# Interagency Task Force on Mental Health Regulation

# Recommendations for Changes in Minnesota's Mental Health Regulatory System

**Report to the Commissioner of Health**

**and to the Minnesota Legislature**

**Authority: Laws of Minnesota, 1990**
**Chapter 568, Article 2, Sections 93 and 94**

**Minnesota Department of Health**
**Health Systems Development Division**

**March, 1991**

# INTRODUCTION

The 1990 Minnesota Legislature directed the Commissioner of Health to convene an interagency task force to study the existing system of regulating and monitoring licensed and unlicensed individuals who provide a range of mental health services and to make recommendations for administrative improvements in that system. (1990 Minnesota Laws, Chapter 568, Article 2, Sections 93 and 94.)

The Task Force was directed to consider:

1) methods of coordinating and improving the monitoring or regulation of unlicensed mental health practitioners and the most efficient venue for administering this function (e.g. autonomous board, state agency, etc.);

2) funding sources for the monitoring or regulation of unlicensed mental health practitioners; and

3) methods of coordinating complaints and disciplinary actions regarding licensed and unlicensed mental health providers.

The Task Force, which met in July and November of 1990, is comprised of representatives from the following state entities: the Board of Marriage and Family Therapy; the Board of Social Work; the Board of Medical Examiners; the Board of Nursing; the Board of Psychology; the Board of Unlicensed Mental Health Service Providers; the Department of Health; and the Department of Human Services. Staff support for this effort was provided by the Department of Health.

This report provides background on developments in the area of mental health professional regulation since 1987 and reports on the findings and recommendations of the Interagency Task Force on Mental Health Regulation on a number of issues related to the current regulation of mental health practitioners in the State of Minnesota.

# EXECUTIVE SUMMARY

Staff conducted more than 60 interviews with individuals who were involved in the development of the legislation creating the Office of Social Work and Mental Health Boards, the start-up period and/or the current operation of the Office and the three boards contained therein (i.e. Board of Social Work, Board of Marriage and Family Therapy, and Board of Unlicensed Mental Health Service Providers); experts in the field of occupational regulation; national and local representatives of several mental health professional associations; and officials in ten states which regulate various mental health occupations. Staff performed a review of the regulatory statutes and rules for those states, as well as the California statute.

In addition, Task Force members reviewed and analyzed eight different cost/benefit policy options which were prepared by staff, ranging from the status quo to the establishment of an omnibus health professionals regulatory agency. These policy options are presented as Appendix B of this report.

The interview process has yielded consensus on a number of issues related to the operation of the Office and, specifically, to the continued viability of the Board of Unlicensed Mental Health Service Providers:

- Minnesota Statutes Chapter 148B, establishing the Office of Social Work and Mental Health Boards, the Board of Social Work, the Board of Marriage and Family Therapy, and the Board of Unlicensed Mental Health Service Providers, contained no clear direction about administrative roles and responsibilities of the Office of Social Work and Mental Health Boards.

- a drafting flaw in the statute provided no clear direction regarding assistance to the "Office" and the three new regulatory boards during their start up phase. The task fell, unfunded, to the Department of Health, which was unable to provide much guidance. This lack of guidance was perceived by the three Boards established in 1987 as a lack of support for occupational regulation on the part of the Department.

- the umbrella structure of the Office of Social Work and Mental Health, as defined in current law, is unworkable. There is little hope that the composite structure can be modified to make it work.

- the statutes governing the operations of the Office of Social Work and Mental Health Boards (Minn. Stats. 148B, Minn. Stats. 214, Minn. Stats. 13 (Government Data Practices Act), and Minn. Stats. 14 (Administrative Procedures Act) are in conflict with regard to the legal responsibilities of the Office and the Boards. The appropriation of funds is made to the "Office" but the Boards collect fees. The Office appears to have

administrative authority and is accountable for the aggregate expenditures of the three Boards but the legal authority and the ability to raise or lower fees rests with Boards.

- there is the potential for conflict with regard to data sharing between Boards. The data sharing problem has particular implications for applicants for dual licensure and for investigations performed by the Attorney General's Office of complaints against individuals who are dual-licensed.

- there is consensus among Task Force members that the consumer protection function served by having a means to discipline unlicensed mental health practitioners remains important. However, the Task Force believes that requiring unlicensed practitioners to file their credentials with the Board of Unlicensed Mental Health Service Providers has not served to identify the "universe" of unlicensed mental health providers, is extremely difficult to enforce, and should be repealed.

- there is consensus on the Task Force that investigations and disciplinary actions taken against unlicensed practitioners would be better administered by a state agency, rather than an autonomous Board. Thus, the Task Force recommends that the Board of Unlicensed Mental Health Service Providers be sunset, as scheduled, in 1991.

In addition, a number of related themes have arisen in the Task Force's examination of the State's mental health professional regulation system. These include: 1) a desire for a consistent, single "point of entry" for information to consumers on the provision of mental health services as well as complaints made against all licensed and unlicensed mental health professionals; 2) concern about conflicts between the implementation of Chapter 148B, the Government Data Practices Act and the Administrative Procedures Act which have implications for the smooth operations of all health professional regulatory Boards; 3) concern that health regulatory boards lack cease and desist authority; 4) concern about issues related to staff and complaints that are in process during the transition period following the sunset of the Board of Unlicensed Mental Health Service Providers; 5) universal concern among health professional regulatory boards about insufficient resources allocated to the Attorney General's Office, which lengthens the time required to adjudicate consumer complaints; and 6) the need for a system to assist in the "birth" of any new licensing boards in the future.

# RECOMMENDATIONS

The Interagency Task Force on Mental Health Regulation makes the following recommendations:

1) eliminate the Office of Social Work and Mental Health Boards.

2) allow the Board of Social Work and the Board of Marriage and Family Therapy to operate independently.

3) allow the Board of Unlicensed Mental Health Service Providers to sunset, as scheduled, in June, 1991.

4) eliminate the filing requirements for unlicensed mental health practitioners and repeal all current exemptions from disciplinary action under the code of conduct. Retain the language of Minnesota Statutes 148B.44, describing prohibited conduct by all unlicensed mental health service providers, and the language of Minn. Stats. 148B.45, describing penalties for prohibited conduct.

5) transfer the enforcement of the existing code of conduct laws for unlicensed practitioners to a state agency. These laws would allow the state to fine, censure, reprimand, or enjoin from practice any non-licensed individual who engages in harmful or fraudulent behavior.

6) grant the agency explicit cease and desist authority and investigative resources, similar to that provided for in Minn. Stats. 153A.15, which empowers the Commissioner of Health to investigate and take enforcement action against hearing instrument sellers for prohibited conduct.

7) establish a "clearinghouse" function in a state agency (referred to in this report as the "Office of Mental Health Practice") to: perform intake of complaints against unlicensed mental health practitioners and referral of complaints against licensed practitioners to the appropriate licensing board; administer disciplinary action against unlicensed providers of mental health services (using the definition of "psychotherapist" and "psychotherapy" found in Minn. Stats. 148A.01, Subdivision 5 and 6, regarding criminal violations for sexual contact between psychotherapists and clients); and provide information and public education on mental health practices and practitioners.

8) fund the consumer protection function of the "clearinghouse" through the surplus in the Special Revenue Fund. If a surplus does not exist, the cost of the function should be charged as agency indirect cost to all health professional licensing boards. In addition, some baseline percentage of funding for the clearinghouse should be provided via general appropriations to ensure the operation of the public education activities to be undertaken by the "clearinghouse."

9) enact legislation to grant cease and desist authority to health professional licensing boards governed by Minn. Stats. 214.

10) if any licensing boards are established in the future, ensure that provisions are made in the enabling legislation for "start-up" activities.

These recommendations were accepted unanimously by the Task Force.

# BACKGROUND INFORMATION

The ultimate goal of occupational regulation, whether through legislative or administrative action, is to protect public safety and well-being. Traditionally, this goal has been designed as a two-part process. Applicants for licensure or registration (as title protection is known in Minnesota) must meet certain entry level criteria, usually based on education and supervised training, and pass an examination. Second, practitioners are held accountable for their actions by a state entity, often a Board, which governs each licensed profession. The Board considers consumer complaints against a practitioner and takes investigatory or disciplinary action, when appropriate.

Under Minnesota Statutes 214.001, Subdivision 2, there are four criteria which are used to evaluate the degree to which the public will benefit from regulation of a human service occupation:

- whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote.

- whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability.

- whether the citizens of this state are or may be effectively protected by other means.

- whether the overall cost effectiveness and economic impact would be positive for the citizens of the state.

The Commissioner of Health has primary responsibility for determining the need for occupational regulation. Under Minn. Stat. 214.13, the Commissioner coordinates the Human Services Occupations Advisory Council (HSOAC), an advisory panel of health and human service professionals who conduct a rigorous "sunrise" review of different occupations to determine whether regulation, or additional regulation, is appropriate. The Council may recommend no additional regulation; registration (title protection), which the Commissioner is empowered to administer by administrative rule; or licensure, which requires the enactment of legislation.[1]

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[1]The HSOAC program is not funded currently but it remains authorized, should the Legislature provide funding in the future.

The State of Minnesota currently licenses practitioners from the five federally-recognized mental health disciplines: psychiatry; psychology; social work, marriage and family therapy; and psychiatric nursing.[2]

The legislature enacted licensure laws for the occupations of social work and marriage and family therapy in 1987. That same year, the legislature also enacted innovative legislation aimed at regulating unlicensed providers of mental health services. A self-supporting, autonomous Board of Unlicensed Mental Health Service Providers was established to identify providers who were not licensed under existing law and to provide jurisdiction for consumer complaints against unlicensed providers.

These actions arose out of a legislative compromise among the recommendations of three different entities: the Human Services Occupations Advisory Council, the Advisory Task Force on the Regulation of Psychotherapists (a panel appointed by the Commissioner of Health to examine generic regulation of psychotherapists), and the Department of Health. Under this compromise, all three of the Boards created in 1987 were to operate as part of a newly established composite structure, the Office of Social Work and Boards (Minn. Stats. 148B), hereafter referred to as the Office.

## METHODOLOGY

In the preparation of this report, staff conducted more than 60 interviews with individuals who were involved in the development of the legislation creating the Office of Social Work and Mental Health Boards, the start-up period and/or the current operation of the Office and the three boards contained therein (i.e. Board of Social Work, Board of Marriage and Family Therapy, and Board of Unlicensed Mental Health Service Providers); experts in the field of occupational regulation; national and local representatives of several mental health professional associations; and officials in ten states which regulate various mental health occupations.[3] Staff performed a review of the regulatory statutes and rules for those states, as well as the California statute.

In addition, Task Force members reviewed and analyzed eight different cost/benefit policy options which were prepared by staff, ranging from the status quo to the establishment of an omnibus health professionals regulatory agency. These policy options are presented as Appendix B of this report.

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[2]Public Health Service Act, 42 USC 242a, Section 303.

[3]Colorado; Florida; Georgia; Massachusetts; Nebraska; Texas; Virginia; Washington; Wisconsin; and Wyoming.

# FINDINGS

The interview process has yielded consensus on a number of issues related to the operation of the Office of Social Work and Mental Health Boards and, specifically, to the continued viability of the Board of Unlicensed Mental Health Service Providers:

- Minn. Stats. 148B, establishing the Office of Social Work and Mental Health Boards, the Board of Social Work, the Board of Marriage and Family Therapy, and the Board of Unlicensed Mental Health Service providers, contained no clear direction about administrative roles and responsibilities of the Office of Social Work and Mental Health Boards.

- the statutes governing the operations of the Office of Social Work and Mental Health Boards (Chapter 148B, Chapter 214, Chapter 13 (Government Data Practices Act), and Chapter 14 (Administrative Procedures Act) are in conflict with regard to the legal responsibilities of the Office vs. the Boards. The appropriation of funds is made to the "Office" but the Boards collect fees. The Office appears to have administrative authority and is accountable for the aggregate expenditures of the three Boards but the legal authority and the ability to raise or lower fees rests with boards.

- there is the potential for conflict in the statutes with regard to data sharing between Boards. Chapter 214.10, Subdivision 8(d) requires the exchange of information between boards, agencies or departments within the state. However, under Minn. Stats. 13.41, Subdivision 2, data collected, created or maintained by any licensing agency are classified as private, except for the names and addresses submitted by applicants for licensure. The data sharing problem has particular implications for investigations of complaints against individuals who are dual-licensed, which are performed by the Attorney General's Office, and for applicants for dual-licensure.

- a drafting flaw in the statute provided no clear direction regarding assistance to the "Office" and the three new regulatory boards during their start up phase. The task fell, unfunded, to the Department of Health, which was unable to provide much guidance. This lack of guidance was perceived by the three Boards established in 1987 as a lack of support for occupational regulation on the part of the Department.

- the umbrella structure of the Office of Social Work and Mental Health Boards, as defined in current law, is unworkable. There is little hope that the composite structure can be modified to make it work.

- there is consensus among Task Force members that the consumer protection function served by having a means by which to discipline unlicensed mental health practitioners remains important. However, for a number of reasons that will be discussed later in this report, the Task Force believes that requiring unlicensed practitioners to file their credentials with the Board of Unlicensed Mental Health Service Providers has not served to identify the "universe" of unlicensed mental health providers, is extremely difficult to enforce, and should be repealed.

- there is also consensus among Task Force members that investigations and disciplinary actions taken against unlicensed providers would be better administered by a state agency, rather than an autonomous Board. Thus the Task Force recommends that the Board of Unlicensed Mental Health Service Providers be sunset, as scheduled, in June, 1991.

## EXPLANATION OF FINDINGS

The compromise which created the Office of Social Work and Mental Health Boards and the three new regulatory boards was crafted in the closing days of the 1987 legislative session. Because of time constraints, little attention was given to incorporating an implementation plan into the statute. The creation of the Office itself was clearly intended to increase administrative efficiency by capitalizing on economies of scale (i.e. shared computer systems, shared staff, etc.) The parties involved agreed to this imperfect compromise, fully acknowledging that it had major problems but indicating that they were committed to its implementation. Unfortunately, the operation of these four entities has developed into an administrative quagmire.

The Task Force finds that many or most of the management and policy issues that have arisen in this debate are directly related to the statute which created the "Office" and the three boards. The statute is silent on which entity (the Office vs. the individual Boards) is responsible for which tasks. This lack of statutory direction became apparent immediately upon the start up of these four new entities. In addition, the undefined structure of the "Office" -- not part of a state agency but not a Chapter 214 self-supporting regulatory board -- has made the implementation of the legislation and the smooth operation of the three boards it contains very difficult.

The transition period to full operation of the Office and the three Boards was further complicated by a number of factors: 1) four separate and distinct entities were being started concurrently; 2) little direction was provided to the Office and the Boards due to the absence of funding and structure for start-up; 3) there were complex legal issues to address in the development of rules for each Board; 4) four groups of citizens, most unfamiliar with the legislative process, administrative rulemaking, or state government were immersed immediately in technical and legal matters, a situation which was aggravated by a vague statute; 5) there is no precedent in Minnesota law for structures similar to either the Office of Social Work and Mental Health Boards or the Board of Unlicensed Mental Health Service Providers; and 6) there was no statutory delineation of administrative and legal functions and responsibilities of the Office vs. those of the boards.

It is reasonable to expect a certain amount of confusion in the development of a new regulatory entity. There are complex rulemaking obligations which must be completed under time constraints. Essentially volunteer board members who may or may not be familiar with the political development and the legislative intent of the statute with which they are now charged

with regulating must be trained. Some Board members must also learn to place their obligations to the Board to which they are appointed above the special interests of the regulated profession to which they belong.

**Office of Social Work and Mental Health Boards**

The creation of a composite Office of Social Work and Mental Health Boards to perform administrative functions for three regulatory Boards with similar interests is understandable. The Legislature's goal in promoting this structure was to discourage the proliferation of licensing boards, to encourage administrative efficiency among similar boards, and for the Office to serve as a single, easily identifiable point of contact for consumers seeking to bring complaints against practitioners.

However, the lack of direction in the statute about the responsibilities of the Office and its Executive Secretary has resulted in major administrative problems for the Office and the three Boards that continue to this day. These problems have reached a critical stage, the consequence being that the Board of Marriage and Family Therapy has moved its operation away from the Office to a different space. Both the Board of Social Work and the Board of Unlicensed Mental Health Service Providers have also considered taking the same action at various times.

The statute established four equal senior staff positions -- an Executive Secretary for the Office and one for each of the Boards -- but it was silent on several crucial administrative issues. Each Board was given the authority to hire only an Executive Secretary. There was no provision for hiring the head of the Office nor was there any indication of who would supervise that individual. By default, an Executive Committee, consisting of the Chairs and Vice-Chairs of each of the Boards was formed to supervise the Executive Secretary of the Office and to make administrative decisions about the operation of the Office. The Chair of the six-member Executive Committee rotates between the three Boards.

This arrangement has resulted in a significant problem. Because the Chair loses the power to vote on issues before the Executive Committee, each of the Boards perceives a negative shift in the balance of power during its tenure as Chair. This imbalance has further exacerbated the confusion already experienced by members of each of the Boards. In addition, the Office staff perceive that their interests are not well represented on the Executive Committee.

Further, while the statute does not delineate a reporting relationship for the head of the Office, Section 148B.02, Subdivision 1 does give that individual sole authority to hire all administrative staff. Staff perform administrative duties for all of the Boards but they serve at the direction of the Executive Secretary of the Office. The Executive Secretary is also responsible for compiling an annual report on the operations of the Office and the three Boards which is submitted to the Legislature.

The administrative arrangements that have been developed in an attempt to address the deficiencies in the statute have been a constant source of concern and irritation to the volunteers

who serve on each of the three Boards and have forced the Boards to focus primarily on administrative matters rather than policy concerns. This administrative focus has competed for time and resources during the crucial start up and rulemaking phases of each of the Boards. The contingency nature of these arrangements has also had an extremely negative impact on the staff employed by the Office of Social Work and Mental Health.

The majority of those interviewed for this report believe that the deficiencies in the statute have contributed to a high level of turnover since 1987 in Executive Secretaries for the Office of Social Work and Mental Health Boards, the Board of Social Work, and the Board of Marriage and Family Therapy (the Office has had three; Social Work has had three; and Marriage and Family Therapy has had two). The working environment has been described by some as chaotic and lacking direction. There are indications of persistent confusion about reporting lines as well as a lack of communication between Office clerical staff, the Executive Directors of the Boards, and members of the Boards.

The existence of the Office also appears to have contributed to the financial problems of each of the three Boards, as each must pay for a percentage of the staff, equipment, and other expenses of the Office. The bitter disputes over equitable allocation of Office resources and staff which occurred almost immediately upon the creation of these four entities are ongoing and continue be a source of serious concern for all involved. Members of each of the three Boards (Social Work, Marriage and Family Therapy, and Unlicensed Mental Health Providers) see the Office as competitive with their operations and as a financial drain on Board revenues.

A number of states have composite board structures comprised of several licensed or certified mental health occupations. As in Minnesota, most have been developed as part of a political compromise. There are critical differences in the experience in Minnesota and other states, however.

The majority of the composite structures in each of the states reviewed for this report are housed within an agency of state government, e.g. the Office of the Secretary of State (Georgia); the Department of Professional Regulation (Florida); a department of health (Texas and Washington) or a department of commerce (Wyoming and California).

In many states, there is a single Regulatory Board, composed of representatives from several licensed or certified professions. Minimum standards of practice for each of the regulated mental health professions are determined by standards committees for each regulated profession. Checks and balances are built into these structures to ensure equitable allocation of staff and resources between the various regulated professions. Big and small boards do not compete for staff and other resources; each receives services that are appropriate to its needs.

Colorado's regulatory system is slightly different from other states. There are separate licensing boards for psychology, marriage and family therapy, social work and professional counseling under the Mental Health Division of the Department of Regulatory Agencies' Division of Registrations. Licensure is voluntary. However, a composite structure -- the Colorado State

Grievance Board -- is charged with investigating complaints and taking disciplinary action against all persons, licensed and unlicensed, who provide mental health services.

The Grievance Board does not generate revenues. A surcharge is levied on the renewal fees of all licensed mental health professionals for the operation of the Board; unlicensed providers do not file their credentials with the state. The only remedy currently available to the Board for disciplining unlicensed providers is injunctive relief through the courts.

The Colorado State Grievance Board is scheduled to sunset on July 1, 1992, unless continued by the General Assembly. The Colorado Department of Regulatory Agencies is currently conducting a sunset review of the Board. Issues to be raised as part of the review process include additional funding mechanisms, the duty of licensed mental health professionals to report ethical and other violations made by other mental health professionals, the definition of adequate supervision, and the implications of restricting the practice of unlicensed psychotherapy.

**Board of Unlicensed Mental Health Service Providers**

Every state in the nation currently allows the practice of psychotherapy by individuals who have no formal education or training in a recognized mental health discipline.[4] In the vast majority of states --Minnesota, Colorado and Washington being exceptions -- there is little or no protection or formal redress for consumers who have been harmed by unregulated providers.

In 1987, the Minnesota Legislature established the Board of Unlicensed Mental Health Service Providers to serve as a regulatory body for mental health practitioners who were not eligible for licensure by one of the existing regulatory boards. This effort was aimed largely at identifying otherwise unregulated providers. As is the case for all health professional regulatory boards governed by Minn. Stats. Chapter 214, the Board of Unlicensed Mental Health Service Providers was intended to be self-supporting.

There are no minimum education or training standards required for practice. For a $50 fee, "filers" receive a document, similar to a business permit, which allows them to practice and places them under the jurisdiction of the Board for disciplinary actions. However, this "permit" implies neither State recognition nor an endorsement of the individual's credentials or competence to provide services. Individuals are prohibited from displaying the permit.

There has been concern among individuals who are required to file with the Board that "they don't get anything" for filing and that the fees are too high, relative to what filers receive (i.e.

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[4]This is scheduled to change in 1995, when the State of Florida will prohibit the provision of mental health services without a license in one of the mental health occupations that is regulated by the State. Officials in Nebraska and Colorado are also considering restricting the practice of psychotherapy to licensed or certified individuals.

nothing, in their view). However, as noted previously, occupational regulation is undertaken by the State to benefit the public, not professionals.

The Board's primary activity since its establishment has been rulemaking. The Board was prohibited in statute (Minn. Stats. 148B.41, Subdivision 1) from adopting rules that "restrict or prohibit persons from providing mental health services on the basis of education, training, experience, or supervision, or that restrict the use of any title." The Board's role was to identify unregulated providers of mental health services, not to screen their credentials, and to discipline providers who breached ethical and generally accepted professional standards of practice.

As a result, the rules were drawn very broadly to capture a great many aspects of practice and the broadest possible array of professions. This may be a result of the difficulty in defining psychotherapy. However, it also speaks directly to the issue of whether the Legislature intended to "close the loop" on practice, in other words, whether minimum standards should be required for the provision of mental health services.

During the rulemaking process, the Minnesota Legislature exempted chemical dependency counselors and public employees from the Board's jurisdiction. This action severely reduced the expected number of filers. During its deliberations, the Task Force considered whether to recommend regulation for chemical dependency counselors and professional counselors as part of this project. However, a majority of the members of the Task Force agreed that regulation for either group should be decided on its own merits, independent of the work of the Task Force.[5]

The wording of Minn. Stats. Chapters 148B.44 and 148B.45 clearly speaks to the investigation, adjudication, and enforcement of complaints against unlicensed providers. The Board of Unlicensed Mental Health Service Providers has been more active in addressing complaints than in gathering data about the nature and breadth of unlicensed practice in the state. To date, the Board has engaged in little or no public education efforts to advise practitioners who might fall under the Board's jurisdiction of the necessity of filing their credentials.

A total of 100 complaints have been filed with the Board of Unlicensed Mental Health Service Providers since its establishment in 1987. Of that total, 30 cases have been dismissed and 21 have been referred to another Board for action. Twenty-one cases are under formal investigation and 25 others are pending action. (Of the original 35 complaints that were transferred to the Board from other established licensing boards, approximately 20 concerned one facility and two providers. Those cases are still under investigation by the Attorney General's Office.)

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[5]The Minnesota Department of Health is nearing the completion of its Chapter 214 review of the regulation of Chemical Dependency Counselors and a final recommendation from the Commissioner of Health is pending. The Department is not currently funded to undertake a new Chapter 214 sunrise review of professional counselors or other occupations.

The Attorney General's Office has categorized 46 of the complaints (46%) as A-1 (Serious) and 20 (20%) as A-2 (Moderately Serious). A partial listing of complaints includes sexual contact with clients (criminal penalties for which are found under Minn. Stats. 148A.01-.06); fraud; breech of confidentiality; misleading advertising; willful disregard of client safety; and prohibited dual relationships. Sexual impropriety is alleged in nearly half of all complaints.

Twelve percent of complaints have been brought against individuals who have actually filed their credentials with the Board. However, the majority of complaints -- **68 complaints or 74%** -- have been brought against people who have not filed with the Board but who are not licensed by other Boards. Of that total, 45 complaints have been brought against individuals who are not exempt from filing with the Board but have not done so and 23 complaints have been brought against individuals who are exempt from filing. Failure to file with the Board of Unlicensed Mental Health Service Providers by individuals who are not eligible for licensure by another Board is a violation of Minn. Stat. 148B.42, punishable as a gross misdemeanor. To date, however, there have been no prosecutions for failure to file.

Some of those interviewed for this report have expressed concern about the sunset date that has been imposed upon the Board. It has been suggested that, because of the difficult transition period to full operation, the Board of Unlicensed Mental Health has not had sufficient time or funding to "work out the bugs" in its operations.

There is some validity to this assertion. An entity to "regulate the unlicensed" was unprecedented and the Board received little guidance during the start up phase in its operations. In addition, like the Board of Social Work and the Board of Marriage and Family Therapy, the Board of Unlicensed Mental Health Service Providers experienced a number of administrative problems in gaining final approval for its rules, a situation which caused a delay in the recovery of Board fees.

Nevertheless, concerns about the continued viability of the Board of Unlicensed Mental Health Service Providers are justified. While Minn. Stats. Chapter 214 requires that regulatory boards be self-supporting, the unlicensed Board has not collected enough in receipts to offset its expenditures or appropriation. In the Fiscal Year 1990-1991 biennium, the Board received a specific exemption from the language requiring them to be self-supporting. (Laws of Minnesota, 1989, Chapter 282, Article 1, Section 10, Subdivision 13)

The Board of Unlicensed Mental Health Service Providers collected $33,900 in fees in Fiscal Year 1990 with expenditures of $159,400. The Board requested a $150,000 general fund appropriation from the Legislature but received a $75,000 appropriation. Even with this supplement to its FY 1990 receipts, the Board ran a shortfall of $50,500. This appropriation was granted in anticipation that adequate fees, in addition to the appropriation, would be collected by the end of the FY 1990-91 biennium to offset the Board's operating expenses. However, the Board's expenditures for the current fiscal year (FY 1991) are estimated at $169,600, and the Board of Unlicensed Mental Health Service Providers estimates fee receipts of only $40,000, leaving an FY 1991 shortfall of $129,900.

The total number of "filers" has generally remained steady at just under 600, although this number has fluctuated temporarily to as many as 650. As of late 1990, the Board of Unlicensed Mental Health Service Providers was receiving about 20 to 30 new filing applications each month. Concurrently, some number of "filers" are granted licensure by other boards, leave "the field" or, for other reasons, may not renew with the Board of Unlicensed Providers.

The Board would face strong opposition to an increase in the $50 fee which many filers now believe is a financial burden, relative to the perceived benefit conferred (i.e. none.) In addition, the Board will not have the opportunity to undertake a fee increase, should it choose to take such action, because of the impending sunset date. Thus, a substantial increase in fee-generated revenues, and a subsequent reconciliation of the two-year deficit, will not occur prior to June, 1991. Clearly, without a substantial yearly general appropriation, the Board of Unlicensed Mental Health Service Providers has not been and cannot be self-supporting.

One additional note of concern related to the Office of Social Work and Mental Health Boards becomes apparent in an examination of the finances of the Board of Unlicensed Mental Health Service Providers. Although the Board collected only $33,900 in fees in FY 1990, its prorated assessment for the administrative operations of the Office of Social Work and Mental Health Boards was $45,600, a difference of $11,700. As discussed previously, the Board has been granted an exemption in the current biennium but the possibility exists that it would be unable to meet its financial obligation to the Office in the future if the sunset date is extended, thereby increasing the financial obligations for the Office from the Board of Social Work and the Board of Marriage and Family Therapy. This is a further indication of the inefficiency and inequity of the current administrative structure.

Others who have been interviewed for this report are concerned about the sunset date because they do not believe that the Board has yet completed its original mission. They assert that the original intent of the Legislature in establishing the Board of Unlicensed Mental Health Service Providers was the collection of information on the practice of psychotherapy, with the ultimate goal of limiting the practice of psychotherapy.

The annual report of the Board of Unlicensed Mental Health Service Providers, which was submitted to the Commissioner of Health on July 1, 1990, expresses the view of the Board that supervisory requirements, which are customary in the helping professions, strongly encourage providers to incorporate ethical boundaries into their practice of psychotherapy. The Board concludes that, "this type of training may not be available to persons with lessor [sic] training. The data on complaints that we have reviewed so far, however, does not justify this conclusion one way or another." However, the report also asserts that "the data collected to date by the Board, both in terms of registrations and complaints, shows no pattern that providers without degrees generate anymore [sic] or any less complaints than do those with a degree. In fact the

data suggest there may be little, if any, relationship between the amount of training, frequency and/or seriousness of complaints."[6]

The Board of Unlicensed Mental Health Service Providers has suggested to the Task Force that the solution to its funding and operations problems is not a sunset of the Board's activities. Instead, they propose that the Board be expanded into a free-standing, composite "superboard," similar to the two-tiered universal registration system implemented by the State of Washington.[7] This autonomous "oversight" system would operate in addition to the existing licensing boards for psychology, social work, and marriage and family therapy (and any additional mental health-related licensing boards which might be established in the future) and would handle complaints against unlicensed providers.

The State of Washington requires that all persons providing mental health services register initially with the state Department of Health as generic "counselors." (Psychiatrists and psychologists are licensed and are thus exempt from the counselor law.) Once identified by the State, registrants may practice but are prohibited from using a number of protected titles (certified marriage and family therapist or licensed psychologist, for example). All registrants must complete a four hour course in AIDS education, supply personal information and pay a filing fee.[8]

In order to obtain certification, the second tier of regulation, a practitioner must hold a minimum of a master's degree and must have two years of supervised, postgraduate experience, as well as a passing score on a national exam appropriate to one of the three certified occupations (e.g. marriage and family therapy, social work, or mental health counseling). Certification is voluntary and provides title protection only. Investigations and disciplinary actions against all licensed, certified or registered mental health professionals are governed by the Washington Department of Health.

The most significant difference in the Minnesota and Washington regulatory systems concerns funding. In Washington, a fee is required of all persons who "register" their credentials with the Department of Health as well as those who choose to become certified. However, administrative,

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[6]Board of Unlicensed Mental [Health] Service Providers, "Report to the Minnesota Commissioner of Health and the Legislature," July 1, 1990.

[7]A similar proposal for a universal generic psychotherapist licensure system was made in 1986 by the Minnesota Advisory Task Force on the Regulation of Psychotherapists. It was one of several proposals which was incorporated into the legislative compromise which resulted in the creation of the Board of Unlicensed Mental Health Service Providers.

[8]In late 1988, the Minnesota Commissioner of Health recommended that all health professional licensing boards in the state incorporate similar training on HIV infection into continuing education requirements for licensed, registered or otherwise regulated professionals. To date, there has been no action on the Commissioner's recommendation.

personnel, and other costs are met by the Washington Department of Health. In Minnesota, all free-standing regulatory boards must be self-supporting under Minn. Stats. Chapter 214. All administrative, personnel, and other costs must be covered by fees. It has been suggested that this composite oversight board be funded out of general revenues.

The Task Force does not support a statutory change that would expand the current Board of Unlicensed Mental Health Service Providers into a free-standing, composite "superboard." This proposal does not have a clear source of funding and would appear to perpetuate the serious funding and administrative problems now facing the Board of Unlicensed Mental Health Service Providers and the Office of Social Work and Mental Health Boards.

It would also appear to be duplicative of the efforts currently undertaken by existing mental health licensing boards. The members of the Task Force do not believe that there is a need to create an entity which would change the manner in which currently licensed professions are governed. Each of the licensed professions has developed entry-level standards of practice and strict ethical guidelines that allow for appropriate self-governance and client protection.

There is strong agreement on the Task Force that the long term goals in the creation of the Board of Unlicensed Mental Health Service Providers -- provider accountability and protection of the public from incompetent, unethical or unqualified practitioners of psychotherapy -- remain valid. Accountability for providers in independent practice -- those who have no supervision nor peer consultation -- is of particular concern. This is not to imply that unprofessional practice or conduct does not occur in public settings or in private practice where supervision is available. Rather, it is believed that mechanisms for accountability exist in those venues, for instance, facility licensure and inspection or direct supervision of practice by other qualified mental health professionals in that setting.

However, it is difficult to state with any certainty whether the Board of Unlicensed Mental Health Service Providers has been successful in achieving the goal of public protection from unscrupulous, exploitative or unqualified providers. The filing and enforcement functions carried out by the Board of Unlicensed Mental Health Service Providers currently are linked in an effort to provide a comprehensive "safety net" for consumers who risk harm from unlicensed practitioners.

Despite the significant operational and funding problems which the Board has experienced, consumers apparently perceive that the Board has authority to take disciplinary action against providers. However, the Task Force believes that the filing process, while well intentioned, has not served to identify the "universe" of unlicensed mental health providers, is extremely difficult to enforce, and should be repealed.

With the repeal of the filing function, the Task Force also recommends that all current exemptions from the code of conduct governed by the Board of Unlicensed Mental Health Service Providers be repealed. It is the clear intention of the Task Force that <u>all</u> unlicensed mental health practitioners be subject to disciplinary action under the existing code of conduct.

There is consensus among those on the Task Force that the State has a primary role in ensuring, to the maximum extent possible, the competent and ethical practice of psychotherapy. Toward that goal, the Task Force recommends that the Board of Unlicensed Mental Health Service Providers be allowed to sunset as scheduled in June, 1991, and that the disciplinary activities currently conducted by the Board be transferred to an existing state agency.

**Establishment of "Clearinghouse" on Mental Health Practice**

The Task Force further recommends the establishment of a "clearinghouse" on mental health practice (referred to for the remainder of this report as the Office on Mental Health Practice) in an existing state agency, to perform the disciplinary functions now performed by the Board of Unlicensed Mental Health Service Providers. In addition to its disciplinary mission, the Task Force recommends that the Office perform public education and information dissemination activities. It is recommended that this new office have an advisory committee comprised of consumers.

There is a general lack of public understanding about the skills of various mental health professionals and about the services they provide. Consumers often are not familiar with differences in degrees or training between various licensed and/or unlicensed professions. Although each mental health professional regulatory board, including the Board of Unlicensed Mental Health Service Providers, is required by statute to provide public education about the services provided by individuals regulated by that Board, more often than not, greater emphasis is placed on regulatory and disciplinary actions than on the public education function.

The creation of an Office of Mental Health Practice would benefit consumers in a number of ways:

- it would clearly identify the State as the public's source of information regarding mental health practitioners and practices.

- it would assist the consumer by providing "one stop shopping" for information and complaints on the provision of mental health services. Complaints against unlicensed practitioners would be addressed directly by the Office, in consultation with the Attorney General's Office. Complaints against licensed practitioners would be referred to the appropriate Board for further action.

- it would provide public education and disseminate information on the services provided by mental health practitioners. A single phone number could be publicized as part of ongoing public education efforts to raise public awareness of appropriate vs. inappropriate mental health services, thus providing an aspect of public protection. Protection is also offered by ensuring that all unlicensed providers who practice outside of generally-accepted ethical or professional norms of practice can be disciplined.

The Task Force recommends the development of a central data base in the Office, in conjunction with the mental health licensing boards, which would identify the licensees of each of the mental health boards and would note dual-licensure. Because of potential conflicts with the Data Practices Act, data would be limited to the practitioner's name, business address and licensure status.[9]

Another potential advantage of a single intake phone number is consistent access to and from the newly established National Practitioner Data Bank. Through contact with this new federal entity, which began operation in 1990, state regulatory boards and agencies will have access to information regarding malpractice insurance awards, license revocation and other disciplinary actions taken by regulatory entities in other states against specified health professionals. Established under Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, the Data Bank currently requires state regulatory authorities to report disciplinary actions taken against physicians and dentists. States may voluntarily report actions against other regulated health personnel to the Bank but such action is not mandatory at this time.

However, in the future, states will be required to report disciplinary actions against additional licensed or otherwise regulated health and mental health professionals, under an amendment to the program found in Section 5 of Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987. The U.S. Department of Health and Human Services is in the process of drafting regulations governing the collection of data regarding additional health professionals, and is expected to promulgate final rules as soon as 1992.

The Task Force has reviewed a number of agencies to determine which might be best suited to the required tasks: Department of Health (Office of Health Facilities Complaints and other divisions within the Department); Department of Human Services (Mental Health Division and Licensing Division); Attorney General's Office-Consumer Division, Information and Complaint Line; Commerce Department Enforcement and Licensing Division; and the Office of the Ombudsman for Mental Health and Mental Retardation. (Appendix B, Option 3, provides pros and cons for establishing an Office of Mental Health Practice in all but the last of the listed agencies.) The Task Force has made no recommendation regarding which agency is best suited to perform these functions.

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[9]While there is anecdotal evidence to support claims of wide-spread dual licensure, hard data to support the claims is not available as of January, 1991. The Office of Social Work and Mental Health Boards is in the process of creating a new data base to enter basic information on social work licensees and the Board of Marriage and Family Therapy will soon undertake a similar effort for its licensees. The new systems will enable the State to determine the extent of dual licensure between the two boards and, ultimately, with other boards which govern mental health professionals (i.e. Board of Medical Examiners for psychiatrists; Board of Nursing for psychiatric nurses; and Board of Psychology.)

**Funding for the Office of Mental Health Practice**

There are several sources of revenue available to fund the complaint and disciplinary process for unlicensed mental health providers as well as the public education activities to be performed by the Office of Mental Health Practice. These include: general revenues; a minimal surcharge on mental health professional licensees; a surcharge on all health related boards; a recapture of surplus funds in the Special Revenue fund; or some combination of the above. The level of funding is tied, in part, to the number of complaints which are filed against unlicensed mental health providers.

Given the current volume of complaints pending before the Board of Unlicensed Mental Health Service Providers, the cost of operating the Office of Mental Health Practice is estimated at $150,000 to $200,000 per year.

One funding alternative considered by the Task Force is a minimal surcharge on all licensed mental health professionals (to be defined.) The ability to discipline unlicensed providers benefits the consumer by providing an avenue of redress and increased understanding about mental health services and providers. Some assert that benefits also accrue to licensed providers in the form of positive public image. Following that logic, a minimal surcharge is a small price for licensed professionals to pay to enhance consumer protection and to receive a real or perceived benefit related to professional image.

However, in recognition of the budget constraints facing the State, the Task Force recommends that the consumer protection and public education activities to be performed by the Office of Mental Health Practice be funded through the surplus in the Special Revenue Fund. If a surplus does not exist, the cost of the function should be charged as agency indirect cost to all health professional licensing boards. In addition, to ensure some consistent baseline level of funding, the Task Force recommends that some baseline percentage of the funding be provided through general fund appropriations.

## RELATED ISSUES

**Cease and Desist Authority**

There is a great deal of support among Task Force members for explicit cease and desist authority for the health professional licensing boards governed by Minn. Stats. Chapter 214 and for the agency which houses the recommended Office of Mental Health Practice.

There is precedent in existing law for such action. The Commissioner of Health has the power to obtain similar injunctive relief through the courts with regard to state-licensed nursing homes, under Minn. Stats. Chapter 144A.12, and state-licensed Health Maintenance Organizations (HMOs), under Minn. Stats. Chapter 62D.17, Subdivisions 4 and 5.

The use of cease and desist authority has a number of checks and balances. First, the decision to proceed with a cease and desist order requires the consultation and approval of the Minnesota

Office of the Attorney General. Second, a cease and desist order can be drawn narrowly to address a particular issue, and, thus, may not shut down a business. For instance, an order can be drawn to prohibit a male therapist from seeing female clients or to prohibit a particular type of behavior or the use of a particular type of technique.

Some have expressed concern about the wisdom of granting a powerful tool of this sort to volunteer boards. No matter how narrowly it is drawn, a cease and desist order can have serious repercussions for a practitioner's business. It can harm a person's reputation such that, even though they remain open for business, they may suffer a partial or complete loss of clients. These concerns have merit. Nevertheless, cease and desist authority offers a licensing board or other state entity the ability to address egregious conduct by a provider in a timely manner without the heavy burden of taking the situation to a court for an injunction.

Cease and desist authority is no panacea. It is an additional administrative tool that should be used very sparingly and only in the most egregious cases, and even then, with appropriate checks and balances on power. In order to ensure the due process rights of the provider, cease and desist action may be taken only in close consultation with the Office of the Attorney General. The Attorney General has ultimate responsibility for carrying out a cease and desist order.

The Task Force recommends that all health professional licensing boards under Minn. Stats. Chapter 214 be granted explicit cease and desist authority. The Task Force recommends that, because there are no minimum standards for practice of psychotherapy by unlicensed providers, and because there is no license to revoke, cease and desist authority should also be granted to the agency in which the Office of Mental Health Practice is housed. It is further recommended that the agency be granted authority similar to that provided for in Minn. Stats. 153A.15, which empowers the Commissioner of Health to investigate and take enforcement action against hearing instrument sellers for prohibited conduct.

**Adjudication Time for Complaints**

There is almost universal concern among Task Force members about insufficient resources allocated to the Attorney General's Office, which lengthens the time required to adjudicate consumer complaints made against licensed and unlicensed mental health providers. From a practical standpoint, the length of time required to process a complaint may constitute significant harm to the public during the processing time.

This is not to assert that the complaints process should be hurried or incomplete. Under the Administrative Procedures Act (Minn. Stats. Chapter 14), there are stringent due process concerns which must be addressed. However, some on the Task Force believe that balance may have tipped too far in favor of the practitioner and away from protection of the consumer who may have suffered harm.

The length of time required to process complaints can be tied directly to an increase in the volume of complaints. In Fiscal Year 1982, the Office of the Attorney General received a total

of 250 complaints from ten health professional licensing Boards. The same ten boards generated 647 complaints in fiscal year 1986, an increase of 397 cases or 159%. By FY 1990, the number of complaints brought to the Attorney General rose to 1452 complaints (827 major and 625 minor), a 480% increase since FY 1982.

The increased caseload may be due to a number of factors. In this age of consumerism, individuals are more aware that they can file complaints and there is more support and encouragement to take such action; this is especially true in the area of sexual impropriety. In addition, the State of Minnesota has enacted legislation in recent years which requires reporting of improper conduct or other problems concerning vulnerable adults and children and issues related to insurance. Mental health practitioners and Chapter 214 licensing boards are required to report allegations regarding other professionals who have engaged in questionable or prohibited activities.

The Attorney General's Office has taken several actions to try to address the growing caseload and the resulting backlog of complaints. In fiscal year 1987, the Attorney General's Office began to prioritize complaints, categorizing them as "significant" or "minor." Health regulatory boards have been given authority to adjudicate "minor" complaints (e.g. false or misleading advertising), with the option of a review by the Attorney General's office, while the Attorney General concentrates on complaints that are judged to be serious or significant.

## RECOMMENDATIONS

The Task Force on Mental Health Regulation makes the following recommendations:

1) eliminate the Office of Social Work and Mental Health Boards.

2) allow the Board of Social Work and the Board of Marriage and Family Therapy to operate independently.

3) allow the Board of Unlicensed Mental Health Service Providers to sunset as scheduled in June, 1991.

4) eliminate the filing requirements for unlicensed mental health practitioners and repeal all current exemptions from filing and disciplinary action under the code of conduct. Retain the language of Minnesota Statutes 148B.44, describing prohibited conduct by all unlicensed mental health service providers, and the language of Minn. Stats. 148B.45, describing penalties for prohibited conduct.

5) Transfer the enforcement of the existing code of conduct laws for unlicensed providers to a state agency. These laws would allow the state to fine, censure,

reprimand, or enjoin from practice any non-licensed individual who engages in harmful or fraudulent behavior.

6) grant the agency explicit cease and desist authority and investigative resources, similar to that provided for in Minn. Stats. 153.A.14, which empowers the Commissioner of Health to investigate and take enforcement action against hearing instrument sellers for prohibited conduct.

7) establish a "clearinghouse" function in a state agency (referred to in this report as the "Office of Mental Health Practice") to: perform intake of complaints against unlicensed mental health practitioners and referral of complaints against licensed practitioners to the appropriate licensing board; administer disciplinary action against unlicensed providers of mental health services (using the definition of "psychotherapist" and "psychotherapy" found in Minn. Stats. 148A.01, Subdivision 5 and 6, regarding criminal violations for sexual contact between psychotherapists and clients); and provide information and public education on mental health practices and practitioners.

8) fund the consumer protection function of the "clearinghouse" through the surplus in the Special Revenue Fund. If a surplus does not exist, the cost of the function should be charged as agency indirect cost to all health professional licensing boards. In addition, some baseline percentage of funding for the "clearinghouse" should be provided via general fund appropriations to ensure the operation of the public education activities to be undertaken by the "clearinghouse."

9) enact legislation to grant cease and desist authority to health professional licensing boards governed by Minn. Stats. 214.

10) if any licensing boards are established in the future, ensure that provisions are made in the enabling legislation for "start-up" activities.

These recommendations were accepted unanimously by the Task Force.

## TRANSITION ISSUES

The members of the Task Force have expressed concern about several issues which will arise as a result of the recommended sunset of the Board of Unlicensed Mental Health Service Providers in June, 1991, and during the period of transition to the establishment and start up of operations of the new Office of Mental Health Practice.

The Task Force is concerned that classified employees of the Office of Social Work and Mental Health Boards be provided with ample opportunity to gain new classified employment in other

state agencies after the legislation authorizing the operation of the Office is repealed. Under the layoff provisions of the appropriate collective bargaining agreements for state employees (e.g. American Federal of State, County, and Municipal Employees for clerical employees, Middle Management Association for supervisory employees, and Minnesota Association of Professional Employees for professional employees), certain rights are provided to employees whose jobs are abolished.

It is also crucial that the Legislature clearly delineate the point of decisionmaking authority for complaint and disciplinary activities related to unlicensed mental health providers, both during the period of transition and once the Office of Mental Health Practice has been established. The majority of the problems currently affecting the operation of the Office of Social Work and Mental Health Boards, the Board of Unlicensed Mental Health Service Providers, the Board of Marriage and Family Therapy and the Board of Social Work originated during the transition period after their establishment. There is strong consensus on the Task Force that close attention be paid to planning for the transition period and during the initial start up phase of the Office of Mental Health Practice.

Further the Task Force suggests that the Legislature undertake a review of the Government Data Practices Act (Minn. Stats. Chapter 13) and the Administrative Procedures Act (Minn. Stats. Chapter 14), to ensure that Chapter 214 licensing boards and other state regulatory entities have the ability to exchange necessary data and to ensure that there is a balance between the due process rights of mental health practitioners and consumer protection concerns.

Sec. 93. **REPORT ON METHODS OF COORDINATING SOCIAL WORK AND MENTAL HEALTH BOARDS.**

(a) The commissioner of health shall convene an interagency task force consisting of health department staff and representatives from the commissioner of human services and the boards of social work, marriage and family therapy, unlicensed mental health service providers, medical examiners, nursing, and psychology to study the current system of monitoring and regulating both licensed and unlicensed individuals who practice mental health counseling, psychotherapy, psychiatry, psychiatric nursing, social work, professional counseling, chemical dependency counseling, and similar activities. The task force shall make recommendations for improving coordination, administrative efficiency, and effectiveness of the activities of the department of health and the boards that monitor and regulate these social work and mental health occupations and professions. The task force shall solicit and consider the comments and recommendations of affected individuals, associations, and government agencies. In developing its recommendations, the task force shall consider:

(1) methods of monitoring or regulating unlicensed practitioners and whether this activity should be administered by the health department, an independent administrative agency, a board, or another entity;

(2) a surcharge on license fees of all social work and mental health boards to finance the monitoring or regulation of unlicensed practitioners;

(3) methods of coordinating the various systems for accepting and investigating complaints;

(4) coordinated information systems to identify individuals who have been denied a license or have been subject to disciplinary action by another licensing board or agency; and

(5) other relevant issues identified by the task force.

(b) The commissioner of health shall report to the legislature by December 1, 1990, with the results of the study and the recommendations of the task force.

Sec. 94. **EXEMPTION.**

For the biennium ending June 30, 1991, the board of unlicensed mental health service providers is exempt from Minnesota Statutes, sections 16A.128, subdivision 1, and 214.06, subdivision 1.

# INTERAGENCY TASK FORCE ON MENTAL HEALTH REGULATION

## OPTIONS PAPER

The 1990 Minnesota Legislature directed the Commissioner of Health to convene an interagency task force to study the current system of regulating and monitoring licensed and unlicensed individuals who provide a range of mental health services. The Task Force is responsible for making recommendations for administrative improvements in the existing regulatory structure. 1990 Minnesota Laws, Chapter 568, Article 2, Sections 93 and 94.

The Task Force must consider the following:

1) methods of coordinating and improving the monitoring or regulation of unlicensed mental health providers and the most efficient venue for administering this function (e.g. autonomous board, state agency, etc.);

2) funding sources for the monitoring or regulation of unlicensed mental health providers; and

3) methods of coordinating complaints and disciplinary actions regarding licensed and unlicensed mental health providers.

Due to staff constraints, the scope of the options presented in this study are limited to existing regulatory boards and structures.

Staff acknowledges that significant interest and concern exists about the identification and regulation of additional mental health specialties. The Human Services Occupations Advisory Council (HSOAC) completed its review of the need to regulate Chemical Dependency Counselors in June, 1990. A determination by the Commissioner of Health is expected by December, 1990.

That determination will influence, and be influenced by, issues discussed in this study. Therefore, Options 5 and 6, which consider the regulation of additional mental health specialties, are included <u>for discussion purposes only</u>. Additional regulation would require a review of criteria under Minnesota Statutes, Chapter 214.

**1) Status quo. Retain current structure (i.e. Office of Social Work and Mental Health, containing Board of Social Work, Board of Marriage and Family Therapy, and Board of Unlicensed Mental Health Providers) but rename Board of Unlicensed Mental Health Service Providers to Board of Mental Health Practice.**

Pros:

- -- system already in place
- -- no new State expenditures
- -- public protection function still valid, as evidenced by new complaints being brought to board by public.
- -- New name may provide benefit to public by clarifying purpose or function of Board as place to bring complaints or seek information on providers
- -- removes stigma to both public and "filers" implied by current name (i.e. Board of Unlicensed Mental Health Service Providers)

Cons:

- -- pairing of licensed and unlicensed providers in one composite structure creates confusion
- -- lack of direction in statute makes administrative "overlay" of Office of Social Work and Mental Health Boards cumbersome and confusing; source of great tension to three separate Boards contained therein
- -- Board of Unlicensed Mental Health Service Providers is not currently self-supporting in FY 1991, as required under Minn. Stats. 214, and likely will not be in FY 1992
- -- no clear constituency in support of continuation of separate "board" for unlicensed providers
- -- insufficient statutory authority to enforce penalties against a) persons who practice without filing credentials or b) filers who practice outside of generally-accepted norms of ethical and/or professional practice (e.g. false or misleading advertising, dual relationships, sexual contact with clients, etc.)
- -- no incentive for individuals to file credentials with unlicensed board (i.e. no perceived benefit to filers)

**2) Office of Social Work and Mental Health is dismantled. Board of Social Work, Board of Marriage and Family Therapy, and Board of Unlicensed Mental Health Service Providers operate as autonomous boards.**

Pros:

- -- dismantling "Office" removes source of severe tension from operations of three Boards, resulting from lack of statutory definition of scope of "Office" (e.g. legal responsibilities of Office vs. those of Boards, reporting lines, etc.)

-- dismantling "Office" allows Boards to concentrate on regulatory policy matters instead of current heavy emphasis on administrative details, reporting lines, etc.
-- dismantling "Office" may result, to some degree, in lower expenditures to each Board
-- inequitable allocation (or perception of inequitable allocation) of resources from Office to each Board ceases to be an issue
-- restores direct control over Board operations and expenditures to boards
-- clear precedent in Minnesota law for autonomous, health-related Boards, free of composite structure

Cons:

-- volunteer boards may not have sufficient expertise to complete prospective budgets and fee reviews and other administrative functions (e.g. personnel matters, purchasing) now performed by "Office" staff
-- Board of Unlicensed Mental Health Service Providers is not currently self-supporting in FY 1991, as required under Minn. Stats. 214, and likely will not be in FY 1992.
-- questions exist regarding Board of Marriage and Family Therapy's ability to be self-supporting
-- autonomy of Board which "regulates the unlicensed" is problematic; regulatory responsibility may be better placed in State agency
-- opportunity for coordination of functions is reduced

**3) Board of Unlicensed Mental Health Service Providers sunsets in June, 1991. Office of Social Work and Mental Health is dismantled. Board of Social Work and Board of Marriage and Family Therapy become autonomous. Existing state agency administers current system of filing of credentials of unlicensed mental health service providers and complaints against filers. (Different agency scenarios are provided below.) Filing function is supported via filing fees and minimal charge on and all mental health licensees (i.e. psychologists, social workers, and marriage and family therapists).**

**NOTE: None of the agencies discussed in Option 3 has been asked for comment on their willingness to assume responsibility for the function outlined in this option. Agency scenarios are provided for discussion only.**

Pros:

-- public protection function still valid, as evidenced by new complaints being brought currently by public to Board of Unlicensed Mental Health Service Providers

-- dismantling Office of Social Work and Mental Health Boards allows Board of Social Work and Board of Marriage and Family Therapy to concentrate on regulatory policy matters instead of current heavy emphasis on administrative details, resulting from lack of statutory definition of scope of "Office" responsibilities vs. Board responsibilities
-- dismantling of "Office" may result, to some degree, in lower expenditures to Board of Social Work and Board of Marriage and Family Therapy
-- broadening fee support to include all licensed mental health providers is considered a "public service," i.e. licensed providers contribute to ensure that appropriate action can be taken against unlicensed providers who practice outside of generally-accepted ethical or professional norms of practice
-- broadening fee support to licensed mental health providers recognizes benefit to all practitioners from "safety net" function

Cons:

-- less professional autonomy if regulation (i.e. monitoring) is done by state agency instead of separate Board
-- no incentive for individuals to file credentials with State (i.e. no perceived benefit to filers)
-- insufficient statutory authority to enforce existing penalties against:
  a) persons who practice but do not file or
  b) filers who practice outside of generally-accepted norms of ethical and/or professional practice (e.g. false or misleading advertising, dual relationships, sexual contact with clients, etc.)
-- lack of full range of enforcement options (e.g. no cease and desist authority or other administrative remedies) is problematic

## OPTION 3A: DEPARTMENT OF HEALTH, REGULATION BY DIVISION

Pros:

-- Department of Health has long-standing expertise with regulation of allied health occupations
-- Department has substantive knowledge of provision of mental health services and development of Board of Unlicensed Mental Health Service Providers
-- Department currently provides some degree of administrative support to Boards contained under Office of Social Work and Mental Health

Cons:

-- Department of Health has not had a role in mental health regulation

## OPTION 3B: DEPARTMENT OF HEALTH, OFFICE OF HEALTH FACILITY COMPLAINTS

Pros:

-- Office of Health Facility Complaints has regulatory expertise related to health-care facilities (e.g. hospitals, nursing homes, board and care facilities and supervised living facilities)

Cons:

-- Office has no expertise in regulation of individual health or mental health providers in private practice. Complaints about individuals employed in licensed health care facilities are referred to county social services, Department of Human Services or other relevant agencies, as well as County Attorney.

## OPTION 3C: DEPARTMENT OF HUMAN SERVICES MENTAL HEALTH DIVISION

Pros:

-- Department of Human Services Mental Health Division has substantive knowledge of mental health facilities and provision of mental health services.

Cons:

-- Department of Human Services Mental Health Division has no regulatory jurisdiction over individuals.

-- Department of Human Services Licensing Division does not regulate individuals who provide mental health or chemical dependency services; Licensing Division does have regulatory jurisdiction over and processes complaints against various types of facilities in which mental health and chemical dependency services are provided.

## OPTION 3D: ATTORNEY GENERAL'S OFFICE CONSUMER DIVISION INFORMATION AND COMPLAINT LINE

Pros:

-- Consumer Division has expertise in investigating and mediating and/or adjudicating consumer complaints against individuals in a variety of non-health related occupations who violate various consumer laws

Cons:

-- AG's Consumer Division has no expertise in occupational regulation or in mental health practice.
-- Consumer Division Information and Complaint Line refers all complaints to agencies of jurisdiction, where such jurisdiction exists. Consumer Division keeps only those complaints for which no such jurisdiction exists.
-- Information and Complaint Line gets few mental health-related calls; refers those calls to appropriate boards.
-- potential for complaints against unlicensed mental health service providers being lost in "queue" of a wide variety of consumer complaints against a wide variety of professionals

OPTION 3E: COMMERCE DEPARTMENT
ENFORCEMENT AND LICENSING DIVISION

Pros:

-- Licensing Section of Enforcement and Licensing Division has expertise in regulation of a variety of individuals in non-health related industries. Separate Enforcement Section investigates complaints against licensees for alleged violation of consumer laws.
-- Some complaints against unlicensed mental health service providers might best be addressed under consumer laws (e.g. false or misleading advertising of services)

Cons:

-- Commerce Department has no expertise in provision of health or mental health services.

**4) Board of Unlicensed Mental Health Service Providers sunsets in June, 1991. Office of Social Work and Mental Health is dismantled. Board of Social Work and Board of Marriage and Family Therapy become autonomous. Unregulated mental health service providers are no longer required to file credentials in order to practice.**

Pros:

-- sunset of Board of Unlicensed Mental Health Service Providers resolves numerous jurisdictional and operational conflicts
-- dismantling Office of Social Work and Mental Health Boards allows Board of Social Work and Board of Marriage and Family Therapy to concentrate on regulatory policy matters instead of current heavy emphasis on administrative details, resulting from lack of statutory definition of scope of "Office" responsibilities vs. Board responsibilities

-- dismantling of "Office" may result, to some degree, in lower expenditures to Board of Social Work and Board of Marriage and Family Therapy
-- option will have support from providers who must now file with Board of Unlicensed Mental Health Service Providers

Cons:

-- original intent of BUMP board (i.e. protection of public from unregulated providers) is abandoned
-- consumer complaints against subsequently unregulated providers will not be investigated or enforced
-- workload of remaining regulatory boards and Attorney General's office may increase as new complaints against unregulated providers must be investigated for jurisdiction

**5) Board of Unlicensed Mental Health Service Providers sunsets in June, 1991. Office of Social Work and Mental Health is dismantled. Board of Social Work and Board of Marriage and Family Therapy become autonomous. Additional mental health specialties are regulated; minimum standards for practice are developed for independent and supervised practice of counseling.**

**Legislature establishes Clearinghouse on Mental Health Practice in state agency which:**

**a) administers filing of credentials/complaints for small number of remaining unregulated mental health service providers for defined period of time, then practice by unregulated individuals is phased-out (i.e. closes "loop");**
**b) provides public education on mental health practices;**
**c) refers complaints/questions on licensed or otherwise regulated mental health providers to appropriate venue. Clearinghouse is supported via minimal fee on all regulated and unregulated mental health providers.**

**(NOTE: The Clearinghouse structure would work with or without additional regulation, and regardless of the degree of regulation: no additional regulation, registration, or licensing.)**

Pros:

-- clearly identifies State as public's source of information regarding mental health service providers and practices
-- provides public with "one stop shopping" for information and complaints on provision of mental health services
-- ongoing public education efforts raise public awareness of appropriate vs. inappropriate mental health services provides public protection
-- meets original intent of Board of Unlicensed Mental Health Service Providers

- -- Clearinghouse may have support of licensed mental health occupations
- -- public protection function still valid, as evidenced by new complaints being brought currently by public to Board of Unlicensed Mental Health Service Providers
- -- dismantling Office of Social Work and Mental Health Boards allows Board of Social Work and Board of Marriage and Family Therapy to concentrate on regulatory policy matters instead of current heavy emphasis on administrative details, resulting from lack of statutory definition of scope of "Office" (e.g. legal responsibilities of Office vs. those of Boards, reporting lines, etc.);
- -- dismantling of "Office" may result, to some degree, in lower expenditures to Board of Social Work and Board of Marriage and Family Therapy
- -- broadening fee support to include all licensed and unlicensed mental health providers recognizes benefit to consumers from "safety net" function
- -- broadening fee support for "safety net" function to include all licensed and unlicensed mental health providers recognizes benefit to providers, i.e. to ensure that appropriate action can be taken against unregulated providers who practice outside of generally-accepted ethical or professional norms of practice

Cons:

- -- Professional Counselors/Chemical Dependency Counselors/ other unregulated groups likely to continue to push for licensure in legislature
- -- no incentive for individuals to file credentials with State in interim period (i.e. no perceived benefit to filers)
- -- Clearinghouse may experience problems re: Data Practices Act
- -- insufficient statutory authority to enforce existing penalties against:
  a) persons who practice but do not file or
  b) filers who practice outside of generally-accepted norms of ethical and/or professional practice (e.g. false or misleading advertising, dual relationships, sexual contact with clients, etc.)
- -- lack of full range of enforcement options (e.g. no cease and desist authority or other administrative remedies) is problematic.

**CLARIFICATION:** The primary difference in Options 5 and 6 can be found in subdivision (c). In Option 5, the Clearinghouse serves a referral function. In Option 6, the Clearinghouse serves an investigatory function.

**6) Board of Unlicensed Mental Health Service providers sunsets in June, 1991. Office of Social Work and Mental Health is dismantled. Board of Social Work and Board of Marriage and Family Therapy become autonomous. Additional mental health specialties are regulated; minimum standards for practice are developed for independent and supervised practice of counseling.**

**Legislature establishes Mental Health Information and Grievance Office in Department of Health which:**

- **a) administers filing of credentials/complaints for small number of remaining unregulated mental health service providers for defined period of time, then practice by unregulated individuals is phased-out;**
- **b) provides public education on mental health practices;**
- **c) <u>investigates complaints</u> against all licensed or otherwise regulated mental health providers (i.e. physicians, nurses, social workers, psychologists, marriage and family therapists, and others.) Complaints are addressed by composite advisory board with augmenting panel from each of the licensed/registered professions. Office is supported via minimal fee on all regulated/unregulated mental health providers.**

(**NOTE:** The Clearinghouse structure would work with or without additional regulation, and regardless of the degree of regulation: no additional regulation; registration; or licensing.)

Pros:

- -- clearly identifies State as public's source of information regarding unlicensed mental health service providers
- -- provides public with "one stop shopping" for information and complaints on provision of mental health services
- -- meets original intent of Board of Unlicensed Mental Health Service Providers
- -- reduces duplication/lowers costs of Attorney General's investigations of dual-licensed providers
- -- decreases Attorney General's workload and provides for more timely investigations
- -- central contact point for communications to and from National Practitioner Data Bank (Note: Reporting to Data Bank is now mandatory for actions taken by State entities against doctors, dentists, and nurses. Reporting for other health and mental health providers will become mandatory when regulations are finalized in the next two years.)
- -- ongoing public education efforts raise public awareness of appropriate vs. inappropriate mental health services provides public protection
- -- Clearinghouse may have support of licensed mental health occupations

-- public protection function still valid, as evidenced by new complaints being brought currently by public to Board of Unlicensed Mental Health Service Providers
-- dismantling Office of Social Work and Mental Health Boards allows Board of Social Work and Board of Marriage and Family Therapy to concentrate on regulatory policy matters instead of current heavy emphasis on administrative details resulting from lack of statutory definition of scope of "Office" (e.g. legal responsibilities of Office vs. those of Boards, reporting lines, etc.);
-- dismantling of "Office" may result, to some degree, in lower expenditures to Board of Social Work and Board of Marriage and Family Therapy
-- broadening fee support to include all licensed and unlicensed mental health providers recognizes benefit to consumers from "safety net" function
-- broadening fee support for "safety net" function to include all licensed and unlicensed mental health providers recognizes benefit to providers, i.e. to ensure that appropriate action can be taken against unregulated providers who practice outside of generally-accepted ethical or professional norms of practice

Cons:

-- Existing licensure boards may not want to relinquish authority over complaints against licensees
-- Professional Counselors/CD Counselors/other unregulated groups likely to continue to push for licensure in legislature
-- no incentive for individuals to file credentials with State in interim period
-- Clearinghouse may experience problems re: Data Practices Act
-- lack of minimum standards for filing weakens enforcement and potentially weakens public protection
-- insufficient statutory authority to enforce existing penalties against:
    a) persons who practice but do not file or
    b) filers who practice outside of generally-accepted norms of ethical and/or professional practice (e.g. false or misleading advertising, dual relationships, sexual contact with clients, etc.)
-- lack of full range of enforcement options (e.g. no cease and desist authority or other administrative remedies) is problematic

**7) Legislature shifts control for regulation of all health professions from autonomous boards to existing state agency. Individual boards for each occupation operate semi-autonomously but agency provides administrative, investigative, personnel and other services.**

Pros:

- -- reorganization of existing activities which may provide some degree of policy coordination and administrative efficiency to existing regulatory activities
- -- provides "one stop shopping" for consumers seeking information or seeking to file a complaint
- -- regulatory activities continue to be financed through fees on regulated individuals; expenditures from general revenues are low
- -- potential cost savings to state in terms of personnel, overhead, equipment, materials, and other resources now purchased by individual boards
- -- to some degree, centralization already exists for finances of health-related boards; all board fees are deposited into the same account
- -- provides additional degree of state oversight for those who perceive "capture" of boards by professions
- -- consistent point for communications on disciplinary actions to and from the National Practitioner Data Bank
- -- precedent in other states: approximately 30 states centralize occupational regulation functions, to varying degree

Cons:

- -- regulatory boards and corresponding professional associations may oppose loss of autonomy, depending on degree of centralization
- -- efficiency varies depending on type of centralization (i.e. is professional staff hired to serve individual Boards or to serve functions?)
- -- who appoint Board members - Governor or Commissioner of Department?

**8) Legislature establishes omnibus regulatory agency for health professions with individual, semi-autonomous regulatory boards for each regulated occupation.**

Pros:

- -- reorganization of existing activities which may provide some degree of policy coordination and administrative efficiency to existing regulatory activities
- -- provides "one stop shopping" for consumers seeking information or seeking to file a complaint

-- regulatory activities continue to be financed through fees on regulated individuals; expenditures from general revenues are low
-- potential cost savings to state in terms of personnel, overhead, equipment, materials, and other resources now purchased by individual boards
-- to some degree, centralization already exists for finances of health-related boards; all board fees are deposited into the same account.
-- provides additional degree of state oversight for those who perceive "capture" of boards by professions
-- consistent point for communications on disciplinary actions to and from the National Practitioner Data Bank
-- potential for support in legislature
-- precedent in other states: approximately 30 states centralize occupational regulation functions, to varying degree

Cons:

-- unknown costs to State of consolidation process
-- efficiency varies depending on type of centralization (i.e. is professional staff hired to serve individual Boards or to serve functions?)
-- regulatory boards and corresponding professional associations may oppose loss of autonomy, depending on degree of centralization
-- who appoints Board members - Governor or Commissioner of Department?