

Final Report of
Findings and Recommendations

By the
Nebraska State Board of Health

on the
Application on the
Mental Health Practitioners Proposal
to the
Director of Health
and the
Nebraska Legislature

September 14, 1992

Recommendations of the Full Board of Health on the Proposal

The members of the full Board of Health met on September 14, 1992 for their bimonthly meeting. At this meeting the Board members formulated their recommendations on the proposal by taking action on the advice provided to them regarding the proposal by the 407 Committee members of the Board (see attached 407 Committee report).

The Board members discussed the following issues: the core curriculum, the nature of the examination, enforcement and administration, grandfathering, access to services vs. professional standards, and the nature of the evidence presented during the review.

Chairperson Dr. Arthur Weaver asked the applicants whether the core curriculum needs to be further defined. Janet Coleman, a representative of the applicant group, responded by stating that the applicants recognize that the curriculum does need further definition, but added that the applicants feel that this should be done in rules and regulations, rather than in statute.

Chairperson Weaver asked the applicants whether there is sufficient commonality among mental health professions to develop a common licensing examination. Ms. Coleman indicated that the applicants believe that there is, and that the applicants intend to develop a content exam as soon as possible. Ms. Coleman added that the 3000-hour clinical program is the element in the proposal that she feels does the most to build commonality among the professions covered by the

proposal.

Dr. Wempe expressed concern about the ability of the state to effectively enforce the provisions of the proposal. He stated that there are so many types of practitioners in the mental health area that defining what they are doing, or even keeping track of them, might be impossible tasks. Dr. Wempe stated that even in his own profession of Veterinary Medicine, whose boundaries are far more clearly-defined than are those of the mental health professions, attempting to enforce the law on abusers has often been complex, difficult, and seldom produces conclusive results.

Chairperson Weaver asked the applicants whether anything could be done about inappropriate care in the area of pastoral counseling. Janet Coleman responded that the applicants' proposal originally called for the regulation of pastoral counseling that is done for remuneration, but did not call for regulation of counseling provided by a minister as part of his/her pastoral duty to members of their congregation. Ms. Coleman added that her group has been informed that this approach might lead to a constitutional challenge if attempts were made to implement it.

Janel Foote stated that one way to make the enforcement of the proposal easier would be to recommend that the proposal cover only those practitioners who provide services for "remuneration" rather than for "compensation." Ms. Foote stated this would make it clearer who is, and is not, covered by the proposal. David Montgomery responded that concern has

been expressed throughout the course of the review about practitioners who would request a "free donation" or a favor in return for services rather than payment per se, and that the only way to cover such situations is to have the proposal regulate mental health services provided for any kind of "compensation."

Chairperson Weaver and Dr. Wempe commented that some technical committee members had not been satisfied with the evidence provided by the applicants in support of their proposal, and that the votes taken by the technical committee members revealed some reluctance to approve the proposal among the members. Margaret Allington, R.P.T., the chairperson of the technical committee, responded by stating that because of their professional backgrounds some of the technical committee members held the proposal to very high standards of proof vis-a-vis the four criteria. Ms. Allington stated that the committee member from the legal profession, who voted against the proposal on the four criteria, later informed her that he liked the proposal, but felt that it failed to satisfy standards of proof to which he is accustomed.

Margaret Allington expressed the opinion that the proposal would provide recourse to persons who have been abused by their therapists. Ms. Allington also stated that the proposal would improve the quality of mental health services available to rural Nebraskans.

Steven Bennett, D.P.M., expressed concern about comments from the 407 Committee that seemed to recommend the

grandfathering of CSMs. Dr. Bennett was concerned that some of these practitioners do not possess a masters degree, and that to grandfather them could lower the standards being proposed by the applicant group. Carl Maltas responded to these concerns by stating that the reason that the 407 Committee wanted CSMs to be included as licensed mental health professionals is that in many rural communities CSMs are the only mental health practitioners available. Mr. Maltas stated that to exclude them from practice would adversely impact access to mental health services in some rural communities.

Barbara Christensen, R.N., stated that there are more than seven-hundred CSMs in Nebraska, and that we need to know how many of them would be adversely effected by the proposal.

Janet Coleman responded to these concerns by acknowledging that there is a need for more data on what percentage of CSMs do not possess a masters' degree, but expressed the opinion that the proportion of CSMs that would be adversely impacted by the proposal is probably not very substantial. Ms. Coleman then added that those CSMs who do not possess a masters' degree could be given a chance to be grandfathered by being offered a one-time opportunity to pass the proposed licensing examination.

Chairperson Weaver then asked if any of the Board members wanted to propose any amendments to the proposal. There were no motions to amend. Chairperson Weaver then asked for a motion on the recommendations of the 407 Committee of the Board regarding the proposal. Dr. Bennett moved that the Board

members approve the recommendations of the 407 Committee on the proposal. Margaret Allington seconded the motion. Voting aye were Allington, Bennett, Christensen, Fitzgerald, Foote, Gilmore, Kellough, Maltas, Tempero, and Weaver. Voting nay was Wempe. Dr. Wempe stated that he could not support the proposal until more evidence is generated. By this action the Board members recommended in favor of the proposal, including the additional recommendations of the 407 Committee (see pages 12 and 13 of this report).

Recommendations of the 407 Committee of the Board of Health on the Mental Health Practitioners' Proposal

The members of the 407 Committee of the Board of Health met on September 3, 1992 at 1:30 p.m. in the Fourth Floor Conference Room of the Bennett Martin Public Library in Lincoln, to formulate their advice to the full Board of Health on the mental health practitioners' proposal.

The 407 Committee members received testimony from Margaret Allington, R.P.T., the chairperson of the technical review committee, pertinent to the issues raised by the technical committee's review on the proposal. Ms. Allington presented a brief overview of the issues that comprised this review. Ms. Allington stated that the technical committee's discussions dealt with the nature and scope of the examination for mental health practitioners, problems associated with generating evidence on harm to the public in the area of mental health services, and the extent to which the proposal provides "recourse" to consumers of mental health services.

The members of the 407 Committee of the Board of health discussed the implications of the proposal for access to mental health services in rural areas of Nebraska, the implications of the proposal for the cost of mental health services, the size and composition of the omnibus Board that would be created by the proposal, the implications of the proposal for third-party payments, the proposed licensing examination for mental health candidates, and certification for Marriage and Family Therapists.

Carl Maltas, the chairperson of the 407 Committee, expressed concern about the potential impact of the proposal on access to services in rural areas of Nebraska. Mr. Maltas stated that the current proposal would license only masters-level practitioners, and that this raises the concern that the proposal might have the effect of restricting access to services in rural areas. Mr. Maltas stated that nursing homes in rural areas utilize the services of bachelors-level mental health practitioners, and that if the proposal were to become law, these practitioners might be excluded from practice. Mr. Maltas stated that there are CSMs who have many years of work experience but who lack a masters degree. Mr. Maltas stated that the applicant group needs to find a way to ensure that such practitioners will not be excluded from practice, and that failing to do so could disrupt the provision of mental health services in some rural areas of the state.

Janet Coleman, a representative of the applicant group, responded to this concern by stating that the number of practitioners in the situation described by Mr. Maltas is not known, but expressed doubt that the number of such practitioners is very significant. Ms. Coleman stated that the best way of addressing such concerns is to ensure that there are sufficient training programs in rural areas to deal with the demand for licensed practitioners. Ms. Coleman added that educational programs tend to respond to demand, and that there are some training programs currently in-place in western Nebraska for mental health practitioners.

Janel Foote, R.P., asked whether the proposal would reduce administrative costs. David Montgomery responded by stating that it could, depending on the size of the Board that is created. Mr. Montgomery added that the proposal would also create an opportunity to eliminate duplicate regulations, which would result in consolidation and simplification. Richard Fitzgerald, D.D.S., expressed concern that the proposed Board of Mental Health Practitioners could become very large and therefore costly to operate, and that the applicants need to develop a method by which to control the size of the Board.

Barbara Christensen, R.N., expressed concern as to whether there is sufficient commonality between the various mental health professions to devise a common licensing examination. Ms. Christensen then asked whether candidates for licensure would be allowed to practice while undergoing their education and training. Ms. Coleman responded that they would be allowed to practice, but only under the supervision of licensed practitioners.

Janel Foote asked what implications the proposal would have for third-party payments. Ms. Coleman responded that the implications of this proposal for third-party payments is not clear at this time, but that in general, third-party payers tend to look more favorably upon licensed practitioners than on those who have certification.

Carl Maltas and Barbara Christensen asked the applicants about the role of certification in the omnibus licensing system that is being proposed. These 407 Committee members wanted to

know whether or not those who possess certification would be required to be licensed in order to practice. The applicants explained that all practitioners covered by the proposal would have to be licensed in order to provide mental health services, and that the purpose of certification under this proposal is to provide identity for the professions covered by the proposal and to inform the public as to the differences between the various professions that comprise the omnibus group.

The 407 Committee members then formulated their advice to the full Board of Health by taking up the four criteria of the credentialing review statute. Timothy Wahl, M.D., moved that the proposal satisfies the first criterion which states, "Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument." Janel Foote seconded the motion. Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.

Dr. Wahl moved that the proposal satisfies the second criterion which states, "Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest." Dr. Fitzgerald seconded the motion. Dr. Wahl stated that there is a need to address problems of access to mental health services in rural areas,

and that his support for the proposal on this criterion was based upon the understanding that the applicants would find a way to include in the omnibus licensing program mental health practitioners who currently do not possess a masters degree. Dr. Wahl and Mr. Maltas stated that these practitioners sometimes represent the only access to mental health services available to persons in remote rural areas of the state. Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.

Janel Foote moved that the proposal satisfies the third criterion which states, "The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state." Mark Kellough, D.C., seconded the motion. Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.

Dr. Fitzgerald moved that the proposal satisfies the fourth criterion which states, "The public cannot be effectively protected by other means in a more cost-effective manner." Dr. Wahl seconded the motion. Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.

By virtue of these four votes, the 407 Committee members advised the full Board of Health to recommend approval of the proposal.

The 407 Committee members then made additional recommendations:

Dr. Fitzgerald moved that the 407 Committee members recommend that a way be found to include CSMs under the omnibus licensing program of the proposal. Barbara Christensen seconded the motion. Some committee members were concerned that the proposal as currently written would exclude CSMs from practice, and that this would diminish access to mental health services for some rural Nebraskans. Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from the voting.

Dr. Fitzgerald moved that the 407 Committee members recommend that care be taken to see that the proposed Board of Mental Health Practitioners stay as small and compact as possible so as to avoid being expensive and unwieldy. Janel Foote seconded the motion. Dr. Fitzgerald expressed concern that a Board which regulates more than one profession might become unduly large and unwieldy unless steps are taken to prevent this from occurring. Voting aye were Christensen, Fitzgerald, Foote, Kellough, and Polzien. There were no nay votes. Carl Maltas and Dr. Wahl abstained from voting.

Janel Foote moved that the 407 Committee members recommend that the profession of Marriage and Family Therapy be certified under the proposed omnibus licensure law. Dr. Wahl seconded the motion. Ms. Foote stated that this motion was intended to clarify the wording of the ancillary recommendation on Marriage and Family Therapy made by the technical review committee

(pages 3, 28, and 31 of the Final Report of the Mental Health Technical Review Committee). Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.

Janel Foote moved that the 407 Committee members recommend that practitioners whose licenses or certificates to provide mental health services are currently revoked not be grandfathered or be allowed to make reapplication for licensure. Dr. Fitzgerald seconded the motion. Ms. Foote stated that this motion was intended to clarify the ancillary recommendation on the subject of grandfathering made by the technical review committee (pages 3, 28, and 31 of the Final Report of the Mental Health Technical Review Committee).

Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.

Dr. Wahl moved that the 407 Committee members endorse the ancillary recommendations on educational and examination requirements, and the recommendations on "remuneration" and "consideration" made by the technical review committee.

Dr. Fitzgerald seconded the motion (pages 3, 28, and 31 of the Final Report of the Mental Health Technical Review Committee).

Voting aye were Christensen, Fitzgerald, Foote, Kellough, Polzien, and Wahl. There were no nay votes. Carl Maltas abstained from voting.