
Minnesota Department of Health

Alcohol and Drug Counselor Licensing Program

Biennial Report

December 24, 2002

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**Minnesota Department of Health
Alcohol and Drug Counselor Licensing Program
Biennial Report
July 1, 2000 to June 30, 2002**

I. General Information. This biennial report is required by Minnesota Statutes, chapter 214.

A. Alcohol and Drug Counselor Licensing System Mission and Major Functions

Mission

The mission of the Alcohol and Drug Counselor (ADC) Licensing System in the Minnesota Department of Health (MDH) is to protect consumers of alcohol and drug counseling services. The activities of the licensing system do this by: ensuring that licensed alcohol and drug counselors meet minimum competency standards of required education, internships, and examinations; issuing licenses to qualified applicants; enforcing the licensing requirements by making proper licensing determinations after background investigations are conducted; investigating complaints alleging illegal or unethical practice, taking enforcement action for violations of prohibited conduct, monitoring practitioner conduct after discipline; and acting as an information clearinghouse by providing the public with information about the regulation of alcohol and drug counselors in Minnesota.

Minnesota Statutes, Ch. 148C authorizes the Commissioner of Health (Commissioner) to create and utilize advisory groups in carrying out licensing duties. The Commissioner-appointed 13-member Advisory Council under ' 148C.02 advises the Commissioner in several areas, including the original development of the administrative rules for licensing procedures, setting examination standards, policies and procedures, reviewing practitioners= professional conduct, and, in disciplinary cases, counselor competency, practice, and impairment issues. The Commissioner-appointed 12-member Cultural Diversity Committee under ' 148C.11 advises the Commissioner on licensing criteria, particularly as it effects members of ethnic and minority communities. The Commissioner-appointed seven-member Education Committee, authorized by Minnesota Rules, Part 4747.1300, provides advice and recommendations concerning classroom education, internship, examination, and continuing education issues as they arise. The Commissioner, through program staff, regularly consults with the advisory groups on policy issues affecting the licensing system.

Major Functions

Administering a system for initial and continuing licensing

- a. Communicating licensing requirements to practitioner field through mass media, professional conferences, direct mail, and telephone.
2. Processing and reviewing initial and renewal license applications to assure that licensing qualifications have been met. Processed 344 initial and 1371 renewal applications during the biennium. Staff returned approximately 99% of initial applications to applicants for clarification of information or for requesting additional information. Staff, after consultation with the Education Committee, determine whether course work documented by applicants is sufficiently related to alcohol and drug counseling and therefore meet the training requirements. In processing the initial applications, staff returned an average of

30 phone calls per day during the biennium from applicants requesting status reports on the progress of their applications, as well as other license-related questions. During renewal periods, phone calls increased to over 50 per day with questions concerning continuing education requirements and renewal.

- c. Staff reviewed, processed, and approved 314 applications for licensing during the biennium.
- d. Consulting with ADC Advisory Council, Cultural Diversity Committee and Education Committee on licensing issues within their expertise.
- e. Through agreement with written examination owner, made written examinations available three times per calendar year. Developed oral examination, policies and procedures, conducted two training sessions over three days for examiners and administered the first oral examination sponsored by MDH.

Investigating allegations of misconduct and incompetency

- a. Engaging in fact-finding by interviewing complainants, witnesses, practitioners, and other agencies including law enforcement, to obtain relevant information and documentation about the allegations.
- b. Coordinating investigations involving jurisdiction of more than one regulatory agency by making appropriate referrals to other agencies, including the Office of Mental Health practice within the Department of Health.
- c. Obtaining input from Advisory Council and Cultural Diversity Committee through use of Competency Review Committee about practitioner competency and ethics by holding meetings as necessary to review specific cases.
- d. Informing complainants of public disciplinary action taken as a result of their complaints within the constraints of the Minnesota Government Data Practices Act.

Taking and enforcing disciplinary actions against practitioners as necessary and appropriate for violations of statute or rule

- a. Evaluating the case against a practitioner while balancing the constitutional due process rights of the practitioner against the Department's obligation to protect the public from harm in a cost-effective way.
- b. Obtaining voluntary agreements with practitioners for discipline when appropriate or pursuing discipline through the use of a determination with an opportunity for appeal and a contested case hearing.
- c. Protecting identity of clients when sexual misconduct or other serious violations have occurred.
- d. Subsequent to disciplinary action, setting up a system to continue monitoring practitioner's conduct to ensure it complies with Disciplinary Order.
- e. Taking further enforcement actions if there is evidence to conclude that the practitioner violated terms of the Order of the Commissioner.

Providing information and education about licensing requirements and procedures and practice standards to professional associations, educational institutions, legislators, the public and other interested parties

- a. Providing information on license requirements to persons interested in careers in the alcohol and drug counselor field through telephone, mail, and in-person contact with inquirers.

- b. Providing guidance to licensed alcohol and drug counselors and applicants in interpreting practice standards to promote compliance.
- c. Providing information to professional associations to assist those practitioners in getting accurate information.
- d. Providing educators and schools with accurate information for students to use in completing academic requirements and applying for licensing and internships.
- e. Providing callers verification of practitioner licenses and public actions against their license.
- f. Providing information about the complaint and investigation process to consumers and other members of the public.
- g. Distributing final disciplinary actions against practitioners to Advisory Council and Cultural Diversity Committee members as well as other interested persons.
- h. Regularly providing statistics about the number of credentialed practitioners, investigations and disciplinary actions to Advisory Council and Cultural Diversity Committee.

B. Major Activities During the Biennium

The following major activities were performed by the Department, after consulting with its advisory groups, during the biennium:

1. The administrator of the credentialing examination required by Minn. Stat. ' 148C.04, the Minnesota Certification Board (MCB), decided in September, 2000 that they would no longer provide written and oral examinations to prospective license applicants. The Department of Health with assistance of the Education/Exam committee developed the oral examination process and procedures laid out in the AAApplicant=s Guide.@ The Guide contains all the instructions, forms, questions and procedures used in administration of the oral examination. The Department of Health administered the first oral examination in June, 2002, and will offer an oral examination three times per year in the months of February, June, and September. The Department tests up to 30 applicants per examination. A full examination requires 20 examiners (6 panels of three examiners and two substitutes). The Department scheduled and provided training to selected alcohol and drug counselors to prepare them to be examiners for conducting oral interviews of examination candidates. Training was held on April 4, 2001, April 5, 2001, and June 7, 2002. The Department requires all examiners to have attended training before assisting in the administration of an oral examination.

The Department also began offering a written exam through an agreement with the Professional Testing Company (PTC), which developed, owns and maintains the examination used by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission. The written exam is offered three times a year in the months of March, July and November. During this biennium, the Department has offered the written examination on the following dates: July 27, 2001, November 17, 2001, and March 23, 2002.

2. Initiated three legislative amendments in the 2001 legislative session: 1) to eliminate a redundant reporting requirement; and 2) allow for investigative data exchange between the Department and law enforcement and other regulatory agencies; and 3) changes to a

temporary practice provision for new graduates who need to take and pass examinations.

3. On September 17, 2001 entered into an Interagency agreement with Health Professionals Services Program (HPSP) which is a state agency serving health-related licensing agencies by providing a place for practitioners with mental, physical or substance abuse problems to get evaluated and monitored without necessarily being disciplined or sanctioned by the regulatory agency. To date, ten Alcohol and Drug Counselors have utilized these services. A Department staff person regularly attends the Program Committee as part of being a served regulatory agency.
4. As of December, 2001, Investigations and Enforcement staff have been actively collaborating and teaming with staff of the Department of Human Services (DHS) which licenses chemical dependency facilities by communicating about licensed status of individuals working facilities and in some cases accompanying DHS on-site visits.
5. Held 18 meetings with Education Committee to discuss issues related to alcohol and drug counseling curriculum and standards and to develop an oral examination and Applicant=s Guide for MDH.
6. Held six meetings with the Joint Advisory Council and Cultural Diversity Committee to provide updates on the licensing program, legislative initiatives, and to provide updates on Education committee and examinations.
7. Held five meetings with Cultural Diversity Committee to discuss the impact of the licensing program on members of ethnic and minority communities.
8. Held four meetings of the Competency Review Committee to review pending investigations against 25 practitioners to give input about next steps and/or appropriate sanctions for violations of prohibited acts.
9. On February 28, 2002 staff gave a presentation to members of Minnesota Association for Research and Recovery in Chemical Health (MARRCH) about the licensing activities, including a description of the investigations and enforcement process for illegal practice.
10. With the March 2002 renewal, the Department began mailing out HPSP brochures with renewal materials.
11. Developed and refined license renewal application materials. In order to speed up and streamline the renewal process, the Department no longer requires the AVerification of Credential@ form to be completed and returned before a license is renewed. The renewal application was reworded in several places to provide clarification to the practitioner.
12. Contributed to a MARRCH newsletter article describing types of complaints made in June 2002.

C. **Emerging issues regarding regulation of licensed alcohol and drug counselors**

Program budget deficit. As of July 2002, the licensing system for alcohol and drug counselors was operational for four and-one-half years. At the end of the biennium, the account balance for the ADC licensing system was a negative \$1.2 million. This deficit has two sources: 1) MDH promulgated administrative rules between 1994 and 1998 at a cost of about \$450,000, and 2) with the exception of the most recent fiscal year, the annual revenues from fee receipts and penalties have not matched or exceeded the annual costs of operating the licensing system. Therefore, it is necessary to adjust licensing system fees so that revenues approximate ongoing costs and the deficit does not grow further.

The primary reason that revenues have been insufficient to pay for the licensing system is that there have been far fewer licensees than estimated. MDH originally estimated 5,000 applicants for an ADC license and 3,000 licensees renewing every two years. Though MDH sent out almost 6500 application packets, it has received only 1739 applications. As of the end of June, 2002, MDH had issued 1519 licenses, but there are currently only 1367 active licensees - 117 licenses have expired or lapsed, some have been revoked; and 28 licensees renewed in inactive status. Currently there are just over 175 pending applications. The Department now estimates that sometime in fiscal year 2005, the number of active licenses will reach 1600. This is a little over one-half the number MDH calculated would be paying fees to support the ADC licensing system.

By law, MDH is required to seek adjustments whenever fee revenues do not approximate the ongoing costs of regulating. MDH will propose the following fee adjustments to the 2003 Legislature: Increase the license application and biennial renewal fee from \$250 to \$295; establish an initial and renewal temporary license fee of \$100; increase the written examination fee from \$80 to \$90; increase the inactive renewal fee from \$100 to \$150; and establish a \$100 fee to renew an expired license.

MDH will also ask the Legislature to decide whether and in what amount it would establish a surcharge fee to recover the deficit. The current \$45 surcharge fee expires at the end of fiscal year 2003. This surcharge was to have recovered the initial cost of \$450,000 for establishing the licensing system. In addition to the rule-making costs, expenses were incurred for personnel, developing a licensing database, creating licensing forms and instructions and mailing several thousand license application packets - all before the first license application fee was ever received. Again, because of the lower than estimated number of licensees, surcharge revenues were insufficient, and the deficit grew. To recover the accumulated deficit, MDH will propose that a surcharge be collected in an amount and for a duration to be decided by the Legislature. For example, a surcharge fee to recover the deficit over 10 years would equal \$99 payable by each first-time and renewal applicant. Recovery of the deficit in 5 years would require a surcharge of \$211. In presenting the Legislature with alternative surcharge schedules and amounts, MDH expects the Legislature to take testimony and consider how much ADC practitioners and the field can reasonably pay. Information from practitioners and treatment providers is that the field has undergone a severe contraction, funding for chemical dependency treatment has not kept up with inflation and the level of need, salaries are not competitive, and there is a shortage of qualified, licensed counselors.

The statutorily-required examinations and their administration. The Department was informed in September, 2000 by the Minnesota Certification Board (MCB), the sole written and oral examination administrator, that it would no longer examine individual license candidates unless the candidate qualifies for and applies for the private credential the MCB offers. MDH was therefore required to make another examination option available to potential applicants for ADC licensing, and MDH now administers an oral examination three times per year.

Statutory Exemptions. From the outset of regulating, MDH has heard complaints from licensed alcohol and drug counselors and the leadership of MARRCH regarding the statutory exemptions from licensing for public and hospital employers of alcohol and drug counselors. MDH anticipates that an initiative to repeal the exemptions will be made by MARRCH in a future legislative session.

Reciprocity Requirements. MDH intends to seek repeal of the licensing reciprocity language in the statute because of the confusion and frustration it creates for license applicants from other states. Both applicants and MDH staff waste time and effort on the reciprocity mechanism because applicants do not understand that the qualifications they met to obtain their credential from another jurisdiction must be substantially similar to Minnesota's qualifications for an ADC license. Essentially, applicants must meet the same entry requirements as Minnesota residents, and there is no advantage to applying on the basis of a credential from another jurisdiction.

Changing Types of Investigations. Investigation and Enforcement statistics show changes in types of complaints in frequency of report and severity of conduct by practitioners. Unlicensed practice investigations continue to account for the most frequent type of case, and the number of cases has increased by 70 percent over the biennium. More serious types of investigations have also increased, such as those involving issues of sexual contact between practitioners and clients and practitioners who have either relapsed or exhibited behavior indicative of relapse. During the past two years, sexual misconduct cases increased by 700 percent, and cases involving the overindulgence in use or dependence on alcohol increased by 600 percent.

Federal law client records= provisions. Allegations are frequently received by Investigation and Enforcement staff which necessitate the review of patient records to determine the actions taken by an alcohol and drug counselor during treatment. The confidentiality of alcohol and drug abuse patient records is governed by Title 42, Code of Federal Regulations, a federal law which requires prior written consent of a patient for the release of treatment information. Without prior written consent, investigators must obtain a court order. MDH investigators do not have the authority to obtain such court orders, and investigations are frequently either dropped or narrowed in scope when the patient either cannot be identified or refuses to provide the prior written consent. Title 42 also protects the identities of individuals receiving chemical dependency services; therefore, without a cooperative patient, information is not accessible.

Chapter 148C also does not provide access to Federal Bureau of Investigation (FBI) criminal case history information. Criminal history information is made available to MDH through the Minnesota Department of Human Services, which merely allows for State of Minnesota-level criminal histories. In those cases where it is necessary to obtain criminal case history information from another state, investigators routinely have to contact each state to obtain the information. Each state maintains its own procedure for information requests, and investigators

must remain current on each states= requirements. To date, approximately 44 states have been contacted for criminal case information. Eight of those states (specifically, Alaska, California, Maryland, Nevada, New York, Ohio, South Dakota, and Wyoming), require investigators to obtain fingerprint cards of the practitioner to conduct the criminal history check. MDH pays the extra expenses for the fingerprinting of practitioners and the fees charged by out-of-state agencies. Three states (Arizona, North Carolina, and Tennessee) are considered Aclosed states,@as they are statutorily prohibited from providing MDH with criminal history information. The only way to access criminal history information from Aclosed states@ is through the submission of fingerprint cards directly to the FBI, which Chapter 148C does not authorize. Therefore, criminal history information for practitioners relocating from the Aclosed states@ to the State of Minnesota is unavailable. This is particularly troubling in the case of the State of Arizona, which is considered by law enforcement to be a source of illegal narcotics for the State of Minnesota. MDH staff are discussing whether to seek legislative authorization to obtain fingerprints from all ADC license applicants.

II. **Advisory Group Members, Department Staff, and Budget**

- A. Composition of the ADC Licensing Advisory Council.** The ADC Licensing Advisory Council is comprised of 13 members appointed by the Commissioner for staggered, four-year terms under ' 148C.02. Seven members are licensed alcohol and drug counselors, three are public members, one member is appointed by the American Indian Advisory Committee to the Department of Human Services, one member is the director of an accredited alcohol and drug counselor training program, and one member is a former consumer of alcohol and drug counseling treatment services.
- B. Composition of the ADC Licensing Cultural Diversity Committee.** The ADC Licensing Cultural Diversity Committee is comprised of twelve members appointed by the Commissioner for staggered, four-year terms under ' 148C.11 with two members representing each of the following ethnic and minority communities:
- | | |
|---------------------|-----------------------------|
| a. African American | b. Asian American |
| c. Chicano/Latino | d. Deaf and Hard of Hearing |
| e. Disability | f. Native American |
- C. Composition of ADC Licensing Education/Examination Committee.** The ADC Licensing/ Education Committee is comprised of seven members appointed by the Commissioner for staggered, four-year terms under Minnesota Rules, part 4747.1300. Two members are LADCs, two members are appointed by the ADC Licensing Cultural Diversity Committee, two members are academic training providers, and one member is an academic training program director.
- D. Department Staff.** The staff positions listed below are assigned to the alcohol and drug counselor licensing system, however only one position is full time or nearly full time. All other staff work on other credentialing systems in addition to alcohol and drug counselor licensing.

<u>Employee name</u>	<u>Job classification</u>	<u>FY 2001</u>	<u>FY 2002</u>
Tom Hiendlmayr	Health Prog. Manager	.10	.13
Susan Winkelmann	State Prog. Admin. Dir.	.25	.20
Jon Hall	Management Analyst IIR	.50	.09
Terri Ross	Legal Technician	.39	.25
Karen Morgan	Ofc. Admin. Spec. Int.	.50	.50
Nancy Breems	Administrative Secretary	.37	.01
Diane Michaels	Ofc. Admin. Spec. Int.	.25	.10
Grace Rauchwarter	Ofc. Specialist	.00	.10
Kyle Renell	Legal Analyst	1.00	.50
Kinh Hua	Info. Tech. Spec.	.05	.04
Megan Thompson	State Prog. Admin.	.00	.92
Totals		3.41 FTE	2.84 FTE

C. Receipts and disbursements and major fees assessed by Department

	<u>Receipts</u>	<u>Expenditures</u>
FY 2001:	\$167,000	\$261,000
FY 2002:	\$245,000	\$220,000
Total:	\$412,000	\$481,000

III. Licensing and Registration

A. Persons licensed as of June 30, 2002

There were 1340 licensed alcohol and drug counselors licensed as of June 30, 2002.

B. New licenses issued during biennium

314 new licenses were issued during the biennium.

IV. Complaints

A. Complaints Received

Number of Complaints received each fiscal year

FY 2001	47
FY 2002	90

1. Number of complaints categorized by type of occupation regulated by Department

The licensing program regulated licensed alcohol and drug counselors and license applicants only.

2. Number of complaints per 1,000 persons

FY 2001	.034
FY 2002	.067

3. Number of complaints categorized by type of complaint

	<u>FY 2001</u>	<u>FY 2002</u>
Incompetence/harmful/dangerous practice	5	2
Submitted false statements on commissioner=s form	1	0
Sexual contact or reasonably interpreted as sexual	3	7
False advertising	3	0
Conduct likely to harm public	1	0
Unable to provide services safely	1	3
Breach of confidentiality	2	1
Impaired objectivity	2	12
Unlicensed practice	14	40
Violated Commissioner=s Order	2	0
Obtained license by bribery or fraud	1	0
Failed to self report	1	1
Over indulgent in use of or dependence of alcohol	4	2
Use of legend drugs	1	2
Bartering	1	1
Conviction of a crime against another person	0	2
Other	5	3

4. Open Complaints

	<u>FY 2001</u>	<u>FY 2002</u>
Complaints Open	47	88
Open less than three months	6	23
Open three to six months	5	9
Open six to twelve months	17	18
Open more than one year (explain)	20	41

5. Closed Complaints

	<u>FY 2001</u>	<u>FY 2002</u>
Number Closed	25	33
Disposition Type:		
A. Revocation	0	4
B. Suspension	0	1
C. Limited or Conditional License	0	1
D. Civil Penalties	0	6
E. Reprimand	0	0
F. Dismissal	24	21
G. Referral to Licensing Boards	0	0
H. Cease and Desist	1	0
Cases closed that were		
open more than one year	0	2

D. Other Investigation Activity

Total Background Investigations Opened

FY 2001	231
FY 2002	205

Total Background Investigations Closed

FY 2001	290
FY 2002	280

Pending Background Investigations as of June 30, 2002	79
Pending Complaint Investigations as of June 30, 2002	89

Disposition by Type	<u>FY 2001</u>	<u>FY 2002</u>
A. Application Refused	1	0
B. Civil Penalty	0	7
C. Application Denied	3	3
D. Conditional Licensing	0	1
E. License Revoked	2	2
F. License Suspended	0	1
G. Cease & Desist Order	1	0

E. Other Program Activity

Location and dates of the administration of licensing examinations by the Minnesota Department of Health:

Written examination

07/28/2001	Minneapolis, Minnesota
11/17/2001	Minneapolis, Minnesota
03/23/2002	Minneapolis, Minnesota

Oral examination

06/08/2002	St. Paul, Minnesota
09/21/2002	St. Paul, Minnesota