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**Office of Mental Health Practice
Minnesota Department of Health
Biennial Report
July 1, 2000 to June 30, 2002**

I. General Information

A. Office of Mental Health Practice Mission and Major Functions

Mission:

To protect consumers who receive mental health services from practitioners who fall outside of the licensing authorities for Minnesota psychologists, social workers, marriage and family therapists, psychiatrists, nurses, and alcohol and drug counselors. Unlicensed mental health practitioners include, but are not limited to, professional counselors, psychotherapists, hypnotherapists, private school counselors, and spiritual counselors. The Office of Mental Health Practice's mandate is to receive and investigate complaints against unlicensed mental health practitioners, take enforcement action for violations of prohibited conduct, monitor practitioner conduct after discipline, and act as an information clearinghouse by providing the public with information about regulation of mental health professionals in the state of Minnesota.

Major Functions:

Investigating complaints

- Accepting complaints and reports from the public, health care service providers, and other health care regulators regarding the conduct of unlicensed mental health practitioners.
- Determining whether a complaint is jurisdictional and if so, obtain sufficient evidence to determine if a violation of statute has occurred.
- Engaging in fact-finding by interviewing complainants, witnesses, and practitioners, and obtaining relevant documentation about the allegations.
- Coordinating investigations involving matters within the jurisdiction of more than one regulatory agency by making appropriate referrals to other state boards, agencies, including the office of the ombudsman for mental health and mental retardation, departments responsible for licensing health related occupations, facilities and programs, and law enforcement personnel in this and other states.
- Informing complainants of action taken to resolve their complaints as allowed by

the provisions of the Minnesota Government Data Practices Act.

Taking and enforcing disciplinary actions against all unlicensed mental health practitioners for violations of prohibited conduct

- Evaluating the case against a practitioner while balancing the constitutional due process rights of the practitioner against the Commissioner's obligation to protect the public from harm in a cost effective way.
- Holding conferences with practitioners to clarify information received during an investigation and identify the practitioner's role and responsibility in a matter under investigation, and allow the practitioner an opportunity to make a meaningful response.
- Obtaining voluntary agreements with practitioners for discipline or pursuing discipline through contested cases.
- Protecting the identity of clients when sexual misconduct or other serious violations occurred.
- Subsequent to disciplinary action, setting up system to continue monitoring practitioner's conduct to ensure it complies with disciplinary Order.
- Taking further enforcement actions if there is evidence to conclude that practitioner violated terms of the Order of the Commissioner.
- Processing and coordinating requests from practitioners for reinstatement to practice without restrictions.

Acting as informational clearinghouse on mental health services provided by both licensed and unlicensed practitioners through dissemination of information to the public about avenues for relief, consumer rights, sexual exploitation by counselors, and to practitioners about legal responsibilities

- Available by phone or in writing to answer questions about regulations pertaining to mental health service providers in Minnesota and consumer rights.
- Available by phone or in writing to answer questions about legal responsibilities for unlicensed mental health practitioners in Minnesota
- Available on-line via website to provide information about regulation of mental health practitioners in the state of Minnesota, consumer rights, how to file complaints against unlicensed mental health practitioners, sexual exploitation by counselors and therapists, and public disciplinary action which has been taken by

the OMHP.

- Distribution of brochures and other printed materials to both consumers and practitioners to describe consumer rights and options, to educate the public and practitioners about sexual exploitation by counselors and therapists, and to inform practitioners about their legal responsibilities.
- Collecting and recording data about both investigations and enforcement actions for distribution to the public and legislative authorities about the OMHP's activities.

B. Major activities during the biennium

- Drafted and issued two press releases to inform the public of unlicensed practitioners who have had disciplinary action taken against them by the OMHP. The Minneapolis Star Tribune published an article on February 14, 2002 concerning two of the disciplined practitioners.
- Provided input and assistance to the managing editor of *Minnesota Monthly Magazine* for publication of the article "The ABC's of Mental Health Professionals" published in the February 2002 edition.
- OMHP staff wrote an article for publication in the Winter 2001 edition of *Healthy Minnesotans Update* published by the Minnesota Department of Health, titled "Office of Mental Health Practice: A Resource for Minnesota's Mental Health Consumers".
- Distributed nearly 400 copies of the booklet "It's Never OK: A Handbook for Victims and Victim Advocates on Sexual Exploitation by Counselors and Therapists" upon requests from consumers and constituents.
- Distributed over 1500 copies of two different informational brochures, one titled "Using Mental Health Services? Know Your Rights and Options" and the other titled "It's Never OK - Sexual Exploitation by Counselors", upon requests from consumers and constituents.
- Responded to nearly 300 inquiries from the public and/or practitioners to provide information about regulation of unlicensed mental health practitioners.
- New complaint handling procedures were developed in response to recurring complaints from sex offenders in sex offender treatment programs located in Minnesota. Researched and identified other applicable regulatory authorities and contact persons having the authority to intervene in matters of complaint

investigation and resolution of complaints from sex offenders concerning treatment provided by sex offender program staff. Using the information obtained, OMHP staff reviewed and processed all pending complaints from sex offenders in these programs; made proper referrals to regulatory authorities, the mental health and corrections ombudsman; and made recommendations to treatment program staff.

- Established undercover investigation guidelines and procedures; conducted an undercover investigation and assessed outcome results.

C. Emerging issues regarding regulation of unlicensed mental health practitioners

- Sexual misconduct with clients continues to comprise a significant portion of all complaints received by the OMHP. As noted in the previous biennial report, Ellen T. Luepker, an expert on the topic, reported in a 1999 issue of the Journal of the American Academy Psychiatry Law that clients who are sexually abused by their counselors suffer great harm; that intensive and extensive subsequent treatment is necessary, and these clients are especially vulnerable to professional revictimization. Due to the devastating and enduring impact of practitioner sexual misconduct, the OMHP has, since 1992, consistently focused on educating practitioners and the public about this topic. Complaint statistics show the number of complaints involving sexual misconduct have dropped from the previous biennium (35 percent of all complaints) to 31 percent of all complaints received for this reporting period.
- The number of complaints received has dropped by more than half from a high of 91 written complaints in 1995 to 39 written complaints received during 2002. While the OMHP is unable to determine with certainty the reason for the decreased volume of complaints, one reason could be that complaints attributable to alcohol and drug counselors are no longer counted in the OMHP system because they are now handled by the alcohol and drug counselor licensing system.
- There remains, however, a significant number of alcohol and drug counselors exempt from the licensure requirement. These counselors comprise an identifiable group, and in the coming biennium staff can target and educate practitioners in this group about the regulations that pertain to unlicensed mental health practitioners as well as the involved clients about their rights and options.
- Another consequence associated with the reduced volume of new complaints is that OMHP staff can concentrate additional efforts on education and prevention activities oriented towards both consumers and providers of unlicensed mental health services.

II. OMHP's staff and budget

A. Employees

The OMHP is part of the Health Occupations Program within the Health Policy and Systems Compliance Division in the Minnesota Department of Health.

The OMHP has two full-time investigators, one half-time equivalent support person, and one fourth-time equivalent supervisor. The OMHP shares salary expenses for a computer programmer with the other four regulatory programs within the health occupations program.

B. Receipts and Disbursements and Major Fees Assessed by Office

Since there is no credentialing component to this program, no fees were received, however, civil penalties were received as follows:

Civil Penalties Received

FY 2001	\$2868
FY 2002	\$2441

TOTAL	\$5309
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Expenditures

FY 2001	\$165,089
FY 2002	\$153,033

TOTAL	\$318,122
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III. Licensing and Registration

There is no licensing or registration component to this Office.

IV. Complaints

A. Complaints Received

	<u>FY 2001</u>	<u>FY 2002</u>
Complaints Received	61	39
Complaints per 1000 Regulated Persons (estimated 2000 practitioners)	.03	.02

	<u>FY 2001</u>	<u>FY 2002</u>
Complaints by Type of Complaint		
Harm to Public ¹	28	15
Sexual Misconduct	15	8
Impaired Objectivity	12	9
Breach of Confidentiality	2	3
False Advertising	0	4
Violation of an Order	2	0
Obtaining money from client other than fees	1	0
Nonjurisdictional	1	0
B. Open Complaints on June 30		
Total Number of Open Complaints	104	68
Open Less than three months	9	8
Open 3 to 6 months	8	3
Open 6 to 12 months	16	5
Open more than one year	71	52
C. Closed Complaints on June 30		
Total Number Closed during FY	61	75
Disposition by Type		
(a complaint may have more than one disposition type)		

¹"Harm to the public" constitutes conduct by a practitioner likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.

A. Revocation	5	1
B. Suspension	2	4
C. Civil Penalties	5	5
D. Reprimand	7	13
E. Dismissal	27	47 ²
C. Closed Complaints on June 30	<u>FY 2001</u>	<u>FY 2002</u>
(continued from previous table)		
F. Referral to Licensing Boards	19	6
G. Not Pursued by Complainant	1	4

²The nearly 75 percent increase in the number of cases dismissed in part reflects completed investigations of complaints from incarcerated or civilly committed sex offenders. Additionally, staff closed a higher percentage of lower priority cases in the second reporting period. When complaints are received by the OMHP, they are classified according to the severity of the allegations; A1 represents cases involving sexual misconduct, or the practitioner is actively engaging in the habitual overindulgence of alcohol or legend drugs; A2 cases represent issues such as breach of confidentiality, false advertising, or failure to maintain boundaries (of a less serious nature); A3 cases reflect allegations/violations involving the least amount of patient harm, such as billing issues, competence to perform psychological testing, improper record-keeping, discriminatory or demeaning conduct, or issues determined as nonjurisdictional. During FY 2001 eighteen percent of the dismissed cases were A3 cases, whereas during FY 2002 forty-seven percent of the dismissed cases were A3 cases. As described previously, with fewer new complaints to investigate, staff had time to work on pending lower priority cases, which generally take less time to investigate as they are not as complicated. Consequently, a greater number of these cases were closed.

V. Trend Data as Of June 30

<u>Fiscal year</u>	<u>Complaints Rec'd</u>	<u>Complaints Per 1,000</u>	<u>Open Files</u>
FY 2002	39	.02	68
FY 2001	61	.03	104
FY 2000	66	.03	101
FY 1999	66	.03	123
FY 1998	85	.04	177
FY 1997	71	.03	192
FY 1996	73	.03	169
FY 1995	91	.04	189
FY 1994	82	.04	155
FY 1993	64	.03	90
FY 1992	71	.03	59

The number of open cases has declined at the end of each fiscal year since 1997 because a second full-time investigator was hired in 1997. The OMHP had only one full-time investigator from 1991 to 1997 who was responsible for all investigations and operation of the public clearinghouse function. The appropriation amount limited the number of full-time staff to one and there was more work than one staff person could reasonably handle. Specifically, consistently over all fiscal years, one-third of the complaints received alleged sexual misconduct, and these investigations are complex and very time-consuming. Factors contributing to time taken in such investigations include investigating to determine whether jurisdiction exists, numbers of witnesses, the time client-victims take in deciding to cooperate fully with the department, and practitioner non-cooperation.

³The 57 percent increase in FY 2002 from FY 2001 in the number of cases closed which were open more than one year is attributable for the most part to completed investigations involving 24 complaints from incarcerated or civilly committed sex offenders. The fewer number of new complaints received by the OMHP in FY 2002 allowed OMHP staff to focus on those cases which were open for more than one year and to complete those investigations and make final determinations on those cases.