SUNRISE ANALYSIS OF A PROPOSAL TO REGULATE PROFESSIONAL COUNSELORS

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by

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TABLE OF CONTENTS

Page

Introduction 1

Background on Counseling 1

Current Proposal to Regulate Professional Counselors 5

Analysis of Proposed Legislation 6

Conclusion 9

Recommendation 9

Notes 11

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Introduction

In 1984, the Legislature amended the Hawaii Regulatory Reform Act, or the "Sunset Law," by incorporating a "sunrise" provision. Under this provision, the Legislative Auditor is required to analyze proposed legislation that would impose licensing or other regulatory controls on unregulated occupations.

The Legislative Auditor is required to assess the probable effects of the proposed measure and to determine whether its enactment would be consistent with state regulatory policies in the Sunset Law (Chapter 26H, Hawaii Revised Statutes). These policies establish criteria for regulation such as the following:

- Regulation is warranted only where reasonably necessary to protect the health, safety, and welfare of consumers.
- Evidence of abuse shall be accorded great weight in determining whether regulation is desirable.
- Regulation shall not be imposed except to protect relatively large numbers of consumers who may suffer a disadvantage in choosing the provider of the service.
- Regulation should not unreasonably restrict entry into the occupation by qualified persons.
- Regulation should protect the consumer and not the regulated profession.

During the 1988 legislative session, Senate Bill No. 3094 relating to counseling was introduced. The bill would establish licensing requirements for professional counselors. This proposal was referred to the Legislative Auditor for sunrise analysis of whether its enactment would be consistent with sunset law policies.

This analysis contains background information on the counseling profession, an examination of the need to regulate professional counselors, and an assessment of the proposed legislation.

Background on Counseling

Significant social, economic, scientific, and ideological changes over the past 100 years have influenced the development of formalized counseling. As life became more complex, people lost

close personal relationships with family and friends. They turned to educators, social workers, psychologists, and other helping professionals for assistance.

Economic conditions such as depressions, unemployment, and international conflicts during this century created much insecurity and grief. This led people to question the quality of their lives and to seek assistance in changing their environment.

Scientific developments in the fields of psychology and psychiatry have provided counselors with the conceptual framework in dealing with their clients. Various concepts and theories were followed by counselors in their efforts to help individuals, including social intervention, vocational guidance, measurement and testing, and individual counseling.

The field of vocational or career guidance has influenced the work of many counselors. Jesse B. Davis and Frank Parsons were pioneers in vocational guidance. Davis was a product of the social reform movement during the late 1800s. Frank Parsons called for the preparation of professional vocational guidance experts to test and place young adults in occupations.[1]

After its beginnings, the focus of guidance changed from vocational and educational guidance to a link with counseling. This change evolved as vocational guidance professionals began to realize that they were not only providing guidance but also were helping individuals deal with their problems.

During the first half of this century, counseling and guidance were primarily creatures of schools and universities. The professional counseling organizations represented people who were employed in vocational and educational settings.

In 1952, four organizations merged to form the American Personnel and Guidance Association (APGA).[2] The four founding groups became national divisions of APGA. The membership of the four divisions had primarily an educational orientation. However, over the next 30 years, the members of APGA were increasingly found in noneducational settings and private practice in the community. In 1983, the APGA changed its name to the American Association for Counseling and Development (AACD) to reflect the changing makeup of its membership.

Occupational characteristics. In 1986, counselors were employed in approximately 123,000 jobs in the United States.[3] More than two out of three jobs were in elementary and secondary schools and colleges and universities. Counselors also worked in job training centers, vocational rehabilitation centers, nonprofit organizations, correctional institutions, residential care facilities, health facilities, and other public and private agencies.

Counselors provide a wide range of services depending on the type of clients they serve and their work settings. School and college counselors help students develop an understanding of

their abilities, interests, talents, and personality characteristics through the use of various techniques such as interviews, counseling sessions, and tests. Rehabilitation counselors evaluate persons with disabilities and help them become more independent and productive. Mental health counselors provide services in the areas of drug and alcohol abuse, family conflicts, child and spouse abuse, suicide, work problems, criminal behavior, and other problems.

During 1987-88, AACD had approximately 56,000 members nationwide and in foreign countries.[4] Membership in AACD is open to anyone whose responsibilities and interests are in the areas of counseling and human development. This includes people who work in schools, colleges, mental health agencies, rehabilitation facilities, community agencies, business/industry, private practice, employment and related human service settings.

AACD has 56 state and international branches. The 15 national divisions of AACD are comprised of various organizations representing members from the fields of counseling and human development. The larger divisions of AACD include the American College Personnel Association, National Career Development Association, American School Counselor Association, and American Mental Health Counselors Association.

Professional counselor organizations outside of AACD represent counselors in other specialty areas. Organizations such as the American Association for Marriage and Family Therapy and the National Rehabilitation Counseling Association represent marriage and family therapists and rehabilitation counselors, respectively.

The National Board for Certified Counselors (NBCC) is an independent, voluntary, not-for-profit organization which has established a national certification program for counselors who have met NBCC standards. The NBCC's purpose in certifying counselors is to "provide a national standard that can be used as a measure of professionalism by interested agencies, groups, and individuals." As of May 1988, NBCC had certified some 17,500 counselors.[5]

Several counseling specialties have their own counselor certification systems. The NBCC provides certification for career counselors and career development professionals through its affiliate organization, the National Council for Credentialing Career Counselors. Clinical mental health counselors are certified by the National Academy of Certified Clinical Mental Health Counselors (NACCMHC), an affiliate organization of AACD. The Commission on Rehabilitation Counselor Certification (CRCC) certifies rehabilitation counselors who meet various eligibility categories.

Counselors in Hawaii. Counselors are employed in the public and private schools, colleges, and universities in Hawaii. Other counselors work in public and private agencies. Sixty-four public and private agencies were listed under the subject heading "counseling" in the 1987-88 *Directory of Social Resources.*[6]

The Hawaii Association for Counseling and Development (HACD) is the chartered state branch of the AACD. During 1987-88, HACD had 184 members in Hawaii and in other jurisdictions.

Other professional counseling associations in Hawaii include the Hawaii Mental Health Counselors Association; Military Educators and Counselors Association - Hawaii, Asia, Pacific; Hawaii School Counselor Association; Hawaii Division - American Association for Marriage and Family Therapy; and Hawaii Rehabilitation Counseling Association.

Regulation of professional counseling. Licensing for professional counseling emerged as a result of several factors. During the 1970s, professional counselors began competing for positions in public and private agencies with psychologists and social workers. However, counselors were reportedly being denied jobs because they lacked the credentials. In some cases, they were being sued by state psychology licensing boards for practicing psychology without a license.[7]

In 1975, the AACD senate adopted a position in favor of establishing provisions for the licensure of professional counselors. The American Association for Marriage and Family Therapy (AAMFT) has also actively promoted the licensure of marriage and family therapists. Virginia was the first state to license professional counselors in 1976. In 1988, professional counseling was regulated in 28 states. Eleven out of these 28 states also regulated marriage and family therapy. Seven additional states regulated only marriage and family therapy.

Most of the affected 35 states prohibit the use of the title of licensed professional counselor, mental health counselor, and/or marriage and family therapist without a license. Some states also regulate the practice of professional counseling, mental health counseling and/or marriage and family therapy. Each state has educational, experience, and examination requirements. The requirements in most states include a master's degree, two or three years of supervised experience, and an examination. A few states specify the number of semester hours of course work required as part of the master's degree ranging from 30 to 60 semester hours.

A majority of the states exempt certain classes of persons from the requirements of the licensing laws. Included among such exemptions are public employees, students, nonresidents, physicians, psychologists, nurses, social workers, members of the clergy, attorneys, and school counselors or employees.

The state licensing laws have other common provisions. In most of the states, applicants who are licensed in another state or jurisdiction would be eligible for licensure by reciprocity. Continuing education requirements are included in most of the state licensing laws. Most states prohibit the disclosure of confidential or privileged communications between the counselor or therapist and client.

Current Proposal to Regulate Professional Counselors

Senate Bill No. 3094 proposes to regulate anyone who practices professional counseling under the title "licensed professional counselor." Professional counseling is defined as "providing counseling services to individuals, couples, groups, families, children, organizations, or the general public through the therapeutic relationship; developing understanding of personal problems; defining goals and planning action reflecting interest, abilities, aptitudes, and needs as these relate to personal, social, educational, and career concerns." Professional counseling includes, but is not limited to: (1) the application of counseling theories and techniques; (2) appraisal activities; (3) research activities; (4) referral activities; and (5) consulting activities. The bill also restricts professional counseling from any act or service within the practice of psychology, as defined in Section 465-1, HRS.

A Board of Licensed Professional Counselors would be created consisting of seven members. Five members of the board must be licensed professional counselors. Two of the professional counselors may be faculty members from a school within the state which provides training in professional counseling. The remaining members of the board must be public members who have an interest in the field of professional counseling.

The board would be given the authority to adopt rules; set the licensing fees; examine the qualifications of applicants for licensure; discipline licensees; grant licenses to qualified applicants; adopt a code of ethics; and enforce the proposed law and its rules.

To qualify for a license, an applicant must (1) not be in violation of the proposed law or the rules of the board, (2) have a graduate degree in counseling or comparable degree from an accredited institution, based on a program of not fewer than 60 graduate semester hours primarily concerned with professional counseling, (3) have a minimum of two years of supervised experience, and (4) pass an examination. Applicants who are licensed in another state would be eligible for licensure by reciprocity.

Specialty endorsements may be added to the licenses provided the applicants can show proof that they have met standards set by the board for each specialty area. The bill provides for two specialty categories--the clinical mental health counselor and the marriage and family therapist. Applicants in these specialty areas must meet additional education and experience requirements. Other specialty endorsements may be established by petitioning the board.

Licenses would have to be renewed once a year. In order for a license to be renewed, the licensee must pay the license renewal fee and meet the board's continuing education and supervision requirements.

The bill requires a licensed professional counselor to provide a professional disclosure statement to the client. A professional disclosure statement would have to include information about the counselor, including the counselor's philosophy and approach to counseling and formal education and training. A counselor cannot charge a client for counseling services if a disclosure statement is not provided to the client.

The bill prohibits licensed professional counselors or employees of counselors from disclosing communications between counselors and clients. Exceptions to this provision would apply when: (1) the client or persons legally responsible for the client give consent to disclose information; (2) the client initiates legal action or makes a complaint to the board against the counselor; (3) the intent to commit a crime or harmful act is revealed; and (4) a minor is or is suspected to be the victim of a crime, abuse, or neglect.

The board would determine the psychological tests which are used to assess mental and emotional disorders and which require the completion of doctoral-level training to be administered and interpreted. Licensees would be required to complete doctoral-level training before administering, using, or interpreting these tests.

Grounds for the suspension, revocation, and denial of licenses include practicing under the title of licensed professional counselor without a license; obtaining a license by bribery or fraud; engaging in unfair or deceptive acts or practices; conviction of a crime which brings into question the counselor's competence; inability to practice because of mental illness, physical illness, or substance abuse; gross negligence; violations of the statute or board rules; failure to file a professional disclosure statement; violations of the code of ethics; disciplinary action against the person's license in another state; and falsely claiming that the person has a specialty endorsement.

The board may impose a fine for each violation of the proposed bill or the board's rules not to exceed $1,000 for each violation.

Analysis of Proposed Legislation

Summary of findings. Our analysis of Senate Bill No. 3094 is based on criteria in the Sunset Law. We find that regulation of professional counselors is not warranted because it would not comply with state regulatory policies in the Sunset Law. In summary, our findings are:

1. The practice of professional counseling does not pose sufficient harm to warrant licensure.

2. The educational requirement for licensure would restrict entry into the profession.

3. The scope of regulation is confusing and restrictive and would limit the practice of professional counseling.

4. The composition of the Board of Licensed Professional Counselors is questionable.

No evidence of harm. According to the AACD Licensure Committee, professional counseling should be regulated because it has no legal definition and, thus, anyone can use the title of counselor. Sales personnel, massage parlor operators, and palm readers are calling themselves counselors to gain credibility. AACD also says that there is an increase in the incidences of untrained people offering "counseling services" and charging high fees. According to the licensure committee, licensure is needed to protect the public's right to obtain services from qualified counselors, to ensure the freedom of choice in selecting professional counseling over other professions, and to enforce professional standards.[8]

We find no documented evidence that consumers have been harmed by incompetent or unethical professional counselors. The Hawaii Association for Counseling and Development, as well as other counseling associations, did not provide any documented evidence of harm. They provided only anecdotal accounts of counselors who might have caused harm to their clients.

One of the cases provided by HACD involved a school counselor. However, according to HACD, the licensure proposal was not intended to apply to school counselors. School counselors are currently certified by the Department of Education. Thus, its example of abuse involving the school counselor is not relevant to the licensing issue since school counselors would not have to be licensed under S.B. No. 3094.

The Office of Consumer Protection and the Office of the Ombudsman received no complaints about counselors in Hawaii during the past three years. Based on the lack of documented cases of harm and complaints involving professional counselors, the practice of professional counseling does not warrant licensure.

Licensing requirement restricts entry into the profession. Under the licensing proposal, applicants for a license must have a graduate degree in counseling or a comparable degree from an accredited school, a minimum of two years of supervised experience, and passed an examination. The graduate degree must be from a program requiring "not fewer than sixty graduate semester hours primarily concerned with professional counseling."

The licensing requirement of 60 semester hours will prevent some counselors from becoming licensed. Although the requirement now is 60 semester hours, some counselors graduated from counselor education programs when the requirement for obtaining a master's degree was less than 60 semester hours.

For example, the University of Hawaii (UH) currently has a master's of education degree program in counseling and guidance which requires 60 semester hours of courses. However, prior to 1978, the counselor education program at UH required only 30 semester hours for a master's degree in counseling and guidance. Thus, while they may have a master's degree in counseling

and many years of experience in the counseling field, counselors who graduated from the UH counselor education program more than ten years ago would not qualify under S.B. No. 3094.

Similarly, some counselors in certain specialty counseling fields entered the profession with degrees in areas other than counseling. The Commission on Rehabilitation Counselor Certification provides certification to rehabilitation counselors under various eligibility categories. In order to be certified, individuals in the rehabilitation counseling field must have obtained: (1) a master's degree in rehabilitation counseling; (2) a master's degree related to a master's degree in rehabilitation counseling; (3) a master's degree unrelated to a master's degree in rehabilitation counseling; or (4) a bachelor's degree in any discipline.[9] (Categories (3) and (4) will be phased out in 1992.) Counselors with master's or bachelor's degrees in noncounseling disciplines would not meet the requirements for licensure under S.B. No. 3094.

Confusing and restrictive limits on counseling activities. S.B. No. 3094 states that "professional counseling shall not include any act or service within the practice of psychology, as defined in section 465-1." This provision is confusing relative to other provisions of the bill and may restrict professional counselors from providing certain kinds of services which are also provided by psychologists.

Section 465-1, HRS, defines the practice of psychology as "the performance of any professional service which consists of and requires the application of psychological principles, theories, techniques, and instruments for the purpose of assessment, diagnosis, and treatment of behavioral, emotional, mental, or behavioral health problems or disorders as defined by a diagnostic manual acceptable to the board and defined in its rules; and for the purpose of the assessment, diagnosis, and rehabilitation of organic brain syndromes."

Under S.B. No. 3094, professional counselors would be licensed to provide similar types of services. Professional counseling includes the application of counseling theories and techniques and assessment of an individual's behavior and mental and emotional problems. The bill further states that the clinical mental health counselor must "demonstrate knowledge of the diagnosis and treatment of mental and emotional disorders by passing an examination."

Moreover, the bill contains requirements for one area of professional counseling which clearly overlaps with the practice of psychology. Although it appears to contradict the provision which excludes the practice of psychology from professional counseling, a provision is included in the bill relating to psychological tests. Under the proposal, licensees who have completed doctoral-level training would be allowed to administer, use, and interpret psychological tests and instruments which are used for assessment of mental and emotional disorders. This type of appraisal activity is also a part of the practice of psychology, as defined in Section 465-1, HRS.

Thus, while one provision of the bill prohibits professional counseling from including any act or service within the practice of psychology, another provision allows it.

If professional counselors and psychologists provide mutually exclusive services, then the provision excluding the practice of psychology would not restrict the practice of professional counseling. However, some professional counseling activities fall within the scope of the practice of psychology. Thus, the provision excluding the practice of psychology from professional counseling is confusing and would limit the practice of professional counseling.

Questionable composition of board. S.B. No. 3094 provides for seven members on the Board of Licensed Professional Counselors. Five of the members must be licensed professional counselors and the other two members must be public members who have demonstrated an interest in the field of professional counseling.

The provision that the public members demonstrate an interest in professional counseling is questionable for two reasons. *First,* the public would not be assured that the board's activities take into consideration the general public interest if the public members have an interest in the profession. *Second,* the other five members of the board already would represent the interests of the profession. The purpose of including public members on professional and occupational boards is to bring impartial viewpoints to the board and to ensure that the broad public interest is taken into consideration.

Conclusion

Occupational licensing and regulation are efforts to ensure public protection by establishing minimal standards for practice. Unless there is evidence showing that consumers are at a disadvantage or being harmed by practitioners in the occupation, licensure is unwarranted.

We do not find sufficient evidence of cases of harm or consumer complaints relating to professional counselors to impose regulation. Moreover, the proposed legislation would restrict entry into the counseling profession and the activities of professional counselors. It would not adequately protect the health, safety, and welfare of consumers.

Recommendation

We recommend that Senate Bill No. 3094 not be enacted.

NOTES

1. John J. Pietrofesa, Alan Hoffman, Howard H. Splete, and Diana V. Pinto, *Counseling: Theory, Research, and Practice,* Chicago, Rand McNally College Publishing, 1978, pp. 9-10.

2. Edwin L. Herr, "AACD: An Association Committed to Unity Through Diversity," *Journal of Counseling and Development*, Vol. 63, No. 7, March 1985, pp. 395-396.

3. U.S., Bureau of Labor Statistics, *Occupational Outlook Handbook: 1988-89 Edition*, Washington, D.C., U.S. Government Printing Office, April 1988, p. 116.

4. American Association for Counseling and Development, *Working for You! Join AACD*, Alexandria, no date.

5. National Board for Certified Counselors, Inc., *National Counselor Certification: Information & Application*, Alexandria, no date, p. 1.

6. Judith F. Clark, *Directory of Social Resources, 1987-88*, Honolulu, Volunteer Information and Referral Service, 1987, pp. 21-26.

7. John McFadden and David K. Brooks, Jr., *Counselor Licensure Action Packet*, Revised Edition, Alexandria, American Association for Counseling and Development, 1983, p. 3.

8. AACD Licensure Committee, *Questions & Answers: Counselor Licensure Legislation*, Alexandria, August 1987, pp. 1-2.

9. Commission on Rehabilitation Counselor Certification, *Guide to Rehabilitation Counselor Certification*, Arlington Heights, January 1, 1986, pp. 3-4.