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# Minnesota Department of Health

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## Office of Mental Health Practice *Biennial Report*

October 13, 2000



Health Policy & Systems Compliance  
Health Occupations Program  
121 E 7<sup>th</sup> Place, Suite 400  
St. Paul, MN 55101  
651/282-5621  
[www.health.state.mn.us](http://www.health.state.mn.us)

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For more information, contact:  
Health Occupations Program  
Minnesota Department of Health  
121 E 7<sup>th</sup> Place, Suite 400  
PO Box 64975  
St. Paul, MN 55164-0975

Phone: (651)282-5621  
Fax: (651)282-5628

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**Office of Mental Health Practice  
Minnesota Department of Health  
Biennial Report  
July 1, 1998 to June 30, 2000**

**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 state licensing authorities, including, but not limited to, professional counselors, psychotherapists, hypnotherapists, private school counselors, and spiritual counselors. The Office of Mental Health Practice's (hereinafter "OMHP") 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 or inquiry is jurisdictional and if so, obtaining sufficient evidence to determine if a violation of statute occurred.
- Engaging in fact-finding by interviewing complainants, witnesses, and the 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.

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**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, 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.

**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 the development of a website which provides 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 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.

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- Collecting and recording data about both investigations and enforcement actions for distribution to the public and legislative authorities about OMHP's activities.

## **B. Major Activities during the Biennium**

The following major activities were accomplished by OMHP during the biennium:

- Revised the OMHP statute to clarify definitions and scope of regulations, and address release of data.
- Developed a web site to provide information about the OMHP and regulations pertaining to mental health practitioners for access by the public, practitioners, and other providers of health care services. The site provides links to other sites to inform persons how to pursue complaints about treatment received from unlicensed mental health practitioners, obtain printed informational materials, review applicable statutes, or obtain information about unlicensed mental health practitioners who have been disciplined.
- Made brochures available at the Minnesota State Fair, the Public Health Partnership 2000 conference "Celebrating a Century of Success", and to the Minnesota Department of Health Injury and Violence Prevention Unit to incorporate into their outreach and educational programming.
- Provided information about rules and regulations pertaining to unlicensed mental health practitioners to applicable providers of services in on-site presentations at African American Family Services and the Minnesota Coalition Against Sexual Assault.
- Participated in the Mental Health State Agency Liaisons Group in order to be involved in the collaboration of governmental infrastructure for the development and delivery of mental health-related policies and programs in a way that maximizes the state's collective resources and expertise.
- Provided information for the production of a television news article on Kare 11 News to help educate the public about regulations applicable to unlicensed mental health practitioners, identify practitioners who have had disciplinary action taken against them by OMHP, and how consumers may file complaints.
- Drafted and facilitated the implementation of two press releases to inform the public about rules and regulations pertaining to unlicensed mental health practitioners and provide information about unlicensed practitioners who have had disciplinary action taken against them by OMHP.
- Prioritized investigations of alcohol and drug counselors in anticipation of new license requirements requiring information from OMHP as part of its background checks process prior to issuing licenses.

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- Evaluated need for and secured a second permanent investigator to improve and facilitate more timely processing of complaints received by OMHP.
  - Completed eight enforcement actions which resulted in revocation of the right to provide unlicensed mental health services for six different practitioners. Civil penalties were collected in six of the eight actions.

### **C. Emerging issues regarding regulation of unlicensed mental health practitioners**

- Sexual misconduct with clients is alleged in approximately thirty five percent of all complaints received by OMHP and this has been a consistent trend since OMHP's inception in the Department of Health. Clients who are sexually abused by their counselors suffer great harm and in 1999, Ellen T. Luepker, an expert on the topic, reported that for the clinic population studied, 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 and the high percentage of complaints received by OMHP, we will continue to focus on practitioner sexual misconduct and educating the public on this topic.
- In each of the last two bienniums, representatives of Professional Counselors have sought licensure for practitioners with a Master's Degree in counseling and otherwise not licensed by the five mental health licensing boards in Minnesota. Currently, these Master's level mental health practitioners are considered to be part of OMHP's jurisdiction. In previous bills initiated by this group, they have proposed repeal of OMHP's jurisdiction and responsibilities in the process of licensing their practitioner group. The Department's position is that repeal of OMHP would unduly harm consumers receiving services from practitioners who would be excluded from the Professional Counselor's license and that no matter how many licensure boards the legislature may establish, there still would be practitioners whose qualifications do not fit any boards' requirements.

## **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 part-time equivalent supervisor. The OMHP shares salary expenses for a computer programmer with the other four regulatory programs within the Health Occupations Program..

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**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 1999	\$4854
FY 2000	\$787*
<b>TOTAL</b>	<b>\$5641</b>

\* Practitioners were allowed to pay civil penalty assessed during this fiscal year by installments over 18 months. Remaining to be collected is \$2013.

**Expenditures**

FY 1999	\$132,797
FY 2000	\$145,270
<b>TOTAL</b>	<b>\$278,067 (excluding indirect costs)</b>

**III. Licensing and Registration**

There is no licensing or registration component to this Office.

**IV Complaints**

**A. Complaints Received**

	<u>FY 1999</u>	<u>FY 2000</u>
Complaints Received	66	66
Complaints Per 1,000 Regulated Persons (Estimated 2,000 practitioners)	.03	.03

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**Complaints by Type of Complaint**

Harm to public	24	23
Sexual Misconduct	18	10
Impaired Objectivity	9	7
Breach of Confidentiality	6	3
Conviction of crime	2	4
False Advertising	2	3
Bill of Rights Violation	2	0
Unsafe services	1	0
Fraudulent Billing	1	3
Nonjurisdictional	1	5
Failure to cooperate	0	1
Client Records Issue	0	4
Abuse of Alcohol	0	3

**B. Open Complaints on June 30**

Complaints Open	123	101
Open Less than three months	18	9
Open 3 to 6 months	10	2
Open 6 to 12 months	14	6
Open more than 1 Year (explain)	81	84

**C. Closed Complaints on June 30**

Number Closed	120	88
Disposition By Type		
A. Revocation	2	5
B. Suspension	5	0
C. Limited or Conditional Practice	1	0
D. Civil Penalties	0	0
E. Reprimand	18	1
F. Dismissal	84	56
G. Referral to Licensing Boards	10	26

	<b>FY 1999</b>	<b>FY 2000</b>
Cases Closed that were open more than one year (explain)	74	27



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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 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

Explanation of cases open for more than one year: The OMHP had only one full time investigator between 1991 and 1997, who was responsible for all investigations and operation of the public clearinghouse function for the state. 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, one-third of the complaints alleged sexual misconduct and these investigations can be very time consuming. Factors contributing to time taken in 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. Data indicate that since hiring a second full time investigator, the number of open files at fiscal year end has decreased by 91 files from the high of 192 in 1997.