
**Sunset Review: Evaluation of the
State Board of Professional Counselors
and Therapists**

**Department of Legislative Services
Office of Policy Analysis
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October 2007

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF THE EXECUTIVE DIRECTOR
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

October 31, 2007

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Professional Counselors and Therapists. This evaluation process is more commonly known as sunset review because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report has been prepared to assist the committees designated to review the board – the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee – in making their recommendations to the full General Assembly. The board is scheduled to terminate on July 1, 2009.

Since 1994, the board's regulatory authority and composition have been altered significantly (and in a piecemeal fashion) as the board now regulates – both through certification and licensure – professional counselors, marriage and family therapists, and alcohol and drug counselors. The resulting regulatory structure is unnecessarily complex and confusing, and the board has been challenged in recent years with sharp increases in the number and types of regulated professionals. Professional counselors and marriage and family therapists have predominantly opted to become licensed rather than be certified; thus, the continued need for certification of these types of counselors is questionable. However, the certification option remains relevant for alcohol and drug counselors. Further, although such counselors now constitute about 44 percent of all regulated professionals, alcohol and drug counselors are underrepresented on the board with one member. DLS makes a series of recommendations related to these issues and to enhance the board's administrative operations. Finally, DLS recommends that the board's termination date be extended by 10 years to July 1, 2019. Legislation to implement the recommended statutory changes, including a revision of the Professional Counselors and Therapists Act, is being drafted.

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly
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We would like to acknowledge the cooperation and assistance provided by the board and its staff throughout the review process. The board was provided a draft copy of the report for factual review and comment prior to its publication; its written comments are included as an appendix to this report.

Sincerely,

Karl S. Aro
Executive Director

KSA/ml

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services has evaluated the State Board of Professional Counselors and Therapists. This board, established in 1985, is undergoing full evaluation for the second time. Findings and recommendations are summarized below.

The total number of individuals regulated by the board continues to increase, though annual changes have been difficult to reliably determine due to inconsistencies in the board's methods of data collection and reporting. The board recently began to automate certain processes, which should improve access to more accurate and timely data.

Recommendation 1: The board should implement a standardized system for collecting and reporting licensing and certification data. This system should be used to report data in a consistent format in the board's annual reports.

Certification of professional counselors is of limited use to the majority of professionals, with a small minority of practitioners maintaining their certification. The designation creates an unnecessary level of bureaucracy at the board without providing a tangible benefit to consumers.

Recommendation 2: Statute should be amended to repeal prospective certification of professional counselors while authorizing currently certified professional counselors to renew certification indefinitely and to continue practicing nonclinical professional counseling.

The academic programs in marriage and family therapy align with the clinical course of study prescribed by the board, virtually eliminating demand for certification of marriage and family therapists. The two marriage and family therapists currently certified by the board should be allowed to continue to practice under that designation, with new applicants required to meet standards for licensure.

Recommendation 3: Statute should be amended to repeal prospective certification of marriage and family therapists while authorizing currently certified marriage and family therapists to renew certification indefinitely and to continue practicing nonclinical marriage and family therapy.

Certification of alcohol and drug counselors is tiered, with the level of certification determined by an applicant's level of education and amount of supervised experience. The tiered system creates confusion among applicants, requiring a disproportionate amount of staff resources to resolve.

Recommendation 4: The board should review the certification structure for alcohol and drug counselors to determine whether the current three-tiered certification structure is of continued benefit to the profession and the public. The results of this review, including any proposed alternatives, should be included in the interim report due to the General Assembly by October 1, 2010.

The Maryland Professional Counselors and Therapists Act reflects the many

additions to the board's regulatory authority since the authorizing statute was enacted in 1985. The statute is convoluted, proving difficult to understand by applicants examined on its content as well as the public.

Recommendation 5: Statute should be significantly redrafted for clarity, organization, and accuracy and include the substantive provisions recommended throughout this evaluation as well as repeal any obsolete provisions.

The number of licensed and certified professionals has increased significantly since the board was last reorganized in 1996. An increase in board membership would relieve workload pressures among current board members and make it easier for the board to reach quorum. Current membership does not accurately reflect the number of professionals credentialed in each field, provide continuity in professional representation, or afford adequate representation in disciplinary matters before the board. Further, the board has been hampered by vacancies.

Recommendation 6: Statute should be amended to:

- **increase the size of the board to 11 members to include 4 professional counselors, 3 alcohol and drug counselors, 2 marriage and family therapists, and 2 consumer members. This configuration would more accurately reflect the number and type of licensees and certificate holders regulated by the board, with consideration afforded to the need for institutional memory in licensing and disciplinary matters and sufficient**

membership in each of the fields regulated;

- **repeal the professional distinctions made in statute among the professional counselor members as unnecessary and too limiting; and**
- **eliminate the position of alcohol and drug advisor to the board as unnecessary in light of the addition of alcohol and drug counselor members to the board.**

Recommendation 7: Statute should be amended to require the vote of just one of the board members representing the same profession as the individual before the board when considering disciplinary actions.

Recommendation 8: The board, in conjunction with the Department of Health and Mental Hygiene, should work with the Governor's Office to ensure that nominations for board vacancies are considered within a reasonable time frame that minimizes disruption to board activity.

Complaints received by the board have become increasingly complex, requiring a disproportionate amount of time to resolve. The board has begun referring cases to the Office of Administrative Hearings but has not developed standard criteria for referral. Other hearing options should be available for those cases in which the board chooses to retain jurisdiction.

Recommendation 9: The board should develop clear standards for the types of cases to be referred to the Office of Administrative Hearings.

Recommendation 10: Statute should be amended to authorize the board to allow a subcommittee of the board to hear disciplinary cases on behalf of the full board, with hearings scheduled on days separate from regular board meetings.

A review of individual disciplinary case files revealed that certain information relevant to the case and its disposition were not collected systematically. Pertinent information including dates, contact information, and board action should be recorded on a standardized form and then compiled in a way that accurately reflects that information.

Recommendation 11: The board should establish a systematic method for tracking complaints and disciplinary cases that clearly documents each step in the process and a system for maintaining hard copy files. The board should consider including a single tracking form in each file, similar to the form used in licensing files.

Changes to administrative operations have the potential to mitigate the increases in workload that have resulted from the growth in the number of certificate holders and licensees. Improvements in automation and use of staff resources could provide the additional capacity needed to meet the growing demand for services.

Recommendation 12: The board should continue to develop its ability to automate data collection processes to improve recordkeeping and increase access to information for members of the board, staff, and the public.

The board's fund balance exceeds the amount necessary to meet its requirements

and protect against unexpected changes in revenues or expenditures. Given the board's projected level of spending, a reduction in the size of the fund balance is not expected in fiscal 2008. If growth in revenues continues to exceed growth in expenditures, the board should consider reducing fees or providing a one-time rebate if a reasonable fund balance cannot otherwise be achieved.

Recommendation 13: The board should evaluate its revenue structure to determine the levels necessary to reach a reasonable fund balance by the end of fiscal 2011. The results of the review should be reported to the General Assembly in the interim report due October 1, 2010.

The board continues to play an important role in providing access to mental health services in Maryland. The board enforces standards and provides a framework by which the public may clearly identify practitioners who meet the board's professional criteria. For the continued benefit of the public health and the professional advantages regulation provides, the State should maintain its regulation of professional counselors and therapists.

Recommendation 14: Statute should be amended to extend the termination date for the State Board of Professional Counselors and Therapists to July 1, 2019. Additionally, uncodified language should be adopted requiring the board to report to the Senate Education, Health and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2010, on the implementation of the recommendations contained in this report.

Chapter 1. Introduction

The Sunset Review Process

The Maryland Program Evaluation Act, § 8-401 *et seq.* of the State Government Article, provides for a system of periodic legislative review of the regulatory, licensing, and other governmental activities of various units of State government. The Act is informally referred to as the “sunset law” and the associated process as “sunset evaluation” because governmental units subject to the Act are generally scheduled to terminate unless affirmatively reauthorized by the General Assembly. The goal of the sunset evaluation process is to promote accountability in government operations.

The State Board of Professional Counselors and Therapists is one of approximately 70 entities currently subject to evaluation. The board last underwent a full sunset review in 1992. A preliminary evaluation of the board conducted in 2001 recommended that the board be waived from further review at that time, with another preliminary evaluation in five years. The preliminary evaluation in 2006 recommended a full evaluation to assess the need for the board to continue issuing certificates, to evaluate board membership and use of resources, and to provide an opportunity to redraft portions of the authorizing statute. If not reauthorized by the General Assembly, the board will terminate on July 1, 2009.

Research Activities

The Department of Legislative Services (DLS) researched counseling and therapy professions and the regulation of these professions in Maryland and other states to complete this evaluation. Research activities included literature and document reviews, Internet research, telephone and in-person interviews, various site visits, and attendance at meetings.

Literature and Document Review

This evaluation incorporates a review of the Annotated Code of Maryland, Title 17 of the Health Occupations Article and the Code of Maryland Regulations, Title 10, Subtitle 58. Board documents including meeting minutes, annual reports, newsletters, complaints, licensee files, financial records, and other files maintained by the board were also examined. Further information was provided by web sites maintained by professional organizations, credentialing agencies, and regulatory agencies in other states.

Interviews and Site Visits

Interviews were conducted with each of the board members, the board’s administrator and licensing staff, and the Assistant Attorney General for the board. The Associate Director of

the Health Workforce, the health occupations boards' fiscal administrator, and staff to the Secretary of Health and Mental Hygiene were also consulted for the report.

DLS analysts visited the State Board of Professional Counselors and Therapists office several times over the course of the evaluation. Visits were made to observe administrative processes and procedures and to analyze licensing, financial, and complaint data. Staff attended the June board meeting; however, no disciplinary hearings were held during the course of the full evaluation.

Report Organization

This chapter provides a summary of the sunset review process, a list of the activities undertaken to complete the evaluation, and a description of the profession. **Chapter 2** contains analysis of the operations and functions of the board and presents recommendations. Legislation to implement statutory recommendations, including a comprehensive revision of the Maryland Professional Counselors and Therapists Act, is being drafted. The board reviewed a draft of this report and provided the written comments included in **Appendix 1**. Appropriate factual corrections have been made to the document based on the board's comments.

Profile of the Profession

The United States Bureau of Labor Statistics (BLS) characterizes the practice of counseling as assisting people with personal, family, educational, mental health, and career decisions and problems. Within this broad definition, BLS identifies several areas of specialty, including (1) educational, vocational, and school counselors; (2) employment and career counselors; (3) rehabilitation counselors; (4) mental health counselors; (5) substance abuse and behavioral disorder counselors; and (6) marriage and family therapists. According to BLS data, 601,000 counselors were practicing in 2004, with growth in the profession expected to exceed the average rate of growth among other occupations.

Educational, vocational, and rehabilitation counselors are the largest category of counselors and are generally employed in schools and universities. All states require school counselors to hold a state school counselor certification; some require the counselor to also hold a teaching certificate. BLS estimates that 248,000 educational, vocational, and rehabilitation counselors are in practice. Although this is the largest subcategory of counselor, practice is functionally distinct from other categories of counselors and generally does not encompass the clinical experience required of other counselors.

Counselors practicing outside of a school setting are generally regulated by state licensing boards; California is the only state that has not adopted counselor credentialing. Although individual state requirements vary, licensure generally requires a graduate degree in

counseling, two years or 3,000 hours of supervised clinical experience, passage of a state-approved examination, and good moral character. In many states, licensing boards that regulate counselors also regulate other mental health professionals, such as social workers and psychologists.

The Profession in Maryland

The Maryland Professional Counselors and Therapists Act defines counseling as assisting an individual, family, or group to develop an understanding of problems, define goals, make decisions, plan a course of action, and use appropriate resources in personal and professional development.

The Maryland General Assembly established the State Board of Examiners of Professional Counselors in 1985, determining that professional counseling profoundly affects the lives and the health of the people of the State. The authorizing statute established a certification framework for professional counselors, providing “title” protection to those professionals certified by the board.

Since the last full evaluation of the board in 1992, the General Assembly has expanded the purview of the board to include regulation of marriage and family therapists and increased the membership of the board to include a certified marriage and family therapist. The General Assembly similarly established certification of alcohol and drug counselors in 1996, increasing board membership to include a certified professional alcohol and drug counselor and an additional consumer member. These changes increased board membership to nine individuals, the number currently authorized to serve. These and other significant changes to the board since the last evaluation are detailed in **Exhibit 1.1**.

Licensing was established in 1998 for clinical professional counselors, clinical marriage and family therapists, and clinical alcohol and drug counselors, authorizing licensees to apply counseling principles in the diagnosis, prevention, and treatment of emotional and mental conditions of individuals or groups. Certification was not eliminated, but board membership was limited to licensed professionals; an exception exists for certified professional alcohol and drug counselors, who remain eligible to serve.

Exhibit 1.1
Significant Legislative Changes Since the 1992 Sunset Evaluation

| <u>Year</u> | <u>Chapter</u> | <u>Change</u> |
|-------------|----------------|---|
| 1993 | 58 | Extended the termination date of the board to July 1, 2004. |
| 1994 | 721 | Established certification of marriage and family therapists; expanded board membership to include a certified marriage and family therapist. |
| 1996 | 576/577 | Established certification of alcohol and drug counselors; expanded board membership to include a certified professional alcohol and drug counselor and a second consumer member. |
| 1997 | 461 | Created an advisor to the board, appointed from membership of certified associate or supervised alcohol and drug counselors. |
| 1998 | 131/132 | Established licensing of clinical professional counselors, clinical marriage and family therapists, and clinical alcohol and drug counselors. |
| 1999 | 437 | Altered board membership and prohibited the board from taking disciplinary action without input from the board member licensed in the field of the counselor under investigation. |
| 2000 | 358 | Changed the name of the board to the State Board of Professional Counselors and Therapists. |
| 2001 | 355 | Authorized individuals to practice alcohol and drug counseling without certification while fulfilling the requirements for supervised experience. |
| 2002 | 209 | Extended the termination date of the board to July 1, 2009. |
| | 367 | Established categories of licensure that allow graduates to practice while fulfilling the requirements for supervised experience. |
| 2003 | 133 | Established reciprocal licensure for marriage and family therapists licensed or certified in another state. |
| 2004 | 511 | Authorized the board to impose civil penalties, prohibited a stay of a board order pending judicial review, allowed the board to make appeals, and authorized injunctive action against unlicensed practitioners. |
| 2006 | 364 | Established reciprocal licensure and certification for professional counselors and alcohol and drug counselors licensed or certified in another state. |

Source: Laws of Maryland

The board was renamed the State Board of Professional Counselors and Therapists in 2000. In 2003, the General Assembly established reciprocal licensing for marriage and family therapists. Reciprocal certification and licensure for professional counselors and alcohol and drug counselors followed in 2006.

Board Is Administratively Located within the Department of Health and Mental Hygiene

The board is one of 18 health occupations regulatory agencies operating within the Department of Health and Mental Hygiene (DHMH). The Board of Professional Counselors and Therapists is special funded, supporting all board expenses through fees generated. Fees provide for one office administrator, two licensure coordinators, and one contractual office secretary position, as well as administrative expenses.

Although largely autonomous, certain administrative functions are shared among the majority of the health occupations boards. The cost of these functions, such as fiscal services and information technology, are allocated to the boards based on usage. The department also assesses the board for indirect costs incurred in providing access to counsel, personnel services, office space, and other overhead expenses.

Chapter 2. Findings and Recommendations

Board Has Been Challenged with Sharp Increases in the Number of Regulated Professionals

According to the statistics of the board, the number of professionals regulated has more than doubled since 2000, the first year of significant licensing activity by the board. A comparison of totals in 2000 and 2007, detailed in **Exhibit 2.1**, reveals that the number of certificate holders has increased in the area of alcohol and drug counseling, while certification in other areas has decreased significantly. Over the same period, licensure has increased in each category. Although the Department of Legislative Services (DLS) is unable to independently verify the 2000 data, these totals suggest the magnitude of recent change has been significant.

Exhibit 2.1 Number of Professionals Regulated by the Board of Professional Counselors and Therapists

| | <u>2000</u> | <u>2007</u> |
|--|---------------------|---------------------|
| <u>Professional Counselors</u> | | |
| Certified (CPC) | 262 | 98 |
| Licensed Graduate (LGPC) | - | 315 |
| Licensed Clinical (LCPC) | 1,153 | 1,930 |
| <i>Subtotal</i> | <i>1,415</i> | <i>2,343</i> |
| <u>Alcohol and Drug Counselors</u> | | |
| Certified Supervised Counselor (CSC-AD) | 220 | 836 |
| Certified Associate Counselor (CAC-AD) | 268 | 755 |
| Certified Professional Counselor (CPC-AD) | 3 | 9 |
| Licensed Graduate (LGADC) | - | 2 |
| Licensed Clinical (LCADC) | 137 | 385 |
| <i>Subtotal</i> | <i>628</i> | <i>1,987</i> |
| <u>Marriage and Family Therapists</u> | | |
| Certified (CPC-MFT) | 20 | 2 |
| Licensed Graduate (LGMFT) | - | 36 |
| Licensed Clinical (LCMFT) | 136 | 160 |
| <i>Subtotal</i> | <i>156</i> | <i>198</i> |
| Total | 2,199 | 4,528 |

Source: Department of Health and Mental Hygiene

The total number of individuals regulated by the board has continued to increase, but annual changes in license and certification activity have been difficult to track. One challenge has been a largely manual system for processing applications and tracking licensees and certificate holders. The board began automating certain processes in the summer of 2007, providing access to more accurate and timely data.

Currently the board is unable to accurately project the magnitude of future growth, particularly among different categories of professionals. A review of all applicant files indicates that many professionals are inactive or do not renew, and numbers provided by staff indicate that nearly one-third of all files are not currently active. Predicting growth and assessing trends of certified alcohol and drug counselors is especially difficult, given the mobility among these practitioners. They have a relatively high rate of turnover in the lower tiers of certification.

Inconsistent recordkeeping has complicated efforts to assess trends in the number of individuals regulated by the board. Numbers previously provided by the board do not align from year to year, and the format for reporting data in the board's annual reports has been inconsistent. This lack of continuity complicates efforts to project certification and licensing trends and, in turn, forecast revenues and expenditures in future years.

Recommendation 1: The board should implement a standardized system for collecting and reporting licensing and certification data. This system should be used to report data in a consistent format in the board's annual reports.

Regulatory Structure Is Unnecessarily Complex

Since 1994, several significant changes have been enacted that have altered the board's regulatory authority and composition. The addition of new professional categories and adoption of licensure have increased the size and scope of the board's purview. These changes have resulted in a regulatory structure that is unnecessarily complex and provisions of law that are functionally obsolete.

Certification is an area of statute that has limited continued applicability. Prior to the adoption of licensure, certification was the only means for regulation by the board. The certification process provides title protection for those regulated, meaning that only those professional counselors and therapists who meet the board's requirements are authorized to use the title of Certified Professional Counselor. It does not prohibit individuals from practicing professional counseling or therapy if the individual does not claim to be certified.

In 1998, licensure was adopted for those practicing *clinical* professional counseling, *clinical* alcohol and drug counseling, and *clinical* marriage and family therapy. Those meeting the professional requirements are authorized to diagnose and treat mental and emotional disorders and to engage in psychotherapy. Unlike certification, licensure provisions prohibit the practice of clinical counseling by individuals who are not licensed by the board. An exception

exists for those practicing under the licensed graduate designation adopted in 2002. A licensed graduate counselor or therapist may practice clinical counseling without a license for a limited time while under the supervision of a licensed professional counselor or therapist approved by the board.

With certification and licensure, the board currently issues 11 different titles. The educational and other requirements for each title are detailed in **Exhibit 2.2**. While licensed professionals are authorized to provide services that certified professionals are not, the difference is not likely to be readily apparent to a consumer.

Licensure affords substantive professional benefits over certification. Licensure authorizes professionals to provide clinical counseling as part of their scope of practice. Licensure also protects against unauthorized practice, whereas certification only protects against unauthorized use of the title. Furthermore, licensure entitles a professional counselor or therapist to reimbursement from health care providers. Given these benefits and the potential confusion created among consumers resulting from multiple professional designations, certification has limited future utility.

Certification of Professional Counselors Is No Longer Needed

Certification of professional counselors has become nearly obsolete since the introduction of licensure in 1998. This trend is one of professional self-selection: individuals now entering and those already practicing in the field of professional counseling are overwhelmingly choosing licensure over certification. Board staff reports that a new initial application for certification has not been filed in more than five years. Fewer than 100 of the more than 2,300 professional counselors regulated by the board have chosen to be certified.

Notably, the education requirements for licensed and certified professional counselors are substantively similar. Both licensure and certification require at least 60 graduate credit hours in counselor training, the same type of graduate degree, and the same number of years and number of hours of supervised experience in counseling. The distinguishing factor is that the credits for licensure must be obtained in graduate clinical courses. This difference places a minimal additional burden on new entrants to the field because individuals are aware of the more stringent requirements before pursuing their degree, while previously certified practitioners have the added obligation of finding the time and money to update their education and experience hours.

Exhibit 2.2 Qualification for Certification or Licensure

| <u>Title</u> | <u>Education</u> | <u>Experience</u> | <u>Exam</u> |
|--|--|--|--|
| Certified Professional Counselor (CPC) | Master's degree and 60 credit hours in counselor training Doctoral degree and 90 credit hours in counselor training | 3 years supervised experience 2 years supervised experience | National Counselors Examination |
| Licensed Graduate Professional Counselor (LGPC) | Meet educational requirements for certification as CPC Minimum 60 credit hours of graduate clinical counseling | None | National Counselors Examination |
| Licensed Clinical Professional Counselor (LCPC) | Meet educational requirements for certification as CPC Minimum 60 credit hours of graduate clinical counseling | Meet experience requirements for CPC; 2 years supervised clinical experience | National Counselors Examination |
| Certified Supervised Counselor – Alcohol and Drug (CSC-AD) | Associate's degree in counseling field Minimum 15 credit hours in alcohol and drug training | 2 years supervised experience | International Certification and Reciprocity Consortium |
| Certified Associate Counselor – Alcohol and Drug (CAC-AD) | Bachelor's degree in counseling field Minimum 20 credit hours in alcohol and drug training | 3 years supervised experience | International Certification and Reciprocity Consortium |
| Certified Professional Counselor – Alcohol and Drug (CPC-AD) | Master's or doctoral degree in counseling field Minimum 25 credit hours in alcohol and drug training | 3 years supervised experience | Examination for Masters Addiction Counselors |
| Licensed Graduate Alcohol and Drug Counselor (LGADC) | Meet educational requirements for certification as CPC-AD Minimum 60 credit hours of graduate clinical counseling | None | Examination for Masters Addiction Counselors |

| <u>Title</u> | <u>Education</u> | <u>Experience</u> | <u>Exam</u> |
|--|--|--|--|
| Licensed Clinical Alcohol and Drug Counselor (LCADC) | Meet educational requirements for certification as CPC-AD Minimum 60 credit hours of graduate clinical counseling | Meet experience requirements for CPC-AD; 2 years supervised clinical experience | Examination for Masters Addiction Counselors |
| Certified Professional Counselor – Marriage and Family Therapist (CPC-MFT) | Master’s degree and 60 credit hours in counselor training Doctoral degree and 90 credit hours in counselor training | 2 years supervised experience | Examination in Marital and Family Therapy |
| Licensed Graduate Marriage and Family Therapist (LGMFT) | Meet educational requirements for certification as CPC-MFT Minimum 60 credit hours of graduate clinical counseling | None | Examination in Marital and Family Therapy |
| Licensed Clinical Marriage and Family Therapist (LCMFT) | Meet educational requirements for certification as CPC-MFT Minimum 60 credit hours of graduate clinical counseling | Meet experience requirements for CPC-MFT; 2 years supervised clinical experience | Examination in Marital and Family Therapy |

Source: Laws of Maryland

Discussions with board members and staff indicate that certification is of limited use to the majority of practitioners, with the exception of those employed as school guidance counselors. Unlike clinically trained professional counselors, school guidance counselors generally do not diagnose or treat psychological problems and do not require a license to practice. Moreover, guidance counselors are required to fulfill the separate certification requirements established by the Maryland State Department of Education, which does not require certification by the board as a condition of employment. Nonetheless, some school guidance counselors also elect to be certified as professional counselors by the board. In deference to the time and monetary needs of the certified professional counselors with jobs that did not require clinical counseling qualifications, the board has retained certification.

In light of current licensing trends and the other conditions discussed above, certification for professional counselors has few practical applications. Certification has the potential to confuse consumers seeking counseling services, has limited use to professionals, and creates an unnecessary level of bureaucracy at the board. Language authorizing those currently certified as professional counselors to maintain their certification would minimize potential negative effects on these practitioners.

Recommendation 2: Statute should be amended to repeal prospective certification of professional counselors while authorizing currently certified professional counselors to renew certification indefinitely and to continue practicing nonclinical professional counseling.

Certification of Marriage and Family Therapists Is Nearly Obsolete

Marriage and family therapy is a specialized course of study offered by a limited number of academic institutions in the State. The academic programs available align with the academic requirements for clinical marriage and family therapy prescribed by the Board of Professional Counselors and Therapists. This convergence of professional and academic programs, combined with the professional benefits of licensure, has nearly eliminated demand for certification of marriage and family therapists. The board currently certifies only two marriage and family therapists and has not received an initial application for certification in at least five years, according to board staff. Eliminating certification of these professionals would streamline administrative operations with minimal impact on consumers or the profession. Again, in deference to the time and monetary burdens that would be required of currently certified marriage and family therapists to become licensed, statute should be amended to allow these therapists to continue practicing nonclinical therapy and indefinitely renew their certification.

Recommendation 3: Statute should be amended to repeal prospective certification of marriage and family therapists while authorizing currently certified marriage and family therapists to renew certification indefinitely and to continue practicing nonclinical marriage and family therapy.

Certification of Alcohol and Drug Counselors Remains Relevant but Could Be Simplified

Certified alcohol and drug counselors assist individuals and groups in developing an understanding of substance abuse problems by helping to define goals, make decisions, and plan a course of action for recovery. Licensed clinical alcohol and drug counselors are additionally authorized to diagnose and treat psychological disorders. Unlike the other types of counselors regulated by the board, the majority of alcohol and drug counselors have chosen to be certified rather than licensed.

Certification of alcohol and drug counselors is tiered, with the level of certification determined by an applicant's level of education and amount of supervised experience. As currently structured, the three-tier system of certification places a burden on applicants and staff alike because there is a separate application for each tier of certification. Thus, board staff must roughly determine an applicant's level of education and experience in order to provide the appropriate application. This process contributes to a high volume of calls for the board's licensure coordinator for alcohol and drug counselors. The process also complicates efforts to more fully develop the board's online application process, as applicants often require assistance in determining what level of certification corresponds to their academic credentials. A single application for alcohol and drug certification could serve as one component for streamlining the process for applicants and staff.

The board may further consider collapsing one or more certification tiers to clarify and expedite the credentialing process. State law does not differentiate areas of practice among the three levels of certificate holders, though employers use the different designations in hiring and compensation decisions. The tiered certification system does not appear to benefit the public as any distinctions in practice are determined by individual treatment programs. Although the professional distinctions may be useful to these programs in making personnel decisions, the benefit to the public is less clear.

There are 1,600 alcohol and drug counselors certified by the board. Fewer than 10 of these counselors have attained master's level certified professional counselor status, suggesting that at least one category of certification could be collapsed. If the board membership is expanded to include two additional alcohol and drug counselors, as recommended later in this report, their professional opinions would be useful in determining whether the tiered certification structure continues to contribute to the goal of protecting the public and maintaining standards of practice for the field.

Recommendation 4: The board should review the certification structure for alcohol and drug counselors to determine whether the current three-tiered certification structure is of continued benefit to the profession and the public. The results of this review, including any proposed alternatives, should be included in the interim report due to the General Assembly by October 1, 2010.

Statute Reflects Piecemeal Expansion of Board's Regulatory Authority

The board was established by Chapter 734 of 1985 to certify professional counselors. Regulatory authority was expanded to include certification of marriage and family therapists in 1994, alcohol and drug counselors in 1996, and licensure as an option for all types of counselors in 1998. With each addition, the Maryland Professional Counselors and Therapists Act has become more convoluted and less accessible to the public as well as the practitioners who are examined on its content. Each applicant is given a copy of the Act and the regulations governing professional counselors and therapists to prepare for this examination. Individuals who have taken the exam have expressed concerns to board staff that the statute is complex, confusing, and difficult to navigate. An independent reading of the Act for purposes of this report confirms that view. Redrafting of the statute could improve understanding of professional guidelines among applicants. The board supports redrafting the statute to make requirements clearer to the board, the public, and those professionals regulated by the board.

Recommendation 5: Statute should be significantly redrafted for clarity, organization, and accuracy and include the substantive provisions recommended throughout this evaluation as well as repeal any obsolete provisions.

Current Board Representation Is Outdated

The current membership configuration of the board has impeded the board's ability to fulfill its responsibilities and adapt to changes as its regulatory authority has grown. The statutory composition of the nine-member board is detailed in **Exhibit 2.3**. This configuration was adopted in 1996 when the board's regulatory authority was expanded to include alcohol and drug counselors and modified slightly in 1999. At the time, it more reasonably approximated the number and profession of individuals regulated by the board, with distinctions made among different fields of professional counseling, including public practice, private practice, and academia.

Exhibit 2.3
Statutorily Required Composition of the
Board of Professional Counselors and Therapists

- 1 Licensed clinical professional counselor engaged in professional counselor education
- 1 Licensed clinical professional counselor employed in the private sector
- 1 Licensed clinical professional counselor employed in the public sector
- 2 Licensed clinical professional counselors at large

- 1 Licensed clinical marriage and family therapist

- 1 Certified professional counselor – alcohol and drug; or
Licensed clinical alcohol and drug counselor

- 2 Consumer members

Source: Laws of Maryland

Membership Does Not Reflect Growth in Alcohol and Drug Counseling

The number of credentialed professionals has grown considerably and unequally with the addition of new professions and categories of licensure. The number of alcohol and drug counselors in particular has grown substantially since 2000. Since that time, the combined total of certified and licensed alcohol and drug counselors has increased more than 200 percent to include nearly 2,000 professionals. The rate of growth outpaces growth in the number of professional counselors and marriage and family therapists. As a result, licensed and certified alcohol and drug counselors are underrepresented by a single representative. **Exhibit 2.4** reveals that these counselors comprise 44 percent of practitioners credentialed by the board.

Exhibit 2.4
**Comparison of Practitioner Representation on the Board
to Practitioners Credentialed by the Board**

| | <u>Representation on Board</u> | | |
|--------------------------------|--------------------------------|-------------------------------|--|
| | <u>Total Membership</u> | <u>Practitioners Only</u> | <u>Practitioners Credentialed by Board</u> |
| Professional Counselors | 56% | 71% | 52% |
| Marriage and Family Therapists | 11% | 14% | 4% |
| Alcohol and Drug Counselors | 11% | 14% | 44% |
| Consumers | 22% | — | — |

Source: Department of Legislative Services

The rate of growth has significantly increased the workload of the board, especially in the essential area of credentialing. Each application for licensure and certification must be thoroughly reviewed to determine whether it meets prescribed course and experiential requirements. Typically, an application is reviewed by a board member who is licensed in the area for which the individual is applying. This practice places a disproportionate burden on the single alcohol and drug counselor member. Since the resignation of the board's alcohol and drug counselor member in April 2007, the board's alcohol and drug counselor advisor (appointed under § 17-202 of the Health Occupations Article) has been reviewing all alcohol and drug counseling applications. As the responsibilities of the advisor are not statutorily defined, it is unclear whether this practice is allowable under current law.

Configuration Impedes Board's Ability to Fulfill Responsibilities

Another problem related to board composition is the board's difficulty in attaining a quorum to conduct business. Section 17-205 of the Health Occupations Article defines a quorum as a "majority of the full authorized membership of the Board." As the board is composed of nine members, at least five members must be present to conduct business. Significantly, the board only has seven members from which to draw its quorum due to the resignation of the alcohol and drug member in April 2007 and the lack of a second consumer member for five years (since 2002). These member deficits often limit the board's ability to conduct business when absences occur due to schedule conflicts, illness, or other issues.

The most critical problem related to the membership configuration is the board's inability to take action in disciplinary cases against alcohol and drug licensees or certificate holders

without the vote of the alcohol and drug counselor member, as required under § 17-205(c) of the Health Occupations Article. The majority of disciplinary cases heard by the board are matters involving alcohol and drug counselors. With the resignation of the board's alcohol and drug counselor member, the board cannot act on any of these cases until a member is appointed to fill the vacancy. These positions often take several months or longer to fill, as nominations must be approved by the Governor's appointment office.

Although there have been very few complaints made against licensed marriage and family therapists, the same scenario would apply if the board were to lack the marriage and family therapist member. This statutory requirement, combined with the board's current configuration, has crippled the board's ability to act on many complaints in a timely and efficient manner.

Recommendation 6: Statute should be amended to:

- **increase the size of the board to 11 members to include 4 professional counselors, 3 alcohol and drug counselors, 2 marriage and family therapists, and 2 consumer members. This configuration would more accurately reflect the number and type of licensees and certificate holders regulated by the board, with consideration afforded to the need for institutional memory in licensing and disciplinary matters and sufficient membership in each of the fields regulated;**
- **repeal the professional distinctions made in statute among the professional counselor members as unnecessary and too limiting; and**
- **eliminate the position of alcohol and drug advisor to the board as unnecessary in light of the addition of alcohol and drug counselor members to the board.**

Recommendation 7: Statute should be amended to require the vote of just one of the board members representing the same profession as the individual before the board when considering disciplinary actions.

Recommendation 8: The board, in conjunction with the Department of Health and Mental Hygiene (DHMH), should work with the Governor's Office to ensure that nominations for board vacancies are considered within a reasonable time frame that minimizes disruption to board activity.

Increased Complaint Volume May Necessitate Changes to Board Processes

The board uses its disciplinary authority to enforce professional standards relating to counseling and therapy practices. The board's role in this area is part of its mission to protect consumers. Successfully fulfilling responsibilities in this area requires timely and thorough complaint investigation, the prompt holding of disciplinary hearings, and efficient recordkeeping.

As shown in **Exhibit 2.5**, the board has seen an increase in the total number of complaints in the last five years, though there has been a leveling off in recent years. The initial increase in all complaints may be attributed to two factors: the change to licensed professionals subject to more stringent professional standards and the rapid increase in the number of licensed and certified alcohol and drug counselors. When compared to other boards, however, the board's total complaint activity is small and should be manageable. Yet the board is struggling to process efficiently the increased number of complex complaints it receives.

Exhibit 2.5
Complaint History
Fiscal 2003-2007

| | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
|--|-------------|-------------|-------------|-------------|-------------|
| Number of Complaints Received | 14 | 21 | 22 | 26 | 21 |
| <u>Board Action</u> | | | | | |
| Dismissed – Complaint Withdrawn | 1 | 1 | | | |
| Dismissed – No Authority | 1 | 4 | 5 | 4 | 1 |
| Dismissed – Other Reasons | 4 | 6 | 3 | 7 | 6 |
| Sent Letter – Advisory/Admonishment | 2 | 6 | 8 | 3 | 3 |
| Referred to Rehabilitation Committee | | 1 | | 3 | |
| Surrendered License or Certificate | 1 | | | | |
| Referred to Attorney General/Consent Order | 1 | 3 | 1 | 4 | 3 |
| Referred to Criminal Division | 2 | | 4 | 1 | 1 |
| Referred to Office of Health Care Quality | | | 1 | 2 | 1 |
| Pending Court Decision | 1 | | | 2 | |
| Issued Cease and Desist Order | 1 | | | | |
| Under Investigation* | | | | | 6 |

*This category reflects only cases received during fiscal 2007. Although cases received in prior years were not necessarily acted on in the same year, there is no backlog of cases from other years.

Source: Department of Health and Mental Hygiene

Complex Complaints Can Linger

The board is receiving increasingly complex complaints, including insurance fraud and ethical boundaries. The majority of these complaints allege unethical conduct or sexual misconduct by a licensed or certified professional counselor or alcohol and drug counselor. Consequently, the board is holding more full hearings with both parties represented by counsel. Full hearings involve cases requiring each party to prepare and present extensive testimony and evidence. The board is often asked to make rulings on evidence and other motions brought by the parties.

The board shares the services of one investigator to handle all of its complaints. Though the total number of complaints handled by the board is small compared to other boards, the increasing complexity of the cases referred to investigation justifies board consideration of expending additional resources on investigative staff. Insufficient investigations can hinder preparation and outcomes in complex cases.

Complaint resolution is consuming much of the board's time and resources, and individual cases can take a long time to resolve, thus prolonging uncertainty for the practitioner and potentially exposing other consumers to risk. In 2006, the board held 10 board meetings. Five of the 10 meetings were devoted to disciplinary hearings. This left the board only five days to conduct board business related to other core functions including licensure, legislation, and regulations. At least one case took over four months to be completely heard – half the testimony was heard in late spring, and the other half was not heard until early fall due to continuances, extensions, vacations, and scheduling conflicts. It is not unusual for a case to be open for up to one year. For example, review of recent complaints revealed that:

- An allegation of altering credentials was received in July 2006 and referred to the Office of the Attorney General (OAG) in June 2007.
- A case of a man in a financial and sexual relationship with his client was received in July 2006. It was referred to OAG in April 2007, but as of August 2007, he had not yet surrendered his license to the board.
- A sexual harassment complaint was received in April 2006 and referred to OAG in April 2007.

In light of these difficulties, the board has delegated some hearings to the Office of Administrative Hearings (OAH). The board lacks a consensus on standard criteria for cases to be referred. It appears that the board is moving toward referring cases to OAH that have facts easily compared to disciplinary standards.

Nevertheless, the board is likely to continue holding lengthy hearings because the difficult and ambiguous cases would likely be heard by the board itself instead of being referred to OAH. Although relatively few boards have such authority, allowing a subcommittee of the board to hear certain cases on behalf of the full board could increase efficiency by meeting on days not scheduled for regular board meetings and not consuming already compressed board time. However, any such subcommittee should include at least one board member who is licensed (or certified as appropriate) in the same area as the individual subject to disciplinary hearing. The subcommittee would recommend an action to the full board for a final decision.

Recommendation 9: The board should develop clear standards for the types of cases to be referred to the Office of Administrative Hearings.

Recommendation 10: Statute should be amended to authorize the board to allow a subcommittee of the board to hear disciplinary cases on behalf of the full board, with hearings scheduled on days separate from regular board meetings.

Most Straightforward Complaints Are Handled in a Timely Manner but Documentation of All Complaints Should Be Improved

Despite the above circumstances, the board continues to process the majority of complaints in a timely manner and complaints usually reach a final disposition within three to four months of being received. The majority of complaints are dismissed. The board sometimes sends the subject of a complaint a letter of admonishment or a letter of education. Occasionally a professional may surrender a license or certificate.

Review of the board's complaint data indicates that the board's current system for tracking and documenting complaints is insufficient. The board maintains hard copy files for each complaint, and the executive director maintains a spreadsheet that includes limited information: the name of the licensee or certificate holder, the date the complaint was received, the date the case was referred for investigation, and disposition of the complaint. Although each case is assigned a case number, these case numbers are not used to maintain confidentiality. Instead, cases are referenced by the name of the licensee on documents and in executive session minutes.

Review of a sample of hard copy complaint files shows that they are incomplete. Many files contained multiple copies of some materials (*i.e.*, investigative reports, written complaints) and were missing other related documents (*i.e.*, correspondence, board voting information, disposition letters). There is no method for recording pertinent details about a case as it moves through the process, including a case's assigned number, board liaison information, dates on which board votes are taken, dates on which hearings are scheduled or held, evidence received or ruled on, or the names and contact information of party representatives including attorneys and witnesses. In the majority of files, there was no way to determine the time frame in which a complaint was handled or even the final disposition of a case. Maintaining complete hard copy files is necessary because any documents contained within the file may be evidence in a future court proceeding. Complete recordkeeping may protect the board and the legal integrity of its decisions.

Recommendation 11: The board should establish a systematic method for tracking complaints and disciplinary cases that clearly documents each step in the process and a system for maintaining hard copy files. The board should consider including a single tracking form in each file, similar to the form used in licensing files.

Other Administrative Processes Could Be Improved to Accommodate Increased Workload

The growth in the number of professional counseling and therapy practitioners regulated by the board has markedly increased the workload for board members and staff. The most significant contributor to workload is application processing. Each application is reviewed by a staff member to ensure that all required elements have been completed. The application is then reviewed by a board member in the appropriate field to determine whether all course and other requirements have been met. The process is largely manual – coordinated by two full-time staff members who answer applicant questions, mail applications, and conduct a preliminary review of the applications. This system is cumbersome and more appropriately suited for a smaller volume of initial and renewal applications.

As discussed earlier, the growth in certified and licensed professionals has also increased the number of disciplinary actions before the board. If current trends continue, the board will not have the personnel and other resources available to meet the growing demand in both credentialing and disciplinary actions. By making changes to administrative operations, the board may be able to alleviate some of the current strain on board members and staff. Possible improvements include:

- ***Automating processes:*** One of the complications in increasing online access to application materials is the quantity and length of applications available. Each credentialing category has a separate application, with many applicants requiring the assistance of a staff member to determine the appropriate level of credentialing. Streamlining the application process could reduce the number of applications, allowing for greater online access. Online availability of these forms has the potential to reduce postage costs and reduce call volume at the board's office.
- ***Maximizing staff resources:*** Board members and staff report that many applications are received with incomplete information, requiring multiple reviews. The board could consider charging for subsequent reviews of an applicant's file to discourage applicants from submitting incomplete applications, reduce unnecessary administrative processing, and compel users to pay the full cost for their use of board resources.

Changes in automation and use of staff could provide the additional capacity needed to keep pace with the growth in the profession. Improving the efficiency in these administrative processes has the potential to reduce workload in certain areas, allowing the board to increase function with current resources.

Notably, the board has begun to improve online capabilities. It has upgraded its web site to include a more user-friendly interface, more links to downloadable forms, and information about the board and requirements for licensure and certification for potential applicants. The adoption of an online license and certificate verification system in 2007 is one indicator that the

board is exploring ways to improve access to information while reducing the administrative requirements of staff.

Recommendation 12: The board should continue to develop its ability to automate data collection processes to improve recordkeeping and increase access to information for members of the board, staff, and the public.

Board’s Revenues Have Outpaced Expenditures in Recent Years

Funds to cover the expenses of the board are entirely generated by the fees collected by the board; a schedule of selected fees is listed in **Exhibit 2.6**. For example, applicants for certification or licensure must submit a \$75 application fee in addition to a \$100 certification and licensure fee. The board also charges \$25 for an optional preapplication credentials evaluation for a review of an applicant’s transcript to determine whether all course requirements for a certain credential have been met. Fees are standardized, with all applicants subject to the same fees regardless of category or level of credentialing. An exception exists only in the fee for renewals, which is \$150 for certificate holders and \$200 for licensees.

Exhibit 2.6 Selected Fees and Charges

| <u>Type of Fee</u> | <u>Amount</u> |
|--|----------------------|
| Application processing | \$75 |
| Initial application review | 75 |
| Preapplication credentials evaluation | 25 |
| Certification and licensure | 100 |
| Certification renewal | 150 |
| Licensure renewal | 200 |
| Late renewal surcharge | 50 |
| Inactive status annual | 25 |
| Reinstatement | 100 |
| Drug and alcohol certification upgrade | 25 |

Source: Code of Maryland Regulations 10.58.02.02

Special funding of the health occupations boards, including the Board of Professional Counselors and Therapists, was established by Chapter 272 of 1992 in order to improve the boards’ performance and make them self-supporting. Special funding has enabled these boards to carry over revenues in excess of those needed to cover expenses from one year to the next.

The ability to carry a balance insulates the boards from unexpected changes in expenditures or revenue collection, allowing the boards to maintain fees at the same level over several years.

The board has maintained a healthy fund balance since incurring a negative balance in fiscal 2000. Revenues in that year were significantly less than in the years prior and following, causing the board to carry a negative balance forward to fiscal 2001. Since raising fees in 2000, the board's fund balance has grown significantly, as detailed in **Exhibit 2.7**. The board's balance of \$405,657 at the end of fiscal 2007 exceeds reasonable expectations for meeting expenses; the balance is equivalent to 89 percent of the board's fiscal 2007 operating budget. The size of the board's fund balance reflects several factors:

- **Biennial renewal:** Certificates and licenses are valid for up to two years. Upon expiration the certificate holder or licensee may renew for an additional two-year term. Due to this biennial schedule, the amount of revenue collected by the board fluctuates based on the renewal cycle. The majority of professionals regulated by the board renew in odd-numbered years, increasing the amount of revenue in those years. Thus, a portion of funds collected in odd-numbered years must be reserved to support operations in the following year. This pattern is reflected in the year-end fund balance for fiscal 2007.
- **Growth in profession:** The growth in the counseling profession, as well as the availability of graduate licensing, has increased the number of people regulated by the board, increasing the amount of revenue collected in each biennial cycle. Fees have remained constant since 2000, but there has been an average 9 percent annual growth in revenues since the new fees were implemented. The board's inability to project growth limits its ability to modify its fee structure in response to the high fund balance.
- **Automation of administrative processes:** The board had been considering contracting for an automated system to improve the application and renewal processes. However, recent improvements to the health occupations boards' online capabilities have made this a lower priority. A portion of the fund balance was reserved for that possibility.

In addition to these variables, the board has experienced turnover among its staff, reducing expenditures below projected levels.

Exhibit 2.7
Fiscal History of the Board of Professional Counselors and Therapists
Fiscal 2004-2008

| | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> | <u>2008 est.</u> |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|
| Beginning Balance | \$194,424 | \$134,116 | \$278,491 | \$260,737 | \$405,657 |
| Revenues Collected | <u>322,877</u> | <u>536,986</u> | <u>374,545</u> | <u>600,329</u> | <u>463,200</u> |
| Total Revenues Available | \$517,301 | \$671,102 | \$653,036 | \$861,066 | \$868,857 |
| Total Costs | \$383,185 | \$392,611 | \$392,299 | \$455,409 | \$449,135 |
| Direct Costs | 320,724 | 325,897 | 314,460 | 371,411 | 365,083 |
| Indirect Costs | 62,461 | 66,714 | 77,839 | 83,998 | 84,052 |
| Ending Balance | \$134,116 | \$278,491 | \$260,737 | \$405,657 | \$419,722 |
| Percent of Total Expenditures | 35% | 71% | 66% | 89% | 93% |

Source: Governor's Budget; Department of Health and Mental Hygiene

According to benchmarks established by DHMH for boards of this size, the Board of Professional Counselors and Therapists should carry a balance up to 25 percent of annual expenditures. The board's fund balance exceeds the amount necessary to meet its requirements and protect against unexpected changes in revenues or expenditures. Given the board's projected level of spending, a reduction in the size of the fund balance is not expected in fiscal 2008. If the board's regulatory activity remains stable, revenues will continue to outpace expenditures, further increasing the amount of the board's fund balance.

The board should evaluate the potential effect of variables including staffing requirements and turnover levels, future certification and licensing trends, and the effect of automation on workload when considering future resource needs. The growth in the profession has allowed the board to maintain fees at a constant level; the size of the board's fund balance suggests that fees will not need to be raised for several more years. Board members interviewed for this evaluation have indicated that maintaining fees at an affordable level for certificate holders and licensees is a continued priority. If growth in revenues continues to exceed growth in expenditures, the board should consider reducing fees or providing a one-time rebate if a reasonable fund balance cannot otherwise be achieved.

Recommendation 13: The board should evaluate its revenue structure to determine the levels necessary to reach a reasonable fund balance by the end of fiscal 2011. The results of

the review should be reported to the General Assembly in the interim report due October 1, 2010.

Regulation of Professional Counselors and Therapists Should Be Continued

At the time of the board's last full sunset review in 1992, when the board only certified professional counselors, it was determined that continued regulation of the counseling profession was beneficial to the health, safety, and welfare of the public. The then-Department of Fiscal Services noted in its review that the board executed its functions efficiently and recommended extension of the board's termination date by 10 years to July 1, 2004. In addition, the report included three recommendations to improve the functions of the board, all of which were initially addressed by Chapter 58 of 1993:

- Development of a State exam to test applicants on their knowledge of professional ethics and State regulation of the counseling and therapy profession.
- Limiting grandfathering periods during which a then-practicing counselor could apply to the board for certification while being waived from having to meet the new education and experience requirements, a process known as grandfathering. Similar requirements were placed on marriage and family therapists and alcohol and drug counselors in subsequent years. These grandfathering provisions are now functionally obsolete.
- Restricting continuing education credits acquired through home study; Chapter 58 prohibited the board from authorizing any home study courses toward the completion of continuing education requirements.

The 2001 preliminary evaluation found that the board continued to fulfill all of its mandated duties even with the significant expansions of its regulatory authority and recommended that the General Assembly extend the board's termination date to July 1, 2009. DLS recommended a five-year extension, rather than the customary 10-year extension, to allow the board to assess the continued need for professional certification in light of the trend toward licensure and provide a reasonable amount of time to implement any policy changes resulting from its review. However, the board has not proposed any substantive changes to its regulatory authority.

The board has generally kept pace with the legislative changes that have affected the practice of counseling and therapy through the timely promulgation of appropriate regulations. However, the board has been unable to fulfill the requirement to promulgate joint regulations (with the Board of Examiners of Psychologists) governing minimum training and continuing education requirements for professional counselors who use tests to appraise clients. Despite a statutory deadline of October 1, 2000, and many meetings between the two boards, the joint

development of these regulations remains at an impasse. As of the date of this report, there remains no agreement, and the boards are continuing negotiations.

The board continues to play an important role in providing access to mental health services in Maryland. The board enforces standards for regulated professionals and provides a framework by which the public may clearly identify practitioners who have met the board's professional criteria. For the continued benefit of the public health and the professional advantages regulation provides, the State should maintain its regulation of professional counselors and therapists.

Recommendation 14: Statute should be amended to extend the termination date for the State Board of Professional Counselors and Therapists to July 1, 2019. Additionally, uncodified language should be adopted requiring the board to report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2010, on the implementation of the recommendations contained in this report.

**Appendix 1. Written Comments of the
State Board of Professional Counselors and Therapists**



DHMH Board of Professional Counselors and Therapists

Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

October 30, 2007

Warren G. Deschenaux, Director
Department of Legislative Services
Legislative Services Building
90 State Circle
Annapolis, Maryland 21401-1991

Dear Mr. Deschenaux:

Enclosed is the response of the State Board of Professional Counselors and Therapists to the exposure draft report, "Sunset Review: Evaluation of the State Board of Professional Counselors and Therapists", dated October 16, 2007.

The Board agrees with the majority of the recommendations and thanks Stacy Goodman and Suzanne Potts, Legislative Analysts, for their thorough analysis and professional interactions with Board staff.

We appreciate the opportunity to provide the Board's view on the recommendations contained in this draft.

Sincerely,

Aileen F. Taylor
Executive Director

Enclosure

cc: John M. Colmers, Secretary, DHMH
Mr. Richard A. Proctor
Mr. Karl S. Aro

Responses of the State Board of Professional Counselors and Therapists

Sunset Recommendations – October 16, 2007

Note

- 1) Page 5 of the exposure draft report: Regarding the discussion concerning reciprocal certification or licensure for professional counselors, the Board notes that the General Assembly added reciprocity for LCPCs in 2007 in § 17-3A-03.1 (Supp. 2007)(HB 955).
 - 2) Page 10 – Exhibit 2.2. The experience requirements for Licensed Clinical Professional Counselors (LCPC) is 3 years supervised experience.
- The Board's response to the recommendations follow.

Recommendation 1: The board should implement a standardized system for collecting and reporting licensing and certification data. This system should be used to report data in a consistent format in the board's annual reports.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 2: Statute should be amended to repeal prospective certification of professional counselors while authorizing currently certified professional counselors to renew certification indefinitely and to continue practicing nonclinical professional counseling.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 3: Statute should be amended to repeal prospective certification of marriage and family therapists while authorizing currently certified marriage and family therapists to renew certification indefinitely and to continue practicing nonclinical marriage and family therapy.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 4: The Board should review the certification structure for alcohol and drug counselors to determine whether the current three-tiered certification structure is of continued benefit to the profession and the public. The results of this review, including any proposed alternatives, should be included in the interim report due to the General Assembly by October 1, 2010.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 5: Statute should be significantly redrafted for clarity, organization, and accuracy and include the substantive provisions recommended throughout this evaluation as well as repeal any obsolete provisions.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation. The redrafting should include, but not be limited to, the specific additional provisions identified by the Board including: (1) the practice of the professions as required in the definitions; (2) grounds for discipline; (3) authority to enter premises where the Board suspects that counseling is being practiced by an unlicensed individual, based on a formal complaint; (4) reexamination and fees; (5) licensure educational requirements that refer back to certification.

Recommendation 6: Statute should be amended to:

- **increase the size of the board to 11 members to include 4 professional counselors, 3 alcohol and drug counselors, 2 marriage and family therapists, and 2 consumer members. This configuration would more accurately reflect the number and type of licensees and certificate holders regulated by the board, with consideration afforded to the need for institutional memory in licensing and discipline and sufficient membership in each of the fields regulated;**
- **repeal the professional distinctions made in statute among the professional counselor members as unnecessary and too limiting; and**
- **eliminate the position of alcohol and drug advisor to the board as unnecessary in light of the addition of alcohol and drug members to the board.**

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 7: Statute should be amended to require the vote of just one of the board members representing the same profession as the individual before the board when considering disciplinary actions.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 8: The board, in conjunction with the Department of Health and Mental Hygiene (DHMH), should work with the Governor's Office to ensure that nominations for board vacancies are considered within a reasonable time frame that minimized disruption to board activity.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 9: The board should develop clear standards for the types of cases to be referred to the Office of Administrative Hearings.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 10: Statute should be amended to authorize the board to allow a subcommittee of the board to hear disciplinary cases on behalf of the full board, with hearing scheduled on days separate from regular board meetings.

RESPONSE: The Board of Professional Counselors and Therapists agrees with the first part of this recommendation. Because a subcommittee of the Board could also convene to hear certain types of short disciplinary case after a regular board meeting, the Board would like the discretion to be able to do so. This authority would in no way constrain the full board from hearing a particular case, in addition to using a subcommittee and referring to the OAH.

Recommendation 11: The board should establish a systematic method for tracking complaints and disciplinary cases that clearly document each step in the process and a system for maintaining hard copy files. The board should consider including a single tracking form in each file, similar to the form used in licensing files.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 12: The board should continue to develop its ability to automate data collection processes to improve recordkeeping and increase access to information for members of the board, staff, and the public.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 13: the board should evaluate its revenue structure to determine the levels necessary to reach a reasonable fund balance by the end of fiscal year 2011. The results of the review should be reported to the General Assembly in the interim report due October 1, 2010.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.

Recommendation 14: Statute should be amended to extend the termination date for the State Board of Professional Counselors and Therapists until July 1, 2019. Additionally, uncodified language should be adopted requiring the board to report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2010, on the implementation Of the recommendations contained in this report.

RESPONSE: The Board of Professional Counselors and Therapists agrees with this recommendation.