

ASAM Safety Sensitive Worker Best Practices

in Diagnosing, Treating, and Monitoring Licensed Professionals

**J.E. Buddy Stockwell III, JD, CCI
Executive Director
Tennessee Lawyers Assistance Program
Office (615) 741-3238
Cell (615) 393-3619
Buddy.Stockwell@tncourts.gov
www.tlap.org**

HOW DID WE GET HERE?

And, by the way . . .

Where IS here???



**SIX DECADES
OF EXPERIENCE AND
EVOLUTION:**

**Doctors, Nurses, Pilots, Lawyers, and other
“Safety Sensitive Occupations”**

1958

Doctors See a Problem “Impaired Physicians”

And since these are MEDICAL ISSUES it is natural that Physicians were the first concerned profession

1974

**FAA and Airlines
See a Problem
“Impaired Pilots”**

1991

**ABA Lawyers and Judges
See a Problem
“Impaired Lawyers”**

2005

FSPHP Clinical Guidelines

**The Federation of State Physician Health Programs
Clinical Guidelines that
Medically Support Fitness-to-Practice**

2008

British Medical Journal

**Study verifies the No-Relapse Efficacy
of the FSPHP's Clinical Guidelines**

2009

Journal of Substance Abuse Treatment

How Addicted Medical Professionals are Treated

2014

A WHIRLWIND!

- **ASAM Published SSW Criteria**
- **DOJ Letter of Finding LASC (Feb.)**
- **DOJ/LASC Settlement (Aug.)**
- **New Paradigm for Recovery**

2015 Louisiana JLAP Audit

**Sparked by DOJ Investigation
Louisiana JLAP first LAP ever Audited by a
Combination of PHP Doctors and LAP Lawyers**

2015 “Love First”

Intervention pioneer Debra Jay visits JLAP and seeks information on how Louisiana JLAP is achieving 95% no-relapse rates in monitoring

2016 ABA CoLAP

“The Prevalence of Substance Use and other Mental Health Concerns Among American Attorneys”

2016

Structured Family Recovery

Debra Jay launches “Structured Family Recovery”

**(families use elements of SSW formal monitoring)
and a realization of Dr. Dupont’s New Paradigm)**

2017

ABA CoLAP

The Path to Lawyer Wellbeing

2017

ASAM on Drug Screening

Report Explains the Limitations of Drug Screening

2018

ABA CoLAP

Wellbeing Toolkit

2018

Louisiana JLAP Audit Supplement

Defines NEW category of “Diagnostic Monitoring”

**Explains value of “Peer Professionals Program”
versus simply drug screening by a private company**

2019 UPDATED FSPHP Clinical Guidelines

**The FSPHP publishes State-of-the- Art “Best Practices”
in monitoring and clinically supporting fitness-to-practice**

2020

FSPHP Membership Expanded

All monitoring programs can now join the FSPHP

2021

**What does all this mean for
Lawyers Assistance Programs?**

It Depends . . .

***“To Protect or Not Protect”
That is the Question***



***“If you’ve seen one LAP,
you’ve seen one LAP”***

GENERAL COMPARISON: BASIC LAP PROGRAM MODELS*

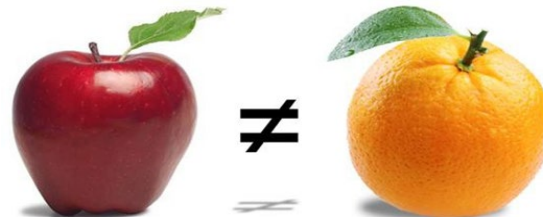
Peer-Professionals' Program

- Confidential Assistance
- All Mental Health issues
- Educates the profession
- Duty to protect the public
- Often a Court Program
- Protect, assist, and educate
- Atty ED in Recovery & clinicians
- ASAM SSW clinical standards
- Efficacy by relapse-free outcomes
- Provides formal monitoring
- Testifies in discipline/admissions
- Expectations: fit-to-practice
- Success: low relapse, public ok
- VALUES: save lives and careers

Lawyers Helping Lawyers

- Confidential Assistance
- All Mental Health issues
- Educates the profession
- No duty to protect the public
- Often a Bar Association Program
- Assist and educate
- Clinician ED & staff
- No formal clinical standards
- Efficacy by client satisfaction
- Discipline provides monitoring
- Rarely testifies in disc/admissions
- Expectations: support the client
- Success: valuable member service
- VALUES: save lives and careers

*per National Experts
2015 La. JLAP Audit



ASAM Safety-Sensitive Workers

Licensed professionals managing a complex body of education and training while working in an environment where complex, real-time decisions must be made quickly under stress and wherein mistakes can't be corrected and are very costly and/or can visit irreparable harm upon the public.

- Airline Pilots
- Doctors and Nurses
- Attorneys and Judges
- Pharmacists
- Others (Police, Fire, Railroad)

FORMAL PROGRAMS (HIMS, PHP, NRP, LAP, etc.)

On any Given Day:
NO SECOND CHANCES



Unique to Lawyers



IOLTA Accounts: We Hold Client Money

Monitoring Compliance

LAP “*Compliance*” via ASAM SSW Best-Clinical-Practices Monitoring is a stipulation that:

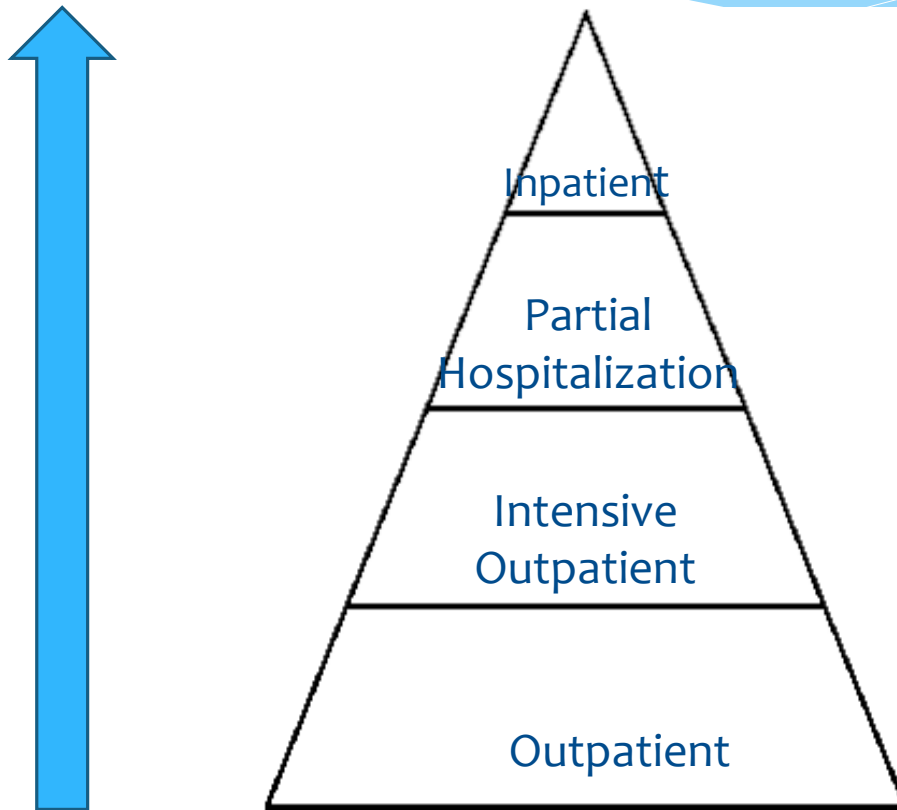
- **Appropriate SSW Clinical Standards Met**
- **Impairment Removed**
- **Fit-to-practice by Clear and Convincing Stds**
- **Close Supervision via LAP Monitoring**
- **Public/Profession not in Danger**
- **Self-Regulation Accomplished**
- **Saves Lives and Careers at VERY HIGH RATES**

Very Simple Formula

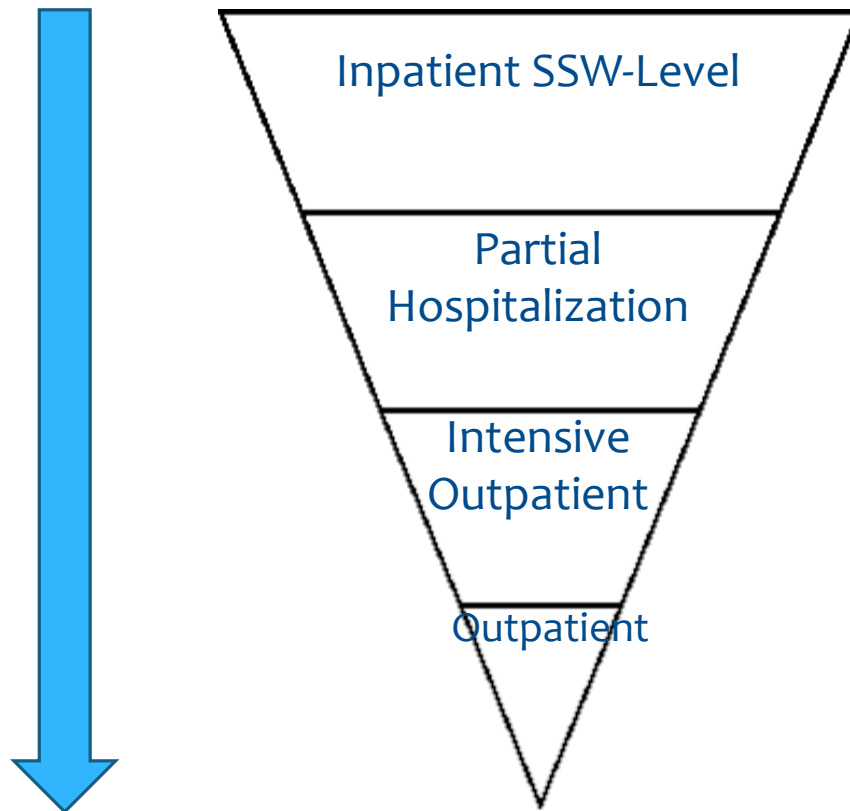
- 1) **Comprehensive Diagnostics by S.S.W. level facilities**
- 2) **Professionals' Track Treatment with S.S.W. Peers**
- 3) **Post-treatment Best-Practices in Peer Monitoring**

Clinical Quality Control = Compliance = Fit-To-Practice

General Public “Fail First Model”



Safety-Sensitive Workers “Success First Model”



Safety-Sensitive Workers

RELAPSE IS NOT PART OF RECOVERY!

(BTW It has NEVER been a required part of Recovery)

Relapse-Free Success Rates

Alcoholics Anonymous:	7%
Outpatient:	20 to 40%
30 Day Inpatient:	50%
SSW standards and peer monitoring:	85% - 95%

SSW standards:

**“Fit-To-Practice by
Clear and Convincing Evidence”**

THE SOCIAL CONTRACT*

*Practicing a S.S.W. Profession is a
Privilege, Not a Right*

*From 2018 FSPHP National
Conference Presentation

Origins

- Freedom v. dependence
- Collective v. personal will
- Governance
- Agreement

**I CAN'T SEEM TO FIND
THIS MYSTICAL
DOCUMENT CALLED THE
"SOCIAL CONTRACT" YOU
CLAIM I AM PARTY TO.**



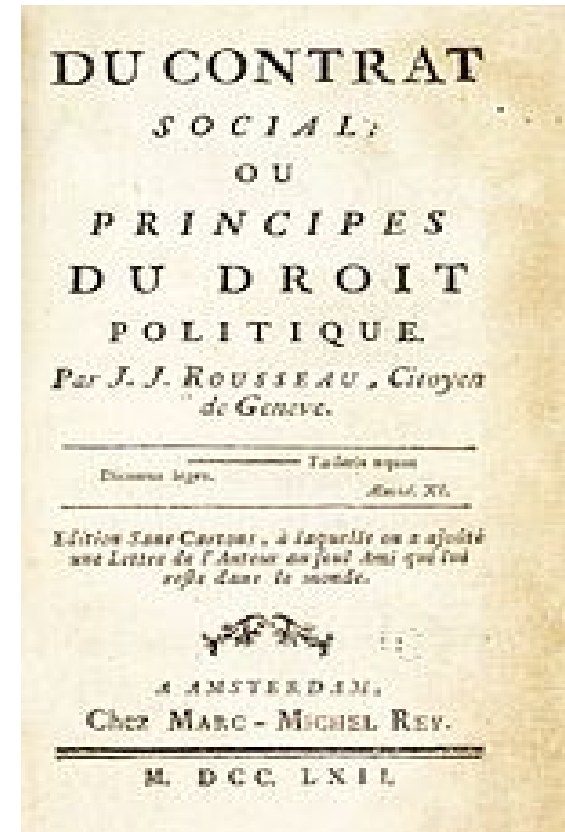
Overarching Issue: What are the collective's legitimate interests?

Jean-Jacques Rousseau

1762 Book by Jean-Jacques Rousseau:

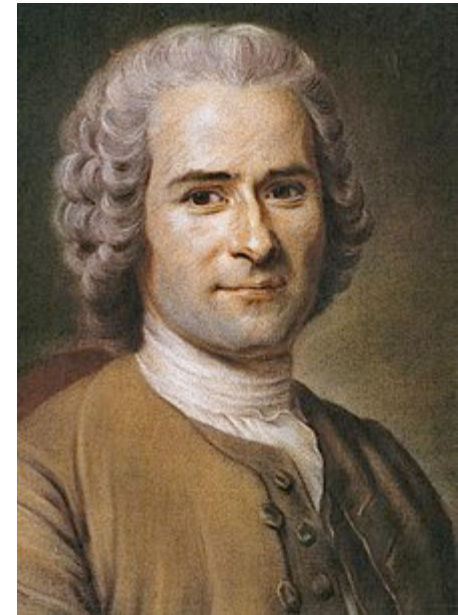
The Social Contract concerns the origin of society and the legitimacy of the authority of the state over the individual.

The Social Contract deems that individuals have consented, either explicitly or tacitly, to surrender some of their freedoms and submit to the authority of the ruler or magistrate (or to the decision of a majority), in exchange for protection of their remaining rights.



Common Frames . . . Ethics

- License exchanged for permission, status
- Accepted by competent party, aware of risk
- Establishes society's claim on fit and competent practitioners



Standards for Professionals

The “**Social Contract**” demands standards be established for certain state licenses to practice a profession, and it also **requires certifying fitness-for-duty** in such professions.

Increased Responsibility In the Legal Profession

One of the LAST self-regulated professions, it is incumbent upon regulators to ensure that current Clinical Best-Practices for Safety Sensitive Workers are utilized so as to ensure fitness-to- practice and protect the public.

Social Contract: Fitness-For-Duty

- **Established Professionals' Programming for SSWs**
- **Specialized diagnostics, treatment, and monitoring**
- **Published, professional and clinical standards**
- **Establishes nexus between illness, loss of function**
- **Communication between experts and the community**

Social Contract Conclusions

- The Social Contract applies to lawyers, doctors, nurses and pilots, etc.
- PHPs, NRPs, LAPS, and HIMS monitoring programs are necessary
- Rights to SSW licenses are conditional
- Coercion is not the relevant construct for mandated monitoring
- Court-ordered monitoring participation honors the Social Contract

Best Practices Monitoring is an offer to satisfy the condition of “fitness-to-practice”

What About Voluntary Cases?

Can a Monitoring LAP using ASAM SSW standards coincide with robust confidential voluntary help?

- **From 2010 to 2020 at Louisiana JLAP: 500% increase in Voluntary Cases while also averaging a 95% no relapse rate**
- **Now, the majority of cases in La. are totally CONFIDENTIAL**
- **Education, Education, EDUCATION, EDUCATION!!!**
- **The Community of Lawyers in ASAM SSW-level no-relapse Recovery become a powerful force to support avoiding Fail-First treatment**

The False Hope of Bargaining

A Conditionally Admitted lawyer who relapsed twice under monitoring:

Buddy, I was impaired, but you were not and you knew better . . .

Why did you let all of us pressure you into agreeing to let me go to insufficient levels of treatment?

The Ultimate Issue

Will the Public continue to tolerate licensed professionals with mental health diagnoses?

In the fullness of time, we will succeed or fail in part upon the success of ongoing efforts to develop clinical best-practices that statistically and objectively certify “fitness-to-practice” and effective and reliable protection of public.

THE GOAL OF BEST-PRACTICES MONITORING



Healthy Professionals Fit-to-Practice



THANK YOU!

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