



STATE OF NEBRASKA

ROBERT KERREY • GOVERNOR • GREGG F. WRIGHT, M.D., M.Ed. • DIRECTOR

MEMORANDUM

TO: Senator Donald Wesely

FROM: Gregg F. Wright, M.D., M.Ed. *Gregg Wright*
Director of Health

SUBJECT: Recommendations Regarding Credentialing of Professional Counselors

DATE: January 3, 1986

In preparing my recommendations on the professional counselors proposal, I have attempted to conform to both the letter and the spirit of LB 407. My principal concern has been to try to assure that there has been a reasonably uniform interpretation and application of the philosophy, criteria, and procedures required by the act.

The language of LB 407 is quite specific in identifying the three criteria that must be satisfied by any group seeking professional credentialing. Briefly stated, these are that there must be clear evidence of harm to the public resulting from the lack of regulation; that the public must need and benefit from an assurance of minimum standards of competence; and that no method other than regulation by the state provides for cost-effective protection of the public.

However, each of the technical review committees has found it necessary to determine for itself how to apply these criteria. For example, each has had to decide what type and amount of documentation of actual or potential harm to the public is sufficient to warrant exercise of the regulatory powers of the state. If the committee found the three criteria to be met, it had to determine which level of regulation was most appropriate. Most importantly, each committee has had to determine whether the proposed regulation will, in fact, protect the public from the harm that has been documented.

I have attempted to identify each of these elements in the committee report, and I have scrutinized the application, and the evidence and testimony submitted by all parties. In making my recommendations, therefore, I have reviewed the same material that was used by the technical committee. But I have also been guided by the intent of LB 407 to provide a uniform application of a broad philosophy of regulation to all applications. I take this philosophy as one that views state regulation as a means of last resort. This philosophy

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finds the necessity for regulation to rest almost exclusively in the need to protect the health, safety, and welfare of the public from the prospect of widespread and significant harm. It seeks to balance this necessity against the very real economic and social costs of regulation, such as restriction of competition, potential increases in the cost of health care, limitation of the availability and accessibility of services, and increases in the size and cost of state government.

The application of this broad philosophy may at times lead to a somewhat different interpretation of the evidence submitted from that arrived at by the technical committee. I hope that any such different interpretations will be viewed, not as sharp differences of opinion between the Director of Health and the technical committee, but rather as the natural shift of emphasis and priority that occurs when one moves toward a more global perspective.

In this light, I submit the following comments and recommendations regarding the proposal for credentialing of the professional counselors.

Recommendations

In their proposal the professional counselors sought licensure for all persons meeting the requirements set forth in their bill. The technical review committee concluded that there was justification for the regulation of professional counselors, but felt that certification was a more appropriate level than licensure. The committee also made a number of subsidiary recommendations regarding specific sections of the proposed bill.

I agree that certification of professional counselors would be a partial solution to the problems demonstrated by the applicant. However, because this solution does not address the most important aspects of the problem, I would recommend that legislation regulating professional counselors not be enacted at this time. If such certification were coupled with registration of those that choose to counsel without being certified, an appropriate protection could be offered. I would urge the professional counselors to collaborate with the Department of Health and other parties to design a proposal that will more adequately protect Nebraskans from the actions of unqualified or deceptive practitioners.

Discussion:

In reviewing the materials and testimony submitted for this review, I was most impressed with the case made by the proponents that the unregulated practice of counseling is expanding rapidly, that the

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field is populated by some persons who engage in fraud, deception, or the offering of poor quality services to the public, and that there is harm being done to the citizens of Nebraska. I strongly concur with this finding of the technical review committee.

I also agree with the committee's judgment that licensure is not an appropriate level of regulation for professional counselors. Licensure presupposes a clearly defined scope of practice that may be uniquely ascribed to the licensees, and which may not be engaged in by anyone other than a licensee except as defined by the statute. As with social work, the practice of professional counseling does not appear to be sufficiently well-defined to justify such an exclusionary degree of regulation. If professional counselors were licensed as proposed, the nebulous scope of practice that would have to be enforced, coupled with the numerous exemptions to the act that would be necessary, would lead to an extremely unwieldy process of enforcement. Constant interpretations would have to be made as to whether this practitioner or that method of treatment did or did not constitute an infringement of the practice act. Besides being time consuming, this exercise would rapidly exhaust scarce resources. In addition, the standards set for licensure, while not unreasonable, are sufficiently high that most persons offering advice for money would not qualify, and are not intended to be able to qualify, for licensure. The Legislature would then have to determine whether to exempt these people from the bill (which would largely eliminate regulation of the group where the greatest and most frequent abuses occur) or to deprive them of their livelihood.

Certification, on the other hand, seems designed for this type of profession. Persons not choosing to become certified would not be deprived of their ability to practice, but the consumer would be able to select counselors with the knowledge that state certification carried with it a standard set of minimum qualifications that might not be met by non-certified practitioners. Courts and other referring bodies could easily specify that the services of a certified professional counselor be used. I would emphasize that state certification, while voluntary, is essentially a form of title protection that provides strict regulation of those choosing to become certified. Despite the similarity of terms, it should not be confused with private certification by associations or the type of certification granted by the state as a part of the process of educational credentialing. State certification as defined in LB 407 differs from licensure only in that it is not mandatory.

For all its advantages, however, I find certification to have one shortcoming that renders it unsatisfactory for application to professional counselors as proposed. If unqualified persons are providing counseling services that can be harmful to the public, and if certification by the state is a voluntary process, then it seems

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clear that the unqualified, the unscrupulous, and the fraudulent would simply choose not to become certified and carry on with their harmful practices unaffected by the enactment of the legislation. Certification alone will not, therefore, address the problems identified without some means of regulating providers who are not certified.

One possible system that might prove effective would be to establish a joint certification and registration system. Professional counselors, those meeting the highest standards of preparation, would be certified along the lines of the technical review committee's recommendation. But a system of mandatory registration would also be implemented for anyone offering advice or counseling to the public for remuneration. Such registration would have no prerequisites, but as a condition for maintaining registration, a counselor would be required to provide a disclosure statement to prospective clients. This statement would contain such information as the counselor's qualifications, the nature and estimated cost of the proposed treatment, a list of acts constituting unprofessional conduct and a description of procedures for filing a complaint. This information would enable the consumer to make an informed choice regarding the treatment he or she would be purchasing. Loss of registration, and therefore of the ability to practice, would be a penalty for failure to issue or adhere to the disclosure statement.

Other mechanisms are doubtless possible. I would support a proposal that contained provisions sufficient to protect the public from deception and fraud perpetrated under the guise of helpful assistance. But I cannot endorse a proposal, such as this one by the professional counselors, that protects the professional status of a few practitioners without any significant improvement in the standards of practice of the entire field.

For your information I enclose the technical review of the professional counselors' proposal conducted by the Department of Health, as well as the Department's proposal for uniformity in credentialing. I also enclose a copy of a bill proposed in the state of Washington that contains provisions I feel might be helpful in designing future legislation. I stand ready to assist the Legislature and the professional counselors in any way necessary to develop a more comprehensive and effective regulatory measure.

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Enclosures

cc: Senator Harry B. Chronister
Senator Timothy J. Hall
Senator Dan Lynch
Senator Richard Peterson
Senator Jacklyn J. Smith
Senator Ron Withem