

Preliminary Evaluation of the State Board of Professional Counselors and Therapists

Recommendation: Full Evaluation

Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as sunset review. Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. The agencies subject to review are usually subject to termination unless legislative action is taken to reauthorize them. The State Board of Professional Counselors and Therapists is one of about 70 entities currently subject to evaluation. The board last underwent a full evaluation as part of sunset review during 1992. The board also underwent a preliminary evaluation in 2001. Following preliminary evaluation, the Legislative Policy Committee decides whether to waive an agency from further evaluation. If waived, legislation to reauthorize the agency typically must be enacted. Otherwise, a full evaluation is undertaken the following year.

In conducting this preliminary evaluation, DLS staff reviewed annual reports for the past five years, minutes for board meetings, the Professional Counselors and Therapists Act and related regulations, the prior full and preliminary sunset reviews of the board, the operating budget of the board, and the regulatory structure in other states. In addition, DLS staff conducted interviews with board members and the executive director and attended a board meeting/disciplinary hearing.

The State Board of Professional Counselors and Therapists reviewed a draft of this preliminary evaluation and concurred in the findings and recommendations. However, the board did not provide written comments.

State Board of Professional Counselors and Therapists

Professional counseling has seen an increased level of regulation nationwide in recent years. In 1992, professional counseling was regulated in 35 states, and in 2001, at the time of the last preliminary evaluation, professional counseling was regulated in 45 states and the District of Columbia. Just five years later, in 2006, all states except Nevada have some type of counselor credentialing law to regulate the use of titles related to the counseling profession or regulate the practice of professional counseling. Most states now regulate professional counseling, mental health counseling, marriage and family therapy, and substance abuse or addiction counseling.

According to the board, Maryland is among the most highly regulated states for professional counselors. Review of the regulatory structure in other states supports this view.

Counseling involves assisting an individual, family, or group to develop an understanding of intrapersonal and interpersonal problems, define goals, make decisions, and plan a course of action. Under the Maryland Professional Counselors and Therapists Act, a person may be either *licensed* to practice clinical professional counseling, marriage and family therapy, or alcohol and drug counseling, or *certified* to practice professional counseling, marriage and family therapy, or alcohol and drug counseling. Additionally, a person may be certified as a supervised alcohol and drug counselor or an associate alcohol and drug counselor.

This licensing and certification structure was developed over several years. In 1994 and 1996, marriage and family therapists and alcohol and drug counselors, respectively, were brought under the purview of the board when the General Assembly established certification requirements for these professionals. Until then, the board had only provided for certification of professional counselors. In 1998, requirements for the licensing of certain counselors (those who wish to practice “clinical” counseling) were established through Chapters 131 and 132.

The board is part of the Department of Health and Mental Hygiene (DHMH). Statutory authority for the board is found in Title 17 of the Health Occupations Article. With the changes related to certification and licensing, the board grew to its current size of nine members to allow for representation of the different professionals regulated. Five members must be licensed as professional counselors, one member must be a licensed clinical marriage and family therapist, one member must be a certified professional alcohol and drug counselor or a licensed clinical alcohol and drug counselor, and two members must be consumers. The Governor must also appoint a certified alcohol and drug counselor as an advisor to the board; however, the advisor lacks any official standing to establish a quorum or vote on matters before the board. Board members serve staggered four-year terms. New board members undergo training and are assigned a mentor on the board. The board meets once every month, except in August.

The board is authorized to adopt rules and regulations to carry out the provisions of the Maryland Professional Counselors and Therapists Act. Additionally, the board is required to maintain a registry of all counselors or therapists currently licensed or certified by the board, submit an annual report to the Governor and the Secretary of Health and Mental Hygiene, adopt a code of ethics, establish continuing education requirements, investigate complaints and conduct hearings, and create committees as appropriate to advise the board on special issues.

Statutory Changes to the Board

Since the preliminary evaluation in 2001, few statutory changes have affected board operations. As shown in **Exhibit 1**, the most significant legislative changes occurred through Chapter 511 of 2004. Chapter 511 authorized the board to impose civil penalties instead of or in addition to the denial, suspension, or revocation of a license or certificate, or as a stand-alone penalty for a licensee’s or certificate holder’s disciplinary violation. Chapter 511 also substantively impacted the hearing and appeals procedures of the board by prohibiting a stay of a

board order pending judicial review, allowed the board to make appeals, and authorized injunctive action for the unauthorized practice of counseling or therapy.

Exhibit 1
Major Legislative Changes since the 2001 Preliminary Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	209	Extended the termination date of the board from July 1, 2004, to July 1, 2009.
	367	Authorized individuals to practice graduate counseling and therapy without a license or certificate under the supervision of a licensed counselor or therapist for a limited period of time.
	440	Authorized the Governor to transfer money from special funds of specified boards to the general fund.
2003	133	Established reciprocity for individuals licensed or certified to practice marriage and family therapy in another state if the state has equivalent or better licensing or certification requirements.
	203	Required verification through the Comptroller's Office that all taxes and unemployment insurance contributions of an individual are paid before issuing a renewal license.
2004	430	Authorized the Governor to transfer money from special funds of specified boards to the general fund.
	511	Authorized the board to impose a civil penalty on licensees or certificate holders for disciplinary violations, prohibited a stay of a board order pending judicial review, allowed the board to make appeals, and authorized injunctive action for the unauthorized practice of counseling or therapy governed by the statute by individuals not licensed or certified to practice counseling or therapy.

Source: Laws of Maryland

Board Has Promulgated Most Necessary Regulations

The board has kept pace with the legislative changes that have affected the practice of counseling and therapy through the timely promulgation of appropriate regulations. It has also worked to keep its regulations current. For example, regulations governing reciprocity requirements for marriage and family therapists licensed or certified in another state went into effect in June 2005. Regulations authorizing the board to impose civil fines for disciplinary violations were also adopted in 2005. Another important set of regulations, published in November 2005, authorize an individual to practice clinical alcohol and drug counseling and alcohol and drug counseling without a license or certificate as a trainee under the supervision of

an approved alcohol and drug supervisor for a limited period of time while the trainee is fulfilling experiential or educational requirements.

The board continues to work with the State Board of Examiners of Psychologists to develop required joint regulations governing the minimum training requirements 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 and DLS staff, the joint development of these regulations remains at an impasse. An Attorney General's Opinion dated September 3, 2004, concluded that the passage of the deadline enacted in statute did not affect the mandatory duty of both boards to continue to develop and adopt the required regulations. The boards continue to negotiate the development of these regulations.

Licensure Activity Has Increased while Certification Activity Has Decreased

In addition to meeting other requirements, all applicants for licensure or certification pay a fee. **Exhibit 2** shows the fees currently in effect. These fees were last amended in 2000. Licenses and certificates are renewed every two years. Individuals who renew their license or certificate must complete the continuing education requirements established by the board.

Exhibit 2

Schedule of Fees: State Board of Professional Counselors and Therapists

<u>Type of Fee</u>	<u>Amount</u>
Application Processing	\$75
Initial Application Review	\$75
Initial Certification and Licensure	\$100
Certification Renewal	\$150
Licensure Renewal	\$200
Late Renewal (in addition to licensure or certification renewal fee)	\$25
Inactive Status (annual)	\$25
Reinstatement	\$100
Maintenance of Letters of Intent	\$15
Drug and Alcohol Certification Upgrade	\$25

Source: COMAR 10.58.02.02

In fiscal 2006, more than 4,400 counselors or therapists were licensed or certified in Maryland. The total number of active licensees and certificate holders has steadily increased

from almost 2,200 in fiscal 2000. As **Exhibit 3** shows, however, licensure has become the predominant option, while certification activity has slowed considerably.

Exhibit 3
Counselors Who Applied for or Renewed Their License or Certification*
Calendar 2005

	<u>Number</u>
<u>Professional Counselors</u>	
Licensed Clinical Professional Counselors	1,343
Certified Professional Counselors	62
<u>Marriage and Family Therapists</u>	
Licensed Clinical Marriage and Family Therapists	110
Certified Marriage and Family Therapists	0
<u>Alcohol and Drug Counselors</u>	
Licensed Clinical Alcohol and Drug Counselors	1,133
Certified Alcohol and Drug Counselors (all classifications)	853
Alcohol and Drug Counselor Trainees	195
Total	3,696

*Reflects licensing and certification activity during the year, not the total number of active licensees or certificate holders. Due to biennial renewal, the number of active licensees and certificate holders is greater.

Source: State Board of Professional Counselors and Therapists, *2005 Annual Report*

The continued use of both licensure and certification may be unnecessarily complex, as it results in eight different professional titles under the Act where there might be just three. The requirements for licensure include a master's or doctoral degree, two or three years and a minimum number of hours of supervised experience in the appropriate field, and 60 hours of graduate course work in particular clinical areas appropriate to the type of license requested. Additionally, all candidates for licensure who do not meet waiver requirements must take an examination prescribed by the board. The examination includes a section that tests an applicant's knowledge of the Maryland Professional Counselors and Therapists Act. Qualifications for professional certification are the same as those for licensure but without the required 60 hours of graduate clinical course work.

Licensure and certification vary in two other significant ways. First, a licensed professional is authorized to practice clinical professional counseling, clinical alcohol and drug counseling, or clinical marriage and family therapy. The addition of the term "clinical" means that a licensed professional may diagnose and treat mental and emotional disorders and engage in psychotherapy. A professional who is only certified may not practice clinical counseling.

Second, the certification provisions in statute provide only title protection. Thus, only individuals who meet the requirements of the board may use certain titles indicating that they are certified professionals. However, there is no prohibition on practicing professional counseling without certification. In contrast, the licensure provisions specifically provide that a person may not practice clinical counseling unless licensed by the board. There is an exception to this prohibition for individuals who are practicing under supervision while qualifying for a license.

Due to the substantive advantages of holding a license versus a certificate, many certified professionals have switched to licensure. The number of individuals certified versus licensed has steadily decreased since the licensing provisions were established in 1998. This trend suggests a gradual phasing out of professional certification.

The 2001 preliminary evaluation also noted this trend and recommended another review in five years, giving the board time to consider whether the continued use of professional certification was necessary and, as appropriate, to act on its decision. While the board has determined that the eventual discontinuation of professional certification may be appropriate, it has been hesitant to take this step because a subset of professional counselors, primarily school counselors, would be required to meet the additional clinical requirements of licensure. These counselors have told the board that school counselors do not need to use clinical skills, *i.e.*, diagnosing and treating mental and emotional disorders, in their practice. They find the additional requirements financially and educationally burdensome and unnecessary.

Alcohol and Drug Counselors Are Underrepresented on Board

The number of individuals either licensed or certified as alcohol and drug counselors is greater than the number of individuals licensed or certified as professional counselors. However, the current configuration of the board includes five professional counselors and only one alcohol and drug counselor to represent the interests of the many alcohol and drug counselor licensees and certificate holders. The alcohol and drug counselor member was added in 1996 when the board's regulatory authority was expanded to include alcohol and drug counselors. Although the Governor is also required to appoint an alcohol and drug counselor as an advisor to the board and the board members agree that the advisor is helpful to the board, this individual is not a member of the board. Consequently, the advisor cannot vote on matters before the board and cannot be counted as a member toward quorum requirements.

Maryland Professional Counselors and Therapists Act Confusing to Individuals Examined on Content

As noted above, each individual applying for licensure or certification is required to take an examination that includes knowledge of Title 17 of the Health Occupations Article, also known as the Maryland Professional Counselors and Therapists Act. Each individual who qualifies to take the examination is given a copy of the Act and the regulations governing professional counselors and therapists to prepare for this part of the examination. The board has expressed concern, having heard similar concerns from individuals taking the examination, that

the Act as currently drafted is complex and confusing. The board would like to redraft portions of the statute to make requirements clearer to those regulated by, and examined on, the contents.

Complaint Activity Is Increasing but Is Still Relatively Light

As shown in **Exhibit 4**, the board has seen an increase in the number of complaints over the last six years and now handles more than 20 complaints a year. While still a relatively small number of complaints given the number of licensees and certificate holders, the complaint volume is much greater than it was just a few years earlier. For example, the board only received one complaint in both fiscal 1996 and 1998. The increase may in part be attributed to the increased number of licensed professionals. Complaints often allege unethical conduct or sexual misconduct by a licensed or certified professional counselor or alcohol and drug counselor.

The board generally receives a written complaint about a professional counselor or therapist from a client or colleague of the counselor or therapist. The board then discusses the complaint and determines what information needs to be gathered. After the investigation and presentation of evidence about the case to the board, the board determines if there are any actionable offenses and, if so, the complaint is forwarded to the Office of the Attorney General.

As required by statute, the board may not take action against a marriage and family therapist unless the board discusses the proposed action with the board member who is a licensed clinical marriage and family therapist and that board member votes, either in the affirmative or in the negative, on the proposed action. Similarly, the board may not take action against an alcohol and drug counselor unless the board discusses the proposed action with the board member who is a licensed alcohol and drug counselor and that board member votes, either in the affirmative or in the negative, on the proposed action.

The board processes the majority of complaints in a timely fashion and complaints usually reach a final disposition within three to four months of being received. About one-half of all 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.

An increasing number of complaints have led to full hearings before the board with both parties represented by counsel. These 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. As a result, complaint resolution is taking up an increasing amount of the board's time and resources, and each case is taking longer to resolve. The board is discussing delegating these complex hearings to the Office of Administrative Hearings.

Exhibit 4
Complaint History
Fiscal 2002-2006

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Number of Complaints Received	15	14	21	22	33
Board Action*					
Dismissed – Complaint Withdrawn		1	1		
Dismissed – No Authority/Jurisdiction**		1	4	5	5
Dismissed – Other Reasons	6	4	6	3	10
Sent Letter – Advisory/Education/Admonishment	2	2	6	8	
Referred to Rehabilitation Committee			1		2
Rescinded/Surrendered License or Certificate	3	1			
Revoked License or Certificate		1	3	1	2
Charged/Referred to Attorney General/Consent Order	2	2		4	2
Referred to Criminal Division	2			1	1
Referred to Office of Health Care Quality		1			2
On Hold Pending Court Decision		1			2
Issued Cease and Desist Order					1
No Disposition/Still Under Investigation					6

*Not necessarily within the same fiscal year.

**May include referral to the appropriate authority.

Source: State Board of Professional Counselors and Therapists

Board Appears to Operate with Sufficient Resources

Along with a full-time executive director, the board has three other full-time staff to handle the licensing function and secretarial/reception duties. The board also utilizes the part-time services of an investigator and a staff attorney. The board has experienced difficulty in keeping a receptionist for an extended period of time and has experienced some disruption as a result. The board reports that its current staffing complement is sufficient to meet its responsibilities but is burning out administrative staff quickly with the required level of maintenance for its paper-based system for processing applications and renewals.

The paper-based processing system is expensive, cumbersome, time consuming, and requires extensive maintenance by board staff. For several years the board has been discussing upgrading the application and renewal system by designing and purchasing a computer-based software program. In 2006, the board has determined that it has enough money to make the upgrade and is in the process of going forward with this change.

The board is special funded, and generally the board's fee revenue has produced sufficient income to support its operations on a biennial basis – as shown in **Exhibit 5**. (In fiscal 2000, the board borrowed about \$21,000 from the Board of Pharmacy.) According to statute, these fees should reflect the operating costs of the board. Due to concerns about excessive fund balances in the late 1990s, the health occupations boards developed target fund balance levels based on a percentage of their annual budget. Boards with smaller budgets need larger fund balances because they have less ability to absorb unexpected expenses. At the time the target fund balances were developed, the board's target was 30 percent; however, due to its increased budget, the target would now be 25 percent.

Exhibit 5
Fiscal History of the State Board of Professional Counselors and Therapists
Fiscal 2002-2007

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Beginning Fund Balance	\$95,732	\$73,593	\$194,424	\$134,116	\$278,491	\$223,606
Annual Revenues	408,873	499,892	322,877	536,986	371,143	460,000
Total Revenues Available	504,605	573,485	517,301	671,102	649,634	683,606
Total Expenditures	431,012	379,061	383,185	392,611	426,028	492,985
Direct Costs	402,340	328,004	320,724	325,897	348,189	n/a
Indirect Costs	28,672	51,057	62,461	66,714	77,839	n/a
Annual Surplus/(Deficit)	(22,139)	120,831	(60,308)	144,375	(54,885)	(32,985)
Biennial Surplus/(Deficit)		98,692		84,067		(87,870)
Ending Fund Balance	\$73,593	\$194,424	\$134,116	\$278,491	\$223,606	\$190,621
Target Fund Balance	\$107,753	\$94,765	\$95,796	\$98,153	\$106,507	\$123,246

Notes: Fiscal 2007 revenues and expenditures are projected. Expenditures for fiscal 2002 and 2003 include \$89,329 and \$12,500, respectively, in transfers to the general fund as authorized through budget reconciliation legislation. The target fund balance represents 25 percent of expenditures, based on the size of the board's budget.

Source: Maryland Governor's Budget Books, Fiscal 2004-2007; Department of Health and Mental Hygiene

With an increasing number of licensees, the board's revenues have increased significantly in recent years and its fund balance has grown accordingly. At the end of fiscal 2006, the board's fund balance was double its target balance. However, the board is beginning to spend down that balance as expenditures exceeded revenues in fiscal 2006 and are projected to do so again in fiscal 2007.

Recommendations

The continued regulation of professional counselors and therapists is necessary to protect the public from harm. Although the board appears to be functioning well and is meeting all of its mandated duties, **the Department of Legislative Services recommends a full evaluation of the State Board of Professional Counselors and Therapists to address the following issues:**

- ***Need for Both Licenses and Certificates:*** Although a small minority of professional counselors regulated by the board has legitimate concerns about the educational and experiential requirements of licensure, this alone does not present a compelling reason to continue issuing both licenses and certificates to the majority of professional counselors and therapists. There are substantive advantages to licensure versus certification for the protection of the public and the professionals being regulated. These advantages are borne out by the gradual phasing out of certification by the individuals being regulated choosing licensure over certification. The continued use of both licenses and certificates makes the board's regulation of professional counseling and therapy unnecessarily complex and expensive. A full evaluation could help identify a method by which the needs of the majority of professional counselors and therapists could be balanced against those school counselors with legitimate concerns about licensing. A full evaluation could also assess existing waiver provisions.
- ***Reconfiguring Membership of the Board to Appropriately Reflect Representation of Licensees:*** The board's current configuration is five professional counselors, one alcohol and drug counselor, one marriage and family therapist, and two consumers. As previously discussed, the number of individuals either licensed or certified as alcohol and drug counselors is now greater than the number of individuals licensed or certified as professional counselors. The board's membership should better reflect the individuals regulated by it. A full evaluation could assess representation on the board and related quorum and disciplinary voting requirements, taking into account any changes recommended in the regulatory structure.
- ***Redrafting Significant Parts of the Maryland Professional Counselors and Therapists Act for Clarity:*** Each individual licensed or certified by the board is required to take an examination that includes knowledge of the content of Title 17 of the Health Occupations Article (Maryland Professional Counselors and Therapists Act). An individual preparing for the exam is given a copy of the statute and the regulations governing professional counselors and therapists. A significant concern of the board, as it has heard from many applicants, is the complexity and confusing nature of the statute as it is currently written.

A full evaluation could explore ways in which DLS, in consultation with the board, could improve the clarity of statute.

- ***Sufficiency of Resources:*** The board has experienced considerable growth in recent years, both in its membership and its regulatory purview, with little growth in staffing. On a biennial basis, the board's expenditures are now outpacing its revenues. In the short term, the board has sufficient funds – due to its high fund balance – to cover its budget. However, it is not clear whether the board has sufficient resources to meet its responsibilities in the longer term. A full evaluation could assess trends in licensure and certification activity and the related revenue streams as well as complaint activity and determine whether the board can sustain the higher level of activity with the resources available to it.

