

Report of Final Findings and Recommendations

By The

Technical Committee for the Review of the  
Application for Credentialing by the  
Nebraska Professional Counselors Association

To The

Director of Health and the Nebraska Legislature

December 6, 1985



The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Professional Counselors Credentialing Review Technical Committee are as follows:

Bruce Gilmore, P.E. - Chair, Member of Board of Health (Columbus)

William Bruns, M.D. - psychiatrist, private practice (Omaha)

Clifford Fawl, Ph.D. - Chairman, Department of Psychology, Nebraska Wesleyan University (Lincoln)

William Ford, Ph.D. - Deputy Director, State Department of Public Institutions (Lincoln)

Hal Johnson, E.Ed. - Professor, Department of Counseling and Educational Psychology, Kearney State College (Kearney)

Janice Leuenberger - Instructor, Department of Special Education and Communication Disorders, University of Nebraska-Lincoln (Lincoln)

Clarke Mundhenke, D.Min. - Chaplain, Lincoln General Hospital (Lincoln)



## Summary of Committee Recommendations

The committee determined that the proposal satisfied the three criteria of Section 21 of LB 407, and thereby recommended that professional counselors be approved for credentialing by the state of Nebraska.

The committee recommended that certification be approved by the Legislature as the most appropriate level of credentialing for professional counselors.

The committee recommended that the criteria of Section 16 of LB 579 be adopted as the minimum requirements for certification. The committee recommended that Section 20 of LB 579 be adopted as the basis for standards of professional conduct for professional counselors.

The committee recommended that paragraphs 1 and 3-6 of Section 6 of LB 579 be accepted as the basis for a definition of professional counseling, and that the appraisal activities mentioned in Part 2, Section 6 be further studied by the Legislature.

The committee recommended that Section 17 of LB 579 be considered as the basis for the continuing education requirement for certified professional counselors.

The committee also recommended that Section 19 of LB 579 be considered as the basis of professional ethics for professional counselors.



## Introduction

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407), is a review process advisory to the Legislature which is designed to assess the necessity of state regulation of health professions in order to protect the public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Director of Health. At that time, an appropriate technical committee is formed to review the application and make recommendations after a public hearing is held. The recommendations are to be made on whether the health occupation should be credentialed according to the three criteria contained within Section 21 of LB 407; and if credentialing is necessary, at what level. The relevant materials and recommendations adopted by the technical committee are then sent to the Board of Health (after 1985) and the Director of Health for their review and recommendations. All recommendations are then forwarded to the Legislature.

In order to accommodate the health occupations that submitted credentialing legislation in the 1985 session, priority has been given to them so that they may complete the review process before the 1986 legislative session. This accommodation has resulted in a shortened review process in which the technical committee recommendations are sent directly to the Director of Health, bypassing the Board of Health for 1985.



## Summary of the Proposal

The Nebraska Professional Counselors Association seeks licensure for professional counselors by the State of Nebraska. According to the proposal, no individual could engage in the practice of professional counseling unless he or she is licensed as such by the State. The proposal would not restrict individuals who are duly registered, certified, or licensed by the State to practice counseling while operating within the scope of their professional duties.

The proposal defines professional counseling as the offering or rendering of counseling services that involves the application of counseling procedures and principles to individuals or groups for monetary remuneration or otherwise. The proposal establishes minimum qualifications that must be met before an individual could be licensed as a professional counselor. Upon application to the Department of Health, an individual would have to provide proof that he or she is a citizen of the United States; has received a Master's degree which is primarily counseling in content from a regionally accredited institution or has experience which is substantially the equivalent of a Master's degree in both subject matter and extent of training; has three years of full-time experience in professional counseling acceptable to the board after receipt of the Master's degree, except that one year of experience may be obtained prior to the granting of the Master's degree if the Master's program included an internship component and thirty graduate semester hours beyond the Master's degree may be substituted for one year of required experience if the hours are clearly related to the field of professional counseling. In addition, the applicant must submit letters of recommendation from at least two of his or her immediate supervisors or graduate professors; successfully complete the

professional counseling licensing examination approved by the board; and pay the appropriate licensure fee.

The proposal would create the Board of Examiners in Professional Counseling consisting of five members appointed by the State Board of Health. Four members would be licensed professional counselors, and one member would be a layperson. Members would be appointed for five year terms, with no member serving more than two consecutive full terms. The board would be empowered to adopt a code of ethics, set licensure and renewal fees, and adopt a licensure examination.

Licenses would be issued for a period of two years. A license could be renewed upon payment of a renewal fee and proof that the continuing education requirements set by the board have been completed during the two year period prior to the application for renewal. The proposal does not provide for grandfathering of current practitioners; however, reciprocity is provided for with jurisdictions that license or certify professional counselors if the standards and qualifications are equivalent to those required by the proposal.

Violation of the proposal would result in a Class III misdemeanor.

## Overview of Committee Proceedings

The Professional Counselors Credentialing Review Technical Committee first convened on July 30, 1985, in Lincoln at the State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas touched upon were the charge to the committee, the three criteria for credentialing contained within Section 21 of LB 407, and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on August 21, 1985, in Lincoln at the State Office Building. After study of the proposal and relevant material compiled by the staff and submitted by interested parties between the meetings, the committee formulated a set of questions and issues it felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions could be made.

The committee reconvened on September 18, 1985, in Lincoln at the State Office Building for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their views on the proposal and the questions and issues raised by the committee at their second meeting. Nine people spoke in favor of the proposal with no opposition. Interested parties were given ten days to submit final comments to the committee.

The committee met for the fourth time on November 6, 1985, in Lincoln at the State Office Building. After studying all of the relevant information concerning the proposal, the committee then formulated its recommendations upon the three criteria found in Section 21 of LB 407. These criteria are as follows:

## Criterion 1

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.

### Information Provided by the Applicant Group

The proponents state that anyone can present himself or herself to the public as a counselor. The profession has no legal standing in Nebraska. Consequently, no ethical or professional standards can be enforced upon those who choose to call themselves "counselors." This situation allows untrained, unscrupulous, or unethical persons to hold themselves out to the public as professional counselors. The harm that such persons do manifests itself in physical, emotional, social, psychological, and financial damage to the client. (pp. 18-20 of the Application.)

Bad advice given by unqualified counselors can indirectly cause physical harm to a client. The phenomenon of suicide is a case in point. Whether or not a suicidal person gets the help he needs depends on the qualifications of his counselor. A counselor's advice can make the difference between life and death for the client. The proponents present examples to illustrate this point. One proponent described a situation in which a suicidal college student was advised by a so-called counselor to "go home to her room and get in touch with her feelings." Given the state of mind of the person in question, such advice could have been disastrous. That it wasn't was due to the intervention of a friend who encouraged her to seek emergency treatment at a mental health center. (p. 49 of the Transcript of the Public hearing of the Social Workers' and Professional Counselors' Technical Committee.)

Inappropriate advice from incompetent or unqualified counselors can result in psychological and emotional harm to clients. One example cited by proponents was that of a young woman who was entering into puberty and was experiencing sexual feelings. She sought advice from a certain "spiritual counselor" as to how to cope with these feelings. She was advised that these feelings stemmed from her basic sinful nature, and that these feelings should be repressed so as to ensure that she not fall into sinful activities. Such advice can induce feelings of guilt and self-hate in the mind of the client, something that no professional counselor would do. (p. 12 of the Transcript of the Public Hearing of the Social Workers' and Professional Counselors' Technical Committee.) The proponents cited similar examples of incompetent advice in such areas as spouse abuse and child abuse to support their claim that the current state of practice in counseling is doing harm to the public.

Inappropriate advice can also cause inconvenience and financial loss to clients. Advice that proves to be worthless has not only wasted the client's time but has also cost him a portion of his financial resources. Bad advice increases the length and cost of rehabilitation for the client. (p. 18 of the Application.)

The proponents also argue that the State of Nebraska is itself imposing counseling on the public without any existing regulation or control over the individuals who provide the services. This occurs when a court sentence imposes counseling on a defendant, when a court requires counseling in cases of child abuse or spouse abuse, or when a school imposes counseling for behaviorally-impaired students. (A Position Paper, by Halvin Johnson.) These clients have little or no choice as to the counseling they receive, and yet there is no assurance under current law

that the counselors that are appointed are qualified to perform the tasks in question. The proponents argue that most counselor clients are vulnerable. Most people seek the advice of a counselor only when confronted by a crisis. They are in no frame of mind to check the credentials of those from whom they seek advice.

#### Information from Other Sources

Opponents of the proposal such as the Anti-Licensure Coalition and the Nebraska Nurses Association state that there is no overriding public need for the proposal. They say that there is no evidence which indicates that there is a crisis of confidence in the counseling profession. The public per se is not asking for the regulation of the counseling profession, only the profession itself.

#### Committee Findings and Recommendations

The committee decided by a vote of 6-0 with one abstention that unregulated practice can clearly harm the public health and welfare, and that the potential for harm is easily recognizable and not remote or dependent upon tenuous argument.

#### Criterion 2

The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability.

#### Information Provided by the Applicant Group

The proponents believe that licensure of professional counselors will enable that profession to eliminate charlatans and incompetents from its ranks. Licensure would create educational standards and standards of practice that all professional counselors would have to comply with in

order to practice in the field. The proponents believe that the enforcement of these standards would facilitate the elimination of those practitioners who are harming the public from the profession. (pp. 16-18 of the Application.)

Creating a process by which the selection of a counselor is based on sound criteria will provide clients with recourse against those counselors whose conduct is considered substandard or unscrupulous. Those who have a grievance against a counselor can complain to the appropriate Board, who in turn may revoke the license of the offending party. (pp. 3 and 4 of LB 579.) Under the current practice situation, the client has no recourse unless he wishes to press criminal charges, a costly and uncertain process at best.

#### Information from Other Sources

There was no argument with the notion that the public can be expected to benefit from initial and continuing professional ability.

#### Committee Findings and Recommendations

The committee decided by a vote of 6-0 with one abstention that the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability.

#### Criterion 3

The public cannot be effectively protected by other means in a more cost-effective manner.

#### Information Provided by the Applicant Group

The proponents argue that licensure is the only way to effectively protect the public from the abuses of incompetent or unscrupulous

practitioners. However, the proponents seek a form of licensure that would protect the title "professional counselor," without seeking to prevent non professional counselors from engaging in the practice of counseling. The proponents believe that alternatives to licensure such as self-regulation, codes of ethics, registration, or certification are useful only as steps in the direction of state licensure, not as ends in themselves. (pp. 21-23 of the Application.)

The proponents argue that the enforcement of the provisions of the proposal will not cost the state anything. Indeed, the state will experience a net gain in revenue from the receipt of licensure fees. These fees will more than pay for the costs of implementation and administration of the proposal. (pp. 35-36 of the Application.) According to the proponents the public will not have to bear any increased cost for services because of the passage of licensure for professional counselors.

#### Information from Other Sources

The opponents of the proposal argue that the proposal would limit competition by restricting the supply of those providing the services, thereby increasing the cost of those services. Opponents also believe that the licensure of professional counselors would increase the fragmentation of health care to the consumer, which is another factor in driving up the costs of services to the public.

Opponents are also concerned that the proposal will exclude many persons who are currently practicing in the realm of counseling. Examples of such practitioners include nurses and clergymen who engage in personal counseling, as well as drug and alcohol rehabilitation counselors, rape crisis counselors, and peer counselors among the elderly. The proposal, while it does have exclusionary provisions, does not ensure that all

legitimate practitioners would be covered by the provisions of licensure. Opponents also fear that licensure might have an adverse impact on the provision of counseling services in rural areas, due to the possible limitations on the supply of practitioners that licensure might cause.

#### Committee Findings and Recommendations

The committee by a vote of 6-0 in the affirmative with one abstention determined that the public cannot be effectively protected by means other than credentialing by the state in a more cost-effective manner.

#### Committee Discussion of the Appropriate Level of Credentialing

The applicants stated their support for licensure as the only level of credentialing capable of adequately protecting the public from unqualified practitioners. - The other levels of credentialing, registration and certification, do not provide such protection. They lack the administrative "teeth" needed to eliminate unscrupulous practitioners. The applicants believe that the public deserves the highest level of protection that the state can provide.

Some members of the technical committee stated that licensure, the most restrictive level of credentialing, is not the most desirable one for professional counselors. They stated that the scope of practice of professional counseling is not clearly defined enough for licensure. Because of this, licensure would have an excessively restrictive impact on other counseling professions.

Other committee members stated that enforcement of a licensure law for professional counselors could be a "legal nightmare," given the ambiguous nature of counseling's scope of practice. The list of exemptions could never be long enough to protect all legitimate practitioners.

Certification, they argued, might be a way to avoid these problems. Certification holds promise for the protection of the public, and yet does not infringe upon the scopes of practice of other professions that as part of their services provide counseling.

#### Committee Findings and Recommendations

The committee decided by a vote of 6-0 in the affirmative with one abstention to recommend certification as the appropriate level of credentialing for professional counselors. The committee decided that certification gives the consumer adequate recourse against unscrupulous practitioners, and yet avoids the potentially serious enforcement problems associated with licensure. Those who supported certification argued that this level of credentialing would enforce the same academic standards upon those who hold the appropriate credentialing as does licensure, except that it is less restrictive than licensure.

#### Other Committee Recommendations

The committee recommended by a vote of 6-0 with one abstention that the Legislature consider the criteria of Section 16 of LB 579 as the basis for the establishment of minimum requirements for the certification of professional counselors.

The committee recommended by a vote of 5-1 with one abstention to the Legislature that professional counselors be required to abide by definite standards of professional conduct such as those presented in Section 20 of LB 579.

The committee recommended by a vote of 6-0 with one abstention that paragraphs 1 and 3-6 of Section 6 of LB 579 be accepted by the Legislature as an appropriate definition of certified professional counselor, and that

the appraisal activities mentioned in paragraph 2 of Section 6 be further studied to ascertain a level of appraisal activities appropriate for certified professional counselors to be engaged in.

The committee also recommended by a vote of 6-0 with one abstention that the continuing education requirement in Section 17 of LB 579 be considered as a requirement for the certification of professional counselors.

The committee also recommended by a vote of 6-0 with one abstention that Section 19 of LB 579 be considered as the basis of professional ethics for professional counselors.

#### Approval of the Report

This report was approved by the professional counselors' technical committee by a vote of 6-0 with one abstention on December 4, 1985.

