

**Report of Preliminary Assessment for State Regulation
of
Alcohol and Drug Counselors**

Office of Professional Regulation
November 1, 1999

Report of Preliminary Assessment for State Regulation of Alcohol and Drug Counselors

I. Introduction

Pursuant to 26 V.S.A. § 3105(d) and Part I, Administrative Rules for Procedure for Preliminary Sunrise Review Assessments of the Secretary of State's Office of Professional Regulation, the application for licensure of alcohol and drug counselors was received by the Office on June 15, 1999. A public hearing was noticed for and convened at 9:00 a.m. on July 28, 1999, to take testimony and receive supporting documentation. A deadline of August 11, 1999, was established for submission of any additional written comments or documentation, after which the record in this proceeding was closed.

The purpose of this proceeding was to evaluate and report on the appropriateness of professional regulation of alcohol and drug abuse counselors according to the statutory criteria provided by 26 V.S.A. § 3105(d). That provision requires that:

26 V.S.A. § 3105(a)

(a) A profession or occupation shall be regulated by the state only when:

(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(3) the public cannot be effectively protected by other means.

II. Findings

1. On June 15, 1999, an application for preliminary sunrise assessment was submitted by the Office of Alcohol and Drug Abuse Programs, Vermont Department of Health, through Thomas E. Perras, Director.

2. Alcohol and drug counselors function autonomously in diagnosing and implementing a plan of care for those they serve, many of whom present with co-existing disorders. They are employed in substance abuse treatment programs, medical practices, inpatient programs, psychiatric hospitals, mental health centers, and in independent practice. Alcohol and drug counselors work with individuals, groups, and families to deal with issues that underlie and arise from the substance abuse of the identified patient.

3. Over the last 20 years, a confusing system has evolved to regulate the practice of alcohol and drug counselors. The Vermont Alcohol and Drug Abuse Counselors Association (VADACA) began certifying counselors in 1978. In 1984, as a result of the passage of H.404, the State Office of Alcohol and Drug Abuse Programs began (OADAP) approving counselors based on their being certified by VADACA. In the early 1990's, the certifying functions of VADACA were spun off into a free-standing organization, the Vermont Alcohol and Drug Abuse Counselor Certification Board. In 1996, the certification function was assumed by OADAP in conjunction with the Certification Board. The agreement which allowed this was later found to be invalid. Currently, it is unclear whether counselors are, in fact, legally certified and to what extent OADAP has jurisdiction over counselors who are not employed in State-approved programs. This situation has led to difficulties in enforcement of the counselors' code of ethics and professional conduct.

4. There are currently approximately 300 alcohol and drug counselors practicing in Vermont. Of these, approximately 15 percent practice independently, 67 percent practice in clinics, five percent practice in hospitals, and 13 percent practice in other settings.

5. Currently, formal higher education is not needed to obtain OADAP approval as an alcohol and drug counselor. If a more formal regulatory scheme were enacted, eligibility requirements would include a master's degree or higher in a human services field. Transitional provisions would allow current practitioners who lack formal education credentials to qualify under the regulatory scheme.

6. Implementation of education and training standards for alcohol and drug counselors would improve the ability of the profession to treat pharmacological and psychotherapeutic issues, especially with regard to the new and increasing client population of women and children.

7. Applicant cites as reasons to regulate: (1) cases are becoming more complex, with co-existing mental health and substance abuse problems, (2) the field initially dealt with adult male alcoholics but now deals with women and children as well, (3) development of pharmacological treatments leads to a need for better training of counselors, (4) issues of professional ethics and conduct require an independent adjudicative body.

8. Applicant cites anecdotal evidence of harm caused by an alcohol and drug counselor in a recent, highly publicized case. Applicant admits that abuse, exploitation, and harmful practices by alcohol and drug counselors may cause great harm but are rare.

9. The Office of Professional Regulation has the capability to provide independent investigative, adjudicative and associated administrative services to OADAP on a contractual basis. The Office would provide such services using current case management and investigative staff and by means of an administrative law officer, an independent attorney in private practice who is under contract with the Office for the sole purpose of adjudicating administrative law cases.

10. Having the Office provide such contractual services to OADAP alleviates applicant's main concern in seeking regulation: the need for independent adjudication of ethical and professional conduct issues.

11. OADAP itself can adequately provide other administrative and legal services associated with State certification or licensure and is willing to do so. Under such a regulatory scheme, the Commissioner of the Department of Health would likely regulate alcohol and drug counselors, with input from advisor appointees. This regulatory scheme is similar to that which currently exists for numerous professions and occupations attached to the Office, such as naturopathic physicians, physical therapists, dietitians, psychoanalysts, etc.

12. Because only anecdotal evidence of harm to Vermont clients using the services of alcohol and drug counselors has been demonstrated, this profession should not be regulated at the license level. Regulation at the certification level would be sufficient to protect consumers by making them aware of those practitioners regulated by the State and subject to requirements for initial eligibility and biennial renewal of certification.

III. Conclusions

A. Pursuant to the findings set forth above, it cannot be demonstrated that the unregulated practice of alcohol and drug counseling can clearly harm or endanger the health, safety, or welfare of the public; the potential for the harm is remote or speculative. 26 V.S.A. § 3105(a)(1).

B. However, pursuant to the findings set forth above, the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability of alcohol and drug counselors through standard education and training requirements for certification. 26 V.S.A. § 3105(a)(2).

C. Pursuant to the findings set forth above, the public cannot be effectively protected by other means, because government regulation is required to effectively enforce education and training requirements. 26 V.S.A. § 3105(a)(3).

D. Pursuant to the findings set forth above, it is necessary to regulate the practice of alcohol and drug counseling under the least restrictive method of regulation consistent with the public interest. 26 V.S.A. § 3105(b).

E. Pursuant to the findings set forth above, the consumer may have a substantial interest in relying on the qualifications of the practitioner of alcohol and drug counseling; therefore, regulation should be through a system of certification. 26 V.S.A. § 3105(b)(4).

IV. Recommendations

1. Because of the existing administrative structure already in place in OADAP and to

keep regulatory costs as low as possible, this profession should be regulated by the Commissioner of the Vermont Department of Health, with two practicing alcohol and drug counselors as advisors.

2. The level of regulation should be certification, because consumers have a substantial interest in relying on the qualifications of the practitioner.

3. Education and training requirements for eligibility for certification should be based upon recommendations of the Commissioner. A model exists in H.148, a bill introduced in 1999 that proposes to regulate the practice of alcohol and drug abuse counseling.

4. The Commissioner should contract with the Office of Professional Regulation for provision of independent investigative, adjudicative and associated administrative services on issues of ethical and professional conduct.

Respectfully submitted this 1st day of November, 1999.

Thomas J. Lehner
Director, Office of Professional Regulation