 9.

⁵ Accreditation Council for Pharmacy Education, "Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree," Guidelines 14.4 & 14.6.

⁶ California State Board of Pharmacy, "Pharmacist Examination and Licensure Application Instructions."

⁷ National Council of Architectural Registration Boards, "NCARB Education Standard."

⁸ California Architects Board, "Licensing Requirements/Process."

courses, the “signature pedagogy” of social work professional education.⁹ To then become eligible for a license as a clinical social worker in California, a MSW student must gain an additional 3,200 hours of supervised work experience (80 weeks).¹⁰

Nursing: For nursing professionals, California requires that the curriculum at an approved pre-licensure registered nursing program shall provide not less than 18 of its 58 semester units (approximately one-third) in clinical practice courses.¹¹

Thus, for all the other professions, at least one quarter, and as much as one half, of a student’s required education must be in professional skills or clinical courses, as compared to the proposed Task Force requirement of only one-sixth of a law student’s total academic units. Most other professions also require additional, post-graduate clinical or other practice experience prior to licensure. The Task Force recommendation to require fifteen law school units to be taken in law clinics, field placements, or simulated practical skills courses is a modest and critical first step toward achieving in legal education the level of professional experience required in the education of other licensed professions.¹²

In light of the basic experiential requirements of other professions, the Task Force should disregard the argument made by some commenters that it should take no action on its experiential education proposal until “evidence” proves the need for fifteen credits.¹³ No more evidence is needed to establish that legal education is falling short in training professionals and that the ABA has no plans to address that shortfall.

It is not too difficult or too expensive for law schools to deliver the kind of experience-based education that the Task Force proposes. Many of our members teach in law schools that have worked hard and successfully to find cost-effective ways to achieve this goal. For example:

CUNY: All students must take a 12-to-16-credit faculty-supervised law clinic or field placement and a 4-credit lawyering skills seminar, for a total of at least 16-20 experiential credits.

University of District of Columbia: Students must enroll in a 7-credit clinic in their second year and a second 7-credit clinic in their third year, as well as a required 2-credit moot court course, for a total of at least 16 experiential credits.

⁹ Council on Social Work Education, “Educational Policy and Accreditation Standards,” Educ. Policy 2.3., Accreditation Std. 2.1.3 (2012).

¹⁰ California Board of Behavioral Sciences, “LCSW License Requirements.”

¹¹ 16 Cal. Code of Regulations § 1426.

¹² If the Task Force decides to expand its proposed requirement to include the first year, then the required number of practical skills course academic units should be increased proportionately to 21 (i.e., one-quarter of the total 84 law school academic credits).

¹³ Notably, the professional skills requirements for accreditation and licensing in the other professions do not appear to be the product of empirical studies.

Washington & Lee: The much-publicized, revamped third-year curriculum requires 20 academic credits in simulated or real-practice experiences that include one clinic or externship, three problems-based electives, and two skills immersion courses.

Thus, public and private schools, schools in urban and rural areas, schools whose graduates work in the school's local region and those who work across the country, schools with part-time programs and those with only full-time students, and schools with significant tuition and those charging among the lowest in the country are already in compliance with the Task Force's proposal, including mandating that each student take a law clinic or externship. The fact that other schools have not made this effort is no reason not to move legal education forward. It is, rather, a reason that the Task Force's proposal is so critical.

In addition to proceeding with the 15-credit requirement, the Task Force should also revise several of its details, as follows:

- Require that at least one-third of the proposed units (5 credits) involve practice experience through a law clinic or externship. Our experience shows that supervised real world practice is the best way for students to learn how to integrate the theory they learn in the classroom into effective practice and is a powerful way to internalize the values of our profession.¹⁴
- Clarify that the practical skills areas listed at pages 21-22 of the March 22nd Report are just examples of the kinds of lawyer competencies that could be addressed in a skills course, and not descriptions of courses. The final Report should explicitly reject one commenter's suggestion that a classroom-based doctrinal course in professional responsibility would qualify as a "skills" course. Indeed, the Task Force should make clear that it is the applied aspects of "professional responsibility, ethics and civility" that it intends to count toward the requirement by re-framing that competency as "exercising professional judgment in real practice settings" or as "the ability to recognize and resolve ethical dilemmas in practice."¹⁵
- Remove from the list of skills areas the phrases "basics of the justice system, including how courts are organized and administered" and "professional responsibility, ethics and civility," because teaching about these matters in classroom settings does not put students into role as lawyers for experiential learning.
- Clarify what must occur in a qualified course to ensure that practice skills are appropriately taught. As ABA Accreditation Interpretation 302-3 requires, a qualifying experiential course "must engage each student in skills performances that are assessed by the instructor." The ABA has explained that "merely reading about and taking an exam on counseling and negotiation will not suffice; engaging in

¹⁴ In addition to the three law school profiled above, more than a dozen other law schools (including U.C. Irvine) already mandate that all students take a law clinic or externship, with many others guaranteeing a clinical opportunity if the student wishes, demonstrating that a law clinic or externship requirement can be met by all schools. Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Clinic Requirements, Clinic Guarantees, and the Case for Experiential Pluralism: The New, Improved American Law School Curriculum*, 43 WASH. U. J.L. & POL'Y (forthcoming fall 2013).

¹⁵ MacCrate Report, at p. 140.

counseling and negotiation sessions by each student that are then assessed by the professor may.”¹⁶

The legal profession, its clients, and our society cannot simply hope that individual law students will be able to and will choose to take the courses necessary to develop the professional skills they need for the competent and ethical practice of law, and cannot expect that the ABA will require them to do so. CLEA, with its members in California and across the nation, stands ready to help the California State Bar and all American law schools implement the experiential education requirements that the Task Force is proposing.

¹⁶ ABA Consultant’s Memo # 3.