
Sunset Evaluation Report: Marriage and Family Therapists

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

Report No. 02-01
January 2002



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

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THE AUDITOR

STATE OF HAWAII

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OVERVIEW

Sunset Evaluation Report: Marriage and Family Therapists

Report No. 02-01, January 2002

Summary

We evaluated the regulation of marriage and family therapists under Chapter 451J, Hawaii Revised Statutes (HRS), which is scheduled for repeal on December 31, 2002. We concluded that the State should no longer regulate marriage and family therapists; the regulatory law should be allowed to expire as scheduled. However, if regulation is continued, improvements are needed in the law and its administration.

Marriage and family therapists assist adults, children, and families with emotional, behavioral, and relationship problems. Therapists help people with childhood and adolescence difficulties, marriages in crisis, families needing assistance with senior parents, domestic violence, physical and sexual abuse, substance abuse, and other concerns.

In 1998, the Legislature enacted Chapter 451J, HRS, to protect the title of “marriage and family therapist” through a “licensing” program—actually a “title protection” or “certification” program—in the Department of Commerce and Consumer Affairs. As of August 2001, the Department of Commerce and Consumer Affairs reported 80 “licensed” marriage and family therapists in Hawaii.

The Hawaii Regulatory Licensing Reform Act, Chapter 26H, HRS, states that professions and vocations should be regulated only when necessary to protect the health, safety, or welfare of consumers. In assessing the need for regulation, evidence of abuses by providers of the service must be given great weight and the costs and benefits of regulation must be considered.

We found that the regulation of marriage and family therapists is not warranted. There is little evidence of harm in Hawaii. Since the start of the regulatory program in 1998, the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs has received only one complaint against a marriage and family therapist. Furthermore, the benefits of regulation are uncertain. Consumer protections would exist even without the regulatory program. “Licensure” fees do not fully support the program, and anticipated cost savings and improved access to care from regulation have not materialized.

However, if regulation of marriage and family therapists is continued, the regulatory law needs attention. Certain provisions are unnecessary, unclear, or inappropriate. Amendments concerning exemptions, “licensing” requirements, enforcement, and reciprocity should be considered.

Also, if regulation is continued, the Department of Commerce and Consumer Affairs should improve the operations of this program. Improvements are needed

with regard to the Marriage and Family Therapy Advisory Committee, examination administration, “licensure” record keeping, and program forms.

Recommendations and Response

We recommended that the Legislature allow Chapter 451J, HRS, the marriage and family therapist law, to be repealed as scheduled. If regulation of marriage and family therapists continues, we recommended that the Legislature amend Chapter 451J with regard to certain exemptions for overlapping professions, violation of ethical standards, and “licensing” by reciprocity. Also, if regulation continues, we recommended that the Department of Commerce and Consumer Affairs propose amendments clarifying the law and improve the operations of this regulatory program in several areas.

Responding to a draft of our report, the Department of Commerce and Consumer Affairs said it defers to the Legislature on whether the marriage and family therapist regulatory law should be allowed to be repealed as scheduled. The department said it “generally supports elimination of, or deregulation of licensing requirements when a demonstrated need does not exist for government intervention or oversight.” The department agreed with some of our recommendations, disagreed with others, and presented additional perspectives.

This report includes draft legislation to implement recommended changes in the regulatory law if the law is not repealed.

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 02-01
January 2002

Foreword

This report evaluates the regulation of marriage and family therapists under Chapter 451J, Hawaii Revised Statutes (HRS), which Section 26H-4, HRS, schedules for repeal on December 31, 2002. The report presents our findings as to whether the regulatory program complies with policies in the sunset law and whether there is a reasonable need to regulate marriage and family therapists to protect the health, safety, and welfare of the public.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs and other organizations and individuals whom we contacted during the course of our evaluation.

Marion M. Higa
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Table of Contents

Chapter 1 Introduction

Background on Marriage and Family Therapists	1
Previous Auditor’s Reports and Establishment of Regulation in Hawaii	3
Current Regulatory Program in Hawaii	3
Objectives of the Evaluation	6
Scope and Methodology	6

Chapter 2 Regulation of Marriage and Family Therapists Should Be Repealed

Summary of Findings	9
Regulation of Marriage and Family Therapists Is Not Warranted	9
If Regulation Is Continued, the Legal Requirements Need Attention	18
The Department Should Improve Its Regulatory Operations	22
Conclusion	29
Recommendations	29

Notes	37
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Response of the Affected Agency	39
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List of Exhibits

Exhibit 2.1	Layers of Administration for the Marriage and Family Therapist “Licensing” Examination	25
Exhibit 2.2	Approximate Layout of Prometric Testing Center, 1132 Bishop Street, Honolulu	27

List of Appendixes

Appendix A	Proposed Legislation	31
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Chapter 1

Introduction

The Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes (the “sunset” law), establishes policies for occupational regulation and schedules the repeal of newly enacted occupational regulatory programs. The law directs the Auditor to evaluate each board, commission, and regulatory program prior to the repeal date to determine whether the program complies with the sunset law’s policies and whether the public interest requires reenactment, modification, or repeal of the law establishing the program.

If the Auditor finds that the law establishing the regulatory program should be modified, the Auditor must include in the report, drafts of recommended legislation that would improve the policies, procedures, and practices of that program. Even if the Auditor finds that the law establishing the regulatory program should not be reenacted, the Auditor must still evaluate the effectiveness and efficiency of the program and make appropriate recommendations to improve the policies, procedures, and practices.

We evaluated the regulation of marriage and family therapists under Chapter 451J, HRS, which is scheduled for repeal on December 31, 2002.

Background on Marriage and Family Therapists

Marriage and family therapists assist adults, children, and families with emotional, behavioral, and relationship problems. Therapists help people with childhood and adolescence difficulties, marriages in crisis, families needing assistance with senior parents, domestic violence, physical and sexual abuse, substance abuse, and other areas.

Currently, Hawaii and 41 other states regulate marriage and family therapists. Nationally, these therapists may work in private practice, hospitals, schools, colleges, court systems, community mental health centers, health maintenance organizations, and employee assistance programs. The Public Health Services Act recognizes the field of marriage and family therapy as one of the five core mental health disciplines along with psychiatry, psychology, clinical social work, and psychiatric nursing.

Professional organizations and credentials

The American Association for Marriage and Family Therapy is the major professional association with about 23,000 members reported in 2001. The association promotes and represents the professional interests of

marriage and family therapists. It also establishes and maintains professional standards in education, training, and practice. The association's Commission on Accreditation for Marriage and Family Therapy Education develops standards for master's, doctoral, and post-degree clinical training in marriage and family therapy.

The association has four membership categories. *Clinical* members have met the association's requirements for the independent practice of marriage and family therapy (holding an association-approved state license in marriage and family therapy or meeting other requirements such as an appropriate graduate degree, course work, and supervised clinical experience). *Associate* members are persons in the process of obtaining the clinical experience necessary for clinical membership, for licensure as a marriage and family therapist, or both. *Student* members are enrolled in graduate or post-degree programs leading toward licensure as a marriage and family therapist. *Affiliated* members are mental health professionals and allied health professionals not pursuing a marriage and family therapy license, but wanting to develop their skills in marriage and family therapy.

The local affiliate of the American Association for Marriage and Family Therapy is the Hawaii Association for Marriage and Family Therapy, which has 100 members.

The national Association of Marital and Family Therapy Regulatory Boards is an association of agencies that are legally responsible for regulating marital and family therapists in their jurisdictions. The association fosters communication and collaboration among its member boards and provides assistance in developing compatible regulatory standards. In conjunction with the Professional Examination Service, the association has developed a standardized, written licensure examination to help state regulators determine whether applicants have attained the knowledge essential for entry-level practice.

Numbers in Hawaii

As of August 2001, the Department of Commerce and Consumer Affairs reported 80 "licensed" marriage and family therapists in Hawaii.

Education

The educational requirement for most marriage and family therapist positions is a master's degree in marriage and family therapy or in an allied field in mental health counseling with substantial graduate-level work in marriage and family courses. Historically, marriage and family therapists have come from such backgrounds as psychology, psychiatry, social work, nursing, pastoral counseling, and education. The Commission on Accreditation for Marriage and Family Therapy Education accredits marriage and family therapy education programs.

No Hawaii colleges and universities offer marriage and family therapy programs accredited by the commission. However, the Hawaii campuses of the University of Phoenix and of the American School of Professional Psychology, both located on Oahu, offer marriage and family therapy programs. As of October 2001, approximately 170 students were enrolled in these programs, which usually take about two years to complete.

Regulation in other states

As of 2000, marriage and family therapists were regulated at the independent-practice level in 42 states through licensing or certification. Seven of these states also regulate marriage and family therapists at the entry level.

Previous Auditor's Reports and Establishment of Regulation in Hawaii

In November 1995, our *Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists*, Report No. 95-26, recommended that the occupation not be regulated because of the little evidence of harm, uncertain benefits of regulation, and its costs. However, the Legislature remained concerned about potential harm from unregulated marriage and family therapists, the lack of access to insurance reimbursements for their services due to their unregulated status, and the need to build capacity to meet the requirements of the federal *Felix v. Cayetano* consent decree dealing with special education. As a result, Act 159 established the regulation of marriage and family therapists in 1998. The act was later codified as Chapter 451J, HRS.

In January 2001, we issued our *Study of a Proposal to Mandate the Inclusion of Marriage and Family Therapists Within Mental Health and Alcohol and Drug Abuse Treatment Insurance Benefits*, Report No. 00-01. We found little known public demand for such insurance benefits and that currently physicians, psychologists, clinical social workers, and advanced practice registered nurses are available to provide necessary marriage and family therapy.

Current Regulatory Program in Hawaii

A 1998 legislative committee report asserted the need to regulate marriage and family therapists in order to ensure the protection and welfare of the consuming public. The purpose of the regulatory program was to set standards of qualification, education, and experience for persons who seek to represent themselves to the public as marriage and family therapists.

Chapter 451J, HRS, establishes requirements to protect the titles of marriage and family therapists through a "licensing" program in the

Department of Commerce and Consumer Affairs. The law actually created a title protection or certification program, not a licensing program that protects the right to practice an occupation. To avoid misunderstanding, we generally place quotation marks around the word “license” or similar words when referring to Hawaii’s marriage and family therapist regulatory program.

The law required repeal of the regulatory program on December 31, 2002, triggering this sunset evaluation by our office.

Chapter 451J defines marriage and family therapy practice in part as “the application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, or families, in order to diagnose and treat mental, emotional, and nervous disorders within the context of an individual’s relationships.” According to the definition, therapy includes assessing and diagnosing problems, designing and developing treatment plans, and implementing and evaluating courses of treatment. Marriage and family therapists assist people in achieving more adequate, satisfying, and productive social relationships, enable them to improve their behavioral or psychological functioning, and help them reduce distress or disability.

Powers and duties of the director

Chapter 451J authorizes the director of commerce and consumer affairs to:

- grant or refuse “licenses”;
- adopt, amend, or repeal rules;
- administer, coordinate, and enforce the regulatory laws;
- discipline any “licensed” marriage and family therapist for legal violations; and
- appoint an advisory committee of marriage and family therapists and members of the public to assist in implementing the law.

The director can refuse to “license” a person failing to meet “licensing” requirements or for any cause that would be grounds for disciplining a “licensee.”

“Licensing” requirements

To be “licensed,” a person must:

- Have a master’s degree from an accredited educational institution in marriage and family therapy or in an allied field related to the practice of mental health counseling with a

minimum of 33 total semester hours in marriage and family therapy, human development, ethical and professional studies, and research;

- Have a one-year practicum of 300 hours of supervised client contact;
- Complete 1,000 hours of direct marriage and family therapy, and 200 hours of clinical supervision in not less than 24 months; and
- Pass the National Marriage and Family Therapy Exam administered by the department in compliance with standards of the Association of Marital and Family Therapy Regulatory Boards.

Clinical members of the American Association for Marriage and Family Therapy are deemed to have met the above education and experience requirements.

The law prohibits persons from using the title of “marriage and family therapist” unless they are licensed under Chapter 451J. (“Using the title” means holding oneself out to the public as having this status on signs, stationery, or other professional identification.)

Exemptions

The following are exempted from “licensure”:

- Any person doing work within the scope of practice or duties of the person’s profession that overlaps with the practice of marriage and family therapy, provided the person does not purport to be a marriage and family therapist;
- Any student enrolled in an accredited educational institution in a recognized program of study leading toward attainment of a graduate degree in marriage and family therapy and who is identified by an appropriate title including but not limited to “marriage and family therapy student or trainee,” “clinical psychology student or trainee,” “clinical social work student or trainee,” or any title which clearly indicates training status; and
- Any individual who uses the title “marriage and family therapy intern” for the purpose of obtaining clinical experience.

Program costs

Section 451J-4, HRS, requires that assessed fees relating to administering Chapter 451J defray costs incurred by the director of commerce and consumer affairs to support the operation of the “licensing” program.

Structure of existing program

To implement the law, the Department of Commerce and Consumer Affairs established the marriage and family therapist regulatory program within the department's Professional and Vocational Licensing Division. There is no regulatory board; the director of commerce and consumer affairs grants "licenses" and makes disciplinary decisions. One of the division's executive officers administers the "licensing" operations of the program.

The executive officer is assisted by the division's Licensing Branch and Examination Branch and by a Marriage and Family Therapist Advisory Committee. The department's Regulated Industries Complaints Office is responsible for mediating and resolving consumer complaints, prosecuting disciplinary actions against "licensees," and pursuing Circuit Court injunctions against "unlicensed" persons. The department's Office of Administrative Hearings is responsible for conducting hearings and issuing recommended orders for cases originating from the Professional and Vocational Licensing Division.

Objectives of the Evaluation

1. Determine whether regulation of marriage and family therapists is warranted.
2. Determine whether the current regulatory requirements are appropriate.
3. Determine whether the regulatory program is being implemented effectively and efficiently.
4. Make recommendations as appropriate.

Scope and Methodology

The scope of our evaluation was from the enactment of Act 159, SLH 1998 (establishing the marriage and family therapist regulatory program) to October 2001.

Regulation is an exercise of the State's police power and should not be taken lightly. Consumers rarely initiate regulation; more often, practitioners themselves request regulation for benefits that go beyond consumer protection. Practitioners often equate licensure with professional status in seeking respect for the occupation. Regulation may also provide access to third-party reimbursements for their services and help restrict entry into their field.

To assess the need to regulate marriage and family therapists, we applied the regulation criteria set forth in Section 26H-2, HRS, of the Hawaii

Regulatory Licensing Reform Act. The policies in Section 26H-2 were established by the Legislature to ensure that regulation of an occupation takes place only for the right reason: to protect consumers. We used additional criteria for this evaluation, including whether the cause of any harm is insufficient skill of the practitioner and whether the skill needed to prevent harm can be defined in law and measured.

In assessing the need for regulation, we took the position that the burden of proof is on those in the occupation to justify the need for regulation. In addition, it is not enough that regulation may have *some* benefits. We recommend regulation only if it is *demonstrably* necessary to protect the public.

We also scrutinized the language of the existing regulatory statute, Chapter 451J, HRS, for appropriateness, including the “licensing” requirements and disciplinary provisions.

When examining the statutes, we also assessed whether the regulatory approach is one of the following:

Licensing. Gives persons who meet certain qualifications the legal right to deliver services, that is, to practice the profession.

Certification. Restricts the use of certain titles to persons who meet certain qualifications, but does not bar others who do not use the title from offering such services. This is sometimes called *title protection*. Government certification should not be confused with professional certification, or credentialing, by private organizations.

Registration. Involves practitioners signing up with the State so that a roster or registry will exist to inform the public of the nature of practitioners’ services and to enable the State to track them. Registration may be mandatory or voluntary.

We also assessed the effectiveness and efficiency of the regulatory program, including the reliability of the “license” application process, the soundness of “licensing” examination administration, and the timeliness of enforcement.

We reviewed literature on marriage and family therapists and their regulation including relevant federal regulation, regulation in other states, and Hawaii statutes and rules. We reviewed complaints filed at the department’s Regulated Industries Complaints Office and the Office of Consumer Protection, as well as the Office of the Ombudsman, to determine harm to consumers. We also reviewed files, correspondence and other documentation pertaining to the regulatory operations at the

department's Professional and Vocational Licensing Division. We observed the administering of the marriage and family therapist "licensing" examination in Hawaii.

We interviewed officials from various state agencies and state-contracted private providers that may utilize marriage and family therapists to provide services for their programs.

We obtained information from organizations of marriage and family therapists. We also interviewed, as appropriate, representatives of the occupation, staff of the department and other government agencies, and others affected by the occupation.

Our work was performed from May 2001 through November 2001 in accordance with generally accepted government auditing standards.

Chapter 2

Regulation of Marriage and Family Therapists Should Be Repealed

Here we present the findings and recommendations of our evaluation of the regulation of marriage and family therapists under Chapter 451J, Hawaii Revised Statutes (HRS). This law is scheduled for repeal on December 31, 2002. We concluded that the State should no longer regulate marriage and family therapists; the regulatory law should be allowed to expire as scheduled. However, if regulation is continued, improvements are needed in the law and its administration.

As noted in Chapter 1, we generally place the word “license” and similar words within quotation marks when referring to the Chapter 451J program. Chapter 451J, while using the term “license,” actually involves certification, also known as title protection, not licensing.

Summary of Findings

1. The regulation of marriage and family therapists is not warranted. Little evidence of harm exists in Hawaii and the benefits of regulation are uncertain. Consumer protections would exist even without the regulatory program. “Licensure” fees do not fully support the program, and anticipated cost savings and improved access to care from regulation have not materialized.
2. If regulation of marriage and family therapists is continued, the regulatory law needs attention. Certain provisions are unnecessary, unclear, or inappropriate. Amendments concerning exemptions, “licensing” requirements, enforcement, and reciprocity should be considered.
3. The Department of Commerce and Consumer Affairs should improve the operations of this program if regulation is continued. Improvements are needed with regard to the Marriage and Family Therapy Advisory Committee, examination administration, “licensure” record keeping, and program forms.

Regulation of Marriage and Family Therapists Is Not Warranted

Section 26H-2, HRS, states the following:

- The State should regulate professions and vocations only where reasonably necessary to protect consumers;

- Regulation should protect the health, safety, and welfare of consumers and not the profession;
- Evidence of abuses by providers of the service should be given great weight in determining whether a reasonable need for regulation exists;
- Regulation should be avoided if it artificially increases the costs of goods and services to consumers unless the cost is exceeded by the potential danger to consumers;
- Regulation should be eliminated when it has no further benefits to consumers;
- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

In assessing whether regulation of marriage and family therapists is warranted, we considered the criteria listed above and additional criteria including the following:

- The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- The cause of harm is the practitioner's incompetence or insufficient skill;
- The occupational skill needed to prevent harm can be defined in law and measured;
- No alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and
- Most other states regulate the occupation for the same reasons.

We found little evidence of actual abuse and harm by marriage and family therapists in Hawaii. Furthermore, any potential harm is unlikely to be prevented by regulation. Also, regulation has not clearly controlled the cost of therapy or improved access to it. Finally, "licensure" fees do not fully support the program and raising fees could restrict entry into the occupation.

For these reasons, we saw no reason to change the conclusion of our 1995 *Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists* (Report No. 95-26) that regulation is not warranted. Many of our current arguments against regulation are similar to those presented in our previous reports that recommended against regulation of other similar occupations such as professional counseling, mental health and rehabilitation counseling, and social work.

Limited evidence of harm exists in Hawaii

A 1994 article published by the Council on Licensure, Enforcement and Regulation, a national organization, suggested the following threats to the public from counseling and psychotherapy in general: (1) incorrect diagnosis or lack of documentation of the need for treatment; (2) incorrect application of a technique or method; (3) damages due to the violation of confidentiality; (4) damages due to inhumane treatment; (5) unethical entanglement of relationships; and (6) financial irresponsibility or fraud.¹

However, we found a low incidence of public harm posed by marriage and family therapists in Hawaii. Since the start of the regulatory program in 1998, the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs has received only one complaint against a marriage and family therapist. This complaint, which was filed in May 2001 by a consumer alleging unprofessional and unethical conduct by the therapist, was still pending during our July 2001 fieldwork at the department. (Until recently, the complaints office had not received the complainant's sign-off to release medical records needed for investigative work.) The office recently reactivated the case to field investigation status.

Complaints filed with other state agencies were minimal and unrelated to therapists' competence. For example, the Office of the Ombudsman reported two complaints from "license" applicants that they were having communication problems with the Department of Commerce and Consumer Affairs. The Office of Consumer Protection had received no complaints.

Our previous reports noted little harm

Eight of our previous reports on similar occupations have also found limited evidence of harm. These reports, listed below, included three on social workers, two on professional counselors, one on marriage and family therapists, one on occupational therapists, and one on professional mental health counselors and professional rehabilitation counselors:

Report No. 88-16 *Sunrise Analysis Update of a Proposal to Regulate Social Workers*

- Report No. 88-17 *Sunrise Analysis of a Proposal to Regulate Professional Counselors*
- Report No. 91-16 *Sunset Evaluation Report: Social Workers*
- Report No. 92-23 *Sunrise Analysis of a Proposal to Regulate Professional Counselors*
- Report No. 95-26 *Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists*
- Report No. 97-15 *Analysis of a Proposal to Expand the Regulation of Occupational Therapists*
- Report No. 99-21 *Sunrise Analysis of a Proposal to Regulate Professional Mental Health Counselors and Professional Rehabilitation Counselors*
- Report No. 00-02 *Sunset Evaluation Report: Social Workers*

Sunset-type evaluations in other states found little harm

Similar reports that we reviewed from Arizona, Alaska, North Carolina, and Georgia, while favoring regulation, also found no substantial evidence of harm caused by marriage and family therapists. One report described the occupation as low-risk in light of limited insurance claims against therapists.

Benefits of regulation are uncertain

We noted in our 1995 *Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists* that proponents of licensing point to the potential harm from marriage and family therapists because clients seeking therapy at times of crisis are vulnerable and lack expertise in choosing a qualified and ethical therapist. The purpose of licensing would be to screen out practitioners who *would* harm consumers and to discipline those who *have* harmed consumers.

We find the benefits of licensing marriage and family therapists uncertain in both areas. The type of marriage and family therapist regulation currently used in Hawaii, title protection, prohibits people from calling themselves marriage and family therapists without a state “license.” However, title protection does not clearly achieve its desired purpose of assuring consumers that persons using the title are qualified and ethical. The regulation’s ability to deter ethical and professional violations or to assess the competency of practitioners is limited.

Ethical and professional violations are not deterred

According to a leading authority on occupational regulation:

Licensing is a process by which a government agency grants individuals permission to engage in a specified profession or occupation upon finding that individual applicants have attained the minimal degree of competency required to ensure that the public's health, safety and welfare will be reasonably well protected.²

While Hawaii's law provides title protection (not true licensing), its education, experience, and examination requirements attempt to ensure that persons identifying themselves as marriage and family therapists are minimally competent. However, the potential harm from marriage and family therapists results from unethical and unprofessional actions, not the lack of minimal competency (in terms of qualifications, knowledge, and skills).

The American Association for Marriage and Family Therapy investigates allegations that its members have violated its ethics code. From 1990 through 2001 nationally, only 13 percent of violations involved competency or impairment. During the same period, 40 percent of the violations involved multiple relationships (for example, a business relationship with a client that could impair the therapist's professional judgment), the therapist furthering his or her own interests, and harassment (of which 65 percent involved sexual attraction/behavior). Our 1995 *Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists* reported that unethical and fraudulent conduct dominate consumer complaints nationally. In other previous reports on counseling-related professions, we have concluded that potential harm results not from a lack of competency (in terms of qualifications, knowledge, and skills), but from unethical actions, fraud, sexual abuse, and financial irresponsibility.

Such types of harm are difficult to prevent through licensing or title protection because regulation focuses on verifying the practitioner's technical competency, not his or her character.

Competency is difficult to assess

Even if therapist incompetence were a significant cause of harm to consumers, competency would be difficult to assess. For example, marriage and family therapists often perform counseling and psychotherapy. Yet a recent report by the California Board of Behavioral Sciences found that it is difficult for regulators to assess attributes of therapist competency such as integrity, compassion, and emotional maturity.

The California board's view is consistent with views expressed in the 1994 article published by the Council on Licensure, Enforcement and Regulation. The article favored a combination of three licensing examinations for counselors and psychotherapists to screen for competency: (1) a written examination covering pathology to protect consumers from incorrect diagnosis or lack of documentation of the need for treatment; (2) a written examination covering treatment procedures and practice skills to deter inappropriate techniques or methods; and (3) a clinical examination assessing the therapist's interactions with an actual client. While optimistic that examinations could be developed to test competence, the article concluded that "the pieces that are needed to regulate counseling and psychotherapy are not in place, perhaps not even in existence."³ The reasons given were disagreements within the field as to appropriate practices and effective methods, lack of a clear relationship between treatment and outcome, and difficulty defining a desirable outcome. Furthermore, psychotherapy has been described as "an amorphous and vaguely defined process with wide variations in theory and technique."⁴

The article also suggested that the personal and interpersonal qualities of the therapist—such as warmth and empathy—are key to minimal competence. The article therefore put heavy emphasis on clinical examinations involving actual therapy sessions. However, we maintain that clinical examinations can be difficult to administer objectively and uniformly.

To test the knowledge base of licensure applicants, the Association of Marital and Family Therapy Regulatory Boards has developed an examination in conjunction with a testing company, the Professional Examination Service. As of October 2001, 43 out of 44 states that regulated marriage and family therapists were using the national examination. California, the first state to regulate the occupation, uses its own examination. Hawaii uses the national examination, in addition to required course work and supervised clinical experience, for "licensure."

Nevertheless, we believe that the capacity of licensing authorities to assess and assure competency of marriage and family therapists has not been clearly demonstrated.

Consumer protection is in place even without regulation

Even without regulation, other public- and private-sector mechanisms are in place to protect consumers. These protections are further reasons for not regulating marriage and family therapists.

Public organizations provide protection

The State has procedures to inform the public of its rights and to allow for complaints against marriage and family therapists. Public or quasi-public agencies in Hawaii that provide such protection include the following:

- The Office of the Ombudsman investigates alleged erroneous acts of state government and its employees. The ombudsman reports opinions and recommendations to the investigated agency, and notifies the complainant of the actions taken by both the ombudsman and the agency. If the ombudsman finds a breach of duty or misconduct by an employee, the matter is referred to the appropriate authorities.
- The Office of Consumer Protection investigates reported violations of consumer laws and regulations and takes appropriate legal action to stop unfair or deceptive practices in the marketplace. The office recommends new consumer laws, conducts consumer education programs, appears on behalf of consumers before governmental boards and commissions, and serves as a clearinghouse for consumer complaints.
- The Hawaii Disability Rights Center, a private nonprofit public interest organization, provides legal services, information and referral services, and technical assistance to mentally ill persons, persons with developmental disabilities, and persons with other disabilities. The agency serves aggrieved persons in both the public and private sectors.

Private organizations provide protection

Clients of marriage and family therapists who belong to the American Association for Marriage and Family Therapy benefit from the association's membership criteria, its credentialing program, and its "regulatory" requirements (based on the association's Code of Ethics). Through its adjudication process, the association can take actions to protect clients from marriage and family therapists who violate the code. Furthermore, the association publicizes its actions and any attempt by a member to resign during an investigation.

Our previous reports on similar occupations pointed to other existing consumer protections besides regulation—such as supervision and monitoring of counselors by their employers—as reasons not to regulate. Hospitals and other health care facilities must comply with standards for behavioral health care adopted by the Joint Commission on Accreditation of Healthcare Organizations. The standards address patient care and services and organizational functions vital to service

quality. Consumers dissatisfied with treatment services have recourse through client rights and appeal procedures including the civil court system.

“Licensure” fees do not fully support the regulatory program

The Sunset Law states that fees should cover the full cost of administering the program. Information from the Department of Commerce and Consumer Affairs indicates that the “licensure” fees collected for the regulatory program for marriage and family therapists do not meet this requirement.

The Professional and Vocational Licensing Division calculates the cost of running the marriage and family therapist program—encompassing personnel, operational, and equipment costs (including the services of the Examination Branch)—as a percentage of the division’s total cost. The “license” application fee is \$50 and “license” fee for three years is \$250.

Costs for services by the Regulated Industries Complaints Office and the Office of Administrative Hearings are set at the lowest tier for the minimal services required. The “tier” for fees charged to cover investigation and enforcement services by the complaints office and the hearings office under Section 26H-2 appears to be justified. The \$35 annual fee is set at the lowest tier of a three-tiered set of fee amounts based on a fee study that was conducted by the department in 1993. Fees for compliance resolution are based on a combination of factors including the nature and number of complaints and enforcement actions and the fixed base costs for maintaining the capacity to intake, investigate, and prosecute when necessary. With only one complaint against a marriage and family therapist since the program was established, the lowest fee tier is appropriate.

Each applicant pays a \$295 examination fee to Professional Examination Service.

According to the department, the current “licensure” fees do not fully support the program’s operational costs. The department reported that current revenues and the triennial renewal “licensure” fees total an estimated \$30,175, less than the annual cost of \$58,598 to run the program. The projected loss for the next triennial period would be about \$145,620.

Increasing the applicant’s total “licensure” fees, now at \$545, to compensate for the reported underfunding may unreasonably restrict entry into the profession. A fee increase might be passed on to consumers as increased costs for therapist services.

Anticipated cost savings and improved access to care are minimal

Act 159, SLH 1998, the law establishing regulation of marriage and family therapists, states the traditional justifications for occupational regulation, which focus on preventing direct harm to consumers by practitioners, but also makes additional justifications. The law notes that the *Felix v. Cayetano* consent decree demanded improvements in the children's mental health delivery system in Hawaii and included family therapy. The law suggested that cost savings for consumers and the State would result from "licensing" marriage and family therapists, whose services would then be reimbursable by third-party insurers and would be billed at lower rates.

However, we found little solid evidence of improved access and cost savings resulting from regulation. Our 1999 report on insurance benefits for marriage and family therapists found that third-party reimbursements for marriage and family therapists were available under the military's Champus program and the AlohaCare health plan. However, other major health plans such as HMSA and Kaiser did not recognize marriage and family therapists for coverage for mental health care. This holds true today.

The State's MedQUEST program covers family therapy services but only under the supervision of a licensed psychologist or psychiatrist. In addition, the State's fee for service (Medicaid) program recognizes licensed social workers with behavioral health background and advanced practice registered nurses but does not recognize marriage and family therapists. The Department of Health reported that under a memorandum of agreement with the Department of Human Services, it used 34 individual marriage and family therapists for eligible *Felix* youth enrolled in the State's MedQUEST program and received reimbursements of approximately \$5.5 million for family therapy services during the past two years. However, these reimbursements were based on the agreement's rates, which were not tied to Medicaid rates or any other index, so cost savings for the State could not be determined.

Along with cost savings, increased access to care, especially on the neighbor islands, was anticipated from regulation. Our survey of neighbor island yellow pages revealed the presence of "licensed" family therapists along with pastors, PhDs, MDs, and licensed social workers in the family counseling field. The Hawaii Association for Marriage and Family Therapy has projected a statewide increase in "licensed" marriage and family therapists from the current 80 to 300-plus by the year 2005, based on projected student enrollment. However, both projected "licensees" and student enrollment are speculative.

After almost three years of regulation, we are not convinced that "licensing" marriage and family therapists has significantly contributed to increased cost savings and access to care.

If Regulation Is Continued, the Legal Requirements Need Attention

For the reasons stated above, we concluded that regulation of marriage and family therapists is not warranted. However, if the Legislature decides to continue regulation, the regulatory law, Chapter 451J, HRS, needs attention. Certain provisions are unnecessary, unclear, or inappropriate. Amendments concerning exemptions, “licensing” requirements, and enforcement may be appropriate. Also, adding a reciprocity requirement should be considered.

Normally we include both laws and administrative rules in our review of regulatory requirements. For this study, we focused on the laws because the department has not adopted rules for the program, apart from a few rules on fees.

Exemptions from “licensure” are unnecessary and confusing

For regulation to be effective, the profession’s scope of practice must be delineated so that consumers and the State can readily determine who falls under regulation and who does not. However, marriage and family therapists share common practices with other “helping professionals.” Psychiatrists, clinical psychologists, clinical social workers, psychiatric nurse specialists, and professional counselors all may treat disorders and deliver services to individuals, couples, and families. Others who may provide therapeutic services include occupational therapists, rehabilitation counselors, and drug abuse workers. All may emphasize the importance of the family system.

Section 451J-6, HRS, exempts certain groups from the marriage and family therapist “licensure” requirement. The exemptions are unnecessary and confusing. Two of the exemptions in Section 451J-6, HRS, deal with professional overlap but are questionable. The first states that “licensure” is not required of a person who is “doing work within the scope of practice or duties of the person’s profession that overlaps with the practice of marriage and family therapy; provided that the person does not purport to be a marriage and family therapist.” The second says that nothing in the law

shall be construed to prevent qualified members of other licensed professions as defined by any law, rule, or the department, including but not limited to social workers, psychologists, registered nurses, or physicians, from doing or advertising that they assist or treat individuals, couples, or families consistent with the accepted standards of their respective licensed professions; provided that no person, unless the person is licensed as a marriage and family therapist, shall use the title of marriage and family therapist.

Both exemptions are unnecessary since Section 451J-5 already makes it clear that “licensure” is required only of persons who use the title of marriage and family therapist. Furthermore, the first exemption is

unclear and therefore difficult to implement. The provision does not define “overlapping” or explain how the director of commerce and consumer affairs should determine which professions are “exempted” under this category. The provision also muddles the law by using “purport to be a marriage and family therapist” instead of “use the title of marriage and family therapist,” the provision under Section 451J-5.

Basic “licensing” requirements need clarification

Section 451J-7, HRS, sets forth the educational, clinical experience, and examination requirements for “licensure” as a marriage and family therapist. An applicant can satisfy the education and experience requirements directly or by being a clinical member of the American Association for Marriage and Family Therapy. As explained below, the law’s education and experience requirements are unclear and may be excessive.

To summarize the requirements: Applicants must have completed “a master’s degree or doctoral degree from an accredited educational institution in marriage and family therapy or in an allied field related to the practice of mental health counseling which includes or is supplemented by” graduate level course work in the subjects of marriage and family studies, marriage and family therapy studies, human development, ethical and professional studies, and research. The law also sets forth the minimum total hours of such graduate level course work (33 semester hours or 44 quarter hours) and the minimum hours for each subject area. Applicants must also have a one-year practicum with 300 hours of supervised client contact and must have completed 1000 hours of direct marriage and family therapy, and 200 hours clinical supervision in not less than 24 months. Section 451J-1, HRS, defines “accredited institution” as “any educational institution which grants a master’s or doctoral degree and is accredited by a regional accrediting body or a post graduate training institute accredited by the Commission on Accreditation for Marriage and Family Education.”

We are not convinced that all of these education and experience requirements are necessary for basic competence as a marriage and family therapist. In previous reports on the “helping professions,” we explained our doubts about such requirements.

Moreover, the requirements are confusing in several ways. The law does not define “allied field related to the practice of mental health counseling.” Also, it is unclear whether the requirement of a minimum number of hours in certain course areas (for example, marriage and family therapy, human development, research) applies only to applicants who take the “allied field” route or also to those who receive a degree in marriage and family therapy. Furthermore, the course-area provisions do not define key terms such as “human development” and “ethical and professional studies.”

In addition, the practicum provisions do not define “practicum” or “supervised client contact” and do not explain when the practicum must occur. The provision requiring 1,000 hours of direct marriage and family therapy, and 200 hours clinical supervision in not less than 24 months, does not explain when this experience must take place or whether the applicant is the provider or receiver of the therapy or supervision. The provision also leaves unclear whether or not the 1,000-hour and 200-hour requirements are simultaneous, and whether the 24 months applies to both the 1,000 hours and the 200 hours or only to the 200 hours.

Finally, the law does not define “clinical member.” Section 451J-1 requires that clinical supervision under the 200-hour requirement be performed by (1) a “licensed” marriage and family therapist whose “license” has been in good standing in any state for two years preceding commencement and during the term of supervision, or (2) any licensed mental health professional whose license has been in good standing in any state and who has been a “clinical member” in good standing of the American Association for Marriage and Family Therapy preceding commencement and during the term of supervision. However, one would have to access the association’s website or promotional literature to know that its course work and training requirements are similar to those required in Chapter 451J.

The clinical-supervision requirements can be questioned for other reasons. A clinical member deemed by the association to be a qualified and competent therapist may or may not be capable of supervising practicum. In fact, the association has established supervision requirements that are more stringent. Another concern is that the number of qualified supervisors currently available may not meet the clinical supervision needs of the approximately 170 students reportedly enrolled in marriage and family therapy courses in Hawaii. Qualifying persons as supervisors who were merely clinical members in good standing in the association was premised on the limited pool of qualified supervisors at the time Chapter 451J was enacted and remains a concern.

Unclear statutes make program implementation difficult, particularly when the regulatory agency, as is the case here, has not systematically interpreted the law through administrative rules, written policies, or even collected opinions or decisions. The executive officer of the marriage and family therapy licensing program, and the Marriage and Family Therapy Advisory Committee that was appointed to assist the executive officer in reviewing “license” applications, have been addressing the “licensing” requirements on a case-by-case basis. The advisory committee and the executive officer use the curriculum guide of the American Association for Marriage and Family Therapy as their internal reference for examples of necessary course content.

The unclear and possibly unreasonable supervisory requirements seem to be a factor in denying applicants “licensure.” We found applicants rejected for insufficient course work or practicum requirements, reflecting the unreliability of an “allied field” degree as a basis for acceptable course and practicum work. An example of unclear clinical supervision was the committee’s understanding that practicum supervision was under the supervision of the school rather than the restrictive statutory requirements for supervision.

Applicants, the advisory committee, students, and schools need a clearer understanding of what makes course work and supervision acceptable. Chapter 451J should be amended to define “allied fields,” “clinical member,” and clear up the other areas of confusion we identified above. The advisory committee suggested amending Chapter 451J to address “clinical supervision.”

***Ethical standard puts
State at risk***

Under Section 451J-11, HRS, certain acts or omissions require the Department of Commerce and Consumer Affairs to deny, revoke, condition, or suspend the “license” of a marriage and family therapist. Fines may also be imposed. Grounds for enforcement include conviction of certain crimes, failure to report disciplinary action in any state, violation of certain ethical standards, fraud in obtaining a “license,” and certain disciplinary actions taken by any state government or the federal government. The adequacy of these disciplinary grounds has not been tested since the recent enactment of this regulatory program.

However, we found that the ethical violations provision poses a problem. Section 451J-11 requires enforcement action for a violation of recognized ethical standards for marriage and family therapists set by the American Association for Marriage and Family Therapy. The association’s Code of Ethics comprises eight principles that govern its clinical members. The principles cover (1) responsibility to clients, (2) confidentiality, (3) professional competence and integrity, (4) responsibility to students and supervisors, (5) responsibility to research participants, (6) responsibility to the profession, (7) financial arrangements, and (8) advertising.

However, regulatory bodies using “outside” standards risk being accused of delegating authority unlawfully. Furthermore, some sections of the association’s ethics code, such as provisions in the section on responsibility to the profession, may be inappropriate in state regulation and could be unenforceable. We question, for example, whether the ethics code’s standard that “marriage and family therapists participate in activities that contribute to a better community and society” is specific enough for regulatory officials to enforce. Another national association,

the American Association of State Social Work Boards, has said that its legal counsel and other experts oppose incorporating complete codes of ethics of professional organizations into state licensing laws.

Hawaii's law should no longer authorize discipline for violating the ethical standards of the American Association for Marriage and Family Therapy.

Reciprocity should be considered

Chapter 451J does not provide for "licensure" of marriage and family therapists by reciprocity. Reciprocity is a process by which a person licensed for an occupation in one jurisdiction may obtain licensure in another jurisdiction. Through reciprocity agreements, some states accept each other's verification of education, experience, and supervision for licensure.

Recognizing reciprocity with other states that have comparable "licensure" for marriage and family therapists could promote consistency in minimum competencies and improve administrative processing efficiency. Not recognizing reciprocity can restrict entry of persons into the Hawaii marketplace, despite their having met similar or more stringent requirements elsewhere.

The Department Should Improve Its Regulatory Operations

If the regulation of marriage and family therapists is continued, other improvements are needed. The Department of Commerce and Consumer Affairs should improve its regulatory operations with regard to the Marriage and Family Therapy Advisory Committee, examination administration, record keeping, and program forms.

Marriage and Family Therapy Advisory Committee needs better guidance and balance

Section 451J-3 allows the director of commerce and consumer affairs to appoint an advisory committee of marriage and family therapists and members of the public to assist with implementing the law. This provision is consistent with Section 26-9(s), HRS, which authorizes the director to establish advisory committees whose members serve as consultants to the director by reviewing "licensees" referred for possible disciplinary action and as experts to the department for investigations and licensing matters.

We found that the department has not ensured that the committee acts only as an advisory body, has adequate standards for its "licensing" advice, and adequately represents the public.

Department acts as though the committee is the “licensing” authority

The department sometimes acts as though the advisory committee, not the director of commerce and consumer affairs, is the “licensing” authority. For example, in correspondence to “license” applicants, the executive officer has stated that the committee reviewed a list of courses submitted but could not determine their content, that the committee did not accept a particular course as being applicable for “licensing” purposes, and that the committee deferred a “license” application.

However, the committee’s limited advisory role is clear from Sections 451J-3 and 26-9(s). We suggest that future letters clearly attribute any decision making to the department, not the committee, in order to not give the wrong impression.

Committee lacks standards for its “licensing” advice

The actual role of the committee is further confused by the lack of rules or other guidelines for its deliberations and records of its decisions. These shortcomings combined with unclear provisions in Chapter 451J leave no assurance that the committee’s “licensing” advice will be consistent and fair, and increase the likelihood that its decisions will be challenged. Although committee members are protected from liability under Section 26-9(s), HRS, they have expressed the need for clearer guidelines.

Advisory committee members expressed concerns about the lack of clear requirements. One member suggested that the “license” application form on course reporting could be clearer. Another member noted the concerns of some school officials who are unclear about the acceptability of their curriculum requirements by the State. The member suggested a meeting with the schools to clarify coursework requirements.

Our review of correspondence supported committee members’ concerns. The committee’s burdens and the number of deferred applicants could decrease if the department provided a clearer and better understanding of course work standards.

Committee lacks public members

Section 451J-3 allows the director of commerce and consumer affairs to appoint an advisory committee of marriage and family therapists *and* members of the public. However, the committee has never had a public member. Currently, the committee comprises two marriage and family therapists.

It could be argued that because the law does not require an advisory committee in the first place, appointing a public member is also within the discretion of the director of commerce and consumer affairs. Although it has been argued that a public member would not be very helpful in reviewing applicants' qualifications, we believe that the director should appoint to the committee at least one representative of the public, whom regulation is intended to protect. Public input is particularly important in light of the major role this committee plays in whether to approve applicants.

Administration of examination through contractor needs improvement

“License” applicants must pass the National Marriage and Family Therapy Exam of the Association of Marital and Family Therapy Regulatory Boards. With the number of organizations involved in exam administration, it is essential that the Department of Commerce and Consumer Affairs control and monitor the exam process to ensure its soundness. However, the department has not conducted adequate monitoring and a key contract remains unsigned.

Examination administration is multi-layered

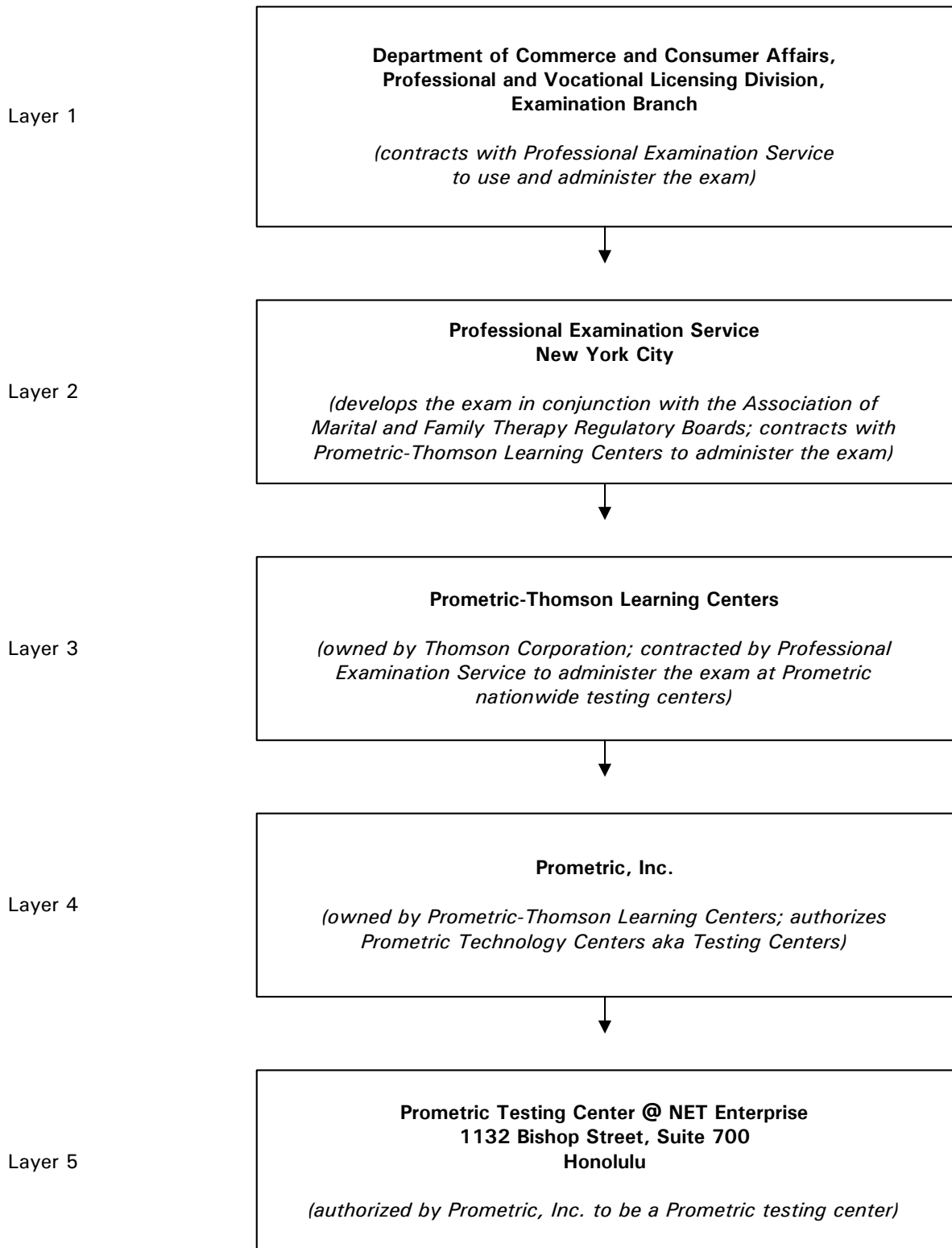
Hawaii uses a standardized, national, written, computerized examination developed by the Association of Marital and Family Therapy Regulatory Boards to test the knowledge base of “license” applicants. As Exhibit 2.1 shows, the examination has many layers of administration. The Department of Commerce and Consumer Affairs (Layer 1) has overall responsibility for exam administration through the Examination Branch of its Professional and Vocational Licensing Division. However, the department does not administer the exam directly but does so through a contractor, Professional Examination Service (Layer 2), a professional testing service that worked with the Association of Marital and Family Therapy Regulatory Boards to develop the exam. The exam is to be administered three times a year.

Professional Examination Service contracts with Prometric-Thomson Learning Centers (Layer 3) to administer the association's marriage and family therapy exams nationwide (as authorized by Prometric, Inc. (Layer 4) at Prometric Testing Centers (Layer 5). Currently, Hawaii's exam is given at a Prometric testing center located at NET Enterprise in downtown Honolulu.

Testing problems may result from the department's lack of monitoring

We observed the exam's administration at the downtown Honolulu testing center on October 10, 2001, when two applicants for marriage and family therapist “licenses” sat for the exam along with ten candidates for other types of licenses. Therefore, our conclusions arose

Exhibit 2.1
Layers of Administration for the Marriage and Family Therapist “Licensing” Examination



from observation of events surrounding the entire group of test-takers, not just the marriage and family therapy candidates. Exhibit 2.2 depicts the testing center floor plan.

We found that the exam staff followed the requirements described in the Professional Examination Service application packet for test candidates and the requirements described in the Prometric on-line help desk. The exam was generally administered in an organized, orderly manner, and was staffed by competent testing center administrators who performed their routine duties effectively. Overall, the center was reasonably well run and seemed secure.

However, the center's staff could have monitored the exam room more closely via the surveillance monitor to detect possible communication between candidates or other forms of cheating. One staff member did enter the exam room from time to time to make sure that scratch paper was not lying around (candidates are supposed to turn their scratch paper in when they leave). But additional monitoring during other times would have improved security. Surveillance videos are kept for 30 days for post-review in the event that questions arise about cheating, but on-the-spot surveillance is also needed to prevent problems or catch them as soon as they occur. We also observed one of the exam staff in the exam room assisting a testing candidate in using her computer. The conversation distracted a neighboring test taker.

As part of its regulatory responsibility, the department should monitor its subcontracted testing administrators to ensure that testing standards and procedures are being followed, surveillance is adequate, and disruptions are minimized. The department may also want to require test administrators to offer computer-testing tutorials to candidates prior to the actual test date, to avoid disruptions and distractions to other candidates on the test day.

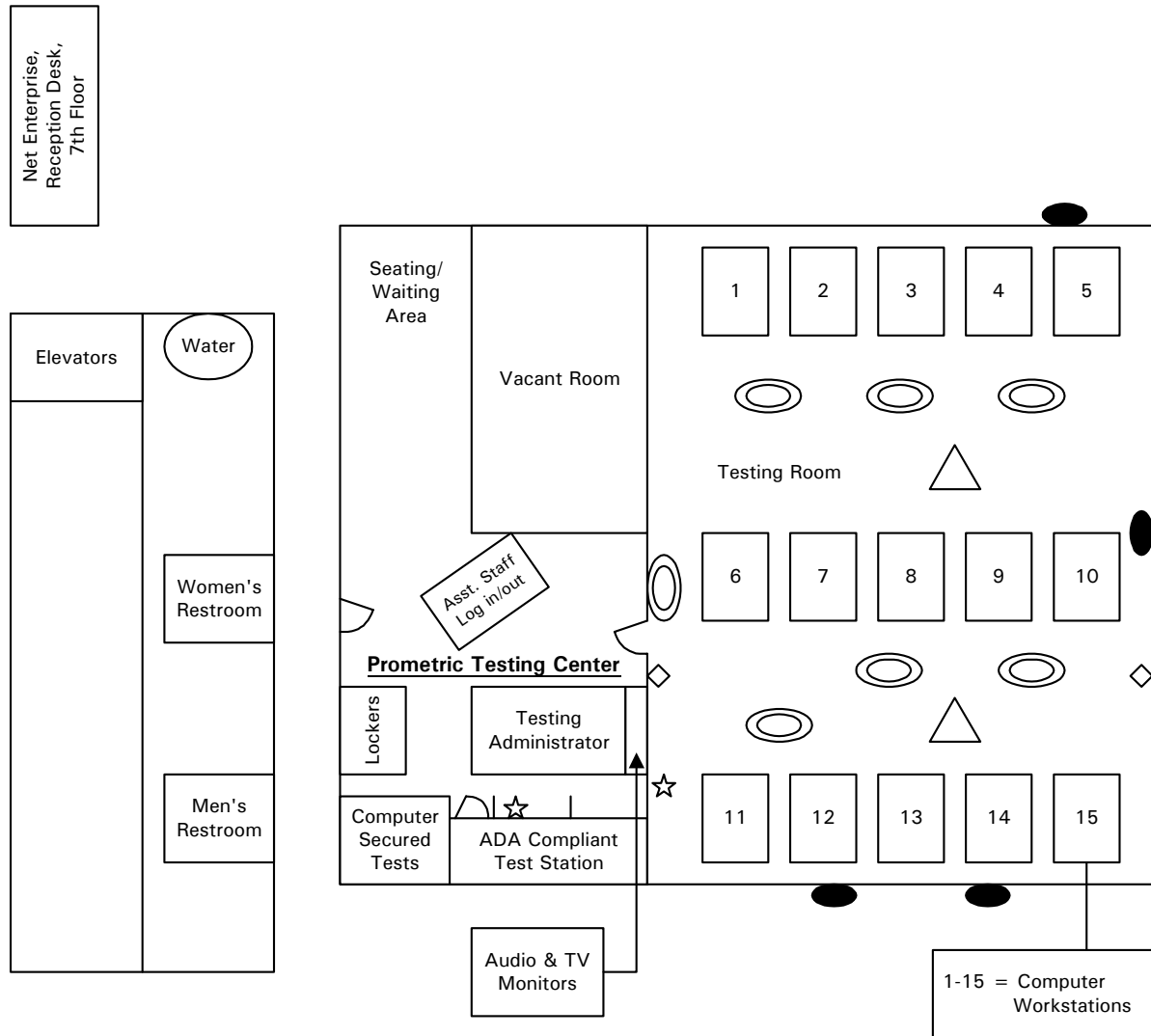
Contract with testing administrator is unsigned

The department has not signed its current draft contract with the testing administrator, Professional Examination Service, to administer the national exam despite the administrator's subcontractor, Prometric Testing Center, having administered the exam on October 10, 2001. As of November 16, 2001, the department still did not have a signed contract with Professional Examination Service.

The department is at legal risk and undermines accountability in allowing the national examination to be administered without a signed contract in place. The department should protect the interests of the State of Hawaii and its licensure applicants by ensuring that its contract for testing services is current.

Exhibit 2.2

Approximate Layout of Prometric Testing Center, 1132 Bishop Street, Honolulu



- ☆ Proctor's Observation 2 Way Windows
- △ Ceiling Microphone
- Parabolic Mirrors
- Surveillance Camera
- ◇ Clock

“Licensure” record keeping is not reliable

We found that the department’s record keeping on “license” applicants and “licensees” is not entirely reliable. The department files “licensure” records for marriage and family therapists at two separate sites of the Professional and Vocational Licensing Division according to their status. Files that are incomplete due to the applicant’s deficiencies in meeting requirements are stored at the division’s Licensing Branch. Each file has a notice of the required but deficient information due and dated when it was sent to the applicant. Completed files—those of “licensed” marriage and family therapists—are located in the basement archives of the Department of Commerce and Consumer Affairs where our file testing was conducted. The files are organized alphabetically, not by licensure year.

A total of 81 files of “licensed” marriage and family therapists were filed in the department’s archives, of which three from our random sample group were misfiled occupational therapists “licensees,” adjusting the total to 78 family therapist files. However, our crosscheck against the executive officer’s list of “licensed” family therapists as of August 2001 showed a total of 80 “licensees.”

From the 78 archived files, we randomly sampled 28 files to test whether the files contained evidence showing that “licensing” requirements were met. Our review found that the department did not always verify on its applicant check-out sheet that “license” requirements were met. The department is responsible for ensuring that all “licensed” marriage and family therapists have met competency requirements for practice. The State could be liable if the “licensure” status of a marriage and family therapist cannot be verified. We also found that 20 percent of the sampled files did not contain exam scores. One file had no sign off on the applicant check out sheet to verify the candidate’s exam data and paid fees.

The department should correct the misfiled occupational therapist files upon the licensing clerk’s review at year’s end to identify “licensees” needing renewal notices. The department should internally resolve the inconsistent number of files against the executive officer’s list of “licensed” marriage and family therapists. The inconsistent number of “licensed” marriage and family therapist files and the misfiled occupational therapist files could be problematical if the need arises to track background information on a “licensee.”

Renewal fees are not described consistently

Renewal fees are described inconsistently on two different “licensing” forms. The application for “licensure” form and the applicant check-out sheet listed different fractioned renewal terms: one-third and two-thirds of the triennium versus one-half and one-half. Two forms with differing fee descriptions can confuse both applicants and the department staff. The department should ensure that its “licensure” terms are consistently reported.

Conclusion

Occupational regulation should be undertaken only when necessary to protect the health, safety, and welfare of consumers. While clients of marriage and family therapists may sometimes be vulnerable, we found little evidence of harm in Hawaii to warrant regulation of this occupation. The benefits of regulation are uncertain and other protections are in place. “Licensure” fees are insufficient to support the regulatory program and higher fees would be passed on to therapists and consumers. Anticipated cost savings and access improvements from regulation are minimal. In light of these factors, Chapter 451J should be repealed. If the Legislature deems some regulation to be necessary, registration of therapists enabling the State to keep track of them should be sufficient.

If regulation of marriage and family therapists is continued, statutory amendments in exemptions, “licensing” requirements, grounds for enforcement, and reciprocity may be appropriate. The Department of Commerce and Consumer Affairs should improve the regulatory program’s operations. Areas needing improvement include the functioning of the Marriage and Family Therapy Advisory Committee, the administration of the “licensing” examination, “licensure” record keeping, and information about fees.

Recommendations

1. The Legislature should allow Chapter 451J, HRS, the marriage and family therapist law, to be repealed as scheduled.
2. If regulation continues, the Legislature should amend Chapter 451J by:
 - a. Repealing Section 451J-6(a)(1) and Section 451J-6(b) dealing with exemptions for overlapping occupations;
 - b. Repealing Section 451J-11(a)(3) concerning violation of ethical standards; and
 - c. Adding a provision for “licensing” by reciprocity.
3. If regulation continues, the Department of Commerce and Consumer Affairs should:
 - a. Propose amendments to Chapter 451J to clarify the “licensing” requirements with regard to “allied field,” “clinical supervision,” and other areas of confusion identified in our report.

- b. Ensure that the Marriage and Family Therapy Advisory Committee functions in an advisory, not a regulatory, capacity;
- c. Establish written standards as a guide for the committee's "licensing" advice, including a record of past "licensing" decisions;
- d. Appoint a public member to the advisory committee;
- e. Actively monitor the administration of the marriage and family therapist national examination in Hawaii as carried out by the department's primary contractor, Professional Examination Service (to include observing examinations periodically and giving feedback to Professional Examination Service for improvement as needed in such areas as exam security and the reduction of distractions in the testing room);
- f. Ensure that its contract with Professional Examination Service is current and signed;
- g. Ensure that its marriage and family therapist licensure files are complete so that records show, and that the public can be assured, that all "licensed" marriage and family therapists have met all "licensure" requirements and documents are correctly filed;
- h. Revise the "licensure" application form to clarify requirements for course work and qualified supervisory requirements; and
- i. Ensure that all "licensure" forms contain consistent and clear information.

TWENTY-FIRST LEGISLATURE, 2002
STATE OF HAWAII

.B. NO.

A BILL FOR AN ACT

RELATING TO MARRIAGE AND FAMILY THERAPY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1 The legislature finds that the auditor in
2 auditor's 2002 sunset evaluation report on marriage and family
3 therapists made recommendations for legislative action to be
4 taken in the event that the legislature wishes to continue
5 regulation of marriage and family therapists. The purpose of
6 this Act is to implement those recommendations by removing
7 sunset on the law, authorizing reciprocity, repealing the
8 exemptions for overlapping occupations, and repealing violations
9 of certain ethical standards as a ground for discipline

10 SECTION 2. Chapter 451J, Hawaii Revised Statutes, is
11 amended by adding a new section to read as follows:

12 "§451J- Reciprocity. The director may enter into
13 reciprocity agreements with other states and issue a license to
14 a marriage and family therapist who has been licensed in that
15 state; provided that the requirements for a license in the state
16 in which the applicant is licensed are deemed by the director to
17 be at least as stringent as the requirements for a license in
18 this State at the date of the license.



1 SECTION 3. Section 26H-4, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) ~~(1) Chapter 451J (marriage and family therapists)~~
4 ~~shall be repealed on December 31, 2002; and~~
5 ~~(2) Chapter 457G (occupational therapy practice) shall be~~
6 ~~repealed on December 31, 2003."~~

7 SECTION 4. Section 451J-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~+~~]§451J-6[~~+~~] Exemptions. ~~(a)~~ Licensure shall not be
10 required of:

11 ~~(1) A person doing work within the scope of practice or~~
12 ~~duties of the person's profession that overlaps with~~
13 ~~the practice of marriage and family therapy; provided~~
14 ~~the person does not purport to be a marriage and~~
15 ~~family therapist;~~

16 ~~(2)~~ (1) Any student enrolled in an accredited educational
17 institution in a recognized program of study leading
18 toward attainment of a graduate degree in marriage and
19 family therapy or other professional field; provided
20 that the student's activities and services are part of
21 a prescribed course of study supervised by the
22 educational institution and the student is identified



1 by an appropriate title including but not limited to
2 "marriage and family therapy student or trainee"
3 "clinical psychology student or trainee", "clinical
4 social work student or trainee", or any title which
5 clearly indicates training status; or

6 ~~.(3).~~ (2) Any individual who uses the title marriage and
7 family therapy intern for the purpose of obtaining
8 clinical experience in accordance with section
9 451J-7(3)

10 ~~[(b) Nothing in this chapter shall be construed to prevent~~
11 ~~qualified members of other licensed professions as defined by~~
12 ~~any law, rule, or the department, including but not limited to~~
13 ~~social workers, psychologists, registered nurses, or physicians,~~
14 ~~from doing or advertising that they assist or treat individuals,~~
15 ~~couples, or families consistent with the accepted standards of~~
16 ~~their respective licensed professions; provided that no person,~~
17 ~~unless the person is licensed as a marriage and family~~
18 ~~therapist, shall use the title of marriage and family~~
19 ~~therapist.~~

20 SECTION 5. Section 451J-11, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) The department shall deny, revoke, condition, or
2 suspend a license granted pursuant to this chapter on the
3 following grounds:

4 (1) Conviction by a court of competent jurisdiction of a
5 crime which the department has determined, by rules
6 adopted pursuant to chapter 91, to be of a nature that
7 renders the person convicted unfit to practice
8 marriage and family therapy;

9 (2) Failing to report in writing to the director any
10 disciplinary decision related to the provision of
11 mental health services issued against the licensee or
12 the applicant in any jurisdiction within thirty days
13 of the disciplinary decision, or within thirty days of
14 licensure;

15 ~~[(3) Violation of recognized ethical standards for marriage
16 and family therapists as set by the association;~~

17 ~~-(4)~~ (3) Fraud or misrepresentation in obtaining a
18 license;

19 ~~-(5)~~ (4) Revocation, suspension, or other disciplinary
20 action by any state or federal agency against a
21 licensee or applicant for any reason provided under
22 this section; or



.B. NO.

1 [~~6~~] (5) Other just and sufficient cause which renders a
2 person unfit to practice marriage and family therapy."

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval.

6

INTRODUCED BY: _____



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Notes

Chapter 2

1. Jim C. Fortune and David E. Hutchins, "Can Competence in Counseling and Psychotherapy Be Identified and Assured?" Resource Brief 94-2; The Council on Licensure, Enforcement and Regulation; Lexington, Kentucky, 1994; p. 3.
2. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, Second Edition, The Council on Licensure, Enforcement and Regulation; Lexington, Kentucky, 1994, p. 1.
3. Fortune and Hutchins, p. 5.
4. Daniel B. Hogan, *The Regulation of Psychotherapists, Volume I, A Study in the Philosophy and Practice of Professional Regulation*, Ballinger Publishing Company, Cambridge, Massachusetts; 1979; p. 11.

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Response of the Affected Agency

Comments on Agency Response

We submitted a draft of this report to the Department of Commerce and Consumer Affairs on December 13, 2001. A copy of the transmittal letter is included as Attachment 1. The response from the department is included as Attachment 2.

The department generally agreed with some of our recommendations, disagreed with others, and presented additional perspectives. Concerning our recommendation that the Legislature allow Chapter 451J, HRS, the marriage and family therapist regulatory law, to be repealed as scheduled, the department said it defers to the Legislature on this matter. The department also said that it “generally supports elimination of, or deregulation of licensing requirements when a demonstrated need does not exist for government intervention and oversight.”

In addition, the department agreed with our recommendations concerning “licensing” by reciprocity, the role and membership of the Marriage and Family Therapy Advisory Committee, the execution of a contract with Professional Examination Service, the correct filing of “licensure” documents, the revision of the “licensure” application form, and consistency and clarity in all “licensure” forms.

However, the department disagreed with our recommendation that if regulation continues, certain statutory “licensing” exemptions for overlapping professions should be repealed. The department favors retaining the exemptions to ensure that qualified members of other professions be able to provide marriage and family therapy services.

Finally, the department responded that it could adopt administrative rules to address issues raised in our report. It remains to be seen whether administrative rules are the appropriate solution in every case.

Draft legislation to implement Recommendation No. 2 (Appendix A) was added to our final report. We also made minor editorial changes for reasons of accuracy or style.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 13, 2001

COPY

The Honorable Kathryn S. Matayoshi, Director
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Matayoshi

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Sunset Evaluation Report: Marriage and Family Therapists*. We ask that you telephone us by Monday, December 17, 2001, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, January 11, 2002.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

BENJAMIN J. CAYETANO
GOVERNOR

MAZIE K. HIRONO
LT. GOVERNOR



STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

KATHRYN S. MATAYOSHI
DIRECTOR

NOE NOE TOM
DEPUTY DIRECTOR

January 7, 2002

RECEIVED

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OFFICE OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

The Department of Commerce and Consumer Affairs ("Department") would like to thank you for the evaluation conducted by your office regarding the licensure of marriage and family therapists. The Department also appreciates the opportunity to respond to the recommendations contained in the report, which were as follows:

- 1 *The Legislature should allow Chapter 451J, HRS, the marriage and family therapist law, to be repealed as scheduled.*

We defer to the Legislature on this matter, but the Department generally supports elimination of, or deregulation of licensing requirements when a demonstrated need does not exist for government intervention or oversight.

2. *If regulation continues, the Legislature should amend Chapter 451J by:*

- a. *Repealing Section 451J-6(a)(1) and Section 451J-6(b) dealing with exemptions for overlapping occupations;*

The Department prefers to retain both exemptions to ensure that qualified members of other professions will be able to provide marriage and family therapy services.

- b. *Repealing Section 451J-11(3) concerning violation of ethical standards;*

The Department recommends amending, rather than repealing section 451J-11(3) to read: "Violation of any unethical practice of marriage and family therapy as defined in rules adopted pursuant to chapter 91."

- c. *Adding a provision for "licensing" by reciprocity.*

The Department agrees with this recommendation, provided any reciprocity provision requires that the reciprocal state has similar or higher licensing requirements than Hawaii's requirements.

- 3. *If regulation continues, the Department of Commerce and Consumer Affairs should:*

- a. *Propose amendments to Chapter 451J to clarify the "licensing" requirements with regard to "allied field", "clinical supervision", and other areas of confusion identified in our report;*

The Department believes that these terms could be further clarified in rules. If regulation of this profession continues, the Department intends to adopt rules.

- b. *Ensure that the Marriage and Family Therapy Advisory Committee functions in an advisory, not a regulatory, capacity;*

The Department will ensure that the Marriage and Family Therapy Advisory Committee continues to function in an advisory capacity.

- c. *Establish written standards as a guide for the committee's "licensing" advice, including a record of past "licensing" decisions;*

In practice, the Department **has** written standards. If regulation of this profession continues, the Department will adopt its written standards in rules.

- d. *Appoint a public member to the advisory committee;*

For the initial advisory committee, the Department determined that it needed the expertise of marriage and family therapists and educators to assist with the implementation of this program. Plans always included appointing a public member to the committee, and this will be done should regulation of this profession continue.

- e. *Actively monitor the administration of the marriage and family therapist national examination in Hawaii as carried out by the department's primary contractor, Professional Examination Service (to include observing*

examinations periodically and giving feedback to Professional Examination Service for improvement as needed in such areas as exam security and the reduction of distractions in the testing room);

The Department actively monitored the administration of the national marriage and family therapist examination, and will continue to do so in the future. With respect to security problems and distractions at the examination facility, the Department finds that while conditions are not perfect, they are adequate.

- f. *Ensure that its contract with Professional Examination Service is current and signed;*

The Department has been and will continue to work with Professional Examination Service to execute a current contract.

- g. *Ensure that its marriage and family therapist licensure files are complete so that records show, and that the public can be assured, that all "licensed" marriage and family therapists have met all licensure requirements and documents are correctly filed;*

The Department reviewed the licensure files for all marriage and family therapists and determined that all individuals who are "licensed" as marriage and family therapists have met the licensing requirements, and passed the national marriage and family therapy examination. With respect to the misfiled occupational therapist files, the Department has corrected filing of the two (2) occupational therapists' files.

The Department would like to clarify that the incomplete applications are not located in the Business Registration Division's Records Viewing Office, but rather are stored in the Licensing Branch of the Professional and Vocational Licensing Division. Furthermore, incomplete applications are not available for public inspection since they are confidential.

- h. *Revise the "licensure" application form to clarify requirements for course work and qualified supervisory requirements;*

Prior to the issuance of the Auditor's report, the Department made numerous amendments to the licensing application form to clarify course work and supervisory requirements.

The Honorable Marion Higa
January 7, 2002
Page 4

Ensure that all "licensure" forms contain consistent and clear information.

The Department agrees with this recommendation and continuously strives to update its forms.

Once again, thank you for the opportunity to review your report and for the ability to offer our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathryn S. Matayoshi', written over a light blue rectangular background.

KATHRYN S. MATAYOSHI
Director

KSM/KH:cls