

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Board of Unlicensed Mental Health Service Providers

Adopted Permanent Rules Relating to Unlicensed Mental Health Service Providers

Rules as Adopted

9000.0050 PURPOSE.

Parts 9000.0100 to 9000.0200 establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a regulatory system and central registry of persons who provide or purport to provide mental health services.

9000.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment; diagnosis; treatment; ~~aftercare;~~ counseling; therapy including guidance, pastoral ~~care~~ mental health counseling, treatment or therapy for addiction, abuse, or abusive behavior exhibited or received by an individual; psychotherapy; hypnotherapy or hypnoanalysis; personal analysis; or other mental health services for remuneration. Mental health services are services that are designed to alleviate symptoms, change or reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase the ability of the individual to adapt to and cope with internal and external stress. Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, couples, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental, psycho-physiological, or psycho-social conditions that they seek to alleviate.

B. "Mental health services" includes those services in item A. Mental health services does not include services that are:

(1) primarily for entertainment;

(2) primarily informational;

(3) primarily for client advocacy; or

(4) related to a custodial or maintenance function.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation, or a congregation member, by clergy when the care is not related to the provision of mental health services in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. A mental health service provider may be:

A. a counselor (crisis, grief, eating disorder, compulsion, phobia or anxiety, drug and alcohol addiction, mental health, pastoral mental health, or sexual and physical abuse);

B. a school and college counselor, if the counselor is providing mental health services as defined in subpart 4;

C. a rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

D. a social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

E. a therapist in an area related to child care, education, new age therapy, holistic therapy, dance, music, or

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recreation, if the therapist is providing mental health services as defined in subpart 4;

F. a hypnotist or hypnotherapist;

G. a behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, barter, or the expectation of payment or voluntary donation from the mental health client, or from the client's agent, insurer, employer, or other representative for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3, and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include the following:

A. a person specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3; or

B. a person not providing mental health services as defined in part 9000.0100, subpart 4~~;--or~~.

~~C.--a-person-not-providing-mental-health-services-for remuneration.~~

Subp. 3. **Requirement to file.** A provider who wishes to

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provide mental health services after the effective date of parts 9000.0100 to 9000.0200 must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0110 to 9000.0200 become effective and who fails to file must pay the late filing fee and the regular filing fee specified in part 9000.0200.

This does not preclude the board from taking action under Minnesota Statutes, section 214.11 or from seeking relief under Minnesota Statutes, section 148B.42, subdivision 5.

9000.0120 PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee according to part 9000.0200;

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in this state or any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history, if any, of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A

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provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on alleged malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other ~~factors that may reasonably be construed to affect public safety~~ activities that are specifically prohibited under Minnesota Statutes, section 148B.44.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this part.

9000.0130 ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way. The date the board acts to authorize issuance of the applicant's "Acknowledgment of Filing" is the date on which the term of filing begins.

9000.0140 DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the information required by part 9000.0120, subpart 1, and the applicant has not provided the required information

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within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state, province, or foreign government;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120, subpart 1, item D, to obtain information from the appropriate regulatory agency in this state or any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the board acts to authorize the issuance of the "Acknowledgment of Filing," according to part 9000.0130, or the date the board acts to reissue the "Acknowledgment of Filing" after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be

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renewed each year.

9000.0160 RENEWAL OF FILING.

Subpart 1. **Renewal notice.** Prior to the date the filing ends under part 9000.0150, the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 within the deadline in subpart 2. The renewal application must be made on the forms provided by the board. The forms are available from the board office.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made by the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200.

Subp. 5. **Reduction of first renewal fee.** A provider who had a valid "Acknowledgment of Filing" before December 5, 1989,

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upon the first renewal under subpart 2, shall pay the current renewal fee minus a portion of the fee that is equal to 1/12th of the fee for each month from the date of initial acknowledgment to December 5, 1989.

For example, if the provider received a valid "Acknowledgment of Filing" in September of 1989, and the current filing fee is ~~$60~~ $50 upon renewal of filing, the provider would have three months credit and would pay only ~~$45~~ $37.50 for the next yearly filing fee, calculated as follows: ~~$60~~ $50 - (three months x 1/12th of ~~$60~~ $50) = ~~$45~~ $37.50.

9000.0170 BILL OF RIGHTS.

A provider of mental health services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a state or contractual community correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200, except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

B. adherence to the rule would impose an undue burden on the filer or applicant; and

C. the granting of the variance will not adversely affect the public welfare.

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Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that affect the variance. A variance shall be revoked if there is a material change in the circumstances that justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subparts 1 and 2 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 26 1990
Joan Anderson Growe
Secretary of State
8:05AM

APPROVED AS TO FORM AND LEGALITY
April 25 1990
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassely
SPECIAL ASSISTANT ATTORNEY GENERAL

Rule Memo: ALI

MG

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1686

Docket No. 05-0009-0477

RESUBMISSION DATE 4-12-90
DATE DUE 4-26-90

ADOPTED W/O HEARING X
EMERGENCY RULE
To REVISOR: 4-16-90

APPROVED 4-25-90
DISAPPROVED
WITHDRAWM

REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

____ **Does the revision raise significant new legal issues?**

4-23-90 Review date

comments up 4-20

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting

____ Board's Supplemental Resolution Adopting

✓ Notice of submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

Barbara - send a copy of the Approval memo to the following four

CH

~~Rule Review: MLT~~

Revisor # AR 1555

RULE REVIEW CHECKLIST

(Unified Mental Health Providers Bd)

File No. 1686 Docket No. 050009 0477

DATE RECEIVED 3-21-90 ADOPTED W/O HEARING X

REVIEW DATE 3-30-90 EMERGENCY RULE ~~Sent to Revisor 3-22-90~~ Revisor Back 3-26-90

DUE DATE 4-4-90 REVISOR APPROVED

APPROVED [redacted] REVISOR DISAPPROVED

DISAPPROVED ( ) FILED W/SEC. OF STATE

WITHDRAWN 4-4-90 mjc RETURNED TO AGENCY

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4 Rule as adopted (4 copies)

May 22, 1989 Notice to Solicit Outside Information/Opinion (if applicable)
- Date published in State Register
- Comments

Petition for Adoption of a Rule (if applicable)

Board's Authorizing Resolution
- Sept 8, 1989 Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 148 B.41 Statutory Authority
- NA Small Business Statement
- NA Expenditure of public money statement
- Nov 13, 1989 Signature

✓ Statement of Need and Reasonableness (if applicable)
- NA Small Business Statement
- Fees - § 16A.128 see notes

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Nov 13, 1989 Date 30/25 days before adoption
- Notice attached Notice attached
- Copy of rule or summary attached

✓ Publication in State Register
- Nov 13, 1989 Date 30/25 days before adoption

180-day deadline from: Unsure see note
- Effective date of law requiring rule (14.12) (both rules)
- ✓ end of comment period (§ 14.26) (rules without hearing)
- effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
- Jan 12, 1990 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- Jan 12, 1990 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
- Bob Holley Name of SAAG representing agency

✓ Notice of Submission to Atty. Gen. (if applicable)

✓ Aff. of Mailing Notice to Atty. Gen. (if applicable)

Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

April 12, 1990

RECEIVED
APR 12 1990
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

Martha Casserly
Special Assistant Attorney General
Public Finance Division
525 Park Street, 5th Floor
St. Paul, MN 55103

Dear Casserly:

The following revised and supplemental documents are submitted for your review respecting Permanent Rules of the Board of Unlicensed Mental Health Service Providers requiring filing of unlicensed mental health service providers according to 2010.0300:

A. The revised "Findings of Fact" (Supplemental)

B. Revised Order adopting rule

C. Supplemental "Notice of Submission"

D. Affidavit of mailing "Supplemental Notice of submission of rules adopted with out a public hearing (mailed to all persons who contacted your office relative to these rules)

E. Four copies of the proposed rules as adopted (revised April 6, 1990) with "Certificate of Approval as to Form".

Thank you for your consideration of this matter.

Sincerely,

Robert A. Sullivan

RAS/cms
casserly.ltr

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

CERTIFICATE OF THE BOARD OF
UNLICENSED MENTAL HEALTH SERVICE PROVIDERS
AUTHORIZING RESOLUTION

I, JoAnne M. Ossanna, do hereby certify that I am a member and the chairperson of the Board of Unlicensed Mental Health Service Providers, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Unlicensed Mental Health Service Providers duly and properly called and held on the 8th day of September, 1989, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting has not been rescinded or modified.

"RESOLVED, that Robert A. Sullivan, the executive director of the Board of Unlicensed Mental Health Service Providers, be and is hereby granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing the filing of unlicensed mental health service providers, including but not limited to procedures and standards relating to mental health services, the definition of mental health services, setting fees, and disciplinary procedures, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings. "

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of September, 1989.

JoAnne M. Ossanna
Chairperson

Board Member

RES9-89.UMH

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Unlicensed Mental Health Service Providers

AGENCY: Board of Unlicensed Mental Health Service Providers

MINNESOTA RULES: Chapter 9000

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

FILE COPY

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: April 26, 1990

TO: ROBERT A. SULLIVAN, Executive Director
Board of Unlicensed Mental Health Providers
2700 University Ave. W., Suite 225 (55114)

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Permanent Rule
Relating to Unlicensed Mental Health Providers

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on April 25, 1990.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard please contact me.

MJC:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Dr. Betsy Meshbesher Polydown " "
Jeri Walker " "
Delbert Cory " "
Rev. Mary Lynn Wolfe " "
Robert Holley " "
Phil Sackette " "

Board of Unlicensed Mental Health Service Providers

Proposed Permanent Rules Relating to Unlicensed Mental Health Service Providers

Rules as Proposed (all new material)

9000.0050 PURPOSE.

Parts 9000.0100 to 9000.0200 establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a regulatory system and central registry of persons who provide or purport to provide mental health services.

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intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental, psycho-physiological, or psycho-social conditions that they seek to alleviate.

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(1) primarily for entertainment;

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B. a school and college counselor, if the counselor is providing mental health services as defined in subpart 4;

C. a rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

D. a social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

E. a therapist in an area related to child care, education, new age therapy, holistic therapy, dance, music, or recreation, if the therapist is providing mental health services as defined in subpart 4;

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F. a hypnotist or hypnotherapist;

G. a behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

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A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee according to part 9000.0200;

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in this state or any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history, if any, of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

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A. a change of name, address, or phone number (home

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and business);

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C. a settlement or award based on alleged malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

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The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this part.

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B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary

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by Revisor _____

actions taken in another state, province, or foreign government;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120, subpart 1, item D, to obtain information from the appropriate regulatory agency in this state or any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. Criminal conviction. If the applicant has been convicted of a crime under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. Notice of denial. The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the board acts to authorize the issuance of the "Acknowledgment of Filing," according to part 9000.0130, or the date the board acts to reissue the "Acknowledgment of Filing" after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 RENEWAL OF FILING.

Subpart 1. Renewal notice. Prior to the date the filing ends under part 9000.0150, the board shall send a renewal notice

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to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 within the deadline in subpart 2. The renewal application must be made on the forms provided by the board. The forms are available from the board office.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made by the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200.

Subp. 5. **Reduction of first renewal fee.** A provider who had a valid "Acknowledgment of Filing" before December 5, 1989, upon the first renewal under subpart 2, shall pay the current renewal fee minus a portion of the fee that is equal to 1/12th of the fee for each month from the date of initial acknowledgment to December 5, 1989.

For example, if the provider received a valid

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"Acknowledgment of Filing" in September of 1989, and the current filing fee is $60 upon renewal of filing, the provider would have three months credit and would pay only $45 for the next yearly filing fee, calculated as follows: $60 - (three months x 1/12th of $60) = $45.

9000.0170 BILL OF RIGHTS.

A provider of mental health services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a state or contractual community correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 VARIANCES.

Subpart 1. Grounds for variance; variance application. A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200, except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

B. adherence to the rule would impose an undue burden on the filer or applicant; and

C. the granting of the variance will not adversely affect the public welfare.

Subp. 2. Information required in variance petition. A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

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C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that affect the variance. A variance shall be revoked if there is a material change in the circumstances that justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subparts 1 and 2 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

Approved
by Revisor _____

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

ALTERNATIVE NOTICES

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING, NOTICE OF INTENT TO ADOPT RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

I.

EXPLANATION OF ALTERNATIVE NOTICES

The Minnesota Board of Unlicensed Mental Health Service Providers (hereinafter "Board") is hereby giving notice of its intent to adopt rules without public hearing under the noncontroversial rulemaking procedure of Minn. Stat. sections 14.22 to 14.28 (1988). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to Minn. Stat. sec. 14.25 (1988), and in order to expedite the rulemaking process should that occur, the Board is at the same time hereby giving notice of the hearing on the proposed rules pursuant to Minn. Stat. sections 14.131 to 14.20 (1988). The hearing will, of course, be cancelled if 25 or more people do not request that one be held. The comment period will close on December 13, 1989. This period will give interested persons ample time to contact the Board to find out whether the

hearing will be cancelled and to plan accordingly.

II.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Board of Unlicensed Mental Health Service Providers (hereinafter "Board") proposes to adopt the above-captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing. The Board has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. sections 14.22 to 14.28 (1988).

Interested persons shall have 30 days from the date this notice is published in the State Register to submit comments in support of or in opposition to the proposed rules. The 30 days will expire December 13, 1989. Comment is encouraged. Each comment should identify the portion of the proposed rules being addressed, the reason for the comment, and any change proposed to the rules by the comment. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the 30-day period that a hearing be held on the proposed rules. Any person requesting a hearing should state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rules

addressed, the reason for the request, and any changes they want made to the proposed rules. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by December 13, 1989. If a hearing is required, it will be held in accordance with the provisions of Minn. Stat. sections 14.131 to 14.20 (1988) and the hearing notice provided below.

Comments or written requests for a public hearing should be submitted to:

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

The statutory authority of the Board to adopt the proposed rules is contained in Minn. Stat. sec. 148B.41, subd. 4 and sec. 148B.47 (1988).

If adopted, the proposed rules would establish the definition of mental health service provider, procedures for filing, and acknowledgement of filing as a mental health service provider. The proposed rules will be published in the State Register issue of November 13, 1989, Volume 14, Number 20, and a free copy of the rules may be obtained from the Board by writing or telephoning the Board at the address or telephone number listed above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of the proposed rules and identifies

the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by writing or telephoning the Board at the address and telephone number listed above.

(13) Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore, no further information need be provided under Minn. Stat. sec. 14.11 (1988).

(14) It is the position of the Board that it is not subject to Minn. Stat. sec. 14.115 (1988) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. sec. 14.115, subd. 2 (1988), for reducing the impact of the proposed rules, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

(9) Upon completion of the proposed rules without a public hearing, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, the rules as adopted, and a statement explaining any differences between the rules as proposed and as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the rules as adopted should submit a written request to the Board at the address listed above.

III.

NOTICE OF INTENT TO ADOPT RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE-CAPTIONED RULES WITHIN THE 30-DAY COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON DECEMBER 21, 1989, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned matter will be held pursuant to Minn. Stat. sections 14.131 to 14.20 (1988), in Room 225, Colonial Office Park Building, 2700 University Avenue West, St. Paul, Minnesota 55114, on December 21, 1989, commencing at 9:00 A.M.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7606. Unless a longer period not to exceed 20 calendar days is ordered by the administrative law judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. Written material received

during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period. This rule hearing procedure is governed by Minn. Stat. sections 14.131 to 14.20 (1988) and by Minn. Rules pts. 1400.0200 to 1400.1200 (1989). Questions about procedure may be directed to the administrative law judge.

If adopted, the rules would establish the definition of mental health service provider, procedures for filing, and acknowledgement of filing as a mental health service provider. The proposed rules will be published in the State Register issue of November 13, 1989, Volume 14, Number 20, and a free copy of the rules may be obtained from the Board by writing or telephoning the Board at the address and telephone number listed above in Part II of this notice.

The statutory authority of the Board to adopt the proposed rules is contained in Minn. Stat. sec. 148B.41, subd. 4, and sec. 148B.47 (1988).

The proposed rules may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed rules are therefore advised to participate in the process.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or

she commences lobbying. A lobbyist is defined in Minn. Stat. sec. 10A.01, subd. 11 as any individual:

> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert, St. Paul, Minnesota 55101, telephone: (612) 296-5615.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence which the Board anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Board or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Please note that any person may request notification of the date on which the administrative law judge's report will be available, after which date the Board may not take any final

action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rules with the Secretary of State.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under Minn. Stat. sec. 14.11 (1988).

It is the position of the Board that it is not subject to Minn. Stat. sec. 14.115 (1988) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. sec. 14.115, subd. 2 (1988) for reducing the impact of the proposed rules, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

IV.

NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED IF FEWER THAN 25 PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether the hearing noticed in Part III above will be held, please call or write the Board before December 15, 1989, and leave your name, address, and telephone number. You will be notified as soon as possible after this date and prior to the hearing, if the hearing has been cancelled.

Dated: Nov. 13, 1989.

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers
(612) 649-5490

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RV: 11/1/89

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

AFFIDAVIT OF MAILING OF ALTERNATIVE NOTICES: NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING, NOTICE OF INTENT TO ADOPT RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING, AND CERTIFICATE OF MAILING LIST.

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

Robert A. Sullivan, Being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Board of Unlicensed Mental Health Service Providers rulemaking mailing list is accurate, complete, and current as of the 13 day of November, 1989.

That on the 13 day of November, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent to Adopt Rules with a Public Hearing if 25 or More Persons Request a Public Hearing, and Notice of Intent to Cancel Hearing if Fewer than 25 Persons Request a Hearing, by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Robert A. Sullivan

Executive Director
Title

Subscribed and sworn to before me

this 13th day of November, 1989.

Lois Kauppila

LOIS KAUPPILA
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES APRIL 28, 1992

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

STATEMENT OF NEED AND REASONABLENESS

I. Introduction

The Minnesota Board of Unlicensed Mental Health Service Providers (Board) is proposing rules relating to the filing of unlicensed mental health service providers, (Minnesota Rules pt. 9050.0050 to 9050.0190 [1989]).

Minnesota Statutes 148B.40 - 148B.47 established the Minnesota Board of Unlicensed Mental Health Service Providers. The Legislature required that mental health service providers file with the Board and authorized the Board to "adopt rules necessary to implement, administer or enforce sections 148B.40 to 148B.47 under chapter 14 and section 214.001, subdivisions 2 and 3." (Minn. Stat. 148B.41, Subd. 4 [1988])

The Board is hereby in compliance with the direction of the Legislature and under the authority of statute proposing such rules as necessary to implement, administer and enforce the law pursuant to the requirement of filing, procedures for filing, acknowledgement of filing, and other matters relating to filing.

II. Small Business Considerations

Minn. Stat. section 14.115 requires administrative agencies, when proposing a rule or an amendment to and existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small businesses and to provide opportunity for small businesses to participate in the rulemaking process. It is the Board's position that the rules will not affect small businesses.

The rules will establish filing procedures for unlicensed mental health service providers; define "mental health services"; and give examples of providers who are required to file with the Board under M.S. 148B.40 to 148B.47. The filing is for individual providers, and not businesses. The filing authorizes providers to perform various professional mental health services independent of whether or not the services are performed as part of a small business.

However, should the rules in some way be construed as affecting small business, the Board reviewed the suggested methods for reducing the impact of the rules on small businesses and noted that those methods basically relate to compliance and reporting requirements and performance standards. The proposed rules do not address these matters but instead define terms, clarify ambiguities in the law, and establish procedures for filing. Furthermore, reducing the impact of the rules on small businesses would be contrary to the statutory objectives that are the basis for requiring the Board to register mental health

service providers and to enforce a statutory code of conduct. See Minn. Stat. sections 148B.42 and 148B.44. It would also result in placing a greater burden on those persons not considered "small businesses" when the work of the board applies equally to all filers without regard to their small business classification. Such a distinction, if reflected in renewal fees, would be without justification.

Filers, regardless of whether they are considered as individuals or small businesses, will have an opportunity to participate in the rulemaking process. A notice of the proposed rulemaking will be mailed to all individuals and organizations who have given notice to the Board of their wish to receive notice of proposed rulemaking.

III. Need and Reasonableness: General Statement

The Legislature has established by statute a framework for regulation and supervision of various professional and occupational fields of endeavor including those within the health and mental health care professions. In Minn. Stat. 148B.01 to 148B.48 (1988) a particular scheme for the regulation of social workers, marriage and family therapists and unlicensed mental health service providers was enacted. This program provided for the licensing of social workers and marriage and family therapists. The Legislature also found a need to recognize that there were a number of service providers who would not be classified as social workers or as marriage and family therapists under the new licensing boards and would not properly be subject

to the regulation or overview of pre-existing boards or agencies such as the Minnesota Board of Psychology. These service providers were subject to a requirement of filing which would not be as stringent as, nor as involved as, a requirement for licensing under the boards of social work or marriage and family therapy.

Where the Board of Social Work would license social workers (Minn. Stat. 148B.210 [1988]) and the Board of Marriage and Family Therapy would license those who provided marriage and family therapy (Minn. Stat. 148B.31 [1988]), the Board of Unlicensed Mental Health Service Providers would provide for the filing of such unlicensed service providers who were not otherwise subject to license or regulation.

The Board, having been duly appointed and organized under Minn Stat. 148B.40 - 148B.47 and having adopted emergency or temporary rules, now proposes such permanent rules as it has determined to be necessary to fulfill the direction of the Legislature.

IV. Need and Reasonableness: Specific Provisions

Part 9050.00500 is necessary to relate the purpose filled by the following proposed rules.

Part 9050.0100 proposes those definitions which are necessary to understand the proposed rules and to establish an intellectual consistency of thought and application for further actions under the rules. Subpart 2 "Applicant" and Subpart 3 "Board" are self-explanatory and stand without need for further

rationale.

Subpart 4 "Mental Health Services" relates to the Board's understanding of what fields of endeavor are comprised in the scope of the Board's filing and regulatory authority. The definition is subsumed within the definition provided by statute but delineated further so as to better guide the Board and its staff in its regulatory efforts and provide sufficient notice to providers.

The proposed definition of "Mental Health Services" is fully consistent with the definitions found in Minn. Stat. 148B.40, Subd. 4 which itself follows the standard definition of psychotherapy found in The International Encyclopedia of Psychology, and Psychoanalysis and the definition of psychotherapy used by Benjamin Wolman in the Dictionary of Behavioral Science.

The Board holds that the definition reasonably defines the field and clarifies as to whom is subject to the rules.

Subpart 5 "Provider" is further clarified from the definition by Statutes (148B.40, Subd. 3) so as to identify which specific occupations are mental health service providers and it is necessary to distinguish these providers from those engaged in voluntary helpful expressions of caregiving or befriending. The clarifications in definition were arrived at after two informal hearings before the Board, and represent a reasonable way of delineating who is required to file as a mental health service provider under the intent of the law which is to register and

regulate providers who are not otherwise licensed (see 148B.40, Subd. 3 and 148B.42, Subd. 1).

Subpart 6 "Remuneration" elaborates on these definitions by clarifying what is intended by payment or fee. It is designed to avoid the various "loopholes" which might be occasioned by a loose or careless understanding of what is encompassed by the term "remuneration".

Part 9050.0110 is necessary to explicate what is required to effect a filing under the law. Providers subject to filing need a clear statement of the requirement and the Board needs an expression of policy to guide future efforts. The part simply states who must file, who is excluded from filing and the consequences of failure to file. It is a reasonable approach to the statutory requirement and may be the only approach possible.

Part 9050.0120 details the specific procedures involved in the filing. If this is not provided, potential filing applicants would not have an understanding of what needed to be done in order to be in compliance with the law.

The Legislature in Minn. Stat. 148B.42 identified what information will be required of filing applicants and the Board in its proposed rules only provides a necessary explication so as to render compliance easier. Where the statute has stated what is required, the Board here states how that requirement may be met. This part is pro forma and provides a reasonable method to effect the statutory requirements.

The Board delineates the statutory requirements by stating

that applicants have an obligation to keep such information current. It is reasonable to make this requirement since the alternative may jeopardize the entire scheme of public protection and public disclosure of regulation as envisioned by the Legislature, by required reporting of such matters as malpractice; violation of law; and of inability to practice safely as a result of mental illness, habitual use of drugs or other factors likely to endanger public safety.

Part 9050.0130 reiterates what is already provided by statute in Minn. Stat. 148B.42, Subd. 2. Reiteration is necessary so as to provide a comprehensive statement of regulatory requirements to potential filing applicants.

Part 9050.0140 provides for an explanation of those conditions under which a filing would be denied. Since the mandate of the Legislature provides for filing and prescribes what is accomplished in a filing, it is inherent within this framework for the Board to state when a filing would be denied. Essential to a proper filing is adequate and truthful recording of information and to that extent a failure to report required information would invalidate a filing. Such a provision is a reasonable concomitant of the filing obligation.

Part 9050.0150 limits the effective term of the filing to one year. This is consistent with the approach taken by other professional and occupational regulatory boards and is necessary to assure the Board and the public that information remains current and may be relied upon for accuracy.

Part 9050.0160 indicates the proper procedure for the renewal of filing. The practice of mental health services is expected to involve providers in an on-going activity which occasions the need to continually inform the regulatory board as to the status of practice and conformance with statutory requirements. The enabling statute expressly directs the Board to adopt rules governing renewals at Minn. Stat. 148B.41 [1987].

It is necessary to prescribe those procedures which a filer will use to maintain the filing and the recognized status under the Board's jurisdiction. It is reasonable to require that filers follow the prescribed procedure and no other procedure presents itself as a less burdensome method to effect the Board's renewal of filing.

As a matter of fairness to all filers, it is reasonable to offer a prorated reduction in fees upon renewal for providers who filed prior to 12/5/89. It was originally interpreted that the deadline for filing was 8/6/89. The later deadline for mandatory filing was determined as 120 days (under part 9000.0110, Subpart 3 [Emergency]) from the effective date of permanent rules establishing fees (9000.0100 to 9000.0190) or 7/6/89. Thus, providers who file prior to 12/6/89 would be subject to renewal and renewal fees disproportionately sooner than providers who wait until 12/6/89 to file, since all filings are for a calendar year under 9000.0150 [Emergency].

Part 9050.0170 requires that providers must provide clients with the mental health Bill of Rights. This is a reiteration of

statutory requirement found at Minn. Stat. 148B.46. Redundancy in this case is necessary to fully explicate the regulatory scheme of the Board's jurisdiction. The Bill of Rights itself is found in statute.

Part 9050.0190 establishes the method by which a filer or applicant may seek a variance to the requirements of rule. The Legislature created the Board to avail itself of the administrative convenience and professional expertise to be found in administrative regulation.

Throughout the enabling statute, the Legislature repeatedly uses terms and phrases indicative of a delegation of discretion to the Board:

> "The board <u>may</u> reject a filing if there is evidence of a violation or failure to comply with this chapter." (Minn. Stat. 148B.42, Subd. 1)
>
> "Notwithstanding any law to the contrary, the board <u>may</u> reject a filing or application, or <u>may</u> impose adverse action..."(Minn. Stat. 148B.44, Subd.1)
>
> "When the board finds that a mental health service provider has violated a provision or provisions of this chapter, it may do one or more of the following..."(Minn. Stat. 148B.45 Subd. 1)

This foregoing language suggests that discretion rests with the Board and, where discretion exists, the rationale for describing a process to be used for variances is necessary. Furthermore, the procedure for petitioning for variance will allow the Board to adjust its procedures and adopt a less onerous approach where the dictates of public policy, equity and common

sense prevail. It is reasonable to use this approach to provide for the requisite flexibility in the regulatory framework.

The Board does not propose to grant variances to any requirement imposed by statute only to those provisions established by rule and which may be appropriately supplanted by alternative practices equivalent or superior to those found within the rules. This is a reasonable method to assure that the Board responds flexibly to individual cases and circumstances.

V. Conclusion

The Board submits that the proposed rules are authorized by statute, are demonstrably necessary as determined by statute or logical argument, and are reasonably related in order to address the problem for which they are intended. And although other alternatives may be proposed, no other alternative is more reasonable or less burdensome while maintaining statutory consistency and adhering to the internal logic of the regulatory framework.

Subp. 3. **Duties.** The advisory council shall:

A. advise the commissioner regarding hearing instrument dispenser registration standards;

B. advise the commissioner on enforcement of parts 4745.0010 to 4745.0060;

C. provide for distribution of information regarding hearing instrument dispenser registration standards;

D. review applications and make recommendations to the commissioner on granting or denying registration or registration renewal;

E. review reports of investigations relating to individuals and make recommendations to the commissioner as to whether registration should be denied or disciplinary action taken against the individual;

F. advise the commissioner regarding approval of continuing education sponsors using the criteria in part 4745.0045, subpart 3; and

G. perform other duties authorized for advisory councils by *Minnesota Statutes*, chapter 214, or as directed by the commissioner.

Board of Unlicensed Mental Health Service Providers

Proposed Permanent Rules Relating to Unlicensed Mental Health Service Providers

Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent To Adopt Rules With a Public Hearing if 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing If Fewer Than 25 Persons Request a Hearing

Explanation of Alternative Notices

The Minnesota Board of Unlicensed Mental Health Service Providers (hereinafter "Board") is hereby giving notice of its intent to adopt rules without public hearing under the noncontroversial rulemaking procedure of *Minnesota Statutes* sections 14.22 to 14.28 (1988). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to *Minnesota Statutes* sec. 14.25 (1988), and in order to expedite the rulemaking process should that occur, the Board is at the same time hereby giving notice of the hearing on the proposed rules pursuant to *Minnesota Statutes* sections 14.131 to 14.20 (1988). The hearing will, of course, be cancelled if 25 or more people do not request that one be held. The comment period will close on December 13, 1989. This period will give interested persons ample time to contact the Board to find out whether the hearing will be cancelled and to plan accordingly.

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Unlicensed Mental Health Service Providers (hereinafter "Board") proposes to adopt the above-captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing. The Board has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in *Minnesota Statutes* sections 14.22 to 14.28 (1988).

Interested persons shall have 30 days from the date this notice is published in the *State Register* to submit comments in support of or in opposition to the proposed rules. The 30 days will expire December 13, 1989. Comment is encouraged. Each comment should identify the portion of the proposed rules being addressed, the reason for the comment, and any change proposed to the rules by the comment. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the 30-day comment period that a hearing be held on the proposed rules. Any person requesting a hearing should state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes they want made to the proposed rules. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by December 13, 1989. If a hearing is required, it will be held in accordance with the provisions of *Minnesota Statutes* sections 14.131 to 14.20 (1988) and the hearing notice provided below.

Comments or written requests for a public hearing should be submitted to:

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

The statutory authority of the Board to adopt the proposed rules is contained in *Minnesota Statutes* sec. 148B.41, subd. 4 and sec 148B.47 (1988).

If adopted, the proposed rules would establish the definition of mental health service provider, procedures for filing, and acknowledgement of filing as a mental health service provider. The proposed rules will be published in the *State Register* issue of November 13, 1989, Volume 14, Number 20, and a free copy of the rules may be obtained from the Board by writing or telephoning the Board at the address or telephone number listed above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of the proposed rules and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by writing or telephoning the Board at the address or telephone number listed above.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes* section 14.11 (1988).

It is the position of the Board that it is not subject to *Minnesota Statutes* section 14.115 (1988) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in *Minnesota Statutes* section 14.115, subd. 2 (1988), for reducing the impact of the proposed rules, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

Upon completion of the proposed rules without a public hearing, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, the rules as adopted, and a statement explaining any differences between the rules as proposed and as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the rules as adopted should submit a written request to the Board at the address listed above.

Notice of Intent to Adopt Rules With a Public Hearing If 25 or More Persons Request a Hearing

Please Note That If 25 Or More Persons Submit Written Requests For A Public Hearing With Respect To The Above-Captioned Rules Within The 30-Day Comment Period Pursuant To The Notice Given In Part II Above, A Hearing W Held On December 21, 1989, In Accordance With The Following Notice Of Public Hearing.

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned matter will be held pursuant to *Minnesota Statutes* sections 14.131 to 14.20 (1988), in Room 225, Colonial Office Park Building, 2700 University Avenue West, St. Paul, Minnesota 55114, on December 21, 1989, commencing at 9:00 a.m.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7606. Unless a longer period not to exceed 20 calendar days is ordered by the administrative law judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period. This rule hearing procedure is governed by *Minnesota Statutes* sections 14.131 to 14.20 (1988) and by *Minnesota Rules* pts. 1400.0200 to 1400.1200 (1989). Questions about procedure may be directed to the administrative law judge.

If adopted, the rules would establish the definition of mental health service provider, procedures for filing, and acknowledgement of filing as a mental health service provider. The proposed rules will be published in the *State Register* issue of November 13, 1989, Volume 14, Number 20, and a free copy of the rules may be obtained from the Board by writing or telephoning the Board at the address and telephone number listed above in Part II of this notice.

The statutory authority of the Board to adopt the proposed rules is contained in *Minnesota Statutes* sec. 148B.41, subd. 4, and sec. 148B.47 (1988).

The proposed rules may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed rules are therefore advised to participate in the process.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTE RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions fro proposed rule language.

Minnesota Statutes ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes* sec. 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert, St. Paul, Minnesota 55101, telephone: (612) 296-5615.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence which the Board anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Board or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

PLEASE NOTE that any person may request notification of the date on which the administrative law judge's report will be available, after which date the Board may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rules with the Secretary of State.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes* sec. 14.11 (1988).

It is the position of the Board that it is not subject to *Minnesota Statutes* sec. 14.115 (1988) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in *Minnesota Statutes* section 14.115, subd. 2 (1988) for reducing the impact of the proposed rules, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

Notice of Intent to Cancel Hearing If Fewer Than 25 Persons Request a Hearing

Please Note That The Hearing, Notice Of Which Is Given In Part III Above, Will Be Cancelled If Fewer Than 25 Persons Request A Hearing In Response To The Notice Given In Part II Above.

To be informed whether the hearing noticed in Part III above will be held, please call or write the Board before December 15, 1989, and leave your name, address, and telephone number. You will be notified as soon as possible after this date and prior to the hearing, if the hearing has been cancelled.

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers
(612) 649-5490

Rules as Proposed (all new material)

9000.0050 PURPOSE.

Parts 9000.0100 to 9000.0200 establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a regulatory system and central registry of persons who provide or purport to provide mental health services.

9000.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment; diagnosis; treatment; aftercare; counseling; therapy including guidance, pastoral care, treatment or therapy for addiction, abuse, or abusive behavior exhibited or received by an individual;

psychotherapy; hypnotherapy or hypnoanalysis; personal analysis; or other services for remuneration. Mental health services a. services that are designed to alleviate symptoms, change or reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase the ability of the individual to adapt to and cope with internal and external stress. Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, couples, families, or groups who are experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental, psycho-physiological, or psycho-social conditions that they seek to alleviate.

B. "Mental health services" includes those services in item A. Mental health services does not include services that are:

(1) primarily for entertainment;

(2) primarily informational;

(3) primarily for client advocacy; or

(4) related to a custodial or maintenance function.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation, or a congregation member, by clergy when the care is not related to the provision of mental health services in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. A mental health service provider may be:

A. a counselor (crisis, grief, eating disorder, compulsion, phobia or anxiety, drug and alcohol addiction, mental health, pastoral, or sexual and physical abuse);

B. a school and college counselor, if the counselor is providing mental health services as defined in subpart 4;

C. a rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

D. a social worker or marriage and family therapist, if the person is exempt from licensure under *Minnesota Statutes*, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

E. a therapist in an area related to child care, education, new age therapy, holistic therapy, dance, music, or recreation, if the therapist is providing mental health services as defined in subpart 4;

F. a hypnotist or hypnotherapist;

G. a behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing or is not one of the licensed providers described in *Minnesota Statutes*, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, barter, or the expectation of payment or voluntary donation for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to *Minnesota Statutes*, sections 148B.06, subdivision 3, and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include the following:

A. a person specifically excluded from the definition of mental health service provider in *Minnesota Statutes*, section 148B.40, subdivision 3;

B. a person not providing mental health services as defined in part 9000.0100, subpart 4; or

C. a person not providing mental health services for remuneration.

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Subp. 3. **Requirement to file.** A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0110 to 9000.0200 become effective and who fails to file must pay the late filing fee and the regular filing fee specified in part 9000.0200.

This does not preclude the board from taking action under *Minnesota Statutes*, section 214.11 or from seeking relief under *Minnesota Statutes*, section 148B.42, subdivision 5.

9000.0120 PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee according to part 9000.0200;

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in this state or any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history, if any, of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on alleged malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under *Minnesota Statutes*, section 148B.45, against a filer who fails to meet the requirements of this part.

9000.0130 ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way. The date the board acts to authorize issuance of the applicant's "Acknowledgment of Filing" is the date on which the term of filing begins.

9000.0140 DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by *Minnesota Statutes*, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the information required by part 9000.0120, subpart 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state, province, or foreign government;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120, subpart 1, item D, to obtain information from the

appropriate regulatory agency in this state or any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under *Minnesota Statutes*, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime under *Minnesota Statutes*, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in *Minnesota Statutes*, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of *Minnesota Statutes*, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the board acts to authorize the issuance of the "Acknowledgment of Filing," according to part 9000.0130, or the date the board acts to reissue the "Acknowledgment of Filing" after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 RENEWAL OF FILING.

Subpart 1. **Renewal notice.** Prior to the date the filing ends under part 9000.0150, the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 within the deadline in subpart 2. The renewal application must be made on the forms provided by the board. The forms are available from the board office.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made by the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200.

Subp. 5. **Reduction of first renewal fee.** A provider who had a valid "Acknowledgment of Filing" before December 5, 1989, upon the first renewal under subpart 2, shall pay the current renewal fee minus a portion of the fee that is equal to 1/12th of the fee for each month from the date of initial acknowledgment to December 5, 1989.

For example, if the provider received a valid "Acknowledgment of Filing" in September of 1989, and the current filing fee is $60 upon renewal of filing, the provider would have three months credit and would pay only $45 for the next yearly filing fee, calculated as follows: $60 - (three months x 1/12th of $60) = $45.

9000.0170 BILL OF RIGHTS.

A provider of mental health services must provide clients with the client's bill of rights as required under *Minnesota Statutes*, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a state or contractual community correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance

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rom provisions in parts 9000.0100 to 9000.0200, except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

B. adherence to the rule would impose an undue burden on the filer or applicant; and

C. the granting of the variance will not adversely affect the public welfare.

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that affect the variance. A variance shall be revoked if there is a material change in the circumstances that justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subparts 1 and 2 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

Errata

Department of Health

Correction to Notice to Adopt Rules Relating to Fees for Manufactured Homes Parks and Recreational Camping Areas

The notice that appeared in the *State Register*, Volume 14, Number 18, October 30, 1989, contained two typographical errors.

On page 1092 under the heading "Current Fee", the current renewal fee for high risk establishments was incorrectly stated as $75. The correct current fee is $15. The same error appeared on page 1094 of the *State Register*. Again, under the heading "Current Fee" the current renewal fee for high risk establishments was incorrectly stated as $75. The correct current fee is $15.

Rules As Adopted

(attached in large envelope)

CERTIFICATE OF THE

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

AND

RESOLUTION ADOPTING RULES

I, Don Cavalier, do hereby certify that I am a member and the Chairperson of the Board of Unlicensed Mental Health Service Providers, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Unlicensed Mental Health Service Providers, duly and properly called and held on the 12th day of January, 1990, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "**RESOLVED**, that the rules relating to the requirement of filing of unlicensed mental health service providers are approved and adopted, pursuant to authority vested in the Board of Unlicensed Mental Health Service Providers by Minnesota Statutes, Chapters 148B.41, subd. 4, and 148B.47. Robert A. Sullivan, executive director of the Board of Unlicensed Mental Health Service Providers, is authorized to sign the findings of fact, conclusions, and order adopting the rules, and further is authorized to modify the rules, if necessary to obtain the approval of the rules by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this day of January 12, 1990.

Don R. Cavalier

Don Cavalier
Chairperson

Member, Board of Unlicensed
Mental Health Service Providers

ADPTRL90.RES(1)

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

Notice of the Board of Unlicensed Mental Health Service Providers intent to adopt the above-entitled rules was published in the State Register on November 13, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on November 13, 1989.

All persons were given the opportunity to submit written comment on the rules for at least 30 days after notice of proposed rulemaking.

The above-entitled matter came before the State Board of Unlicensed Mental Health Service Providers (Board) on the 12th day of January, 1990. After considering all written comments submitted to the Board, in accordance with statutory requirements regarding the adoption of rules, the board being fully advised in the premises, hereby adopts the following findings of fact, conclusion and order.

FINDINGS OF FACT

1. The Board published its notice of intent to adopt the above-entitled rules, together with the proposed rules, in the State Register on November 13, 1989.

2. The notice of the board's intent to adopt the rules afforded interested persons 30 days in which to submit data and views on the proposed rules. The comment period, as set out in the notice expired on December 13, 1989.

3. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

4. During the comment period, the board received 29 written comments from interested persons or departments or agencies. They are as follows:

1) Ann Wynia; Commissioner, Department of Human Services, St. Paul, Minnesota
2) Jennifer Walker; St. Louis Park, Minnesota
3) Mary Lynne Wolfe; Brooklyn Park, Minnesota
4) Gail Carrubba; Edina, Minnesota
5) Sharon Hillestad; Hastings, Minnesota
6) Linda Reding; Minneapolis, Minnesota
7) Delbert J. Cory; Cottage Grove, Minnesota
8) Gerald Wolfe; Minneapolis, Minnesota
9) Michele Neely; Minneapolis, Minnesota
10) Dan Stover
11) Neda Wood; Brooklyn Park, Minnesota
12) Michael Porter; St. Paul, Minnesota
13) J. Frank Hargitt; Minneapolis, Minnesota
14) Kerry Fuller; Minnetonka, Minnesota
15) Brian H. McNee; Maplewood, Minnesota
16) Joan Bilinkoff; Therapy Director, Domestic Abuse Project; Minneapolis, Minnesota
17) John Hermansen; Minneapolis, Minnesota
18) Madeline Miller; Minneapolis, Minnesota
19) Cindy Mott; Minneapolis, Minnesota
20) Cathy Brown; Minnetonka, Minnesota
21) Jan Simmons; Apple Valley, Minnesota
22) D. Simmons; Apple Valley, Minnesota
23) Dr. Lotte Scidler; Minneapolis, Minnesota
24) Jody Ruller; Minnetonka, Minnesota
25) Barbara Finstrom; Minneapolis, Minnesota
26) Donald H. Brown; Minnetonka, Minnesota
27) Michael Staples; Bloomington, Minnesota
28) V. P. Nordaker; Minneapolis, Minnesota
29) Holly Hillestad; Hastings, Minnesota

(3) Among the twenty-nine (29) written comments were nineteen (19) that requested a public hearing. No requests for a hearing were withdrawn. Therefore, the Board did not receive requests for a public hearing from twenty-five (25) or more persons which were not withdrawn.

(6) 5. The Board finds that certain of these comments have merit and has modified the rules accordingly. None of these modifications are substantive.

6. In addition, the Board staff made changes to clarify language, and these comments are part of the record.

7. The modifications and the specific grounds for their adoption are as follows:

CLARIFICATION OF LANGUAGE AMBIGUITY

8. Page 1, line 23. [Part 9000.0100, Definitions, subp.4, item A. "Mental Health Services"]* The language could be misconstrued to include persons who by definition in subp. 4, item A, are not providing mental health services.

9. For clarity, it is reasonable to modify page 1, line 23 by deleting the word "aftercare".

10. For clarity, it is reasonable to modify page 1, line 27 by adding the words "mental health" after the word "other". The addition of these words will clarify any ambiguity concerning whether other services represent mental health services or not.
(Comment: Ann Wynia, Commissioner of Human Services, St. Paul, Minnesota)

11. These proposed modifications are not substantially different from the rules as proposed.

DRAFTING ERROR

12. Page 1, line 24 [Part 9000.0100, subp. 4, item A, "Mental Health Services"]. To correct a drafting error, it is reasonable to modify line 24 by deleting the word "care" after the word "pastoral". The term pastoral "care" did not appear in the Board's Emergency Rules. The word "care" was inserted in the proposed permanent rules erroneously. The terms, "pastoral counseling" and "pastoral care" have specific meanings in the rules and it is important to clarify these distinctions so as to clarify any ambiguity as to individuals required to file with the board under these rules.

13. In addition, several of the comments relating to the inclusion of "pastoral counseling" as a mental health service may have resulted from a misreading of the rules, leading to an interpretation that all counseling, care, or healing by clergy, is considered "pastoral counseling". This ambiguity may have occurred because of the erroneous inclusion of the word "care" after the word "pastoral" on page 1, line 24. [Part 9000.0100, subp. 4, item A, "Mental Health Services"]

14. Removing the word "care" after the word "pastoral" in line 24, page 1, [Part 9000.0100, subp. 4, item A, "Mental Health Services"], will also serve to clarify ambiguity.

15. With the clarifications made in numbers 11 through 13 above, the Board believes that any language ambiguity has been clarified and that only "pastoral counselors", who are providers of mental health services as defined in subp. 4 A, would be required to register with the Board.

* Proposed Permanent Rules Draft, dated 10/17/89.

The Board further believes that the language of the rules on page 2, lines 13 through 18, [Part 9000.0100, subp. 4, item C] clarifies that the term "pastoral care" of a congregation, or spiritual counseling conducted by clergy, are not mental health services. Clergy who are not providing mental health services would not be required to register.

(Comments: Mary Lynne Wolfe, Michele Neely, Jay Frank Hargitt, John Hermansen, Cathy Brown, Dr. Lotte Scidler, Jody Ruller, Barbara Finstrom, Jennifer Walker, Donald H. Brown, Michael Staples, Gerald Wolfe, Sharon Hillestad)

AUTHORITY TO REGULATE UNDER MINNESOTA STATUTES

16. A number of the comments received during the open comment period allege that the Board does not have authority under statute (M.S. 148B.40, and M.S. 148B.41) to regulate pastoral counseling.

17. Minnesota Statutes 148B.40, subd. 3 and subd. 4, define "mental health service provider" and "mental health services."

The definition of mental health services, and subsequently, those who are considered providers of mental health services, was intended to be broad so that providers of mental health services, who were disciplined under one occupational title, license, or registration, could not simply change their occupational title and continue to practice without regard to the statutorily established code of conduct (M.S. 148B.44, subd. 1).

18. The Board believes that it is reasonable to interpret 148B.40 to .46 to include, by way of example, a broad range of occupational titles under which mental health services may be practiced. "Pastoral counseling" is one example of those persons who may be covered if they are practicing mental health services as defined [Part 9000.0100, subp. 1,A].

19. The Board further believes that the intent of the legislation creating the Board [M.S. 148B.40 to .46] is to protect the public from harm by mental health service providers through the establishment and enforcement of a "Code of Prohibited Conduct", and through practice related consequences. [148B.44, and .45].

The Board of Unlicensed Mental Health Service Providers, as well as the Boards of Social Work and Marriage and Family Therapy, was established in the 1987 legislative session in partial response to the problems of sexual exploitation and other ethical transgressions by members of professions identified in a report to the Legislature published by The Task Force on Sexual

Exploitation by Counselors and Therapists.[1] This Task Force report was largely the impetus for the creation of these new regulatory boards.[2] The special problems of "regulating the unregulated" in that report makes replete reference to, not only the potential, but actual, harm to the vulnerable mental health clients who approach trusted providers at a time of emotional turmoil and vulnerability, only to be exploited by the provider.[3] Clearly, it was legislative intent to regulate the "unregulated mental health provider" under the legislation creating the Board of Unlicensed Mental Health Service Providers.

20. It can be stated, arguably, that it is reasonable and necessary that pastoral counselors who are the subject of the letters of comment, should be considered mental health service providers to the extent that they provide services that constitute "professional treatment and assessment of cognitive and behavioral, emotional, and social dysfunctions" which are psychological by nature. Often, the nature of the practice of a pastoral counselor is to combine methods, which are psychological, interpersonal, and intrapersonal, as well as spiritual, together in their counseling.

It follows that the nature of pastoral counseling may constitute mental health services as defined [Part 9000.0100, subp. 4, item A, B, and C] depending on the nature of the process itself.

21. To exclude "pastoral counseling" as a mental health service would be unreasonable and outside both the spirit and intent of M.S. 148B.40 to .41 to the extent that any provider of mental health services could simply assume this title to escape regulation, in spite of the fact that the provider was offering mental health services as defined [Part 9000.0100, subp. 4, A] to the general public for remuneration. Such exclusion by a single occupational title, would constitute an unreasonable interpretation and circumvent the purpose of the Board's activity to protect the public.

22. The Board further believes that the rules are within the scope of the statute establishing the Board and granting it authority under M.S. 148B.40 and .41, and that legislative intent clearly indicates that pastoral counseling is to be regulated by the Board. This is evidenced by the fact that M.S. 148B.41, subd. 1, establishing the Board and setting membership, mandates that two pastoral counselors be members of the Board, as well as

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[1] Barbara E. Sanderson (ed.), It's Never OK: A Handbook For Professionals on Sexual Exploitation by Counselors and Therapists, Task Force on Sexual Exploitation by Counselors and Therapists, Minnesota Department of Corrections, St. Paul, 1989, p. xii.

[2] Ibid.

[3] Ibid at Appendix D. see also, Gary R. Schoener et al., Psychotherapists' Sexual Involvement with Clients, Walk-On Counseling Center, 1989, Chapters 6 and 20.

other identifiable specialties and sub-groups of providers subject to the filing requirements.

23. It follows, therefore, that the legislature clearly intended that the Board was to regulate the practice of pastoral counselors to the extent that their practice constitutes mental health services as defined.
(Comment: Michael Staples)

CONSTITUTIONAL SEPARATION OF CHURCH AND STATE

24. A number of the comments received during the open comment period, comment on the fact that the rules as established by the Board, constitute a violation of the United States Constitution Amendment 1, prohibiting restraint of the free exercise of religion.
(Comments: Michael Staples, Donald H. Brown, Jennifer Walker, Barbara Finstrom, Jody Ruller, Delbert Cory, Linda Reding, Sharon Hillestad, Gerald Wolfe, Cindy Mott, D. Simmons, Jan Simmons, Madeline Miller, Brian H. McNee, Kerry Fuller, Neda Wood)

25. The Board believes the inclusion of pastoral counseling within the rules, is constitutional.

26. While the Constitution, in the First Amendment, guarantees the prohibition against the government's regulation of religious beliefs, there is precedent that the state may, in some circumstances, impose incidental burdens on otherwise protected religious conduct. These burdens may be imposed if there is a compelling reason to regulate the practice of religious activities if, and when, the public welfare is to be maintained.

27. The Board believes that they have met the constitutional test, established by precedents set by numerous court cases. Arguments concerning this in detail, are attached as Addendum A, addressing the legal issues and case law involved.

OTHER COMMENTS

28. Other comments received during the Open Comment Period, concerned a request to hold a public hearing, but did not state specific objection to the rules as proposed.
(Comments: V. P. Nordleson, Michael Porter, Gail Carrubba)

29. Since these comments did not make specific reference or objection to specific parts of the rules, and constituted only requests for a public hearing, the Board will not be commenting on these letters in the Findings.

The individuals asking for a public hearing, were given full notice of when the hearing would be held if 25 or more persons requested a hearing. Since less that 25 persons requested a hearing, one was not held.

ACTIVITIES OF VOLUNTARY SELF-HELP GROUPS

30. Commentor Dan Stover, states his concern that the rules can be read to include persons who conduct self-help groups, such as Alcoholics Anonymous, Gamblers Anonymous, Over-eaters Anonymous, etc., as mental health service providers. He specifically mentions fifth-step work with Alcoholics Anonymous, and Al-Anon self-help groups, which, he states, are conducted by ministers or members of the clergy, as this step deals with the spiritual manifestations of recovery.

31. The Board wishes to clarify that they see nothing in the proposed rules, which would restrict the work of ministers or clergy in working with self-help groups, nor does the Board see that these rules would require persons assisting self-help groups in the spiritual realm, to be registered with the Board. First, persons doing spiritual work with self-help groups are typically not doing so for remuneration, as required by the rules, in order to be subject to filing. Secondly, the Board does not believe that the kind of self-help intervention provided by clergy or ministers for self-help groups constitutes the professional practice of mental health services, nor utilizes the techniques outlined in the definition of mental health services given in the rules [Part 9000.0100, Definitions, subp. 4. item A through C]. Those activities are considered spiritual and subject to the exclusions under Part 9000.0100, subp. 4, item C.

CONCLUSIONS

1. The Board has published and served adequate notice of intent to adopt the proposed rules.

2. The Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive and procedural requirements of the statute and rules.

3. The changes that are being made in the proposed rules do not result in rules that are substantially different from those published in the State Register.

4. Any findings which might properly be termed conclusions, and any conclusions which might properly be termed findings, are hereby adopted as such.

5. The above-captioned rules are needed and reasonable.

ORDER

NOW, THEREFORE, IT IS ORDERED that the rules identified as Proposed Rules Relating to Unlicensed Mental Health Service Providers as modified are adopted this 12th day of January 1990, pursuant to authority vested in the Board of Unlicensed Mental Health Service Providers by Minnesota Statutes, section 148B.171.

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers

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RV: 3/20/90

Psychotherapists' Sexual Involvement With Clients: Intervention And Prevention

GARY RICHARD SCHOENER

JEANETTE HOFSTEE MILGROM

JOHN C. GONSIOREK

ELLEN T. LUEPKER

RAY M. CONROE

Foreword by

ANDREW CZAJKOWSKI

WALK-IN COUNSELING CENTER

Minneapolis, Minnesota

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Walk-In Counseling Center
2421 Chicago Avenue South
Minneapolis, MN 55404

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FIRST EDITION

CHAPTER 6

BETRAYAL OF THE PASTORAL RELATIONSHIP: SEXUAL CONTACT BY PASTORS AND PASTORAL COUNSELORS

Rev. Marie M. Fortune

Sexual contact in professional relationships by pastors or pastoral counselors with parishioners or clients is a longstanding problem that now is being discussed more openly. It is an issue of professional ethics too long ignored by the church; the issue compromises the integrity of the professional ministry whenever it occurs and causes serious damage to individuals and congregations. Following the lead of professional organizations of secular counselors and consumer activists who have raised the issue of counselor abuse within a counseling relationship, it is important to break the silence that has surrounded this issue within the church for years. Thus the purpose of this article is to name the sin of violation of professional pastoral relationships, to provide a framework for understanding it ethically, and to offer some practical suggestions for action by the church.

Sexual contact by pastors or pastoral counselors in professional relationships is a violation of professional ethics. It is a serious situation of professional misconduct that often is minimized or ignored. It is not an "affair" although it may involve an on-going sexual relationship with a client or parishioner. It is not merely adultery; it may involve adultery, nevertheless, if the pastor or counselor is in a committed relationship. It is not just a momentary lapse of judgment by the pastor. Often it is a recurring pattern of misuse of the pastoral role by a pastor who does not either comprehend or care about the damaging effects it may have on a parishioner or client.

DEFINITION OF THE PROBLEM

Sexual contact by pastors or pastoral counselors with parishioners or clients within a professional relationship is a violation of professional ethics that not only undercuts an effective pastoral relationship but, also, is exploitative and abusive. It is not the sexual contact per se that is problematic but the fact that the sexual activity takes place within the professional relationship. Once sexual activity occurs, the nature of that relationship is violated. The relationship in question may be formal, such as between a pastoral counselor and a client who is seeking psychotherapy through a pastoral counseling agency, or less formal, such as between a parish pastor and a parishioner currently serving on a parish committee or seeking pastoral support during a crisis. Regardless of the particulars, the relationship between a clergyperson (pastor or pastoral counselor) and those whom he or she is called to serve is a professional one within which sexual activity is inappropriate.

The sexual contact or activity may take many different forms: touching the erogenous zones, fondling the breasts or genital areas, kissing, and/or sexual intercourse. It also may include verbal suggestions of sexual activity or requests for sexual favors by the pastor or pastoral counselor. It may become an on-going sexual relationship. It almost always will be secretive.

Sexual contact or activity within a professional relationship creates a dual relationship; that is, both a love relationship and a counselor/client relationship. This dual relationship undercuts any possibility of an effective counseling relationship. Such a relationship is

based on a client or parishioner's being able to have confidence in the knowledge and authority that the clergyperson brings as pastor or counselor, and to know that this knowledge and authority will not be misused. The client or parishioner also must be able to trust the pastor to respond to the client's or parishioner's best interest, and not to the pastor's self-interest alone. Sexual contact or activity between the two seriously diminishes these important factors and, hence, the professional relationship itself.

Because the professional relationship is by definition primarily the responsibility of the professional (i.e., the pastor or pastoral counselor) any initiation of or participation in activity that jeopardizes the relationship is unethical. The pastor or pastoral counselor by definition is committed to seeking the well-being of those whom he/she serves, hence any activity threatening that well-being is unethical. Sexual contact between persons who, by nature of their roles in a relationship, do not possess equal power is exploitative and abusive; therefore, such contact within a pastoral relationship is abusive and victimizes the parishioner or client.

We have no current data that reveals the extent of this problem within the religious community. The research on this particular form of abuse has yet to be done. However, there is no reason to assume that the incidence among clergypersons is any less frequent than the estimated 10-15% for other counseling professions (see introduction to this volume). The most glaring gap in our current information is the absence of research data from persons who have been victimized by this unethical professional behavior. A national staff person for the United Church of Christ reported that "90% or more of women in a group discussing this issue had experienced it in their own lives in one form or another" (Breitling, 1984). Somewhere between these two sets of figures lies the reality of a serious problem facing the church and its ministry. Whatever the number of clergy who engage in sexual activity with parishioners or clients, whatever the number of parishioners and clients who are victimized by this problem, it is an issue. One incident is one too many. Whenever this problem occurs, it not only damages the individual victim, but also it compromises the integrity of the ministry and the church.

AN ETHICAL ANALYSIS OF SEXUAL CONTACT BY MINISTERIAL PROFESSIONALS

An ethical analysis of unethical professional conduct by pastors and pastoral counselors offers insight to the nature of the violation and to the need for a just response. If we make decisions that affect our actions toward others on the basis of ethics, then an ethical analysis of the problem of sexual contact by pastors and pastoral counselors in professional relationships should point to those dimensions that give us the potential to diminish the life of another. They include (a) violation of role, (b) misuse of authority and power, (c) taking advantage of vulnerability, and (d) the absence of meaningful consent.

Violation of Role: A number of parallels can be found between a pastor's being called to serve a congregation and a pastoral counselor being approached by an individual seeking counseling. In each case the pastoral relationship establishes certain role expectations. This role carries with it a power differential and the expectation that the pastor will bring gifts and resources that the congregation or client may need to call upon.

The role does not include an intimate relationship involving sexual contact. The latter characterizes a lover relationship that differs altogether and presupposes a context of mutuality and equality (i.e., both persons mutually consent and can expect needs to be met mutually). Thus, for a pastor to engage in a sexual relationship with one of his/her parishioners or clients creates a dual relationship in which he/she is both pastor/counselor

and sexual partner. Given that the expectations for each role are widely divergent, it is not possible for a pastor to carry out both responsibly and simultaneously.

Misuse of Authority and Power: The role of pastor or pastoral counselor carries with it authority and power and the responsibility to use them to benefit the people who have called upon a clergyperson for services. This power comes from knowledge, experience, training, leadership skills and charisma, which are gifts much needed in effective ministry with individuals or groups. They are gifts that can readily be misused to the detriment of persons: for example, authority may be used to mislead someone or to encourage harmful action, especially when a person seeks counsel during time of crisis; that is, when the person is vulnerable to a suggestion from someone who is respected and trusted. This is often when a pastor or counselor may suggest or initiate sexual contact with a parishioner or client and thus misuse authority. When the parishioner or client seeks affirmation and intimacy by initiating sexual contact with a clergyperson whom they see as an authority figure, the clergyperson still retains the power to say "no" to the approach. The need thus expressed by the parishioner or client then becomes the issue for the counseling agenda, and the clergyperson's task is to help the individual to find ways to build relationships with peers in which these needs can be met appropriately. Responding sexually to a client or parishioner who makes a sexual overture is still a misuse of role. The pastoral role is best used to set limits and to retain the pastoral relationship; ultimately this is of greatest benefit to the client or parishioner.

Taking Advantage of Vulnerability: To be vulnerable is to lack adequate power or resources to choose for one's self; consequently, one may be overpowered or exploited by another. A number of factors may make a person vulnerable or powerless: age, physical size, gender, race, role, current situation, and the like. A young teenager who is physically small and emotionally naive is vulnerable to possible exploitation by a teacher, employer, parent, or pastor. A woman in crisis during the serious illness of her husband who seeks support from a pastoral counselor is vulnerable to possible exploitation. When a pastor or pastoral counselor uses this vulnerability to dominate, control, and gain sexual access to a parishioner or client, the latter is exploited to her/his detriment. The Hebrew scriptures speak consistently of the expectation that vulnerable members of the community will be protected in their vulnerability. It names them as the sojourner, the widow, and the orphan. In Biblical times, these persons, due to life circumstances, were powerless to care for themselves and the community was mandated to protect them. Likewise, the life circumstances that result in vulnerability today mandate members of the religious community to protect persons in those circumstances from exploitation and never to take advantage of their vulnerability.

Absence of Meaningful Consent: To be meaningful, consent to sexual activity must take place in a context of mutuality, choice, and equality and in the absence of coercion or fear. These factors are not present when an imbalance of power arises out of life circumstances or role differences between two persons, thus coercion or fear is likely to be employed, overtly or covertly, to achieve sexual access. Such is the case in which a dual relationship exists; that is, a relationship in which one person is both pastor and lover to her/his parishioner or client. Even though both persons initially may "choose" to engage in sexual activity with each other and may see themselves as "consenting adults," the "consent" of the parishioner or client is not authentic because of the difference in role, authority, and power. The lack of authenticity may not be immediately apparent, but as the counseling and sexual relationships progress they lead to increased confusion and conflict of expectations and the effect of coercion will begin to be felt. The person with less power in the relationship realizes that her/his freedom to choose and to give shape to the relationship is limited. Meaningful consent, which is necessary for a just and emotionally satisfying sexual relationship, is absent in relationships that are shaped by a difference in power and

role. Hence it is unethical for a pastor to pursue or agree to sexual activity within such a relationship.

RESPONSE OF THE SECULAR PROFESSIONS

The secular counseling professions have been aware of and concerned with sexual abuse by therapists for a number of years. Acting out of this concern, many professional, secular organizations have established policies and procedures to hold their members accountable to a standard of professional conduct and, in so doing, to protect the consumers of their services. (See Ch. 27)

Among religious professionals, similar codes of ethics for pastoral counselors have been established and maintained by professional organizations.

> "...Pastoral counselors do not engage in sexual misconduct with their clients." (American Association of Pastoral Counselors, 1981)

> "...The CPE supervisor shall maintain supervisory relationships on a professional basis, avoiding exploitation of any kind." (Association for Clinical Pastoral Education, 1980)

The AAPC specifically provides a formal complaint process that is overseen by the Regional Ethics Committee in each region. This body has the option to recommend suspension or dismissal from the organization if a member is found to have engaged in unethical conduct.

Unlike codes of ethics for other professional groups, codes of the American Association of Pastoral Counselors and the Association for Clinical Pastoral Education do not specifically refer to sexual contact with clients as unethical conduct. The AAPC refers to "sexual misconduct" which is undefined and ambiguous.. It suggests that some sexual contact may not be "misconduct" whereas other sexual contact may be. The ACPE does not specify sexual contact at all. This lack of clarity weakens both policy statements.

Clearly all codes of ethics for the secular professions are designed to provide guidelines for professionals in the practice of counseling and to protect the clients they serve from the destructive consequences of unethical behavior. The codes also provide a mechanism for professional groups to monitor themselves and thus to maintain a high standard of service. As such, these policies and procedures reflect a commitment by the professions to provide quality service.

For the pastor who ministers outside a formal counseling setting or professional organization (either parish or specialized ministry), there are far fewer guidelines to assist him/her in dealing with the issue of sexual contact with parishioners or clients. Although some denominations make specific reference to sexual misconduct, the expectation is rarely stated that pastors will not engage in sexual activity with the persons they serve because it violates the pastoral relationship. Likewise, the procedures for responding to a complaint about such unethical behavior vary widely and frequently are nonexistent. Hence a clergyperson lacks specific guidance on this issue and the layperson is not aware that sexual contact with a pastor is unprofessional conduct, or that a means of protection and recourse exist should the problem arise.

Some have suggested that specificity is not necessary in stating that sexual contact with parishioners or clients is unethical for clergy. The clergy is supposed to know better.

Others have said that the Bible is their code of ethics and it addresses the issue adequately. Ideally, both views are true but, unfortunately, neither is adequate for either clergy or laypersons at present.

The following situations illustrate the problem of sexual contact by pastors and pastoral counselors in their professional capacities:

- Marsha was an active laywoman in her congregation. This meant that she regularly served on boards and committees and attended many meetings at the church. She noticed after meetings that her senior pastor was paying unusual attention to her; he then made sexual advances which she refused. His advances continued and included touching and trying to kiss her. She consistently refused his approaches. Initially, she did not tell anyone but her husband about the pastor's behavior. It continued. Two years later, in conversation with a friend in the congregation, she pursued an oblique comment that seemed relevant to her situation. In clarifying the comment, her friend shared her experience with the pastor which mirrored Marsha's. After discovering their common problem, they carefully asked other women friends in the congregation and discovered as many as a dozen other women who had been sexually harassed by the senior pastor. They wrote a letter to the parish council requesting that the pastor be confronted and that if the behavior did not cease, that he be relieved of his position. Immediately following the confrontation, the pastor came to Marsha's workplace, walked up to her, grabbed her shoulders and kissed her on the mouth. Even though she was initially stunned and confused by his action, Marsha returned to the council and requested the pastor's dismissal. The council concurred.

- A local pastor was sued by an 18-year-old member of his church who alleged that he forced her into "obnoxious sexual and abusive physical contact" two years earlier. The young woman commented: "I feel very angry at him for taking my trust and throwing it out the door; he used me." The pastor publicly denied the allegation but in court papers he said that the girl consented to the "alleged assaults and batteries" and understood the nature of her acts. Neither the local church nor the denomination took any disciplinary step in this situation.

- A pastoral counselor, a former police chaplain, was ordered to pay damages to a woman who sued him after he had sexual relations with her when she sought counseling from him. He did not dispute the fact of the sexual contact and admitted that it was wrong, but he denied that any damage had resulted to the woman.

- A pastoral counselor, a former president of his regional profes-sional organization, was sued by four women for malpractice. One woman said that the pastoral counselor told her that the sexual activity with him would be "therapeutically beneficial" for her. The cases were settled out of court and damages were paid to each woman. His professional organization ordered him to resign as president, write a letter of apology to each woman, enter therapy himself, and no longer counsel women. His denomination took no disciplinary action.

- A clergywoman who was a guest speaker at a local church was invited by the parish pastor to stop by his study after her presentation. She did so assuming an occasion for a collegial discussion. The pastor closed the door, grabbed the clergywoman, threw her on the sofa, jumped on top of her and penetrated her vaginally with his fingers. The clergywoman was so shocked, frightened, and confused that she waited two months before reporting her experience to her conference minister. The latter subsequently took action that resulted in the removal of the pastor's standing with the

conference. The clergywoman filed a police report alleging attempted rape by the pastor.

- A priest in a local parish engaged some teenagers in the youth group in sexual activity. He would arrange trips with them in order to have the opportunity to approach them sexually. When some teens finally told their parents, the adults confronted the priest who denied the reports. They then went to the bishop and requested his assistance. He chose not to get involved. The priest sought other employment and was hired by a parish in another state. No information about his offending behavior with the youth was passed to his new employers. The bishop refused a request from members of the congregation to meet with them and to deal with their anger and sense of betrayal. A new priest was employed by the parish.

- A young woman went to a Christian counselor seeking help for the recent break-up with her husband. After the first three counseling sessions, the counselor suggested that she needed to be reminded that she was a lovable person and that God still loved her and would show that love through him (the counselor). On this basis, he initiated a sexual relationship that lasted three years until the woman finally indicated that she did not want it to continue. At this point, he threatened her not to tell anyone about the sexual contact. When she told someone in the church he had her committed to a psychiatric ward. She was released only when she agreed that she had lied about his sexual contact with her.

These situations are evidence of the range of abuse from sexual harassment to coercive sexual activity to rape. Also, clearly indicated, is the range of institutional response (or lack of response) by the church.

PARALLELS WITH INCEST

The dynamics of incestuous abuse provide a paradigm for viewing sexual contact by pastors and pastoral counselors in professional relationships and for understanding its consequences. Incestuous abuse takes place within the intimacy and privacy of a family relationship. There is a pre-existing relationship between parent and child or older and younger sibling that establishes the power and authority of roles: the father's or mother's parental role vis-a-vis a child or the older sibling's role based on age, size, and designated authority. In either case, the younger child knows that the parent or sibling has authority over her/him. The child also assumes, until he/she learns otherwise, that the parent or older sibling will protect her/his vulnerability. Trust is central to the relationship. The responsible adults or older sibling should protect the child's vulnerability and not misuse the familial role to the child's detriment. Specifically, this means not engaging in sexual activity with the child in violation of their roles and their trust relationship. This does not mean that they may not have sexual feelings at times in response to the child. However, they do not act on these feelings because of their overriding concern for the child's welfare. When this relationship is betrayed by incestuous abuse, the victim is often sworn to secrecy and the resulting isolation prevents assistance from other family members or persons outside the family. The secrecy also may contribute to the victim's tendency to blame her/himself for the sexual abuse. When the child calls for help by telling someone what is going on, she/he is not likely to be believed. Denial of the reality of incestuous abuse allows avoiding the responsibility for stopping it. Initially, the special attention from the parent or older sibling may be experienced as positive by the child, nevertheless the betrayal of role and trust and subsequent dual relationship takes its toll. The abuse often continues unabated and its victims frequently suffer the long-term consequences of this broken trust, including the unwillingness or inability to ever trust in a relationship again.

Often the church is spoken of as the family of God. As such it is regarded by its members as a series of relationships in which intimacy and trust should abound. Many such relationships are shaped by the particular roles taken by persons and which determine relational expectations. Thus a pastor is called to serve a congregation and, in this capacity, is given power and authority to exercise leadership and provide for the needs of the congregation. A pastoral counselor is called to a specialized ministry of pastoral care for persons. Both roles presuppose responsibility for the persons who are served; both roles carry the potential for betrayal and misuse.

When either pastoral role is betrayed by the initiation of sexual contact with a parishioner or client, secrecy is expected or required and often is upheld by the victim out of fear or shame. She/he is confused: the attention feels good but, at the same time, the blurring of the boundaries of the pastoral relationship feels bad. If and when a victim does speak out, she/he is not likely to be believed or, if believed, is likely to be blamed. The church may not want to know and thus carefully makes itself unavailable to assist the parishioner or client or to call the pastor or counselor to account for his/her actions. Silence begets silence and the family of God becomes for some persons yet another source of pain, fear, confusion, and injustice.

PSYCHOLOGICAL AND SPIRITUAL IMPACT

The psychological effect on a person of sexual exploitation by a clergyperson is profound. Initially, the person may feel flattered by the special attention, especially if she/he has sought counseling at a time of low self-esteem or crisis because of difficulties in a relationship. In fact, sexual attention initially may seem positive and the client even may "consent" to the activity. At the same time, however, the person realizes that she/he is being denied a much-needed pastoral relationship and begins to feel taken advantage of (the consequence of the dual relationship). It is common for persons who have experienced sexual contact with pastors or pastoral counselors to feel that their trust in the pastoral relationship has been betrayed. They also report feeling victimized; that is, made a victim by the experience. To be made a victim is to be made powerless by another. Victims frequently are confused and fearful; as a result, they may not speak to anyone about their experiences. The subsequent isolation then exacerbates the already damaged self-esteem and the tendency to blame themselves for the pastor's actions.

On some level, at some point, most victims of this experience feel anger. It is usually a sign of health when a person begins to respond to exploitation with anger; it can be the primary motivation to try to rectify the situation and to protect others.

Spiritually, victimization by a clergyperson has a profound effect. All the psychological pain is magnified and takes on cosmic proportions. Not only is the victimization experienced as a betrayal of what should have been a trust relationship, but the betrayal is by one who represents God. Thus it is experienced as a betrayal by God. This breach of trust then makes a trusting relationship with anyone difficult. If you cannot trust your pastor, whom can you trust? In addition, the pastor/pastoral counselor by virtue of her/his role has access to the spiritual core of a person's being, perhaps a person's truest self. This access carries with it a dimension of power exceeding that of the secular therapist as well as an even greater potential for abuse. The sexual contact engenders a great deal of guilt and shame for the victim, especially for women who have been taught that any sexual approach by any man is the woman's responsibility. If the client or parishioner currently is in a committed relationship, there is also the guilt associated with the betrayal of that relationship. Thus, the confusion and ambivalence that commonly result take on theological

dimensions: "The person to whom I look for spiritual guidance is engaging me in activity which I thought was sinful but he says it is permissible because it is God's love flowing through him to me. This must be God's will for me." This sense quickly turns to self-blame when it becomes apparent that the sexual relationship is not therapeutic and is not helping to resolve the problems the person brought to the counseling relationship but, in fact, has aggravated those problems. Then the interpretation can be made that this painful experience is God's punishment which the person deserved because she initially "consented" to the sexual activity.

Clearly, the spiritual dimensions are easily distorted and convoluted in the midst of a confusing and difficult experience. The potential for damage is great because the stakes are high. If a woman feels betrayed by the person who represents God to her, and that betrayal leads to her feeling betrayed by God, the foundation of her relationship with God is shaken. If, in addition, the church does little or nothing in response to her call for help, then she may readily conclude that neither God nor the church body is available in her suffering. Then, when her anger and rage do surface, not surprisingly they are frequently directed toward God and the church. This emotional crisis is also a crisis of faith that may lead to complete abandonment of a faith life and of anything to do with the institutional church. The way to reconcile the relationship with God or the church is not easy and must be grounded in an experience of justice for the person betrayed.

PREVENTION: PROTECTING THE PROFESSIONAL PASTORAL RELATIONSHIP

It is not unusual for a pastor or pastoral counselor to be sexually attracted to a parishioner or client. If the attraction occurs in a counseling relationship and could compromise the relationship, the pastor should refer the client to another pastor and terminate his/her relationship. As long it is clear that the pastor's priority is to provide for the client's pastoral and counseling needs and to avoid exploiting the counseling relationship, the client need not interpret the referral as rejection but, rather, as a clear indication of concern for the client's well-being.

If a pastor and parishioner experience a mutual attraction, and if they are mutually interested in fostering this attraction and developing an on-going and possibly sexual relationship, then they should terminate the professional pastoral relationship prior to pursuing the possible sexual relationship. For example, the parishioner could transfer membership to another church, or the pastor could resign his/her position and seek employment elsewhere. Such actions would avoid the development of a dual relationship and would insure that the parishioner retains the counseling resources of a pastor. To some people these suggestions may seem extreme. However, they make clear the seriousness of the situation and the importance of a careful and intentional response to it.

When a pastor feels some confusion about his/her feelings and the appropriate action to take, it is useful to seek out a colleague or counselor, one who shares the concern for maintaining professional standards, to assist in clarifying the best course of action. This careful avoidance of a dual relationship protects the integrity of the pastor or pastoral counselor and the welfare of a parishioner or client. Hence it serves the best interests of both.

A parishioner or client and the congregation in which he/she participates also can help to protect and preserve professional, pastoral relationships. Expectations for professional relationships should be made explicit when a pastor is appointed or called: "The congregation expects the pastor not to engage in sexual activity with any of its members but to maintain pastoral relationships in a professional and ethical manner." This kind of clarity

not only helps the pastor to set clear boundaries but, also, helps parishioners to know that if those boundaries are crossed, they will have some recourse within the congregation and can call for help. Basically, specific expectations establish the community norm for a pastor's behavior.

So too for a pastoral counselor. A statement of expectations for the counseling relationship (preferably written) protects both counselor and client: "As a pastoral counselor, I will not engage in any sexual activity with a client and will relate only within the boundaries of a professional, pastoral relationship. This commitment reflects both the expectations of my professional association and my own standards of professional conduct."

Clarity of role expectations establishes a point of reference for a parishioner or client and helps individuals to avoid unrealistic expectations of their pastor or counselor as well as providing a basis for recourse should this expectation be violated. Some people may feel that this specificity is clinical and legalistic and, thus, may interfere with a caring, trusting, pastoral relationship. In fact, the clear definition of expectations may well enhance the trust level of a relationship and, thus, enable the development of a more effective pastoral, therapeutic relationship.

EFFECTIVE RESPONSES TO ABUSES OF PASTORAL ROLE

An overview of the goals and principles of effective responses to reports of abuse by pastors or pastoral counselors is the focus of this section. Specific suggestions for policy and procedures are available currently in a 1984 report prepared by the Washington Association of Churches ("Sexual Contact by Pastors and Pastoral Counselors in Professional Relationships: A Study with Recommendations to Denominational Judicatories.")

The primary goal of a response to sexual contact by a pastor or pastoral counselor in a professional relationship is to create justice in the midst of injustice. The basic premise of the justice in this circumstance is the shared understanding by everyone involved that an offense has taken place, a member of the church has been harmed by the actions of another, and the pastor or pastoral counselor is responsible for that harm done. Initially the client or parishioner will need support as he/she makes known the abuse has occurred and the violation of the pastoral relationship. The pastor or pastoral counselor who is responsible must be held accountable for his/her behavior and every effort should be made to insure that the offending behavior is not repeated.

The secondary goals focus on the restoration to wholeness. For the victim, this means support and affirmation to heal her/himself. For the community of faith, this means the opportunity to deal openly with its feelings of betrayal and to have its pain and grief acknowledged as well. For the offender, this means a possible therapeutic intervention that may help her/him to deal with the personal and professional issues that may have contributed to poor judgment, lack of impulse control, loss of professional boundaries, denial of responsibility for behavior, and the like. A context of creating justice is required in order for any secondary goal to be achieved.

Restoration for the victim means regaining a sense of personal and collective power, positive self-esteem, trust in the church and its professionals, and so forth. Restoration for the community of faith may result in a renewed sense of its ability to protect members from exploitation and to be faithful to its theological and ethical foundations, as well as a renewal of its trust in the pastoral ministry. Restoration for the offender may result in his/her ability

to carry out an effective ministry and not to threaten the well being of parishioners and clients.

Forgiveness and reconciliation are the theological tools by which restoration is accomplished. However, forgiveness by the victim or the congregation depends on the offender's repentance. "If your brother wrongs you, reprove him; and if he repents, forgive him" (Luke 17:3). Repentance means to take on a new mind; that is, to change, which requires the offender to acknowledge responsibility and to be willing to undertake the necessary work to change his/her behavior. This acknowledgement must be expressed directly to the victim(s). Restitution also may be a part of this acknowledgement and the taking of responsibility for damage done. Financial restitution may make possible payment for medical and counseling expenses incurred by the victim(s) as a result of the offending behavior. When these kinds of actions have taken place, the victim(s) may be able to consider the possibility of forgiveness and the climate for reconciliation, restoration, and healing may develop.

A word of caution: Premature reconciliation should be avoided at all costs. The encouragement of premature reconciliation by a congregation or denomination prior to repentance or restitution undercuts the process of seeking justice and eventually prevents authentic restoration for all persons in the situation.

The church as institution (whether congregation or denomination) is responsible for the actions of its professionals. It ordains ministers to serve on its behalf and in its name. Therefore, it has the responsibility of overseeing the professional behavior of these persons. By and large the professional relationship between an individual clergyperson and the congregation/denomination is less formal than that of a doctor or psychologist with their professions (e.g., it does not involve licensing). It does, however, in some sense involve a covenantal relationship in which an ordained minister is accountable to the church (in whatever form) that ordained him/her. Likewise the church is responsible for its ministers. Thus, when a church learns that one of its ministers is engaged in sexual activity with a parishioner or client, it is the church's responsibility to call this minister to account and thus to protect its members from the abusive professional relationship.

The response is both administrative and pastoral. Administratively, policies and procedures should be developed and implemented so that when a situation of abuse within a professional relationship arises, the mechanism exists through which a congregation or denomination can act. Initially, the response to victim(s) should include information on the process of making a complaint, clarifying of their options in pursuing a complaint (including civil or criminal litigation), advocacy for them within the system, and counseling support to assist personal recovery. The administrative options in response to the offending pastor may range from restrictions on the pastor's counseling ministry with the requirement for rehabilitative therapy to termination of employment to denial of ministerial standing. Depending on the policy of the denomination, these options can be carried out by any designated church body or administrator. If the offense has occurred within a congregation itself, then the congregation also should be recognized as a victim and included in the administrative action. It should be kept informed of the process and involved whenever possible in decision making while respecting the wishes of the victims and their confidentiality.

Pastorally, the response to the victim is the first priority. She/he needs affirmation and support from her/his church in order to even raise this issue. Challenging an institution is never easy but challenging the church and one of its professionals from a position of powerlessness and betrayal is extremely difficult. She/he needs to know that there is both emotional and spiritual support for going through this process. The second pastoral priority

is the congregation (if the offense occurred there). Denominational administrators must be sensitive to the pastoral needs of the congregation as a whole and to their sense of betrayal. Careful and sensitive listening and response in an open discussion can be invaluable to the sustenance of the congregation as a whole. The pastoral needs of the offending pastor should also be addressed. The best pastoral response here is refusal to support his/her denial of the behavior or of responsibility for the behavior. A firm and clear expectation of accountability can provide the means for acknowledging responsibility, repenting, and making restitution; thus the possibility of forgiveness and reconciliation may be created. Neither the administrative nor pastoral responses to the offending pastor should be punitive nor should they isolate and ostracize him/her. Likewise, they should not avoid naming the offense and the one responsible for it and taking all steps necessary to see that the offending behavior is not repeated in the church at any level. This is the only way to provide the means to rehabilitation and restoration. The offending professional must recognize that while there is support for him/her as a person and as a fellow pastor, there is no support for the unprofessional and unethical behavior in which he/she has engaged and that it will not be tolerated or excused.

CONCLUSION

Sexual contact by pastors and pastoral counselors in professional relationships is a serious credibility issue for the church today. The unwillingness of the church, by and large, to acknowledge this problem and to address it directly results in a loss of credibility with its people. Hence some people perceive the church, rightly or wrongly, as acting first to protect its own (i.e., the pastors who act unethically in their pastoral role) from the consequences of their behavior. This perception is understandable since some people have experienced an absence of action and support when they reported instances of clergy misconduct, and have seen the church side with an offending pastor in a civil suit. They also may have seen other clergy support a colleague's denial and excuse the behavior by suggesting that "he who is without sin...." Or they have observed the conspiracy of silence within the church when an offending pastor is "moved" to another conference/diocese/synod but no information is shared with the new employer about the offending behavior. Because of the lack of institutional response by the church, individuals frequently feel that their only recourse is civil court. Here, at least, they find a mechanism to seek restitution for damages done to them. It is an indictment of the church's inaction when recourse to the civil court is deemed necessary..

The church is responsible for monitoring the professional behavior of its ministers. But even if it decides conscientiously to do so now, it still will have to build trust with the public. The lack of credibility is such that the concerns by some people within the church with raising this issue and diligently pursuing it is not necessarily supported. Individuals who have been harmed by a pastor and who have not found support from their denomination or congregation do not trust the church to be willing or capable of holding its representatives accountable. Too often this belief results in persons leaving the church altogether, feeling betrayed, and concluding that the church is not a safe place for them.

Certainly the church must take responsibility for the well-being of its members if it is to be a place where we seek to make justice within and without and if it is to be a place of sanctuary and safety for persons who are vulnerable and facing crisis. We cannot overlook or avoid the injustice in our midst when pastors misuse their pastoral role in sexual contact with their parishioners or clients. We must act justly, fairly, and decisively if we are to restore the integrity of the ministry and of the church.

CHAPTER 20

SEXUAL EXPLOITATION BY CLERGY AND PASTORAL COUNSELORS[1]

Gary Richard Schoener
and
Jeanette Hofstee Milgrom

Our concern with the sexual exploitation of clients by clerical and pastoral counselors came about through our efforts to help the victims. In recent years, however, we also have assisted various church organizations and several seminaries, and we have evaluated clergypersons who have sexually exploited clients or parishioners. Some of this work was noted in the *Legislative Report* (1985) of the Minnesota Task Force on Sexual Exploitation by Counselors and Therapists, and discussed in *Sexual Assault and Abuse, A Handbook for Clergy and Religious Professionals* (Milgrom & Schoener, 1987).

Meanwhile, during the past several years, an ever-increasing number of newspaper stories, many of them given large headlines, have been devoted to cases of alleged sexual exploitation by clergypersons. These stories typically have focused on civil suits or criminal charges brought against clergy for sexual involvement with minors, or civil suits by adult women or their husbands against clergy who have seduced them. Recently, criminal charges were brought against a minister for the sexual exploitation of an adult woman in Minnesota where criminal statutes prohibit such behavior (see Ch. 43, Case 7).

Our file of clippings on sexual abuse by clergy contains predominately stories concerning sexual abuse of children. The accounts are from throughout the United States and concern clergy of a great many faiths. They describe sexual abuse of virtually every imaginable type perpetrated against children of all ages and both sexes. Some examples of headlines may be useful here:

"Pastor accused of having sex with girl, 15" (Phelps, 1983)

"Church is quiet on sexual accusation against its pastor" (McCoy, 1984)

"When priests molest children—A Louisiana case unveils the shame (Sawyer, 1985)

"Byzantine Catholic priest pleads guilty to sexually abusing boys" (Zack, 1987)

"Ramsey judge mulls punitive damages in sex case—Suits allege 20 years of priest's sexual abuse of boys" (Oaks, 1987)

"Priest fired due to charge of sex assault" (Dunbar, 1988)

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[1]Rev. Marie Fortune provides an excellent overview of this topic in Chapter 6. She has contributed greatly to bringing the problem of sexual exploitation by clergy and pastoral counselors out into the open by extensive public speaking and contributions to serious discussions on this issue (Washington Council of Churches, 1984). Her book, *Keeping the Faith* (Fortune, 1987), which is aimed at women who are abused by family members, may be quite helpful to women who are abused by clergy. Her most recent book, *Is Nothing Sacred? When Sex Invades the Pastoral Relationship* (Fortune, 1989), is essential reading.

"Judgment day for a Harlem minister?" (Salholz, 1988)

"Don't Tell Anybody...You'll get in trouble and so will I, a three part series (Ehlert, 1988)

The recently published *Betrayal of Trust: Clergy Abuse of Children* (Gaylor, 1989) contains numerous accounts from the news media of clergy abuse of children. It was published by the Committee to Protect Children From Abusive Clergy. Appendix BB, "Child Sexual Abuse Within the Catholic Church," by Kathe Starke, provides an overview of this topic.

Sexual exploitation of adults has received considerably less press attention, but it too has been the subject of newspaper stories (see for example Gaylor, 1989, pp. 69-71) and a number of local and national TV shows. Ann Landers (1986c) published a letter from "More Than I Needed to Know in Panama City," who learned on his honeymoon that his wife had slept with five men who were at their wedding including the minister who married them. Among other things, Landers advised:

> And for heaven's sake, tell Sally to keep her mouth shut. The minister doesn't need the publicity.

Landers (1986d) withdrew this advice when she published a followup letter from "Disappointed in Detroit:"

> For 32 years I was married to a minister who was protected by people who also kept their mouths shut. In the meantime, my husband was taking advantage of young women to whom he should have been ministering. If people had not remained silent, he would have been removed from his job. The net result was that he caused irreparable harm to all of those who believed he was a servant of God.... (p. 6C)

Landers (1989b) recently published a letter from "A Crushed Christian in California" who indicated that an associate pastor began courting her as soon as he learned of a recent large insurance settlement she had received. As soon as she married him he began dominating her life, frequently citing "God's will" as a rationale for his pronouncements. She wrote:

> Using "God" to control, manipulate, bully, and extort is cruel and sadistic. My emotional scars wlil take years to heal and I may never fully trust a minister or church again. (p. 7E)

Little is available in the way of incidence/prevalence data. Blackmon (1984) surveyed 300 clergy in southern California from four denominations—Assembly of God, Episcopal, Presbyterian, and United Methodist. Thirteen percent reported that they had had sexual intercourse with a parishioner. Kuchan (see Ch. 3) reports Wisconsin data in which counselors reported having received a total of 73 complaints of sexual exploitation by clergy during the years 1982 through 1984. While this was well below the 221 for psychiatrists and 127 for psychologists during the same period, it was higher than that for non-psychiatric physicians (36) and marriage counselors (23).

Bradshaw (1977), in an article entitled "Ministers in Trouble: A Study of 140 Cases Evaluated at the Menninger Foundation," noted:

> Like psychotherapists in other disciplines, the minister who has not taken special training is poorly prepared to handle the hazards of transference and countertransference processes in the pastoral counseling situation. Many of the men felt it was "therapeutic" to become intimate with their clients and thus could not avoid very personal contact with women parishioners. Their actions triggered off reactions by their spouses and their own consciences. Other psychotherapists have access to consultation on difficult situations, but many ministers do not ever seek expert guidance in the matter of treating women of their congregations. (p. 238)

Bradshaw (1977, pp. 238-39) describes the case of a minister who "...had a fleeting affair with a parishioner after counseling her for an emotional problem," resulting in "...a marked loss of self-esteem and increased guilt feelings which he attempted to handle with alcohol abuse." He further notes:

> Several other ministers in our sample handled their guilt feelings, and subsequent loss in their self-esteem from having an affair with a counselee, by "arranging" to get themselves caught or otherwise exposed. Some even made confessions to family or parishioners with the naive expectation that they would be praised and adulated for this bit of truthful behavior! (p. 239)

Our work with victims, clergypersons, and religious institutions has led us to reach some conclusions that may be of some use in examining sexual exploitation by clerical or pastoral counselors. A great many similarities to abuse by other types of counselors and therapists can be identified but there are also some differences, especially when the exploitation occurs in a church or religious setting. We discuss these differences from the perspective of definitional problems, the victim, the perpetrator, and the church or religious body.

DEFINITIONAL PROBLEMS

Sexual involvement with minors is clearly as unethical and illegal for clergy as it is for any adult but sexual exploitation of adults is a more confusing issue.

When religious professionals such as priests and nuns take vows of celibacy or chastity sexual contact with any adult violates church roles or sacred vows. The exact definition of what is included in these vows, however, is usually lacking. Consequently, some clergypersons rationalize that certain types of contact are permissible even though they clearly are sexual. Lay people also tend to be unclear about such definitions so clergypersons sometimes are able to make authentic-sounding arguments to justify exploitative behavior.

Adultery is a sin in most religions. Even if clergy are permitted to marry, therefore, sex with someone other than one's spouse is a serious offense. Also, in many creeds, sex outside of marriage is prohibited.

For these reasons sexual involvement with a parishioner or counselee may be examined in clerical circles in terms of general rules about sexual conduct rather than the sexual exploitation of a client by a counselor. Furthermore, because pastoral work often takes place in settings other than a counseling office, it is not easy to define what a counseling relationship consists of in a religious setting. Instead of regular counseling sessions, for example, counseling may take place in the clergyperson's residence, the parishioner's home, a hospital room, or at a retreat.

It may seem reasonable to assume that the generally tighter strictures regarding sexual contact permits counselees to have an easier time recognizing abuse; in fact, this does not seem to be the case. For one thing, unclear standards on physical contact and the setting in which counseling is provided blurs the potential distinction between professional standards and the definition of personal relationships. Terms like "Christian love" and "sharing" may confuse everyone involved about what is happening. Last but not least, the unspoken belief that the clergyperson is acting on behalf of God may create a sense of security in the righteousness of his or her actions.

Intimacy in the pastoral, or pastoral counseling, relationship can be very confusing to both parties. Madden (1976), in an article on "Meaningful Pastoral Intimacy," wrote:

> Pastoral intimacy is often, and perhaps primarily, allowed or authorized out of an individual need for blessing and affirmation. In other words, the intention of the parishioner in admitting the pastor into the intimate space is bound up in his or her hope or expectation of being affirmed in some way. The inner door is not opened to the minister just to pass the time of day. That can be done on the sidewalk or front porch without the risk of exposure of some part of one's inner space.
>
> If persons allow pastoral intimacy in the hope of pastoral affirmation, it becomes very important that pastors remain aware of why doors are being opened for them. For example, if a parishioner is seeking more to be affirmed than to affirm, he will most likely come off with bad feelings following intimate contact—so will the parishioner.
>
> Pastoral intimacy also carries a "no-sex" contract. This does not preclude the presence of sexual stimulation in pastoral intimacy, but traditionally intimacy is more easily granted to the "holy man" because holiness and sexuality are thought to occupy opposite ends on the spectrum. The holy man did not seem to have sexual feelings, while sexual man was assumed to be without holiness. (p. 37)

Rolfe (1985), in an article, "The Destructive Potential of Psychological Counseling for Pastor and Parish," discusses some of the difficulties inherent in the pastor playing a psychotherapeutic role. He notes that such activities compete with other pastoral duties and with the needs of the clergyman's family. He further asserts:

> The clergy are the only professional group involved in counseling who regularly mix counseling with friendship and thus systematically destroy their own credibility and then relegate themselves to positions of isolation. (p. 64)

THE VICTIM

Clients or parishioners who are sexually exploited vary as broadly as do victims of other types of counselors and therapists. Some are very dependent and/or have relatively serious emotional difficulties whereas others are relatively healthy and functioning well. The effect of the sexual contact is also variable.

Groups of persons within many church settings are potentially highly vulnerable because they lack experience in adult romantic or sexual relationships. They include parishioners who are highly constricted in their life experience as well as nuns. Sometimes when such persons seek to broaden their life experience, or when nuns, for example,

decide to move into the secular world, they are particularly disadvantaged in judging other people's motives and the propriety of certain types of interpersonal behaviors.

Fortune (1989) raises concern about a misnaming of the problem of clergy-parishioner sex by saying that both are vulnerable. She writes:

> ...although the pastor is <u>at risk</u>, it is only the parishioner who is <u>vulnerable</u>. (p. 121)

Rutter (in press), in his book, *Sex in the Forbidden Zone*, also addresses some of the unique features of the clergy-parishioner relationship:

> The power of the pastor over the congregant is tremendously enhanced by his authority, if he wishes to exercise it, to describe to a woman her status with God. (p. 38)

Two problems often are greater for victims of clergy than for victims of other counselors. First of all, they tend to blame themselves for corrupting a presumably "pure" clergyman and often become markedly disenchanted with religion or confused about issues of sin and guilt. Beyond acquiring the normal distrust of authority figures, they also may suffer a loss of faith—a damage to their spiritual side.

Second, many such victims feel extremely isolated, fearing that others in the church hierarchy or congregation will blame them for what happened. When, in fact, they are so accused, which sometimes happens, the parishioner may assume all responsibility and blame. This experience leads to considerable loss of self-esteem and, possibly, the loss of a support network. For someone whose social support network is intertwined with the church, this blow can be devastating. Baker (1984) provided an account of this sort of social context; although the victims were believed, Baker's exposition clearly indicated the devastating potential of the context had the church sided with the pastor. Fortune's (1989) *Is Nothing Sacred? When Sex Invades the Pastoral Relationship*, provides an excellent analysis of these issues.

Nathaniel Hawthorne's *The Scarlet Letter*, published in 1850, and thought by many to be the first American psychological novel, focused on the mistreatment of a young woman made pregnant by a highly respected clergyman who largely escaped the community's wrath. Fortune (1989) cites the non-fictional case of eminent preacher Henry Ward Beecher, who in the 1870s was sued by the husband of parishioner Elizabeth Tilton with whom he had a sexual affair. Not only did Beecher weather the storm, but Victoria Woodhull was jailed for publishing the story of the involvement in 1872. The parishioner has good reason to expect rough treatment in such situations, whereas the clergyman will often be given the benefit of the doubt. In the case Fortune (1989) describes, the minister/perpetrator, who was a multiple offender, was given a standing ovation when he left the church (p. 82).[2]

The impact of sexual exploitation on parishioners who have been victimized by clergy was studied by the Minnesota Interfaith Committee on Sexual Exploitation by Clergy (1989), which published a list of common long-term effects on the victim that included:

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[2] Olsen (1989)describes a very similar series of events in the case of a physician/perpetrator who was shielded by church leaders and the congregation, and afforded the luxury to tell his story from the pulpit.

•extreme anger at the violation of sacred trust
•crisis in one's faith and spiritual life
•grief over the loss of the relationship with the clegyperson and faith community
•fragmentation of self: the mind shuts down the heart, splits off the spirit, and alienates the body
•fear of being disbelieved, blamed, ostracized (p. 8)

The remainder of the list included symptoms common to victims of therapists such as low self-esteem.

A variety of resources may be of assistance to victims of clergy. Fortune (1989) reports having given a group of victims the book *Sexual Violence: The Unmentionable Sin* to read. Some have found the book *Sexual Assault and Abuse: A Handbook for Clergy and Religious Professionals* (Pellauer, Chester, & Boyajian, 1987a) quite helpful, especially the chapter on "Resources for Ritual and Recuperation" (Pellauer, Chester, & Boyajian, 1987b). Several clients have recommended *Rebuilding Your Broken World* (MacDonald, 1988), although we found the author's vague references to his own unnamed transgressions distracting. Fortune's (1989) *Is Nothing Sacred? When Sex Invades the Pastoral Relationship* and *Sexual Exploitation by Clergy: Reflections and Guidelines for Religious Leaders* (Minnesota Interfaith Committee on Sexual Exploitation by Clergy, 1989) have both been helpful to local victims.

THE PERPETRATOR

We have seen the same range of personality types among clergypersons as those described by Schoener and Gonsiorek in Chapter 32. A clergyperson may put forth far-reaching rationalizations to justify the sexual contact, such as providing the counselee or parishioner with self-serving definitions of celibacy or the boundaries of "Christian love."

By the same token, many well-intentioned clergy are poorly prepared for the counseling role. Thus they lack an understanding of the importance of professional boundaries. Rassieur (1976), in *The Problem Clergymen Don't Talk About*, provides an excellent although dated introduction to this issue and offers useful practical advice to clergy and their spouses. The book was ahead of its time when published and is still unique. He provides a variety of examples of pastoral attraction to counselees (pp. 70-87) and discusses problems in the pastoral role and closeness of the work which can set the stage for sexual intimacy. He also lists factors which tend to mitigate against sexual involvement with counselees: marital satisfaction; fear of social consequences; self-image as a pastor; theological and moral constraints; and supportive social relationships. He recommends a value framework to help guide the pastoral counselor and advises, as others have earlier (e.g., Pattison, 1965), that the pastoral counselor obtain professional consultation. A more recent contribution by McDowell (1989) described the pastor's moral defenses in situations where there are temptations of sex with a parishioner.

More than two decades ago Pattison (1965), in "Transference and Countertransference in Pastoral Care," provided an excellent overview of these phenomena for ministers. He wrote in part:

> Sexual transferences are common. The woman who overvalued and idealized her father may overestimate the pastor and regard the pastor's wife as a rival. (p. 197)

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Some people become defensive when their sexual impulses are stimulated and they fear the expression of the impulses. Thus the pastor may provoke negativism to a warm intense personal approach which the parishioner experiences as sexually stimulating. So the pastor is well advised to refrain from physical contacts as well as intimate gestures which may provoke unwanted sexual fantasies or frightened withdrawal. (p. 197).

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The pastor who is afraid of his own sexuality may deny his erotic feelings in situations where he should be aware that he is responding in a sexually provocative or reactive fashion. Often pastors find women accusing them of improper advances while the pastor protests his innocence. Had the pastor recognized his own impulses he might have avoided playing into a mutual sexual distortion of the relationship. (p. 199)

It has become apparent, in the years since Pattison's article was published, that a number of the pastors who protested their innocence were in fact guilty of sexual misconduct with parishioners. However, the scenario which Pattison describes can also occur.

Malony (1989), while noting that ministers may be especially vulnerable to sexual transgressions with counselees, argued that popular belief to the contrary, the ministry is "not as stressful as had been presumed" (p. 50). However, others (e.g., Pellauer, 1987) argue that the ministry is a high stress profession characterized by overcommitment and "workaholism." Clergy and their spouses both experience a number of stressors, although studies have shown that they rate the relative importance of stressors somewhat differently (e.g., Gleason, 1977). Even when in training ministerial candidates are aware of pastoral burnout:

Burnout in pastoral ministry has been occupying the attention of an increasing number of writers. Students in the seminary read these materials with keen interest and, at times, deep personal concern. They are already aware of what it is like to feel overextended in the seminary and wonder how they will escape burnout in the parish. (Harbaugh & Rogers, 1984, p. 99)

Hulme (1989), in a recent contribution, although noting that some ministers are "sex addicts," places considerable faith in education, marriage care groups, and spiritual growth as preventive measures. He wrote:

The protection that clergy and the congregations have in this unsupervised ministry is the commitment of the clergy to their calling, the accepting attitude of the clergy toward their own sexual passions, and the wholesome respect of the clergy's responsibility for their own actions. (p. 191)

As with psychotherapists from professions such as psychiatry and psychology (see Ch. 32), narcissism has been identified as a problem among some clergy and pastoral counselors. Bradshaw (1977, p. 236) reported that 39 out of 140 clergymen evaluated at the Menninger Clinic "...were considered narcissistic personalities." One author has even argued that narcissistic character disorders "...are prevalent among members of the clergy precisely because the profession provides strong reinforcement for such personality problems." (Meloy, 1986, p. 50) Meloy (1986) argues that the pattern of transient sexual

partners characteristic of narcissistic pathology is actually a form of autoeroticism, and that clergy whose sexual outlets are limited to masturbation thus have a sanction for self-love.

Merrill (1985) quoted Jim Smith, the head of the counseling staff at the Family Life Center in a Dallas church, and listed the following warning signs:

- Finding you look forward to someone's visit—thinking, "Let's see, what shall I wear today?"
- Rearranging your schedule to accommodate a certain appointment; "bumping" someone else.
- Meeting in less-than-standard locations: for lunch, at her home, and so on.
- Nurturing fantasy.
- Being secretive with your spouse about what's happening. (p. 105)

Like professional university graduate and medical schools, seminaries rarely provide much in the way of useful guidance on dealing with sexualized or romanticized counseling relationships. The problem is even more serious for clergypersons who operate in situations with fewer clear-cut boundaries and without professional supervision.

Like the mental health professions, religious institutions do little or no screening of individuals who may have difficulty handling the professional role. In addition, the lack of sexual outlets as well as the inattention to sexual issues in many denominations frequently add to the hazards of the role.

There is little if any incentive for clergypersons to self-report their exploitative behavior. Having chosen the ministry as a lifelong profession they have security as long as they remain a minister or priest; should they fall out of grace, however, they chance losing all their security. Typically, few alternative occupations are available to them.

Until relatively recently the careers of clergypersons who were caught were seldom endangered. The clergy were rarely prosecuted criminally for child sexual abuse; and if they were, the penalties were often light. If complaints were made by adults, the clergy often were moved to new parishes where they continued in their pastoral role. Now, suddenly, clergypersons find themselves targets of lawsuits and criminal actions as well as of church discipline.

THE CHURCH OR RELIGIOUS BODY

Churches, religious organizations, and denominations tend to be ill-equipped to deal with complaints of this type. Sexual impropriety is a serious charge and constitutes such a danger to the church body that the tendency in the past has been to discount the reports or to cover them up. All that has been changed by the growth in the number of complaints and the willingness of some parishioners to "go public."

Baker (1984) in *Beyond Forgiveness* provided a dramatic account of how a church body faced the serious charges of sexual exploitation that were leveled at their pastor. Whether the theology cited or the eventual resolution agrees with a reader's views is immaterial; the account itself is useful because it is realistic and reveals the social and political context in which such matters may occur. He provides a graphic description of his reaction to learning that the allegations of sexual misconduct by the pastor were true:

> When he finished, I replaced the phone, sat in stunned disbelief for a few moments, and then laid my head on my desk and cried. (p. 11)

The impact on the church body of such revelations is often devastating, with many "secondary victims" (Fortune, 1989, p. 45).

The church or religious body, of course, has immense power to help to heal the victim's wounds or to exacerbate the victim's pain. Some religious groups discount victims and exclude them, even to the extent of attacks by other members of the parish and innuendos in sermons. Although such behaviors are often devastating to the point of prompting the victim to denounce his or her religion, they also may backfire and result in lawsuits against the church. When children have resulted from sexual liaisons and church organizations have collaborated to hide the clergyman from a paternity suit, the issue attracts public attention. A recent Donahue (1988) television show focused on this very issue.

Rev. Fortune, in Chapter 6, calls for the development of clearer ethical codes and better complaint procedures for victims of pastoral counseling and we heartily agree. Frankly, many church bodies seem unclear about the seriousness of such charges and about their liability to deal with them. In some instances we have advised victims to take their attorney along when they meet with church officials; we know on the basis of our experience that the presence of an attorney tends to get attention. In Minnesota there is little question that the specific listing of clergy in statutes dealing with criminal and civil liability of psychotherapists is helpful.

Fortune (1989) proposes a plan of action aimed at countering the obstacles created by church myopia, a lack of realization of the power of the pastor, and the fact that churches operate like families. She advises that the following actions by the church body will lead to healing for all involved:

1. Truth telling...
2. Acknowledging the violation...
3. Compassion...
4. Protecting the vulnerable...
5. Accountability...
6. Restitution...
7. Vindication... (pp. 114-8)

The Minnesota Interfaith Committee on Sexual Exploitation by Clergy (1989) lists common responses by the family or congregation to sexual exploitation by clergy as:

- attempts to maintain normalcy at all costs
- attempts to avoid confrontation of the behavior
- efforts to maintain a good family image by not talking to outsiders about the family or congregational needs and inadequacies, including sexual exploitation
- fear of disintegration of the family or congregation
- feelings of helplessness, inadequacy, or unacceptability
- shocked disbelief, anger, and rage
- inability to deal with the conflict and anger in helpful ways
- feelings of betrayal and abandonment
- denial
- blaming the victim
- faith and spiritual crisis (p. 9)

The report also makes some useful suggestions for prevention.

To their credit, a number of churches and religious groups have begun to address this issue. A local seminary asked a psychologist to assist the screening committee in better identifying applicants with possible sexual-impulse control problems. Other seminaries are adding course material on the issue of sexual exploitation. The Archdiocese of St. Paul and Minneapolis has sponsored several well-designed conferences aimed at bishops, priests, and other church personnel on the topic of sexual abuse in its many forms. It has also publicized its policies and procedures regarding responses to situations in which pastors are accused of sexual misconduct (Roach, 1988).[3] A number of other church groups have called our center for consultation on developing resources to assist them in such cases, and some are utilizing the hiring procedures we suggest (see Ch. 37 and Appendix C).

The Minnesota State Task Force on Sexual Exploitation by Counselors and Therapists (Sanderson, 1989) gave special attention to the problem of the clergy. The group set up an interfaith task force to examine the problem of the sexual exploitation of counselees by clergy and pastoral counselors.

This discussion group, which became the Minnesota Interfaith Committee on Sexual Exploitation by Clergy, continued its work long after the Task Force had ended, releasing in 1989 its final report entitled Sexual Exploitation by Clergy: Reflections and Guidelines for Religious Leaders.[4] Beyond the recommendations concerning intervention and prevention, which are likely to affect church organizations, the continued work of this group has helped stimulate broader discussion in the local religious community. A local Episcopalian publication, for example, has published articles on sexual exploitation by clergy and on boundaries in the pastor/parishioner relationship (Moss, 1988a,b) written by a member of the Committee. During the first half of 1989 the Evangelical Lutheran Church in America sponsored a local workshop on this topic with Schoener as a presentor.

Nationally, however, the picture is dismal. The pioneering changes in Seattle, Washington, and in Minnesota (described in Rev. Fortune's work and here) are not readily visible elsewhere, although at least two protestant denominations (Evangelical Lutheran Church in America and the United Church of Christ) are developing policies and procedures. Church officials in other states sometimes telephone or write or visit Rev. Fortune or our center for assistance. Far more religious groups, however, are still trying to avoid responsibility or to deny the problem.

Consumer advocacy groups such as the Association of Psychologically Abused Patients in Ft. Worth, Texas, and Stop Abuse by Counselors (Stop ABC) in the State of Washington (see Ch. 31) continue to encounter cases of sexual misconduct by clergy where the church or denomination fails to take responsibility for the problem. Good Tidings, a self-help group which specializes in assisting women who become infatuated with or romantically involved with Roman Catholic priests has assisted many women and some priests during the past five years (see Ch. 31). The Walk-In Counseling Center continues to receive requests for assistance from both clients/parishioners and from church bodies and denominations in Minnesota and elsewhere. It is clear both locally and nationally that a great variety of religious organizations and their memberships are facing many of the same challenges as the health care delivery system and mental health professions.

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[3] Appendix BB presents these policies and discusses the Archdiocese's approach to sexual abuse of children.

[4] Currently available at a cost of $5.00 from Chaplain John Martinson, Abbott-Northwestern Hospital, 2700 Chicago Avenue S., Minneapolis, Minnesota 55407.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirements of Filing of Unlicensed Mental Health Service Providers

DECLARATION OF COUNSEL

I, Robert T. Holley, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0477.

Robert T. Holley

ROBERT T. HOLLEY
Special Assistant
Attorney General

Dated: March 21, 1990

PERSONS REQUESTING NOTIFICATION
OF SUBMISSION OF RULES TO THE ATTORNEY GENERAL

Delbert J. Cory
8346 Isleton Ct.
Cottage Grove, MN 55016

Susan Hermanson
1117 Marquette Ave. S
Minneapolis, MN 55403

same address as John Hermanson who was -

Bill Hoefer
4916 29th Ave. S
Minneapolis, MN 55416

Kerry Fuller
2925 Hazel Ln
Minnetonka, MN 55343

Mary Lynne Wolfe
8216 Halifax Ct.
Brooklyn Park, MN 55443

– Jerry Wolfe at same address was notified

Brian McNee
425 Highpoint Curve
Maplewood, MN 55119

John Hermanson
1117 Marquette Ave. S
Minneapolis, MN 55403

Mike Porter
485 Maryland Ave. W #9
St. Paul, MN 55117

K. Jones
3440 Emerson #17
Minneapolis, MN 55408

Holly Hillestad
9669 E 123rd St.
Hastings, MN 55033

Bob Walker
9001 W 31st St.
St. Louis Park, MN 55426

Jeni Walker
9001 W 31st St.
St. Louis Park, MN 55426

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rules as adopted have been submitted to the Office of the Attorney General on the date of this notice, March 21, 1990, for review as to legality and form to the extent form relates to legality. The proposed rules, the rules as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rules which were published in the State Register and made available to the public on November 13, 1989, have been modified. A copy of the rules as modified is enclosed with this notice. A free copy of the findings of fact, conclusions, and order explaining the amendments and adopting the rules is available upon request from:

Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

The rules must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rules. Any written comments must be submitted within eight calendar days of the date of submission of the rules to the Attorney General. Your comments must address only the issue of legality of the rules or the legality of the specific parts or subparts of the rules. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Attn: Patricia Nolte, Public Finance Division
525 Park Street, 5th Floor
Saint Paul, Minnesota 55155
Telephone: (612) 296-9715.

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

Date: March 21, 1990

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental
Health Service Providers

AGNOTICE.90

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

Robert A. Sullivan, being sworn says:

That on the 21st day of March, 1990, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Robert A. Sullivan

Executive Director

Title

Subscribed and sworn to before me

this 21st day of March,

1990.

Lois Kauppila

LOIS KAUPPILA
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES APRIL 28, 1992

AGAFIDVT.90(7)

everyone else that requested a notice to A.G. received supplemental notice of submission of rules adopted without public hearing to the Attorney General

Changes - findings of fact

page 8 lines 7-10 indicate last change changing $60 to $50 ~~as~~ this is also according to your notes but in the rules $45 is changed to 37.50 (I think this has to be made otherwise the calculation isn't right.

otherwise changes were all made based on ME's notes

same conclusions except changes

Unlicensed Health Providers

All the People who requested to be notified were except:

(1) Susan Hermanson's name was on the list to receive Notice to the A.G. but her letter doesn't request notice. -
John Hermanson (same address as Susans) was sent Notice of Supplemental Notice of Submission of Rules Adopted but his letter didn't request notification to the A.G. either

This is O.K since either letter didn't require notification but John Hermanson was sent notice anyway
(But have been known on Submission notice)

(2) Mary Lynne Wolfe was listed as a person requesting notification of submission to the AG.
~~I could not find a letter from Mary Lynne Wolf~~ - however there was a letter from Jerry Wolfe - same address as Mary Lynne Wolfe's
Jerry and Mary Lynne both requested a hearing but neither requested to be notified to A.G.

Since neither of them requested notification I guess it's allright

when rule is resubmitted

(use resubmission checklist BBL has it)

① must send Notice of Resubmission again + affidavit

② also - significant issues so must have a full comment period of 8 days before rule is approved

changes wh/ must be made: (see enclosed comments

~~pg 3, line 13~~ 5 changes

1. pg 2, line 26 - ~~insert~~ after "pastoral" insert "mental health"

2. pg 3, line 11 - after "donation" insert:
"from the mental health client, or the client's insurer, employer, agent, or other representative"
before "for providing mental health services

3. pg 3, line 31-32 - delete C

4. pg 5, lines 10-11 - delete + replace with:
"E. Other activities that are specifically prohibited under MS § 148B.44

5. pg 8, line 3 - change $60 → 50 + calculation

Bob -

The problem with the rules are as follows:

1. ok page 2, line 26 - after the word "pastoral insert "mental health" so its consistent with the definition of mental health services and with the exemption of spiritual counseling

2. Page 3, line 11 to clarify remuneration, After the word donation insert:

"from the recipient of the mental health services, or the ~~recipients~~ client or consumer or agent or representative or other representative ~~thereof~~."

This would clarify that remuneration comes from the client of the services, not a salary from the Hospital for example

3. ok pg 3, lines 29-32 - what is the difference between B + C? If no difference, C should be deleted.

4. ok pg 5, lines 10-11. This provision appears to be broader than the statute, + further is terribly vague - + unrelated to the Board's

regulation. This should be deleted + replaced with:

OK "E. Other activities that are specifically prohibited under Minn Stat §§ 148B.44"

5. Finally, this is not a legal problem, + thus up to you or your client to change. But page 8, line 3 says "current filing fee is $60." Actually current filing fee is $50. This could be confusing + you might consider changing it.

change $50

Pls let me know your views on this

Thanks!
Marty
Carsparky

unlicensed wks

1. SNR-
2. pg 2, line 26
3. pg 3, line 11
4. pg 3, line 29
5. pg 5, line 10-11
6. pg 8, line 3

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

Notice of the Board of Unlicensed Mental Health Service Providers intent to adopt the above-entitled rules was published in the State Register on November 13, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on November 13, 1989.

All persons were given the opportunity to submit written comment on the rules for at least 30 days after notice of proposed rulemaking.

The above-entitled matter came before the State Board of Unlicensed Mental Health Service Providers (Board) on the 12th day of January, 1990. After considering all written comments submitted to the Board, in accordance with statutory requirements regarding the adoption of rules, the board being fully advised in the premises, hereby adopts the following [**supplemental**] findings of fact, conclusion and order.

SUPPLEMENTAL FINDINGS OF FACT

1. The Board published its notice of intent to adopt the above-entitled rules, together with the proposed rules, in the State Register on November 13, 1989.

2. The notice of the board's intent to adopt the rules afforded interested persons 30 days in which to submit data and views on the proposed rules. The comment period, as set out in the notice expired on December 13, 1989.

3. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

4. During the comment period, the board received 29 written comments from interested persons or departments or agencies. They are as follows:

1) Ann Wynia; Commissioner, Department of Human Services, St. Paul, Minnesota
2) Jennifer Walker; St. Louis Park, Minnesota
3) Mary Lynne Wolfe; Brooklyn Park, Minnesota
4) Gail Carrubba; Edina, Minnesota
5) Sharon Hillestad; Hastings, Minnesota
6) Linda Reding; Minneapolis, Minnesota
7) Delbert J. Cory; Cottage Grove, Minnesota
8) Gerald Wolfe; Minneapolis, Minnesota
9) Michele Neely; Minneapolis, Minnesota
10) Dan Stover
11) Neda Wood; Brooklyn Park, Minnesota
12) Michael Porter; St. Paul, Minnesota
13) J. Frank Hargitt; Minneapolis, Minnesota
14) Kerry Fuller; Minnetonka, Minnesota
15) Brian H. McNee; Maplewood, Minnesota
16) Joan Bilinkoff; Therapy Director, Domestic Abuse Project; Minneapolis, Minnesota
17) John Hermansen; Minneapolis, Minnesota
18) Madeline Miller; Minneapolis, Minnesota
19) Cindy Mott; Minneapolis, Minnesota
20) Cathy Brown; Minnetonka, Minnesota
21) Jan Simmons; Apple Valley, Minnesota
22) D. Simmons; Apple Valley, Minnesota
23) Dr. Lotte Scidler; Minneapolis, Minnesota
24) Jody Ruller; Minnetonka, Minnesota
25) Barbara Finstrom; Minneapolis, Minnesota
26) Donald H. Brown; Minnetonka, Minnesota
27) Michael Staples; Bloomington, Minnesota
28) V. P. Nordaker; Minneapolis, Minnesota
29) Holly Hillestad; Hastings, Minnesota

Among the twenty-nine (29) written comments were nineteen (19) that requested a public hearing. No requests for a hearing were withdrawn. Therefore, the Board did not receive requests for a public hearing from twenty-five (25) or more persons which were not withdrawn.

5. The Board finds that certain of these comments have merit and has modified the rules accordingly. None of these modifications are substantive.

6. In addition, the Board staff made changes to clarify language, and these comments are part of the record.

7. The modifications and the specific grounds for their adoption are as follows:

CLARIFICATION OF LANGUAGE AMBIGUITY

8. Page 1, line 23. [Part 9000.0100, Definitions, subp.4, item A. "Mental Health Services"]* The language could be misconstrued to include persons who by definition in subp. 4, item A, are not providing mental health services.

9. For clarity, it is reasonable to modify page 1, line 23 by deleting the word "aftercare".

10. For clarity, it is reasonable to modify page 1, line 28 by adding the words "mental health" after the word "other". The addition of these words will clarify any ambiguity concerning whether other services represent mental health services or not.
(Comment: Ann Wynia, Commissioner of Human Services, St. Paul, Minnesota)

11. These proposed modifications are not substantially different from the rules as proposed.

DRAFTING ERROR / LANGUAGE AMBIGUITY

12. Page 1, line 24 [Part 9000.0100, subp. 4, item A, "Mental Health Services"]. To correct a drafting error, it is reasonable to modify line 24 by deleting the word "care" after the word "pastoral". The term pastoral "care" did not appear in the Board's Emergency Rules. The word "care" was inserted in the proposed permanent rules erroneously. The terms, "pastoral counseling" and "pastoral care" have specific meanings in the rules and it is important to clarify these distinctions so as to clarify any ambiguity as to individuals required to file with the board under these rules.

13. In addition, several of the comments relating to the inclusion of "pastoral counseling" as a mental health service may have resulted from a misreading of the rules, leading to an interpretation that all counseling, care, or healing by clergy, is considered "pastoral counseling". This ambiguity may have occurred because of the erroneous inclusion of the word "care" after the word "pastoral" on page 1, line 24. [Part 9000.0100, subp. 4, item A, "Mental Health Services"]

14. Removing the word "care" after the word "pastoral" in line 24, page 1, [Part 9000.0100, subp. 4, item A, "Mental Health Services"], will also serve to clarify ambiguity.

To further clarify, the Board believes it is reasonable to insert the words "mental health" after the word "pastoral" on page 1, line 24-25 [Part 9000,0100, subp. 4, item A, "Mental Health Services"] and to insert the same on page 2, line 26 [Part 9000.0100, subp. 5, item A].

* Proposed Permanent Rules Draft, dated 04/06/90.

15. The Board also believes that it is reasonable to clarify the definition of "Remuneration" [9000.0100, subp. 6.] on page 3, line 11 by inserting the words "from the mental health client, or from the client's agent, insurer, employer, or other representative," after the word, "donation" to indicate that remuneration to the provider must be intended to compensate for mental health services rendered.

16. The Board also believes it is reasonable to delete paragraph C, line 33-34, page 3 [9000.0110, subp. 2, item C.]. This provision is redundant and duplicates statutory language [M.S. 148B.40, subd. 3].

17. Further, the Board believes it is reasonable and consistant with M.S. 148B.40 to .46 to modify Page 5, lines 12-14 [9000.0120, subp. 2, "Requirements to Maintain Current Information"] by deleting the words, "factors that may reasonably be construed to affect public safety," after the word, "other" and inserting the words "activities that are specifically prohibited under Minnesota Statutes, section 148B.44."

18. Lastly, the Board believes it is reasonable, and that it would clarify the rules if the amount in the example of prorated fees given on page 8, lines 5-10 [9000.0160, subp. 5.] be changed from $60 to $50 as this amount would be consistant with the actual fee in force.

19. With the clarifications made in numbers 11 through 18 above, the Board believes that any language ambiguity has been clarified and that only "pastoral counselors", who are providers of mental health services as defined in subp. 4 A, would be required to register with the Board.

The Board further believes that the language of the rules on page 2, lines 13 through 18, [Part 9000.0100, subp. 4, item C] clarifies that the term "pastoral care" of a congregation, or spiritual counseling conducted by clergy, are not mental health services. Clergy who are not providing mental health services would not be required to register.

(Comments: Mary Lynne Wolfe, Michele Neely, Jay Frank Hargitt, John Hermansen, Cathy Brown, Dr. Lotte Scidler, Jody Ruller, Barbara Finstrom, Jennifer Walker, Donald H. Brown, Michael Staples, Gerald Wolfe, Sharon Hillestad)

AUTHORITY TO REGULATE UNDER MINNESOTA STATUTES

20. A number of the comments received during the open comment period allege that the Board does not have authority under statute (M.S. 148B.40, and M.S. 148B.41) to regulate pastoral counseling.

21. Minnesota Statutes 148B.40, subd. 3 and subd. 4, define "mental health service provider" and "mental health services."

The definition of mental health services, and subsequently, those who are considered providers of mental health services, was intended to be broad so that providers of mental health services, who were disciplined under one occupational title, license, or registration, could not simply change their occupational title and continue to practice without regard to the statutorily established code of conduct (M.S. 148B.44, subd. 1).

22. The Board believes that it is reasonable to interpret 148B.40 to .46 to include, by way of example, a broad range of occupational titles under which mental health services may be practiced. "Pastoral counseling" is one example of those persons who may be covered if they are practicing mental health services as defined [Part 9000.0100, subp. 1,A].

23. The Board further believes that the intent of the legislation creating the Board [M.S. 148B.40 to .46] is to protect the public from harm by mental health service providers through the establishment and enforcement of a "Code of Prohibited Conduct", and through practice related consequences. [148B.44, and .45].

The Board of Unlicensed Mental Health Service Providers, as well as the Boards of Social Work and Marriage and Family Therapy, was established in the 1987 legislative session in partial response to the problems of sexual exploitation and other ethical transgressions by members of professions identified in a report to the Legislature published by The Task Force on Sexual Exploitation by Counselors and Therapists.[1] This Task Force report was largely the impetus for the creation of these new regulatory boards.[2] The special problems of "regulating the unregulated" in that report makes replete reference to, not only the potential, but actual, harm to the vulnerable mental health clients who approach trusted providers at a time of emotional turmoil and vulnerability, only to be exploited by the provider.[3] Clearly, it was legislative intent to regulate the "unregulated mental health provider" under the legislation creating the Board of Unlicensed Mental Health Service Providers.

24. It can be stated, arguably, that it is reasonable and necessary that pastoral counselors who are the subject of the letters of comment, should be considered mental health service

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[1] Barbara E. Sanderson (ed.), It's Never OK: A handbook For Professionals on Sexual Exploitation by Counselors and Therapists, Task Force on Sexual Exploitation by Counselors and Therapists, Minnesota Department of Corrections, St. Paul, 1989, p. xii.

[2] Ibid.

[3] Ibid at Appendix D. see also, Gary R. Schoener et al., Psychotherapists' Sexual Involvement with Clients, Walk-In Counseling Center, 1989, Chapters 6 and 20.

providers to the extent that they provide services that constitute "professional treatment and assessment of cognitive and behavioral, emotional, and social dysfunctions" which are psychological by nature. Often, the nature of the practice of a pastoral counselor is to combine methods, which are psychological, interpersonal, and intrapersonal, as well as spiritual, together in their counseling.

It follows that the nature of pastoral counseling may constitute mental health services as defined [Part 9000.0100, subp. 4, item A, B, and C] depending on the nature of the process itself.

25. To exclude "pastoral counseling" as a mental health service would be unreasonable and outside both the spirit and intent of M.S. 148B.40 to .41 to the extent that any provider of mental health services could simply assume this title to escape regulation, in spite of the fact that the provider was offering mental health services as defined [Part 9000.0100, subp. 4, A] to the general public for remuneration. Such exclusion by a single occupational title, would constitute an unreasonable interpretation and circumvent the purpose of the Board's activity to protect the public.

26. The Board further believes that the rules are within the scope of the statute establishing the Board and granting it authority under M.S. 148B.40 and .41, and that legislative intent clearly indicates that pastoral counseling is to be regulated by the Board. This is evidenced by the fact that M.S. 148B.41, subd. 1, establishing the Board and setting membership, mandates that two pastoral counselors be members of the Board, as well as other identifiable specialties and sub-groups of providers subject to the filing requirements.

27. It follows, therefore, that the legislature clearly intended that the Board was to regulate the practice of pastoral counselors to the extent that their practice constitutes mental health services as defined.
(Comment: Michael Staples)

CONSTITUTIONAL SEPARATION OF CHURCH AND STATE

28. A number of the comments received during the open comment period, comment on the fact that the rules as established by the Board, constitute a violation of the United States Constitution Amendment 1, prohibiting restraint of the free exercise of religion.
(Comments: Michael Staples, Donald H. Brown, Jennifer Walker, Barbara Finstrom, Jody Ruller, Delbert Cory, Linda Reding, Sharon Hillestad, Gerald Wolfe, Cindy Mott, D. Simmons, Jan Simmons, Madeline Miller, Brian H. McNee, Kerry Fuller, Neda Wood)

29. The Board believes the inclusion of pastoral counseling within the rules, is constitutional.

30. While the Constitution, in the First Amendment, guarantees the prohibition against the government's regulation of religious beliefs, there is precedent that the state may, in some circumstances, impose incidental burdens on otherwise protected religious conduct. These burdens may be imposed if there is a compelling reason to regulate the practice of religious activities if, and when, the public welfare is to be maintained.

31. The Board believes that they have met the constitutional test, established by precedents set by numerous court cases. Arguments concerning this in detail, are attached as Addendum A, addressing the legal issues and case law involved.

OTHER COMMENTS

32. Other comments received during the Open Comment Period, concerned a request to hold a public hearing, but did not state specific objection to the rules as proposed.
(Comments: V. P. Nordleson, Michael Porter, Gail Carrubba)

33. Since these comments did not make specific reference or objection to specific parts of the rules, and constituted only requests for a public hearing, the Board will not be commenting on these letters in the Findings.

The individuals asking for a public hearing, were given full notice of when the hearing would be held if 25 or more persons requested a hearing. Since less that 25 persons requested a hearing, one was not held.

ACTIVITIES OF VOLUNTARY SELF-HELP GROUPS

34. Commentor Dan Stover, states his concern that the rules can be read to include persons who conduct self-help groups, such as Alcoholics Anonymous, Gamblers Anonymous, Over-eaters Anonymous, etc., as mental health service providers. He specifically mentions fifth-step work with Alcoholics Anonymous, and Al-Anon self-help groups, which, he states, are conducted by ministers or members of the clergy, as this step deals with the spiritual manifestations of recovery.

35. The Board wishes to clarify that they see nothing in the proposed rules, which would restrict the work of ministers or clergy in working with self-help groups, nor does the Board see that these rules would require persons assisting self-help groups in the spiritual realm, to be registered with the Board. First, persons doing spiritual work with self-help groups are typically not doing so for remuneration, as required by the rules, in order to be subject to filing. Secondly, the Board does not believe

that the kind of self-help intervention provided by clergy or ministers for self-help groups constitutes the professional practice of mental health services, nor utilizes the techniques outlined in the definition of mental health services given in the rules [Part 9000.0100, Definitions, subp. 4. item A through C]. Those activities are considered spiritual and subject to the exclusions under Part 9000.0100, subp. 4, item C.

CONCLUSIONS

1. The Board has published and served adequate notice of intent to adopt the proposed rules.

2. The Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive and procedural requirements of the statute and rules.

3. The changes that are being made in the proposed rules do not result in rules that are substantially different from those published in the State Register.

4. Any findings which might properly be termed conclusions, and any conclusions which might properly be termed findings, are hereby adopted as such.

5. The above-captioned rules are needed and reasonable.

ORDER

NOW, THEREFORE, IT IS ORDERED that the rules identified as Proposed Rules Relating to Unlicensed Mental Health Service Providers as modified are adopted this 12th day of April 1990, pursuant to authority vested in the Board of Unlicensed Mental Health Service Providers by Minnesota Statutes, section 148B.171.

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers

RAS:ekp

FNDFCT90.SUP(1)
RV: 4/12/90

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

SUPPLEMENTAL NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rules as adopted have been resubmitted to the Office of the Attorney General on the date of this notice, April 12, 1990, for review as to legality and form to the extent form relates to legality. The proposed rules, the rules as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rules which were published in the State Register and made available to the public on November 13, 1989, have been modified. A copy of the rules as modified is enclosed with this notice. A free copy of the supplemental findings of fact, conclusions, and order explaining the amendments and adopting the rules is available upon request from:

Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

The rules must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rules. Any written comments must be submitted within eight calendar days of the date of submission of the rules to the Attorney General. Your comments must address only the issue of legality of the rules or the legality of the specific parts or subparts of the rules. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Attn: Martha J. Casserly, Special Assistant
Attorney General
525 Park Street, 5th Floor
Saint Paul, Minnesota 55155
Telephone: (612) 296-9715.

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

Date: April 12, 1990

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental
Health Service Providers

SUPAGNOT.90

Rule Notice List
April 6, 1990

G. B. Garrett
P. O. Box 301
Hastings, MN 55033

Mr. Jerry Wolfe
8216 Halifax Court
Brooklyn Park, MN 55443

Mr. Bob Walker
9001 - 31st Street West
St. Louis Park, MN 55426

Ms. Jody Fuller
2925 Hazel Lane
Utica, MN 55343

Mr. John Kisling
1833 Stillwater Avenue
St. Paul, MN 55119

Mr. Bill Hoefer
4916 - 29th Avenue South
Minneapolis, MN 55417

Ms. Carrie Kisling
3722 Highland Avenue
White Bear Lake, MN 55110

Rev. Kerry Fuller
2925 Hazel Lane
Minnetonka, MN 55343

Mr. Keith Hallquist
309 Blake Road South
Hopkins, MN 55343

Mr. Greg Kissling
3722 Highland Avenue
White Bear Lake, MN 55110

Ms. Fran Haefer
4916 - 29th Avenue South
Minneapolis, MN 55417

Dr. Betsy Meshbesher Polydorou
6450 City West Parkway
Eden Prairie, MN 55344

Brad Hagemo, O.D.
6111 France Avenue South
Edina, MN 55410

Mr. Theo Manzavrakos
2419 First Avenue South
Minneapolis, MN 55404

Dr. Daniel Hall
5934 Oakgreen Avenue North
Stillwater, MN 55082

Mr. Glen Hillestad
9669 East 123rd Street
Hastings, MN 55033

Holly Hillestad
9669 East 123rd Street
Hastings, MN 55033

Ms. Cheryl Ehrruch
4790 Lakeway Terrace
Shorewood, MN 55331

Mr. Jon Swanson
2901 Nevada Avenue South
St. Louis Park, MN 55426

Mr. John Hermansen
1117 Marquette Avenue, #601
Minneapolis, MN 55403

Ms. Barbara Finstrom
3305 Bloomington Avenue South
Minneapolis, MN 55407

Mr. Mike Porter
485 Maryland Avenue West, #9
St. Paul, MN 55117

Mr. Martin J. O'Brien
157 Hartman Circle
Fridley, MN 55432

Ms. Jeri Walker
9001 West 31st Street
St. Louis Park, MN 55426

Dennis R. Peterson, Esq.
202 Omni Building
1652 Greenview Drive SW
P. O. Box 6477
Rochester, MN 55903

Mr. Glen Hillestad
9669 East 123rd Street
Hastings, MN 55033

Mr. Delbert J. Cory
8346 Isleton Court
Cottage Grove, MN 55016

Mr. Ivan Makovec
201 East 27th Street, #BE
Minneapolis, MN 55408

Brian McNee
425 Highpoint Curve
Maplewood, MN 55119

K. Kones
3440 Emerson #17
Minneapolis, MN 55408

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Rules Relating to the Requirement of Filing of Unlicensed Mental Health Service Providers

AFFIDAVIT OF MAILING THE SUPPLEMENTAL NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

Robert A. Sullivan, being sworn says:

That on the 12th day of April, 1990, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Supplemental Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Robert A. Sullivan

Executive Director
Title

Subscribed and sworn to before me
this 12th day of April,
1990.

Lori L. McPherson

LORI L. McPHERSON
NOTARY PUBLIC
RAMSEY COUNTY
MY COMMISSION EXPIRES 8-23-95

SUPAGAFD.90(7)

Board of Unlicensed Mental Health Service Providers

Adopted Permanent Rules Relating to Unlicensed Mental Health Service Providers

Rules as Adopted

9000.0050 PURPOSE.

Parts 9000.0100 to 9000.0200 establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a regulatory system and central registry of persons who provide or purport to provide mental health services.

9000.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment; diagnosis; treatment; ~~aftercare;~~ counseling; therapy including guidance, pastoral ~~care~~ mental health counseling, treatment or therapy for addiction, abuse, or abusive behavior exhibited or received by an individual; psychotherapy; hypnotherapy or hypnoanalysis; personal analysis; or other mental health services for remuneration. Mental health services are services that are designed to alleviate symptoms, change or reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase the ability of the individual to adapt to and cope with internal and external stress. Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, couples, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental, psycho-physiological, or psycho-social conditions that they seek to alleviate.

B. "Mental health services" includes those services in item A. Mental health services does not include services that are:

(1) primarily for entertainment;

(2) primarily informational;

(3) primarily for client advocacy; or

(4) related to a custodial or maintenance function.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation, or a congregation member, by clergy when the care is not related to the provision of mental health services in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. A mental health service provider may be:

A. a counselor (crisis, grief, eating disorder, compulsion, phobia or anxiety, drug and alcohol addiction, mental health, pastoral, or sexual and physical abuse);

B. a school and college counselor, if the counselor is providing mental health services as defined in subpart 4;

C. a rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

D. a social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

E. a therapist in an area related to child care, education, new age therapy, holistic therapy, dance, music, or recreation, if the therapist is providing mental health services

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as defined in subpart 4;

F. a hypnotist or hypnotherapist;

G. a behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, barter, or the expectation of payment or voluntary donation for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3, and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include the following:

A. a person specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person not providing mental health services as defined in part 9000.0100, subpart 4; or

C. a person not providing mental health services for remuneration.

Subp. 3. **Requirement to file.** A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 must apply to the board and receive

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acknowledgment of the filing as provided in part 9000.0130 before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0110 to 9000.0200 become effective and who fails to file must pay the late filing fee and the regular filing fee specified in part 9000.0200.

This does not preclude the board from taking action under Minnesota Statutes, section 214.11 or from seeking relief under Minnesota Statutes, section 148B.42, subdivision 5.

9000.0120 PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee according to part 9000.0200;

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in this state or any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history, if any, of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

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A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on alleged malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this part.

9000.0130 ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way. The date the board acts to authorize issuance of the applicant's "Acknowledgment of Filing" is the date on which the term of filing begins.

9000.0140 DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the information required by part 9000.0120, subpart 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

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C. the applicant fails to fully disclose disciplinary actions taken in another state, province, or foreign government;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120, subpart 1, item D, to obtain information from the appropriate regulatory agency in this state or any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the board acts to authorize the issuance of the "Acknowledgment of Filing," according to part 9000.0130, or the date the board acts to reissue the "Acknowledgment of Filing" after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 RENEWAL OF FILING.

Subpart 1. **Renewal notice.** Prior to the date the filing

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ends under part 9000.0150, the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 within the deadline in subpart 2. The renewal application must be made on the forms provided by the board. The forms are available from the board office.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made by the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200.

Subp. 5. **Reduction of first renewal fee.** A provider who had a valid "Acknowledgment of Filing" before December 5, 1989, upon the first renewal under subpart 2, shall pay the current renewal fee minus a portion of the fee that is equal to 1/12th of the fee for each month from the date of initial acknowledgment to December 5, 1989.

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For example, if the provider received a valid "Acknowledgment of Filing" in September of 1989, and the current filing fee is $60 upon renewal of filing, the provider would have three months credit and would pay only $45 for the next yearly filing fee, calculated as follows: $60 - (three months x 1/12th of $60) = $45.

9000.0170 BILL OF RIGHTS.

A provider of mental health services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a state or contractual community correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200, except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

B. adherence to the rule would impose an undue burden on the filer or applicant; and

C. the granting of the variance will not adversely affect the public welfare.

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

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B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that affect the variance. A variance shall be revoked if there is a material change in the circumstances that justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subparts 1 and 2 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

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by Revisor _____

SAVE- Requests for copy of decision

Unlicensed Mental Health Providers

Want a copy of the Attorney General Decision

11 Dr. Betsy Meshbesher Polydoron
6450 City West Parkway
Eden Prairie, MN 55344

00 33

2. Jeri Walker
9001 W. 31st St.
St. Louis Park, MN 55426

3. Delbert Cory
8346 Isleton Court
Cottage Grove MN 55016

4 Rev. Mary Lynn Wolfe
Director of Special Affairs
Church of Scientology of Minnesota
3019 Minnehaha Ave
Mpls, MN 55406

148B.39 PRIVILEGED COMMUNICATIONS; EXCEPTIONS.

A person licensed under sections 148B.29 to 148B.39 and employees and professional associates of the person cannot be required to disclose any information that the person, employee, or associate may have acquired in rendering marriage and family therapy services, unless:

(1) disclosure is required by other state laws;

(2) failure to disclose the information presents a clear and present danger to the health or safety of an individual;

(3) the person, employee, or associate is a party defendant to a civil, criminal, or disciplinary action arising from the therapy, in which case a waiver of the privilege accorded by this section is limited to that action;

(4) the patient is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that persons behalf; and

(5) a patient agrees to a waiver of the privilege accorded by this section, and in circumstances where more than one person in a family is receiving therapy, each such family member agrees to the waiver. Absent a waiver from each family member, a marital and family therapist cannot disclose information received by a family member.

History: *1987 c 347 art 3 s 11*

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

148B.40 DEFINITIONS.

Subdivision 1. **Terms.** As used in sections 148B.40 to 148B.47, the following terms have the meanings given them in this section.

Subd 2. **Board.** "Board" means the board of mental health service providers established in section 148B.41.

Subd. 3. **Mental health service provider.** "Mental health service provider" or "provider" means any person who provides, for a remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the board of medical examiners under chapter 147; the board of nursing under sections 148.171 to 148.285; or the board of psychology under sections 148.88 to 148.98; the board of social work under sections 148B.18 to 148B.28; the board of marriage and family therapy under sections 148B.29 to 148B.39; or another licensing board if the person is practicing within the scope of the license.

amended

Subd. 4. **Mental health services.** "Mental health services" means the professional treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including intrapersonal or interpersonal dysfunctions.

Subd. 5. **Mental health client.** "Mental health client" or "client" means a person who receives the services of a mental health service provider.

History: *1987 c 347 art 4 s 1*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 1, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.41 BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS.

Subdivision 1. **Composition.** The board of unlicensed mental health service providers consists of 17 members, including two chemical dependency counselors, two professional counselors, two pastoral counselors, five members representing other identifiable specialties and subgroups of providers subject to filing requirements, and six public members as defined in section 214.02. Within 90 days after the effective date of rules adopted by the board to implement sections 148B.40 to 148B.47, members of the board specified must be mental health service providers who have filed with the board pursuant to section 148B.42.

Subd. 2. **Appointment.** Members of the board are appointed by the governor and serve under section 214.09.

Subd. 3. **Board administration.** The board shall elect from among its members a chair and a vice-chair to serve for one year or until a successor is elected and qualifies. The members of the board have authority to administer oaths and the board, in session, to take testimony as to matters pertaining to the duties of the board. Six members of the board constitute a quorum for the transaction of business.

Subd. 4. **Rulemaking.** The board shall adopt rules necessary to implement, administer, or enforce sections 148B.40 to 148B.47 under chapter 14 and section 214.001, subdivisions 2 and 3. The board shall consult with the commissioner of health, the commissioner of human services, and the commissioner of employee relations in the development of rules. The board may not adopt rules that restrict or prohibit persons from providing mental health services on the basis of education, training, experience, or supervision; or that restrict the use of any title.

History: *1987 c 347 art 4 s 2*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 2, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.42 FILING REQUIRED.

Subdivision 1. **Filing.** All mental health service providers shall file with the state, on a form provided by the board, their name; home and business address; telephone number; degrees held, if any, major field, and whether the degrees are from an accredited institution and how the institution is accredited; and any other relevant experience. An applicant for filing who has practiced in another state shall authorize, in writing, the licensing or regulatory entity in the other state or states to release to the board any information on complaints or disciplinary actions pending against that individual, as well as any final disciplinary actions taken against that individual. The board shall provide a form for this purpose. The board may reject a filing if there is evidence of a violation of or failure to comply with this chapter. Filings under this subdivision are public data.

Subd. 2. **Acknowledgment of filing.** The board shall issue an acknowledgment of filing to each mental health service provider who files under subdivision 1 and relevant rules of the board, and who is determined by the board to be in compliance with this chapter. The acknowledgment of filing must not be displayed in any manner nor shall it be shown to mental health clients. The acknowledgment of filing shall contain, in bold print, the phrase: "This acknowledgment of filing does not imply or certify in any way that this mental health professional has met any standards or criteria of education or training."

Subd. 3. **Nontransferability.** Acknowledgments of filing are nontransferable.

Subd. 4. **Penalties.** Failure to file with the board, or supplying false or misleading information on the filing form, application for registration, or any accompanying statements shall constitute grounds for adverse action.

Subd. 5. **Provision of mental health services without filing.** Except as otherwise provided in this chapter, it is unlawful for any person not filing with the board to provide mental health services in this state as defined in section 148B.40, subdivision 4. Any person violating subdivision 1 is guilty of a gross misdemeanor.

History: *1987 c 347 art 4 s 3; 1988 c 689 art 2 s 49*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 3, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.43 PROHIBITED USE OF ACKNOWLEDGMENT.

No mental health service provider may display the acknowledgment received under section 148B.42, subdivision 2, or refer to it in any advertising, on stationery, or in any communication to a client or the public, or otherwise use the fact that the provider has filed with the state as an indication of state approval or endorsement or satisfaction of standards of conduct, training, or skill.

History: *1987 c 347 art 4 s 4*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 4, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.44 PROHIBITED CONDUCT.

Subdivision 1. **Prohibited conduct.** Notwithstanding any law to the contrary, the board may reject a filing or application, or may impose adverse action as described in section 148B.45 against any mental health service provider for failure to comply with the provisions of this chapter. The following conduct is prohibited and is grounds for adverse action:

(a) Conviction of a crime reasonably related to the provision of mental health services. Conviction, as used in this subdivision, includes a conviction of an offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered.

(b) Conviction of crimes against persons. For the purposes of this chapter, a crime against a person means violations of the following sections: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23; 609.231; 609.235; 609.24; 609.245; 609.25; 609.255; 609.265; 609.26, subdivision 1, clause (1) or (2); 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; and 609.595.

(c) Revocation, suspension, restriction, limitation, or other disciplinary action against the mental health professional's license, certificate, registration, or right of practice in another state or jurisdiction, for offenses that would be subject to disciplinary action in this state, or failure to report to the board that charges regarding the person's license, certificate, registration, or right of practice have been brought in another state or jurisdiction.

(d) Advertising that is false or misleading.

(e) Filing with the board false or misleading statements of credentials, training, or experience.

(f) Conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(g) Adjudication as mentally incompetent, or as a person who has a psychopathic personality as defined in section 526.09, or who is dangerous to self, or adjudication pursuant to chapter 253B, as chemically dependent, mentally ill, mentally retarded, or mentally ill and dangerous to the public.

(h) Inability to provide mental health services with reasonable safety to clients by reason of physical, mental, or emotional illness; drunkenness; or use of legend drugs, chemicals, controlled substances, or any other similar materials or mood-altering substances.

(i) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.

(j) Failure to comply with a client's request made under section 144.335, or to furnish a client record or report required by law.

(k) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client.

(l) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.

(m) Engaging in sexual contact with a client or former client as defined in section 148A.01.

(n) Failure to make reports as required by section 148B.44, or cooperate with an investigation of the board as required by section 148B.46.

(o) Obtaining money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud.

(p) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.

(q) Failure to provide the client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

Subd. 2. **Evidence.** In adverse actions alleging a violation of subdivision 1, paragraph (a), (b), or (c), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of its contents.

Subd. 3. **Mental examination; access to medical data.** (a) If the board has probable cause to believe that a mental health service provider comes under subdivision 1, paragraph (g) or (h), it may direct the provider to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision every mental health service provider is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians', psychologists', or mental health professional's testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a mental health service provider to submit to an examination when directed constitutes an admission of the allegations against the provider, unless the failure was due to circumstance beyond the provider's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A mental health service provider affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the provider can resume the provision of mental health services with reasonable safety to clients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the board shall be used against a mental health service provider in any other proceeding.

(b) In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.42, 144.651, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a mental health service provider without the provider's consent if the board has probable cause to believe that a provider comes under subdivision 1, paragraph (g), (h), or (m). The medical data may be requested from a health care professional, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A health care professional, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the person or organization giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is private data under sections 13.01 to 13.87.

History: *1986 c 444; 1987 c 347 art 4 s 5*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 5, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.45 ADVERSE ACTIONS.

Subdivision 1. **Forms of adverse action.** When the board finds that a mental health service provider has violated a provision or provisions of this chapter, it may do one or more of the following:

(1) deny or reject the filing;

(2) revoke the right to practice;

(3) suspend the right to practice;

(4) impose limitations or conditions on the provider's provision of mental health services, the imposition of rehabilitation requirements, or the requirement of practice under supervision;

(5) impose a civil penalty not exceeding $10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the provider of any economic advantage gained by reason of the violation charged or to reimburse the board for all costs of the investigation and proceeding;

(6) order the provider to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution; or

(7) censure or reprimand the provider.

Subd. 2. **Procedures.** The board shall adopt a written statement of internal operating procedures for receiving and investigating complaints reviewing misconduct cases and imposing adverse actions.

Subd. 3. **Mandatory suspension or revocation of right of practice.** The board shall suspend or revoke the right of a provider to provide mental health services for violations of section 148B.43, subdivision 1, paragraphs (a), (b), and (m).

History: *1987 c 347 art 4 s 6*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 6, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.46 MENTAL HEALTH CLIENT BILL OF RIGHTS.

Subdivision 1. **Scope.** All mental health service providers other than those providing services in a facility regulated under section 144.651 shall provide to each client prior to providing treatment a written copy of the mental health client bill of rights. A copy must also be posted in a prominent location in the office of the mental health service provider. Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak English. The mental health client bill of rights shall include the following:

(a) The name, title, business address, and telephone number of the provider.

(b) The degrees, training, experience, or other qualifications of the provider, followed by the following statement in bold print:

THE STATE OF MINNESOTA HAS NOT ADOPTED UNIFORM EDUCATIONAL AND TRAINING STANDARDS FOR MENTAL HEALTH SERVICE PROVIDERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATIONAL PURPOSES ONLY.

(c) The name, business address, and telephone number of the provider's supervisor, if any.

(d) Notice that a client has the right to file a complaint with the provider's supervisor, if any, and the procedure for filing complaints.

(e) The name, address, and telephone number of the board and notice that a client may file complaints with the board.

(f) The provider's fees per unit of service, the provider's method of billing for such fees, the names of any insurance companies that have agreed to reimburse the provider, or health maintenance organizations with whom the provider contracts to provide service, whether the provider accepts Medicare, medical assistance, or general assistance medical care, and whether the provider is willing to accept partial payment, or to waive payment, and in what circumstances.

(g) A statement that the client has a right to reasonable notice of changes in services or charges.

(h) A brief summary, in plain language, of the theoretical approach used by the provider in treating patients.

(i) Notice that the client has a right to complete and current information concerning the provider's assessment and recommended course of treatment, including the expected duration of treatment.

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(j) A statement that clients may expect courteous treatment and to be free from verbal, physical, or sexual abuse by the provider.

(k) A statement that client records and transactions with the provider are confidential, unless release of these records is authorized in writing by the client, or otherwise provided by law.

(l) A statement of the client's right to be allowed access to records and written information from records in accordance with section 144.335.

(m) A statement that other services may be available in the community, including where information concerning services is available.

(n) A statement that the client has the right to choose freely among available providers, and to change providers after services have begun, within the limits of health insurance, medical assistance, or other health programs.

(o) A statement that the client has a right to coordinated transfer when there will be a change in the provider of services.

(p) A statement that the client may refuse services or treatment, unless otherwise provided by law.

(q) A statement that the client may assert the client's rights without retaliation.

Subd. 2. **Acknowledgment by client.** Prior to the provision of any service, the client must sign a written statement attesting that the client has received the client bill of rights.

History: *1987 c 347 art 4 s 7*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 7, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.47 RENEWALS.

Notwithstanding any other law, the board shall adopt rules providing for the renewal of filings. The rules shall specify the period of time for which a filing is valid, procedures and information required for the renewal, and renewal fees.

History: *1987 c 347 art 4 s 8*

NOTE: This section, as added by Laws 1987, chapter 347, article 4, section 8, is repealed effective July 1, 1991. See Laws 1987, chapter 347, article 4, section 11.

148B.48 REPORTS.

Subdivision 1. **Commissioner of health.** The commissioner of health shall review the report of the office under sections 214.001, 214.13, and 214.141. The commissioner shall make recommendations to the legislature by January 15, 1991, on the need for registration or licensure of unlicensed mental health service providers and the need to retain the board of unlicensed mental health service providers.

Subd. 2. **Board of unlicensed mental health service providers.** The board of unlicensed mental health service providers must report on the board's findings and activities to the commissioner of health and the legislature by July 1, 1990. The board shall report to the legislature on or before January 15, 1991, with recommendations on whether providers who are not trained should be allowed to continue to practice.

Subd. 3. **Legislative intent.** Nothing in this section is intended to require the commissioner of health to delay review of applications for credentialing pursuant to sections 214.13 and 214.141 pending the outcome of the reports required under this section.

History: *1987 c 347 art 4 s 9*

ment or 4,000 hours under the supervision of a clinical social worker meeting these requirements, or of another qualified mental health professional.

[For text of subds 2 and 3, see M.S.1988]

History: *1989 c 282 art 2 s 40*

148B.27 PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

[For text of subd 1, see M.S.1988]

Subd. 2. **Use of titles.** After the board adopts rules, no individual shall be presented to the public by any title incorporating the words "social work" or "social worker" unless that individual holds a valid license issued under sections 148B.18 to 148B.28. City, county, and state agency social workers who are not licensed under sections 148B.18 to 148B.28 may use the title city agency social worker or county agency social worker or state agency social worker. Hospital social workers who are not licensed under sections 148B.18 to 148B.28 may use the title hospital social worker while acting within the scope of their employment.

[For text of subd 3, see M.S.1988]

History: *1989 c 282 art 2 s 41*

148B.32 PROHIBITIONS AND PENALTY.

[For text of subd 1, see M.S.1988]

Subd. 2. **Appearance as licensee prohibited.** After adoption of rules by the board implementing sections 148B.29 to 148B.39, no individual shall be held out to be a marriage and family therapist unless that individual holds a valid license issued under sections 148B.29 to 148B.39, is a psychologist licensed by the board of psychology with a competency in marriage and family therapy, or is a person providing marriage and family therapy who is employed by a hospital licensed under chapter 144 and who is acting within the scope of the person's employment.

[For text of subd 3, see M.S.1988]

History: *1989 c 282 art 2 s 42*

148B.40 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1988]

Subd. 3. **Mental health service provider.** "Mental health service provider" or "provider" means any person who provides, for a remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the board of medical examiners under chapter 147; the board of nursing under sections 148.171 to 148.285; or the board of psychology under sections 148.88 to 148.98; the board of social work under sections 148B.18 to 148B.28; the board of marriage and family therapy under sections 148B.29 to 148B.39; or another licensing board if the person is practicing within the scope of the license. In addition, the term does not include employees of the state of Minnesota or any of its political subdivisions while acting within the scope of their public employment; hospital and nursing home social workers exempt from licensure by the board of social work under section 148B.28, subdivision 6, including hospital and nursing home social workers acting as marriage and family counselors within the scope of their employment by the hospital or nursing home; persons employed by a program licensed by the commissioner of human services who are acting as mental health service providers within the scope of their employment; and persons certified as chemical dependency professionals by the Institute for Chemical Dependency Professionals of Minnesota, Inc. The Institute for Chemical Dependency Profes-

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History: *19*

148B.42 FILIN

Subd. 6. **F**
provider is $50
in effect.

History: *19*

sionals shall provide the board of unlicensed mental health service providers with the name and address of any person whose certification has been discontinued, along with the reason for the discontinuance. Any chemical dependency treatment professional who does not maintain a current and valid certification with the Institute of Chemical Treatment Professionals of Minnesota, Inc., must register with the board of unlicensed mental health service providers in order to provide chemical dependency treatment services.

[For text of subds 4 and 5, see M.S.1988]

History: *1989 c 282 art 2 s 43; 1989 c 300 art 3 s 6*

148B.42 FILING REQUIRED.

[For text of subds 1 to 5, see M.S.1988]

Subd. 6. **Filing fee.** The fee for filing as an unlicensed mental health service provider is $50 until permanent rules establishing fees for filing under this section are in effect.

History: *1989 c 300 art 3 s 7*

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed
Adoption of Rules Relating to the
Requirement of Filing of Unlicensed
Mental Health Service Providers

NOTICE OF WITHDRAWAL

Effective April 4, 1990, the above-captioned rules are withdrawn from the Attorney General's consideration. Resubmission is anticipated following certain nonsubstantial modifications.

ROBERT A. SULLIVAN
Executive Director

Stat Authority
148 B.41 subd 4 and sec 148 B.47
The board shall adopt rules necessary to implement, administer or enforce sections 148 B.40 to 148B.47
The board may not adopt rules that restrict or prohibit persons from providing mental health services on basis of education, training experience or supervision or that restrict the use of any title.

indicates 30 days expires on Dec 13, 1989
mailing notice of publication Nov 13 } 30 days
Notice of Intent
Dual Notice

SOLAR

Statement of need and Reasonableness
indicates adopted emergency rules and now proposes permanent rules
(180 day deadline met if you change the emergency rules to permanent rules?
- 2 informal Hearings before the board to determine to identify health care providers

made changes
- Drafting error regarding pastoral care and counseling - different from Emergency Rules
- missing K(7) submissions requested received no requests to Attorney Generals Office

Comments

Letter from Commissioner of Human Services states using word "aftercare" is unreasonable and "other services" to broad a term should be limited (I faxed her letter)

Rules make reference to fees but don't don't establish any specific amount.
Rules indicate 9000.0200 filing fee is specified in 9000.0300
9000.0200 was not submitted
Rules submitted are 9000.0050 to 9000.0190 I don't think these rules 9000.0050 to 9000.0190 are applicable to 16A.128 Fee setting because they are not establishing specific fees.

Rule
Changes

I think the change from pastoral care to mental health counseling is a significant change. I can understand why why they changed it - its more broad however maybe more people would have commented if they would have known that it only includes pastoral mental health counseling some may think all pastors should be licensed.

Con't Change

How do you distinguish pastoral mental health counseling from spiritual counseling - maybe if they would have originally used pastoral mental health counseling they would have received more requests for a hearing from the pastors because they would be uncertain if they had to register or not because pastoral mental health counseling is not clearly defined. 9000.0100 subd 4 part C defines what mental health services is not. I think it is very difficult to distinguish between spiritual counseling and pastoral mental health counseling.

note 9000.0050 subd 6 Remuneration includes salary compensation etc — that would include almost everyone

expectation of payment

what does expectation of payment mean?

where is 9000.0200?

Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

March 21, 1990

Patricia Nolte
Special Assistant Attorney General
Public Finance Division
525 Park Street, 5th Floor
St. Paul, Minnesota 55103

Dear Ms. Nolte:

The following are documents submitted for your review respecting Permanent Rules of The Board of Unlicensed Mental Health Service Providers requiring filing of unlicensed mental health service providers according to 2010.0300:

A. Photocopy of "Notice of Solicitation".

B. Not Applicable.

C. A copy of the Board's "Authorizing Resolution".

D. A copy of the proposed rule with a "Certificate of Approval As To Form" by the Revisor of Statutes attached.

E. A copy of the "Notice of Intent to Adopt Rule" as mailed (Alternative Notices).

F. Statement of Need and Reasonableness.

G. The affidavit of mailing "Notice of Intent to Adopt".

H. A photocopy of the "Notice of Intent to Adopt" as it appeared in the State Register of Monday, November 13, 1989. (14 SR.1170)

I. Four copies of the proposed rules as adopted.

J. A certificate of the Board's "Resolution Adopting the Rule".

K. The "Findings of Fact, Conclusions and Order" adopting the rule.

L. Copies of all written requests, submissions and comments on the rule. Twenty-nine (29) comments were received. Twelve (12) requests to be notified when the rules are submitted to the Attorney General, were received.

M. Declaration of counsel.

N. Notice of "Submission of the Rule" to the Attorney General and "Notice of Mailing" to those who have requested notice.

O. Affidavit of "Mailing of Notice of Submission of the Rule" to the Attorney General.

I would appreciate your directing requests concerning this matter to Robert T. Holley, Special Assistant Attorney General, at (612) 297-5938. Thank you.

Sincerely,

Robert A. Sullivan
Executive Director

RAS:ekp

NOLTE.LTR(7)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL - Health

DATE : January 19, 1990

TO : ROBERT A. SULLIVAN
Executive Director
Board of Unlicensed Mental
Health Service Providers

FROM : ROBERT T. HOLLEY RTH
Special Assistant
Attorney General

PHONE : 297-2040

SUBJECT : Proposed Permanent Rules: Pastoral Counselors

The Board's proposed permanent rules would define "mental health services" to include pastoral care and would include pastoral counselors among "provider[s]" required to file with the Board. Minn. Rules [Proposed] pt. 9000.0100, subp. 4.A and C. Some 20 or more written objections to the foregoing proposals were received during the recent 30-day comment period. Typical of the objections was the claim that the rules would violate constitutional guarantees regarding the separation of church and state. You have requested my evaluation of such claims.

The First Amendment provides that Congress shall make no law "prohibiting the free exercise" of religion. U.S. Const. AM. I. This provision applies to the states through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213 (1940). It is well-established that the free exercise clause constitutes an absolute prohibition against the government's regulation of religious beliefs. Wisconsin v. Yoder, 406 U.S. 205, 219, 92 S. Ct. 1526, 1535, 32 L. Ed. 2d 15 (1972); Sherbert v. Verner, 374 U.S. 398, 402, 83 S. Ct. 1790, 1793, 10 L. Ed. 2d 965 (1963). At the same time, the government may in some circumstances impose incidental burdens on otherwise protected religious conduct. Yoder, supra, 406 U.S. at 214-215, 92 S. Ct. at 1532-1533.

The test used by the courts to determine whether the proposed governmental burden is permissible has been concisely stated as follows:

> First, the belief, or conduct motivated by the belief, must be religious in nature. Second, the party complaining of a free exercise clause violation must show that the

> regulations under review impose a substantial burden on the exercise of religion. Third, if the complaining party demonstrates that it is burdened by the regulations, the state must have a compelling state purpose for its laws. Relevant to this prong is an inquiry into whether there exists a less restrictive alternative to the regulation.

(Citations omitted.) Department of Social Serv. v. Emmanuel Baptist, 388 N.W.2d 326, 330 (Mich. App. 1986).

Applying the test to the proposed rule, it is not entirely clear whether pastoral counseling of the type which would be subject to regulation is necessarily religious in nature. The scope of the proposed rule is quite narrow. It would relate only to services for which remuneration is received, and in no event would it regulate "spiritual counseling or pastoral care of a congregation, or a congregation member." Minn. Rules [Proposed] pt. 9000.0100, subp. 4.C; Minn. Stat. § 148B.40, subd. 3 (1988). Moreover, it is difficult to conclude that counseling is religious in nature and therefore subject to constitutional protection merely because it is conducted in a religious context or by a pastor. See Note, Intentional Infliction of Emotional Distress by Spiritual Counselors: Can Outrageous Conduct Be "Free Exercise"?, 84 Mich. L. Rev. 1296, 1302 (1986); Esbeck, State Regulation of Social Services Ministries of Religious Organizations, 16 Val. U.L. Rev. 1, 33 (1981). It seems probable that the type of counseling most likely subject to the rule could include both religious and secular elements and that an examination of the facts in each case would be required to most accurately characterize the nature of the activity.

Assuming that in certain cases it might be shown that the pastoral counseling in question is a religious activity, the second portion of the applicable judicial test obligates the complaining party to demonstrate that the proposed Board rule would substantially burden the free exercise or practice of such counseling. A review of the rule indicates that its primary provisions would include a filing requirement and the required provision of copies of a bill of rights to all clients. Minn. Rules [Proposed] pts. 9000.0100 and 9000.0170. Under a previously adopted Board rule, a $50 filing fee would also be imposed. Minn. Rules pt. 9000.0200A. Although a subjective determination, it must be questioned whether such requirements could reasonably be viewed as substantially burdening free religious exercise. Particularly noteworthy is the fact that the rule would not regulate prayer, worship, ritual, religious doctrine or the content of pastoral counseling. See Forest Hills Early Learning Center, Inc. v. Lukhard, 661 F. Supp. 300, 308-309 (1987); Esbeck, supra, at

40; Ericsson, Clergyman Malpractice: Ramifications Of A New Theory, 16 Val. U.L. Rev. 163 (1981).

Further, under the third part of the test, it would appear that it could be shown that the state has a compelling interest in regulating pastoral counselors in the manner proposed under the rule. It is my understanding that at least one ultimate objective of the rule is the prevention of client sexual abuse by religious counselors. As you are aware, a number of such cases have been reported in the local press in recent months. See, e.g., St. Paul Pioneer Press Dispatch, Tuesday, January 16, 1990, at 2B, col. 1. That the state may exercise its police power to eliminate such abuses and to otherwise protect public health and safety has seemingly been established. Indeed, numerous state regulations considerably more intrusive than those presently under consideration have withstood constitutional free religious exercise challenges. Examples include decisions upholding the licensure of church-owned day care facilities and the licensure and inspection of Christian children's homes. E.g., Roloff Evangelistic Enterprises, Inc. v. Texas, 556 S.W.2d 856 (Tex. Civ. App., 1977), app. dis. 439 U.S. 803, 99 S. Ct. 58, 58 L. Ed. 2d 96 reh. den 439 U.S. 998, 99 S. Ct. 601, 58 L. Ed. 2d 672 (1978); Kansas ex rel O'Sullivan v. Heart Ministries, Inc., 227 Kan. 244, 607 P.2d 1102, app. dis. 449 U.S. 802 (1980).

Under the final element of the test, it must be determined whether the proposed rule constitutes the least restrictive means of regulating pastoral counselors. Whether there could be devised any regulation less restrictive than that of mere filing as proposed under the Board's rule seems doubtful. At a minimum, it is apparent that filing is considerably less restrictive than would be a licensure system for pastoral counselors, possibly including education standards and a state-administered license examination.

Based on the preceding, it is my view that the proposed rule could withstand a constitutional challenge arising from a claimed violation of church-state separation or free religious exercise guarantees. If my further examination of this matter may be indicated, please let me know.

RTH:tmr

Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

COMMENTS: PERMANENT RULES - 12/89

#	DATE	FROM	ISSUE	REQ. HRNG.	REQ. A.G.
1	11/27/89	ANN WYNIA, COMM. DHS		N	N
2	11/26/89	JENNIFER WALKER		Y	N
3	11/29/89	MARY LYNNE WOLFE		Y	N
4	12/4/89	GAIL CARRUBBA		Y	N
5	12/6/89	SHARON HILLESTAD		Y	N
6	12/6/89	LINDA REDING		Y	N
7	12/6/89	DELBERT J. CORY		Y	N
8	12/6/89	GERALD WOLFE		N	N
9	12/6/89	MICHELE NEELEY		Y	N
10	12/6/89	DAN STOVER		Y	N
11	12/8/89	NEDA WOOD		Y	N
12	12/8/89	MICHAEL PORTER		Y	N
13	12/8/89	J. FRANK HARGITT		Y	N
14	12/8/89	KERRY FULLER		Y	N
15	12/8/89	BRIAN H. MCNEE		N	N
16	12/8/89	JOAN BILINKOFF		N	N
17	12/11/89	JOHN HERMANSEN		Y	N
8	12/11/89	MADELIN MILLER		N	N
19	12/12/89	CINDY MOTT		N	N

#	DATE	FROM	ISSUE	REQ. HRNG.	REQ. A.G.
20	12/12/89	CATHY BROWN		N	N
21	12/12/89	JAN SIMMONS		N	N
22	12/12/89	D. SIMMONS		N	N
23	12/12/89	DR. LOTTE SCIDLER		N	N
24	12/12/89	JODY RULLER		N	N
25 ✓	12/12/89	BARBARA FINSTROM		Y	N
26 ✓	12/12/89	DONALD H. BROWN		Y	N
27 ✓	12/12/89	MICHAEL STAPLES		Y	N
28 ✓	12/12/89	V. P. NORDAKER		Y	N
29 ✓	12/12/89	HOLLY HILLESTAD		Y	N

PERSONS REQUESTING NOTIFICATION OF SUBMISSION TO ATTORNEY GENERAL

1. Delbert Cory
2. Susan Hermansen
3. Bill Hoefer
4. Kerry Fuller
5. Mary Lynee Wolfe
6. Brian McNee
7. John Hermansen
8. Mike Porter
9. K. Jones
10. Holly Hillestad
11. Bob Walker
12. Jeni Walker

FILE COPY

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ADDRESS REPLY TO:
102 CAPITOL BUILDING
ST. PAUL, MN 55155
TELEPHONE: (612) 296-6196

Dennis Peterson
202 OMNI Building
1652 Greenview Drive S.W.
P. O. Box 6477
Rochester, Minnesota 55903

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Peterson:

Martha Casserly, an attorney in my office, Public Finance Division, reviewed the Unlicensed Board's Adopted Rule for legality. She received and considered comments regarding the legality of the rule.

In her review of the rule for legality, she had several concerns with the rule and informed the board she could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with her suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. The board did make the changes and re-submitted the rule to my office for review.

To find out what changes were made to the rule, or to see the adopted rule as amended, you must direct your request to the executive director of the board, Robert Sullivan. Mr. Sullivan's address is:

Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

If you wish to receive a copy of the Attorney General decision after the rule has been resubmitted, you must renew your request for a copy of the decision.

While the amendments to the rule may not alleviate all your concerns, the changes may resolve some of the issues. Thank you for letting us know your concerns and your participation in the rulemaking process.

Best regards,

HUBERT H. HUMPHREY, III
Attorney General

HHH:PN:bbl
.AN3
cc: Robert Sullivan

LAW OFFICES
PETERSON & LAWHEAD, P.A.
202 OMNI BUILDING • 1652 GREENVIEW DRIVE S.W. • P.O. BOX 6477
ROCHESTER, MINNESOTA 55903

(507) 288-6705

Dennis R. Peterson
Donaldson V. Lawhead

March 30, 1990

Kasson Office:
16 N. Mantorville Ave.
P.O. Box 1
Kasson, MN 55944
(507) 634-2831

Reply To: Rochester

The Honorable Hubert Humphrey III
State of Minnesota
Attorney General
102 State Capitol
St. Paul, MN 55155

Dear Attorney General Humphrey:

As a concerned citizen, I have serious reservations about the rules promulgated for this Board. The rules recommended by the Board go too far and result in the necessity of religious, as well as counselors for drug consultation, to be licensed and supervised by this Board.

I an enclosing a copy of the recommended changes to certain rules and ask that the Attorney General's Office carefully review my suggestions since the rules go far beyond the abuse that is intended to be corrected.

There are also serious constitutional issues involved and I hope that the Attorney General's Office will give me an opportunity to personally present my views concerning this matter before a hasty and illogical rule is adopted. It is far easier to prevent the harm before the rules are adopted, rather than after they are adopted. I would appreciate discussing this at length with any member of your office involved in the adoption and promulgation of these rules.

Very sincerely yours,

PETERSON & LAWHEAD, P. A.

Dennis R. Peterson

DRP:mar
Enclosure

SENT BY FAXMAIL AND REGULAR MAIL 612--297 4193

Board of Unlicensed Mental Health Service Providers

Proposed Permanent Rules Relating to Unlicensed Mental Health Service Providers

Rules as Proposed

9000.0050
Parts 9000.0100 to 9000.0200 establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a regulatory system and central registry of persons who provide or purport to provide mental health services.

9000.0100 Definitions
Subpart 1. Scope. For purposes of parts 9000.0100 to 9000.0200, the following terms have the meanings given them.
Subp. 2, Applicant. "Applicant" means a person who applies to file as a mental health service provider with the board.
Subp. 3. Board. "Board" means the Board of Unlicensed Mental Health Service Providers.
Subp. 4. Mental health services.
A. "Mental health services" means the provision of any treatment; counseling; therapy including guidance, treatment of therapy for abuse, or abusive behavior exhibited or received by an individual; psychotherapy; hypnotherapy, or psychoanalysis Mental health services are services that are designed to alleviate symptoms, change or reduce disturbed patterns of behavior. Mental health services must use interpersonal, or behavioral methods. Mental health services may be provided to individuals, couples, families, or groups who are experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have other mental, psycho-physiological, or psycho-social conditions that they seek to alleviate.

B. "Mental health services" includes those services in item A. Mental health services does not include services that are:

(1) Primarily for entertainment;
(2) Primarily for informational;
(3) Primarily for client advocacy; or
(4) Related to a custodial or maintenance function.

C. "Mental health services" does not include the following areas of practice: educational, vocational, or career guidance; drug or substance abuse counseling; spiritual counseling; and pastoral counseling or care.

Subp. 5. Provider. "Provider" means a person who provides or purports to provide mental health services. A mental health service provider may be:

A. A counselor (crisis, grief, eating disorder, compulsion, phobia, mental health, or sexual and physical abuse);

B. A school and college counselor, if the counselor is providing mental health services as defined in subpart 4;

C. A rehabilitation officer or counselor, if the counselor is providing mental health services as defined in subpart 4;

D. A social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

E. A therapist in an area related to child care, education, new age therapy, holistic therapy, dance, music, or recreation, if the therapist is providing mental health services as defined in subpart 4;

F. A hypnotist or hypnotherapist;

G. A behavior modification practitioner or analyst; and

H. Any other person, regardless of titles, providing mental health services who is not exempt from filing or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 7. Variance. "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 Requirement to File.

Subpart 1. Who must file. A provider of mental health service must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3, and 148B.42.

Subpart 2. Exclusion from filing. Persons excluded from filing under subpart 1 include the following:

A. A person specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. A person not providing mental health services as defined in part 9000.0100, subpart 4.

Subpart 3. Requirement to file. A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 must apply to the board and receive acknowledgement of the filing as provided in part 9000.0130.

------To page 4 of proposed permanent rules--------

CITIZEN CORRESPONDENCE

DATE 4-6-90

TO: ~~Rita Dismmond~~ Patter Peter

FROM: JOANNE PETERSON 7-3498

Please prepare a reply for Mr. Humphrey's signature and return with original correspondence (leave this slip attached) to me at 102 Capitol within ten days.

COMMENTS: Joanne would like a response on these letters - let me know what the rules (dos) approve & I will answer the rest of this type of corres. Thx





PETERSON & LAWHEAD, P.A.
202 OMNI BUILDING • 1652 GREENVIEW DRIVE S.W.
P.O. BOX 6477 • ROCHESTER, MINNESOTA 55903

102 file copy

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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102 CAPITOL BUILDING
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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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HUBERT H. HUMPHREY, III
Attorney General

HHH:PN:bbl
.AN3
cc: Robert Sullivan

7	37,503-38,502	38,219-39,218	38,935-39,934	39,651-40,650	40,367-41,366
	38,503-39,502	39,219-40,218	39,935-40,934	40,651-41,650	41,367-42,366
	39,503-40,502	40,219-41,218	40,935-41,934	41,651-42,650	42,367-43,366
9	40,503-41,502	41,219-42,218	41,935-42,934	42,651-43,650	43,367-44,366
10	41,503-42,502	42,219-43,218	42,935-43,934	43,651-44,650	44,367-45,366
11	42,503-43,502	43,219-44,218	43,935-44,934	44,651-45,650	45,367-46,366
12	43,503-44,502	44,219-45,218	44,935-45,934	45,651-46,650	46,367-47,366
13	44,503-45,502	45,219-46,218	45,935-46,934	46,651-47,650	47,367-48,366
14	45,503-46,502	46,219-47,218	46,935-47,934	47,651-48,650	48,367-49,366
15	46,503-47,502	47,219-48,218	47,935-48,934	48,651-49,650	49,367-50,366
16	47,503-48,502	48,219-49,218	48,935-49,934	49,651-50,650	50,367-51,366
17	48,503-49,502	49,219-50,218	49,935-50,934	50,651-51,650	51,367-52,366
18					

State Board of Investment

Official Notice of Meeting of the State Board of Investment's Investment Advisory Council

The State Board of Investment will meet on Wednesday, June 7, 1989 at 8:30 a.m. in Room 118, State Capitol, Saint Paul, MN.

The Investment Advisory Council will meet on Tuesday, June 6, 1989 at 2:00 p.m. in Conference Room "A," MEA Building, 41 Sherburne Avenue, Saint Paul, MN.

Department of Jobs & Training

Notice of Revised Policy and Procedure for the Purchase of Employment-Related Services

NOTICE IS HEREBY GIVEN that the Minnesota Department of Jobs and Training, Division of Rehabilitation Services/Vocational Rehabilitation (DRS/VR) Program has adopted a revised policy and procedure for the purchase of employment-related services. Employment-related services are defined as: vocational evaluation, work adjustment training, on-the-job training (unless the employer is the sole service-provider), job development/job placement and job coaching.

This policy makes provision for the purchase of services from "accredited providers" and "limited-use-providers." Accredited providers are providers who are accredited for the services purchased by DRS/VR by the Commission on Accreditation of Rehabilitation Facilities (CARF).

A "limited-use-provider" is a provider that is required to meet a set of standards as delineated in the Statement of Assurances, but is not accredited by CARF. Effective October 1, 1989, DRS/VR will limit its purchase of employment-related services from providers not accredited by CARF to $10,000 per year or $20,000 over a two-year period.

Inquiries may be directed to any Division of Rehabilitation Services Area Office or to:

James R. House, Director
Office of Vocational Rehabilitation
Minnesota Department of Jobs and Training
Division of Rehabilitation Services
Fifth Floor, 390 North Robert Street
St. Paul, Minnesota 55101
Telephone Number: (612) 296-5622

Board of Unlicensed Mental Health Providers

Notice of Outside Information or Opinions Being Sought Regarding Proposed Rules of the Board of Unlicensed Mental Health Service Providers Governing the Practice of Unlicensed Mental Health Services

NOTICE IS HEREBY GIVEN that the State Board of Unlicensed Mental Health Service Providers is seeking information or

opinions from sources outside the agency in preparing to propose the adoption of rules governing the practice of Unlicensed Mental Health Services, including the definition of mental health service provider. The adoption of rules is authorized by *Minnesota Statutes*, and Section 148B.17, Section 148B.41 Subdivision 4, and Section 148B.47, which permits the Board to adopt rules governing the practice of Unlicensed Mental Health Services.

The State Board of Unlicensed Mental Health Service Providers requests information and opinions concerning the subject matter of concerning in writing or orally. Written statements should be addressed to:

Robert A. Sullivan
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

Oral statements will be received during regular business hours over the telephone at (612) 649-5490 and in person at the above address.

All statements of information and opinions shall be accepted for 20 days from the date of this publication. Any written material received by the State Board of Unlicensed Mental Health Service Providers shall become part of the rulemaking record regarding these rules.

Dated: 8 May 1989

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental
Health Service Providers

Board of Water and Soil Resources

Notice of Change in Location of Monthly Meeting

The Board of Water and Soil Resources has changed the location of their May 24, 1989 monthly meeting. The Board will be meeting at the Holiday Inn in Detroit Lakes. The Board of Water and Soil Resources will resume their June 28, 1989 meeting at the Department of Agriculture Building, 90 W. Plato Blvd., St. Paul.

Minnesota's North Shore

Historic Sites and Place Names of Minnesota North Shore. Stories recounted by a retired DNR Forester about the North Shore's timbermen, pioneer settlers, commercial fishermen, and others who knew the area first hand. Stock #9-11. 35pp. $3.50 + tax.

Up North. A memorable collection of essays and stories that capture the mystic moods, seasonal subtleties and colorful characters that fill the landscape up north. Stock #19-16. $14.95 + tax.

A Family Guide to Minnesota's North Shore. The 150 miles from Duluth to the Canadian border offer travelers wilderness experiences, places of historic significance, and visions of astonishing beauty. Stock #19-84. $3.95 + tax.

Boundary Waters. Almost 100 pages of beautiful color photographs of Minnesota's canoe country, by Jerry Stebbins with rich text by Greg Breining. Stock #19-69. $24.99 + tax.

Minnesota II. Colorful photographs showing the lyrical balance between country and city, land and water, inhabited by 4.2 million people across 84,000 square miles. A delight for the eyes, with photos by Richard Hamilton Smith and text by Richard A. Coffey. Stock #19-30. $32.50 + tax.



TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add $1.50 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard orders accepted over phone and through mail. ***Prices are subject to change.***

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

The attached letter was sent to the following individuals, (as recommended by the Board), soliciting comment during the solicitation period:

Dr. Bill Madsen
College of St. Thomas
2115 Summit Avenue
St. Paul, MN 55105

Norma James, Ph.D.
Department of Psychology
St. John's University
Collegeville, MN 56321

Lud Spolyar
1505 E. River Road
Minneapolis, MN 55414

Tom Hiendlmayr
Minnesota Department of Health
717 S.E. Delaware Avenue
Minneapolis, MN 55440

Ann Messner, Ph.D.
1360 Energy Park Drive #330
St. Paul, MN 55102

Barbara Sanderson
MN Department of Corrections
300 Bigelow Bldg., 450 N. Syndicate
St. Paul, MN 55104

Jackie Miller
J. Miller Associates
P.O. Box 1377
Burnsville, MN 55337

Bill Holden
Bureau of Community Corrections
C-2353 Government Center
Minneapolis, MN 55487-0533

E. Louise Miller
4516 58th Avenue N. #120
Brooklyn Center, MN 55429

Board of Unlicensed Mental Health Providers

obert Sullivan
_xecutive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

May 31, 1989

(Name)
(Street Address)
(City, State, Zip)

Dear (Mr./Ms Last Name):

On behalf of the Board, we wish to express our sincere appreciation for your willingness to assist in defining the meaning of "mental health service."

As you may know, this Board was created in 1987 and began operation just recently as a regulatory board designed to register mental health service providers who weren't otherwise licensed by the state. M.S. 148B.40 (enclosed) requires the Board to register mental health service providers, and to handle complaints alleging violations of the code of conduct included in the statute. It has been mentioned that the purpose of the Board, and the new regulatory process, was to "close the loop" of persons who practice or purport to practice mental health services, so that all providers are either licensed or registered.

While the idea behind the legislation may have considerable merit - bringing persons heretofore outside of regulation into a regulated structure - it brings up many questions concerning who exactly is a mental health service provider and who is not. At issue is the definition of "mental health service" which is outlined in 148B subd. 4. It is in this area that we solicit your help and expertise.

When the initial Emergency Rule was drafted, we included a broad definition of "mental health services" with the idea that the purpose behind the law was to bring everyone outside of licensure under this regulation. This approach, needless to say, elicited a great deal of controversy because of the number of persons who practice in areas outside of the normal structure.

The matter seems further complicated by the fact that drafters of the statute defined "mental health service" in much the same way that psychotherapy is defined in major psychiatric dictionaries.

With this in mind, we would greatly appreciate your reading the definition of "mental health service" given in the statute, and in turn suggesting how this definition may be further delineated or explained for purposes of the rule. What, in your belief, is the range of "mental health service" provision that should be covered under this definition, what occupational titles would be included and/or excluded, and what is the nature of activities which might be called "mental health services" as the definition is laid out in the statute?

Since we may wish to attach your comments to our Statement of Need and Reasonableness when we submit it for permanent rulemaking, we would appreciate any documentation of your ideas and opinions which you can provide. If you know of studies or articles, books, and/or references in dictionaries and encyclopedias which would back up your opinion, we would appreciate the citation. In addition, if the nature of your practice, research, or teaching has given you special expertise in drafting these kinds of definitions, we would appreciate your citing that in your response.

Again, thank you for your willingness to assist in this important project. We hope that by defining "mental health services" as carefully as possible, we can properly register those who should be registered and implement the necessary regulations to protect Minnesotans from unethical provision of mental health services.

Sincerely,

JoAnne Ossanna, Chair
Board of Unlicensed Mental Health Service Providers

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers

RAS:ekp

ADVISELT.PF(1)

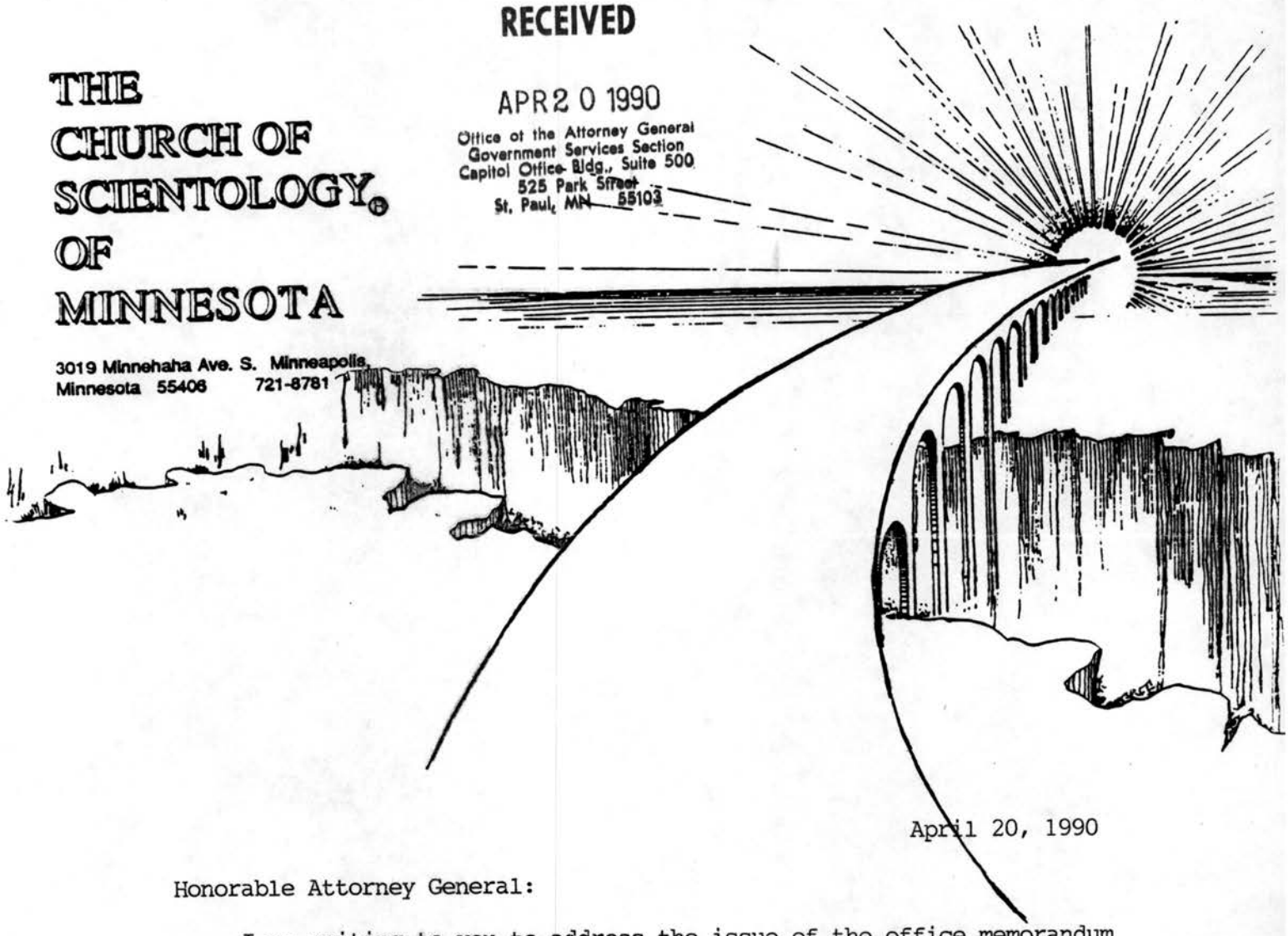
RECEIVED

APR 2 0 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

THE CHURCH OF SCIENTOLOGY® OF MINNESOTA

3019 Minnehaha Ave. S. Minneapolis,
Minnesota 55406 721-8781



April 20, 1990

Honorable Attorney General:

I am writing to you to address the issue of the office memorandum to the Board of Unlicensed Mental Health Service Providers "PROPOSED PERMANENT RULES: PASTORAL COUNSELORS." I received a copy of this office memorandum written by Mr. Holley to the Board concerning the test used by the courts to determine whether a proposed governmental burden on otherwise protected religious conduct is permissible.

I want to address the findings of Mr. Holley. In spite of his views, I still feel the current form of the proposed rules are unconstitutional and request that you include a review of my comments during this 8 day comment period on the rules.

1. Mr. Holley states "it is not entirely clear whether pastoral counseling of the type which would be subject to the regulation is necessarily religious in nature." It is actually quite clear. In fact, it is entirely impossible to separate out religious counseling done by a minister of a spiritual nature from that of a mental nature. Historically and traditionally there has been no separation. The counselor was the minister, he was the person you went to for help of all sorts. Phsychology on the other hand does not believe that man has a soul. He blames all of man's troubles on the brain as he believes that man is a soul-less being. Thus came into existence the separation of the spirit or person from his supposedly "brain" caused problems. This totally violates the religious view of man which sees him as a spiritual being who has or is a soul.

Founder L. Ron Hubbard Copyright © 1988 by Church of Scientology of Minnesota. ALL RIGHTS RESERVED.
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The Church of Scientology - a non-profit organization. Scientology is an Applied Religious Philosophy.

As Mr. Holley pointed out in his brief, individual case examination will put the state into the business of deciding what is spiritual versus secular which is actually the province of the religion itself. This is an improper and very dangerous position for the state to be in.

2. This is discriminatory in relation to Evangelical ministers who are commonly counseling non-members with the purpose of bringing them into their Church; or a minister who encounters a person in need of counseling who is not a member of their congregation. This puts a burden on a minister who is commonly out in the community and has a desire to help anyone he comes into contact with. Must he go then and register with the Board before he dares to speak to someone who might offer him money in exchange for his help? This definitely puts a restricition on the practice of religion as well.

3. The rules would also preclude a minister from accepting "pay" from a person he had helped even though this minister may have devoted a considerable amount of time in counseling a person who was not specific to his congregation. What if he marries someone outside of his Church and takes a fee, or worse yet consults with the couple ahead of time to ensure they are ready for marriage?

4. In terms of proving burden to a Minister, I would confidently predict that the Board would not stop at "registration" - but would go on to licensing, censorship etc. In fact the report due by the Board to the legislature is specifically supposed to suggest who is to be licensed and who is not; and if persons who are unlicensed should be allowed to continue to practice in this state. Will the Board dare to suggest that a minister not counsel when no harm has been proven? Reference: M. S. 148B.48.

5. In spite of Mr. Holley's statement to the opposite, I believe that "content " of pastoral counseling would definitely be regulated as the minister who does not register would then have to be mindful not to cross an ambigious boundary to "mental health counseling", which has been poorly defined, whenever dealing with a person not of his church.

6. Ministers are already licensed by the state. Registration is then redundant.

7. Ministers like anyone else are subject to the laws of the land regarding sexual abuse, etc. They are further subjected to religious censorship by an ecclesiastical hierarchy. No further regulation or censorship is necessary.

8. Mr. Holley cites that "numerous state regulations considerably more intrusive than those presently under consideration have withstood constitutional free religious exercise challenges." He then cites cases of church day care and children's homes. These are examples of business practices and not of religion and are therefore improper examples.

9. Re: Mr. Holley's statement that the rules are "less restrictive", why should they be restrictive at all? Mr. Holley has not made a convincing case for restriction. A few newspaper reports of abuse by religious counselors does not prove that the state has a compelling interest in regulating pastoral counselors. In fact the issue of public harm by ministers has not been adequately demonstrated at all. Mr. Holley has obviously not done enough work on this issue, relying on newspaper accounts of possibly unsubstantiated cases. In the process he has given his opinion that "it would appear that it could be shown that the state has a compelling interest in regulating pastoral counselors."

10. Neither registration nor licensure can actually protect the public. This is clearly demonstrated by many accounts of abuse in the psychiatric and psychological fields which have been documented by the Citizens Commission on Human Rights. Obviously, as these are both regulated fields, regulation hasn't adequately protected the public from harm in these areas. Neither has the Board of Unlicensed Mental Health Service Providers been effective in protecting the public through registration. You might be interested to know that though the Board has received 75 complaints against practitioners and spent well over $200,000 of the taxpayers money, only about half a dozen have been passed on to your office for investigation. Others are pending possible dismissal for technical or other reasons. In actual fact the Board has taken NO final actions on any complaints. To believe that registration of ministers will prevent client sexual abuse is unrealistic. Prosecution of ministers who sexually abuse their clients however is a realistic solution which is already provded for in the statutes.

11. The counseling for remuneration distinction is totally ridiculous. It is apparent that it has been included in an attempt to exempt as many ministers as possible from the registration procedure. If an attempt is being made to exclude as many ministers as possible, why bother to include any? This sets up a discriminatory application of the statutes not to all ministers, but just to a few. The rules, in order to be just should apply to all or none. In fact, if an ultimate objective of the rules is public protection prevention of sexual abuse being specifically mentioned by Mr. Holley, then why is remuneration being made the main criterion for which ministers should be regulated and which should not? Could anyone be so unrealistic as to believe that only those receiving money could abuse a client? Whether a counselor is receiving remuneration or not has nothing to do with whether or not the practitioner will cause harm.

The examination done by Mr. Holley in determining this issue is riddled with illogic and would not stand up to scrutiny by a higher authority. Indeed, the question would be asked: "If the legislation did not include ministers, why are they being added to the rules? And what vested interest is causing ministers to remain in the rules despite great public opposition to this?"

If these rules cannot be legally and constitutionally correct they should be thrown out entirely. I am expecting you to take the proper action on this.

Sincerely,

Mary Lynne

Rev. Mary Lynne Wolfe
Director of Special Affairs

8346 Isleton Court
Cottage Grove, MN 55016
April 15, 1990

The Office of the Attorney General
ATTN: Martha J. Casserly, Special Assistant Attorney General
525 Park Street, 5th Floor
Saint Paul, Minnesota 55155

Dear Ms. Casserly:

This is a written statement on the legality of the proposed Rules Relating to Unlicensed Mental Health Service Providers, Chapter 9000.

THESE RULES EXCEED THE AUTHORITY OF THE STATUTES:
The Rules go far beyond the definition of Mental Health Service Providers authorized by Minnesota Statute 148B.40 Subdivision 4 which exceeds the authority of the Board of Unlicensed Mental Health Service Providers in writing the Rules. The Rule adds the following new terms to the statutory definition: 'guidance', 'pastoral mental health counseling', 'psychotherapy', 'hypnotherapy', 'personal analysis', 'hypnoanalysis', 'other mental health services', 'treatment or therapy for addiction, abuse, or abusive behaviour exibited or received by an individual', 'intrapsychic awareness', 'behavioral methods', 'new age therapy' and 'holistic therapy'. The added terms should at least fall into the catagory of Mental Health need as defined by the Statute which is 'a cognitive, behavioral, emotional, mental, or social dysfunction'. Some of them are far outside the intent of the Statutes. 'Guidance' may not have anything to do with mental health. 'Pastoral mental health counseling' cannot be separated from spiritual health counseling as will be noted by actual example later. 'Treatment or therapy for addiction' may not have anything to do with mental health - for example detox. 'Personal analysis' may not have anything to do with mental health - for example pre-marital counseling. 'Intrapsychic awareness' isn't defined anywhere I know of but in any case it doesn't sound like a treatment for dysfunction. 'Increase of ability' doesn't sound like a treatment for dysfunction either.

THESE RULES ARE NOT A CLEAR STATEMENT OF THE LAW:
The law must be clearly and precisely stated so that there is no question who it affects. None of the new terms are defined and some of them do not even have a dictionary meaning. Some of these terms are very vague, broad generalizations, especially the terms 'other mental health services', 'intrapsychic', 'personal analysis', 'new age', 'holistic', 'treatment or therapy for addiction', and 'pastoral mental health counseling'. Some of these terms include religious activities which should not be under the regulation of the Board of Unlicensed Mental Health Service Providers or any other government body.

THESE RULES ARE TOO BROAD AND GENERAL:
The definition of Mental Health Services in these rules is so broad and so vague that it could include almost any exchange of any nature purporting to improve livingness in any way between individuals or

groups. It might be interpreted to include a number of independent opertors from REIKI HEALERS who deal with spiritual matters and who are very successful in what they do and harm no one to psychic readers who do not hurt anyone either. The Rule does not have a clear limit on who is included.

Further, while I do not personally agree with some of these areas of action such as psychic readers, many of them are dealing with spiritual matters and any regulation of them is therefore regulation of the church by government which the law should not condone.

THESE RULES ARE NOT REASONABLE:
The Statement of Need and Reasonableness does not give any statistics or even any indication of a problem that needs regulation beyond the definition of mental health services provider given in the Statutes. Government should not be involved in regulating anything that is not a specific threat to the public.

THESE RULES VIOLATE SEPARATION OF CHURCH AND STATE:
These rules clearly violate separation of church and state. The supposed exclusion of spiritual counseling or pastoral care by clergy is a contradiction of terms because it cannot be separated from mental health service as defined. The most recent change to define remuneration to include only those receiving payment directly is an improvement which narrows those to whom it could be applied considerably but it still does not eliminate the church completely. I am a retired navy chaplain representing the Reorganized Church of Jesus Christ of Latter Day Saints. Most of my ministry is volunteer. I am not in the business of counseling but I frequently get a referral from someone. Some are not church members. Most I have been able to help. Occasionally one of them has given me a donation out of gratitude. In some cases I have asked for payment for the benefit of my counselee. This as I read the Rule as currently written would include me. While I was acting independently I was also acting under the ordination and license of my church and my actions are subject to their review. Further, I was acting under the direction of my God, even if it may have been 'pastoral mental health counseling', whatever that may mean. I am not the only minister who on occasion or even regularly gets paid directly by clients and who at the same time operate under the ordination and license of their church and who's actions are subject to review by their church. This puts the Board of Unlicensed Mental Health Service Providers in a position of regulating the Church in matters of the Spirit where it clearly should not be.

I am a graduate of the Oberlin Graduate School of Theology and did my clinical pastoral care training at the Riverside Methodist Hospital in Columbus, Ohio. I have worked with many faiths, some of them non-christian, and some of them considered by others to be cults. I am aware of how easy it would be to lose our religious freedoms by allowing even a little encroachment. Historically, churches have been a strong deterant to tryanny and governments have tried to weaken their effectiveness by various subtile ways. The vagueness and counterdiction of terms of these Rules is typical of such action. The authors claim it is harmless now and later interpret the rules to suit their own purposes.

In a good many cases, problem behaviour, marital difficulties, anxieties, drug problems, and other mental health problems are a result of spiritual malfunctions. An actual case in point, a young navy wife began acting strangely, trashed her government housing and was locked up in the psych ward of the local navy hospital. Her husband asked me as a chaplain to visit her which I did. When I arrived she threw a coke bottle at me and trashed the hospital room. I stopped the orderlies who were going to restrain her and waited until she calmed down. After some gentle probing by me she made confession of a sin she had committed and I offered her the forgiveness of God. That handled the problem completely. By definition in these rules, that was a mental health service. I feel it was purely the purview of the church and a spiritual service even though it obviously affected her mental health. Had I not intervened, she would have been treated as a mental health problem by a psychiatrist, probably to her detriment with tranquilizers or other control drugs. I used this example because it was fairly clear cut. Most are going to be more complicated but in my experience of over 30 years in the ministry, few cases of mental ill health can be separated from spiritual ill health. This is made abundantly clear in a book written by a mental health counselor by the name of Paul Lucero. The book is titled, 'In Search of the Eternal Christ' published by Lightbearer Publishing P.O. Box 3174 Montebello, CA 90640 in 1987.

In order to avoid encroachment of the State on religion even by accident, this rule must be rewritten or eliminated altogether.

THE PROCEDURES FOR ADOPTING THESE RULES WERE NOT IN GOOD FAITH:
It should be noted that there were over 25 objections to this Rule but there was no hearing because only 19 of them specifically asked for a hearing. To me this shows the Board's intentions are not in good faith and wants to push this Rule through as is, with most of those it affects unaware of how it could be interpreted or unaware of it at all. Further, I volunteered to be on the Board to use my experience to help put the Rules in acceptable form. Despite my exceptional qualifications someone made sure I wasn't appointed to the Board.

Should these Rules be approved as written, they will have to be challenged in the courts.

Please provide me with a copy of your decision.

Sincerely,

Delbert J. Cory

DELBERT J. CORY

Copy to: Board of Unlicensed Mental Health Service Providers

RECEIVED

APR 17 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. John Hermansen
1117 Marquette Avenuem, #601
Minneapolis, MN 55403

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Hermansen:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

To find out what changes were made to the rule, or to see the adopted rule as amended, you must direct your request to the executive director of the board, Robert Sullivan. In addition, if you wish to be notified when the rule is submitted to the Attorney General, again, you must direct your request to Mr. Sullivan. Mr. Sullivan's address is:

Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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While the amendments to the rule may not alleviate all your concerns, the changes may resolve some of the issues. Thank you for letting us know your concerns and your participation in the rulemaking process.

Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

3/26/90

Dear Honorable Mr. Humphrey,

I'm very concerned regarding the legality aspects of the proposed legistation through "the Board of unlicensed mental health providers"

For one, in the church, ministers are already licensed. Also, this whole action violates "seperation of church & state" & is in fact entirely unconstitutional!

Government has it place. churches also have their rightful place per our constitution (which is supposed to be based on reason) & these actions being proposed are un-reasonable!

concerned citizen

John Hammersen

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Building, Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. John Kisling
1833 Stillwater Avenue
St. Paul, MN 55119

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Kisling:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Office of the Attorney General
Atten: Patricia Noltie
Public Finance Commission
525 Park St. 5th Floor
St. Paul, MN. 55155

John Kisling
1833 Stillwater Ave.
St. Paul, MN.
55119
March 29, 1990

Dear Attorney General,

I am writing this letter to you in regards to the bill Passed by the Board of Mental Health; the Proposed Rules of the Board of Unlicensed Mental Health Providers. This "Bill" is outrages! It violates the first Amendment, is over Legeslation, and violates the rights of the American People. As a registered voter I believe it is my right to write this letter.

Please be aware of the magnetude of this Proposal, and take into consideration the amount of Tax Payers Money that will be wasted.

Thank you for your time and please Regect this Bill.

Sincerely,

John Kisling

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55101

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Ms. Jody Fuller
2925 Hazel Lane
Utica, MN 55343

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Fuller:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

March 29 '90

Office of the Attorney General
Public Finance Division
525 Park St. Floor #5
St. Paul, MN. 55155
ATTN: Patricia Knolte

Dear Attorney-General,

I wish to strongly voice my opposition to the proposed permanent rules being pushed by the Board of Unlicensed Mental Health Service Providers.

Spending the tax payers money to forward licensing of ministers who are already licensed is not only a waste but a violation of the separation of church and state.

I would much prefer law makers time, energy & my money be spent on the real areas of social crisis, such as cleaning up crime and drug use in our communities.

Very Sincerely,

Jody Ruh

2925 Hazel LN.
MTKA, MN. 55343

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MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg. - Suite 500
525 Park Street
St. Paul, MN 55103

ROBERT J. BRUNO, LTD.

ROBERT J. BRUNO
ATTORNEY AT LAW

205 BURNSVILLE PROFESSIONAL PLAZA
1601 EAST HIGHWAY 13
BURNSVILLE, MINNESOTA 55337

TELEPHONE:
(612) 890-9171

April 25, 1990

Martha J. Casserly
Special Assistant Attorney General
525 Park Street, 5th Floor
St. Paul, MN 55155

Re: Proposed Rules for Unlicensed Mental Health Service Providers

Dear Ms. Casserly:

I have been retained by the Church of Scientology with respect to the above rules. It should be noted at the outset that my client vehemently objects to their adoption both on the grounds that they burden free exercise of religion and that they are vague and do not adequately describe to whom the regulations are to apply.

With respect to the latter issue, my client and its members are not professionals in the mental health field. Thus, a great many of the terms used in the regulations, which have no commonly accepted meaning outside of the mental health profession, are meaningless to it. While my client believes that the proposed regulations have no application to its activities, the broadness and vagueness of the proposed regulations is distressing. For example the following terms are undefined in the regulation: "pastoral mental health counseling," "personal analysis," "intrapsychic," "behavioral methods," "intrapsychic awareness," "problem behavior," "social, interpersonal, or intrapersonal dysfunction," "cognitive or emotional distress," "mental, psycho-physiological, or psycho-social conditions," "spiritual counseling or pastoral care of a congregation, or a congregation member, by clergy when the care is not related to the provision of mental health services in item A."

It may be that the above terms have a commonly held meaning to those in the mental health field. To my client and me they are what I would call psycho-babble. It is one thing to apply such terms to the licensure of mental health professionals, the majority of whom may have agreement on the meaning of the terms, and quite another to apply them to the great diversity of non-mental health professional persons to whom the regulations could arguably apply. Keep in mind that the failure to file is a criminal act under M.S. §148B.42. I am confident that the definition of these terms is so vague when applied to a criminal action, they that would not survive a constitutional challenge.

With respect to the free exercise of religion which is protected by both the state and federal constitutions, the issue is not whether there is a substantial burden, as is argued in the Office Memorandum of Robert T. Holley, at page 2, but rather whether there is a burden. Registration, payment of filing fees, and required disclosure of patient's bill of rights (which are of no application to my client's activities) are burdens under the caselaw interpreting the federal and state Constitutions.

Although it is argued by Mr. Holley that these requirements are not substantially burdensome, I fail to see how they are substantially calculated to further the purpose expressed by Mr. Holley of avoiding client sexual abuse by religious counselors. Their purpose appears to be to discourage religious counselling by intimidation.

I am confident that when you review the regulations with an eye toward using the failure to comply with them as the basis for a criminal action, you will find that they will not survive a constitutional challenge and you will disapprove them.

Yours truly,

R. Bruno

Robert J. Bruno

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Bob Walker
9001 - 31st Street West
St. Louis Park, MN 55426

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Walker:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

26 MAR 90

Attorney General State of Montana.

Dear Sir,

As a minister I am concerned with the action of the Board of Unlicensed Mental Practitioners.

So far their action have leaned over the line in violating right guaranteed by the Bill of Rights of the Constitution of the United States

I suggest the recommendations

of this board be kicked back out for overhaul + done up in such a way as not to violate the First Amendment.

This country is based on Freedom, not on the restriction of liberty.

Sincerely

B B Walker

RECEIVED
MAR 29 1990
Office of the Attorney General
Government Services Section
Capitol Square Bldg., Suite 500
550 Cedar Street
St. Paul, MN 55101

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

G.B. Garrett
P.O. Box 301
Hastings, MN 55033

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms./Mr. Garrett:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

26 Mar 90.

Dear "Skip" Humphrey,

I have noticed Several items on a bill that will be passing through your hands soon that I would like to Consider.

The "Board of Unliscensed mental Health Providers" has produced legislation that is simply illegal.

Violations of "church and State", separation of, are included in this bill. The State has no right to have ministers, or pastors Liscensed and under control of the board.

Ministers, chaplains, etc, are already liscensed with the State! This is redundant and a waste of my tax dollars.

Please look at the points I have mentioned and help get it straightened out. Thank you.

Sincerely,

C B Garrett
PO Box 301
Hastings, Mn
55033.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Keith Hallquist
309 Blake Road South
Hopkins, MN 55343

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Hallquist:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Board of Unlicensed Mental Health Providers
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St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

309 Blake Road S.
Hopkins MN 55343
March 28, 1990

Office of the Attorney General
Attn: Patricia Nolte
Public Finance Division
525 Park Street, 5th floor
St. Paul MN 55155

RE: Proposed Permanent Rules for Board of Unlicensed Mental Health Providers

I looked over this proposal and find terms which defy definition in any sense that can be agreed upon or used as a just basis for litigation. For example, "intra psychic", and "pastoral mental health counseling". Where does ministering to someone in need of advice or consolation become "mental health counseling". It doesn't seem possible to answer this question in any objective way. Thus it would be decided on the basis of whatever the majority of the Board feels like doing.

The arbitrariness implicit in this proposal undermines justice, and is what law is set up to prevent. The legal system should provide consistency and clear, understood guidelines that serve to prevent certain types of behavior.

Even if everyone could agree on the meaning of such terms, who is to say what is the right approach to use in talking to another about his problems? Can some Board really decide such an impossible question? It throws into politics the whole area of advising one's fellow man.

If psychiatrists, for example, achieved a preponderance on the board, how much sympathy would they have for ministers who counsel people as spiritual beings rather than stimulus response creatures who should be drugged and perhaps electroshocked "for their own good"?

This proposal opens the door to violations of the Constitution by allowing one group to punish or take away the livelihood of any minister or counselor they don't agree with.

Sincerely,

Keith Hallquist

Keith Hallquist

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MAR 2 ? 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Rev. Kerry Fuller
2925 Hazel Lane
Minnetonka, MN 55343

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Rev. Fuller:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

OFFICE OF THE ATTORNEY GENERAL
ATTN. PATRICIA ARLTE

3-29-90

DEAR. PATRICIA,

RE: PROPOSED PERMANENT RULES OF BOARD OF UNLICENSED MENTAL HEALTH EXAMINERS.

I AM A MINISTER. AS AN INDIVIDUAL INVOLVED IN SPIRITUAL HEALING I FIND THAT THE ARBITRARY + ILLEGAL ADDITION OF MINISTERS TO THE SCOPE OF THIS BOARD IS A MISTAKE.

I UNDERSTAND THE LEGISLATURE DIDN'T INCLUDE THIS CONSTITUTIONAL INVASION BUT IT WAS ADDED BY THE BOARD. I ALSO UNDERSTAND YOU CAN DO SOMETHING ABOUT THIS.

IT WILL NOT HELP SOCIETY TO HINDER RELIGIOUS SPIRITUAL GROWTH + I AM SURE YOU WOULD NOT WANT A BOARD TO DETERMINE YOUR CHURCH'S COMMUNITY REACH. TO RESTRICT THIS AREA IS NOT ACCEPTABLE.

PLEASE DO NOT AUTHORIZE THIS.

SINCERELY

REV. KERRY FULLER
2925 HAZEL LN

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MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite
525 Park Street
St. Paul, MN

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Ms. Carrie Kisling
3722 Highland Avenue
White Bear Lake, MN 55110

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Kisling:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

29 March, 1990

Dear attorney General,

I am writing this letter as I am outraged on the law that was passed regarding the Proposed Permant rules of The Board of Unlicensed Mental Health Providers. This positively violates Seperation of Church and state. This law also provides over legislation of Ministers as they already licensed by the State. The law did not originally include Ministers but the Board added this. This is not OK in a Country That practices Religious freedom and thats under a Constitution such as ours. I think This should be investigated and found to be Illegal Since truth and Honesty are

always the best roads. I believe my viewpoint on this subject is supported by many as I represent the people of this Country.

Sincerely,

Carrie Kisling

CARRIE KISLING
3722 HIGHLAND AVE.
WHITE BEAR LK MN 55110

RECEIVED
MAR 29 1990
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Dr. Betsy Meshbesher Polydorou
6450 City West Parkway
Eden Prairie, MN 55344

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Dr. Polydorou:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Monday March 26 1990

Dear Honorable Mr Humphrey;

I'm writing to you regarding an issue of major concern to me, in reference to the Board of Unliscensed Mental Health Providers.

It is the legality of the rules that I wish to call to your attention and request your aid in the maintanence of our constitutional rights.

1. "Pastoral Care Mental Health Counseling" is mentioned under the definition of "mental Health Services". The Gov. per ther constitition has NO rights to be involved with religions of any kind. This is Unconstitutional.

2. The fact that psychiatrists, psychologists etc are already liscensed by the state. ministers are also liscensed by the state. This board being created is overlegislation and is handling persons that are already being handled by other agencies. This is a waste of taxpayers money and thereby does not even qualify to be legislation. →

In all due regard – Throw this out!
I appreciate your consideration
and action on this matter
and I request a copy of the
attorney general decision on this matter.

Sincerely,

Dr Betsy Meshbesher Polydorou
6450 City West Parkway
Eden Prairie, MN 55344

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Ms. Fran Haefer
4916 - 29th Avenue South
Minneapolis, MN 55417

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Haefer:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Fran Haefer
4916 29th Ave S.
Mpls, Mn 55417

The Office of the Attorney General
Attn: Patricia Nalke, Public Finance Div.
525 Park St. 5th Floor
Saint Paul, Mn 55155

29-Mar-90

Dear Sir,

Concerning "the legality" of the rules submitted by the board of unlicensed mental health providers. "Pastoral care mental health counseling" is mentioned under the definition of "Mental Health Services". The Government per the Constitution has no rights to be involved with Religions of any kind. This is only another way for the State to get more Revenue. The tax payers have a right to seek Counseling from their Ministers. At least from their Ministers

they will not be harmed. As with the Psychiatrists & Psychologists who produce more harm per record & then the Minister is left to Console the grieving family, after the damages have been done.

RECEIVED
MAR 20 1990
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 300
525 Park Street
St. Paul, MN 55103

Sincerely,
Rev. Frances T. Hayes

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Greg Kissling
3722 Highland Avenue
White Bear Lake, MN 55110

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Kissling:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Office of the Attorney General
Attn: Patricia Nolte
Public Finance Division
525 Park St., 5th Floor
Saint Paul, Mn. 55155

Dear Attorney General,

I have recently been hearing about the Board of Unlicensed Mental Health Service Providers, the discussion was concerning the legality of their rules. "Pastoral Care Mental Health counseling" is mentioned in their rules. This is a blatant violation of "the seperation of church and state." This is the entire basis of the U.S. of A. "religous freedom", the first settlers came to America to escape religous persecution of their home lands.

These so called "rules" are coming close, if not already there, to toppling the entire foundation of this great country we live in.

I have paid taxes since I was 8 years old, I never agreed to give any money to a group that violates the Constitution of the United States of America. Not to mention overlegislation.

Please repeal this rule and any other rules of this nature.

Sincerely,

Greg Kisling

3722 Highland Ave

White Bear Lake, Mn. 55110

RECEIVED
MAR 29 1990
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
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GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Theo Manzavrakos
2419 First Avenue South
Minneapolis, MN 55404

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Manzavrakos:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

3.26.90

HONORABLE MR. HUMPHREY,

THIS LETTER IS TO EXPRESS MY DEEPLY HELD CONVICTION THAT THE ACTIONS THAT THE BOARD OF UNLICENSED MENTAL HEALTH PROVIDERS IS TRYING TO PASS INTO LAW REGARDING THE LICENSING AND CONTROL OVER MINISTERS AND THE DELIVERY OF THEIR OWN RELIGIOUS CONVICTIONS TO THOSE MEMBERS OF THEIR CHURCH WHO SHARE THE VIEWPOINTS & RELIGIOUS BELIEFS OF THAT PARTICULAR PHILOSOPHY OF LIFE IS WITHOUT CONTEST AS TO THE UNCONSTITUTIONALITY OF ITS INTENT & PURPOSE.

PLEASE VETO THIS UPCOMING LEGISLATION.

THANK YOU

THEO

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Brad Hagemo, O.D.
6111 France Avenue South
Edina, MN 55410

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Dr. Hagemo:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Dear Mr. Humphrey,

I am writing you today because of my great concern regarding the intentions of the Board of Unlicensed Mental Health Providers to license and regulate pastoral counseling. This issue has moral, ethical and legal ramifications, however I will limit my comments to the legalities.

I am not a legal scholar, but I don't need to be to understand why our founding fathers saw fit to include separation of church and state in the Constitution. Every government which has saught to enforce or inhibit religious practices has instigated its' own demise.

What you have here is a Pandoras' Box of legalistic nightmares, where individuals of opposing religious viewpoints file complaints based on disagreements and misunderstandings. No good can come from this measure!

I respectfully submit that as Attorney General, it is your sworn duty to uphold the Constitution and maintain the separation of church and state.

Sincerely,

Brad Hagemo O.D.

Dr. Brad Hagemo O.D.

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg. Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Ms. Cheryl Ehrruch
4790 Lakeway Terrace
Shorewood, MN 55331

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Ehrruch:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

March 24, 1990

The Office of the attorney general
Attn: Patricia Nolte, public finance division
525 Park Street, 5th Floor.
Saint Paul, MN 55155

The Honorable Ms. Humphrey:

cl strongly disagree with the pending rules regarding the licensing of pastoral care under the provision of mental health providers. this is in direct opposition to ~~this~~ consitution which states seperation of church and state.
Further more:
Licensing is already occuring for mental health providers. this state does not need another level of licensing, this just adds unneclssary cost to our Budget.

Sincerely;
Chris Ehrlich

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Holly Hillestad
9669 East 123rd Street
Hastings, MN 55033

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Hillestad:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

9669. E 123 St.
Hastings, Mn. 55033
March 26, 1990

The Office of the Attorney General
Attn: Patricia Nolte, Public Finance Division
525 Park Street, 5th Floor
St. Paul, Mn. 55155

Dear Honorable Skip Humphy,

I am writing in regards to the rules written up by the Board of Unlicensed Mental Health Providers. I am disturbed by the fact that "Pastoral care Mental Health Counseling" is mentioned in the rules. This is a breach of the seperation of Church and State which is right in our constitution. Anything you can do to get rid of this illegal piece of legislation would be appreciated.

Sincerely,
Holly Dillestad

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Glen Hillestad
9669 East 123rd Street
Hastings, MN 55033

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Hillestad:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

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2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

March 27, 1990

The Honorable Mr Humphrey

Regarding the impending legislation to have ministers get licences to council; They are currently registered or licenced as ministers. If they are doing their job, their pastoral care will cause better mental health. A normal part of being a pastor would be to give mental health counciling.

Are all ministers to be licensed by this new law? What benifits can possibley be derived from this? Wont this simply cost the taxpayers extra money for nothing?

(over)

Since ministers are now to be licensed twice, would it not be justified to licence psychiatrists twice (more wasting of taxpayers money).

Sincerely

Glen Hillestad

RECEIVED
MAR 23 1990
Ohio ... General
Government Services ... Floor
Capitol Office Bldg. ... Suite 230
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Dr. Daniel Hall
5934 Oakgreen Avenue North
Stillwater, MN 55082

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Dr. Hall:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

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Robert Sullivan
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2700 University Avenue West, Suite 225
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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

March 26, 1990

The office of the Attorney General,
Patricia Nolte, Public Finance Division
525 Park Street, 5th Floor
St. Paul, MN 55155

The Honorable Mr. Humphrey,

I am concerned with the issue with the Board of unlicensed mental Health Providers. Pastoral Care Mental Health Counseling is mentioned under the definition of Mental Health services. This is unconstitutional because it violates the rights of Freedom of religions. It should be thrown out of legislation.

Sincerely,

Dr Daniel A. Hall

RECEIVED

MAR 29 1990

Office of the ...
Government Services ...
Capitol Office Bldg., Suite 300
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Mike Porter
485 Maryland Avenue West, #9
St. Paul, MN 55117

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Porter:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

26 March 1990

To: The Office of the Attorney General

From: Mike Porter
485 Maryland Ave W #9
St Paul, MN 55117

Copy: Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers

I appreciate having received a copy of the notice of submission of rules adopted without public hearing to the Attorney General and under separate cover a copy of the rules themselves. I wish to reiterate my concerns on this matter. I feel a public hearing is still necessary. I also feel the rules are unconstitutional and fail to pay heed to separation of Church and State. The inclusion of the word "pastoral" has opened the door to governmental management of religion. This is not acceptable.

Sincerely
Mike Porter

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Ms. Barbara Finstrom
3305 Bloomington Avenue South
Minneapolis, MN 55407

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Finstrom:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

To find out what changes were made to the rule, or to see the adopted rule as amended, you must direct your request to the executive director of the board, Robert Sullivan. In addition, if you wish to be notified when the rule is submitted to the Attorney General, again, you must direct your request to Mr. Sullivan. Mr. Sullivan's address is:

Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

Equal Opportunity Employer

Printed on Recycled Paper

If you requested a copy of the decision by the Attorney General, there is no decision because the rule was withdrawn. If you wish to receive a copy of the Attorney General decision after the rule has been resubmitted, you must renew your request for a copy of the decision.

While the amendments to the rule may not alleviate all your concerns, the changes may resolve some of the issues. Thank you for letting us know your concerns and your participation in the rulemaking process.

Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

3-26-90

Dear Sir.

Pastoral Care Mental Health Counseling is mentioned under the definition of Mental Health Services. For the constitution the goverment has no right to be involved with religions of any Kind. This is unconstitutional!

Truly.

Barbara Finsham

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MAR 29 1990

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Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

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TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Jerry Wolfe
8216 Halifax Court
Brooklyn Park, MN 55443

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Wolfe:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

March 26, 1990

Patricia Nolte
Office of the Attorney General
Public Finance Division
525 Park Street, 5th Floor
St. Paul, MN 55155

Dear Ms. Nolte:

I most strenuously protest the inclusion of "Pastoral Care Mental Health Counselling" under the definition of "Mental Health Services" in the BUMP rules.

Religious counselling and mental health are two completely separate areas and our Constitution dictates and guarantees Freedom of Religion without any government intervention.

The psychiatric influence on educational, governmental and other areas of our society is devastating and we must not tolerate any encroachment into the religious realm.

An attempt by BUMP or any other governmental agency to intervene in religious activities is, quite simply, unconstitutional.

I would appreciate your assistance is correcting this error in the BUMP rules. Thank you.

Sincerely,

Jerry Wolfe

Jerry Wolfe
8216 Halifax Court
Brooklyn Park, MN 55443

cc: Robert A. Sullivan
BUMP

RECEIVED

MAR 28 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Bill Hoefer
4916 - 29th Avenue South
Minneapolis, MN 55417

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Hoefer:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Office of the Attorney General 29MAR90
ATTN: Patricia Nolte
525 Park St. 5th Floor
St. Paul, Mn 55155

Dear Sir,

Please look into the Board of Unlicensed Practitioners. They are violating Religious Freedom by demanding Ministerial counselors be licensed by the state. This is blatantly unconstotutional!

Respectfully yours
Bill Hoefer
4916 29th Ave S.
Mpls, Mn 55417

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg. Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
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GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Jon Swanson
2901 Nevada Avenue South
St. Louis Park, MN 55426

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Swanson:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

24 March 1990

Dear Sir

I am writing in regards to the rules for the licensing of mental health providers.

Per the first amendment of the Constitution Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Therefore any rules or licensing of mental health providers connected to a religion or religious activity would be unconstitutional and illegal.

As a direct violation of the Constitution this Legislation should be thrown out.

Thank You

Jon O. Swanson

Jon Swanson
2901 Nevada Ave. S.
St. Louis Park, MN 55426

Ron Swanson
5801 Nevada Ave. S.
St. Louis Park, MN 55426

RECEIVED

MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg. Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Ivan Makovec
201 E. 27th Street, #BE
Minneapolis, MN 55408

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Makovec:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

Ivan Makovec
201 E. 27th St. #BE
Minneapolis, MN 55408

March 26, 1990

The Office of the Attorney General
Attn: Patricia Nolte, Public Finance Division
525 Park St., 5th Floor
Saint Paul, MN 55155

Re: Board of Unlicensed Mental Health Providers

I am a licensed minister in this state.

I am deeply concerned with the Board of Unlicensed Mental Health Providers, and the fact that "pastoral care mental health counseling" is being mentioned under "mental health services". The Constitution guarantees separation of church and state, and there is no governmental right to interfere with any pastoral counseling services. I am not happy with unnecessary boards being set up at taxpayer expense.

This legislation is unconstitutional and should be thrown out immediately.

Sincerely,

Ivan Makovec

cc: Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, MN 55114

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Ms. Jeri Walker
9001 West 31st Street
St. Louis Park, MN 55426

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Ms. Walker:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

The Office of the Attorney General
Attn: Patricia Nolte, Public Finance Division
525 Park Street, 5th Floor
St. Paul, MN 55155

26 MAR 90

Ms Nolte:

Attached is a letter comment regarding the legality of the Proposed rules of the Unlicensed Mental Health Services Board. I previously sent this letter to the Attorney General and am now resubmitting it to you during the eight calendar days of the comment period after submission of the Rules to the attorney General.

Since I wrote the attached letter I have been told that the State legislature of the State of New Hampshire recently determined that legislation proposed in this same area was illegal and therefore abandoned. Their reasoning and determination would be germane to any finding of legality in this State.

I request a copy of the attorney general decision.

Sincerely

Jeri Walker

9001 W. 31st ST.
St Louis Park, MN 55426

cc: Robert Sullivan

The Honorable Attorney General of Minnesota
102 State Capitol
St. Paul, MN 55155

February 1, 1990

Jeni Walker
9001 W. 31st St.
St. Louis Park, MN 55426

Mr. Humphrey:

I am writing to complain about the proposed Permanent Administrative Rules of the Board of Unlicensed Mental Health Providers. These Rules will be arriving in your office from the Revisor soon. I complained about these rules in writing, as did over thirty other individuals, during the comment period. A public hearing was not held, denying the public their right to give input to the Board and bring about change in these rules.

As a result, the rules have been left in a form that is unconstitutional. Specifically, the requirement of a Pastor to register with the State violates Church State separation. There are additional areas which are also questionable.

I have no case precedent to direct you to regarding this area of unconstitutionality. In fact, I was directed by Mr. Sullivan, the Executive Director of the Board, to include case precedent in my complaint to you as he stated you would not pay attention to a general statement that the rules are unconstitutional.

However, I hope to know that there is no case precedent in this area. This was researched by Mr. Holley of your office and was admitted to me by the current Chairman of the Rules Committee, Jerry Pederson. Mr. Pederson also told me that Minnesota is the first State to attempt registration of Pastoral Counselors. After all, what's the point? Ministers are already licensed by the State! I urge you to investigate and consider this question of unconstitutionality, as the lack of case precedent proves nothing in this instance.

In addition, the requirement that only those counseling for remuneration need register is inconsistent with the stated purpose of the Board and its Rules, of consumer protection. Obviously, an individual can harm others whether he charges for it or not.

I know you have a great concern for upholding the Constitution and request that you remedy this situation. I would request that you hold a public hearing and that you exempt all religious services from State interference.

Sincerely,

Jerry Walker

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Martin J. O'Brien
157 Hartman Circle
'Fridley, MN 55432

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. O'Brien:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

OFFICE OF THE ATTORNEY GEN
PATRICIA NOLTE, PUB FINANCE DIV.
525 PARK ST 5TH FL
ST. PAUL, MN. 55155

26 MARCH 90

RE: UNLICENSED MENTAL HEALTH PROVIDERS

SIRS':

THE FIRST AMENDMENT, IT WOULD PLAINLY SEEM, WOULD PROHIBIT GOVERNMENT INVOLVEMENT WITH THE FREE PRACTICE OF RELIGION.

MY CHURCH DOES PASTORAL COUNSELING, AND DOES IT VERY WELL. I DO NOT WANT THE STATE INVOLVED WITH THIS PROCESS.

PLEASE EXAMINE THIS NEW LAW WITH THIS CONCERN IN MIND. PLEASE CHANGE OR THROW OUT THIS LEGISLATION.

THANK YOU

MARTIN J. O'BRIEN
157 HARTMAN CIR
FRIDLEY, MN. 55432

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MAR 29 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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525 PARK STREET
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ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Dennis R. Peterson, Esq.
202 Omni Building
1652 Greenview Drive, S.W.
P.O. Box 6477
Rochester, MN 55903

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Peterson:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

LAW OFFICES
PETERSON & LAWHEAD, P.A.
202 OMNI BUILDING • 1652 GREENVIEW DRIVE S.W. • P.O. BOX 6477
ROCHESTER, MINNESOTA 55903

(507) 288-6705

Dennis R. Peterson
Donaldson V. Lawhead

March 30, 1990

Kasson Office:
16 N. Mantorville Ave.
P.O. Box 1
Kasson, MN 55944
(507) 634-2831

Reply To: Rochester

The Honorable Hubert Humphrey III
State of Minnesota
Attorney General
102 State Capitol
St. Paul, MN 55155

Dear Attorney General Humphrey:

As a concerned citizen, I have serious reservations about the rules promulgated for this Board. The rules recommended by the Board go too far and result in the necessity of religious, as well as counselors for drug consultation, to be licensed and supervised by this Board.

I an enclosing a copy of the recommended changes to certain rules and ask that the Attorney General's Office carefully review my suggestions since the rules go far beyond the abuse that is intended to be corrected.

There are also serious constitutional issues involved and I hope that the Attorney General's Office will give me an opportunity to personally present my views concerning this matter before a hasty and illogical rule is adopted. It is far easier to prevent the harm before the rules are adopted, rather than after they are adopted. I would appreciate discussing this at length with any member of your office involved in the adoption and promulgation of these rules.

Very sincerely yours,

PETERSON & LAWHEAD, P. A.

Dennis R. Peterson

DRP:mar
Enclosure

SENT BY FAXMAIL AND REGULAR MAIL 612--297 4193

takes out alcohol + drug abuse

Board of Unlicensed Mental Health Service Providers

Proposed Permanent Rules Relating to Unlicensed Mental Health Service Providers

Rules as Proposed

9000.0050

Parts 9000.0100 to 9000.0200 establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a regulatory system and central registry of persons who provide or purport to provide mental health services.

9000.0100 Definitions

Subpart 1. Scope. For purposes of parts 9000.0100 to 9000.0200, the following terms have the meanings given them.

Subp. 2, Applicant. "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. Board. "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. Mental health services.

A. "Mental health services" means the provision of any treatment; counseling; therapy including guidance, treatment of therapy for abuse, or abusive behavior exhibited or received by an individual; psychotherapy; hypnotherapy, or psychoanalysis Mental health services are services that are designed to alleviate symptoms, change or reduce disturbed patterns of behavior. Mental health services must use interpersonal, or behavioral methods. Mental health services may be provided to individuals, couples, families, or groups who are experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have other mental, psycho-physiological, or psycho-social conditions that they seek to alleviate.

B. "Mental health services" includes those services in item A. Mental health services does not include services that are:

(1) Primarily for entertainment;
(2) Primarily for informational;
(3) Primarily for client advocacy; or
(4) Related to a custodial or maintenance function.

changed

C. "Mental health services" does not include the following areas of practice: educational, vocational, or career guidance; drug or substance abuse counseling; spiritual counseling; and pastoral counseling or care.

Subp. 5. Provider. "Provider" means a person who provides or purports to provide mental health services. A mental health service provider may be:

A. A counselor (crisis, grief, eating disorder, compulsion, phobia, mental health, or sexual and physical abuse);

B. A school and college counselor, if the counselor is providing mental health services as defined in subpart 4;

C. A rehabilitation officer or counselor, if the counselor is providing mental health services as defined in subpart 4;

D. A social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

E. A therapist in an area related to child care, education, new age therapy, holistic therapy, dance, music, or recreation, if the therapist is providing mental health services as defined in subpart 4;

F. A hypnotist or hypnotherapist;

G. A behavior modification practitioner or analyst; and

H. Any other person, regardless of titles, providing mental health services who is not exempt from filing or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 7. Variance. "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 Requirement to File.

Subpart 1. Who must file. A provider of mental health service must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3, and 148B.42.

Subpart 2. Exclusion from filing. Persons excluded from filing under subpart 1 include the following:

A. A person specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. A person not providing mental health services as defined in part 9000.0100, subpart 4.

Subpart 3. Requirement to file. A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 must apply to the board and receive acknowledgement of the filing as provided in part 9000.0130.

------To page 4 of proposed permanent rules--------

RECEIVED

APR 5 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 6, 1990

Mr. Delbert J. Cory
8346 Isleton Court
Cottage Grove, MN 55016

Re: In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers

Dear Mr. Cory:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

To find out what changes were made to the rule, or to see the adopted rule as amended, you must direct your request to the executive director of the board, Robert Sullivan. In addition, if you wish to be notified when the rule is submitted to the Attorney General, again, you must direct your request to Mr. Sullivan. Mr. Sullivan's address is:

Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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If you requested a copy of the decision by the Attorney General, there is no decision because the rule was withdrawn. If you wish to receive a copy of the Attorney General decision after the rule has been resubmitted, you must renew your request for a copy of the decision.

While the amendments to the rule may not alleviate all your concerns, the changes may resolve some of the issues. Thank you for letting us know your concerns and your participation in the rulemaking process.

Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

8346 Isleton Court
Cottage Grove, MN 55016
March 26, 1990

The Office of the Attorney General
ATTN: Patricia Nolte, Public Finance Division
525 Park Street, 5th Floor
Saint Paul, Minnesota 55155

Dear Ms. Nolte:

This is a written statement on the legality of the proposed Rules Relating to Unlicensed Mental Health Service Providers, Chapter 9000.

THESE RULES EXCEED THE AUTHORITY OF THE STATUTES:
The Rules go far beyond the definition of Mental Health Service Providers authorized by Minnesota Statute 148B.40 Subdivision 4 which exceeds the authority of the Board of Unlicensed Mental Health Service Providers in writing the Rules. The Rule adds the following new terms to the statutory definition: 'guidance', 'pastoral mental health counseling', 'psychotherapy', 'hypnotherapy', 'personal analysis', 'hypnoanalysis', 'other mental health services', 'treatment or therapy for addiction, abuse, or abusive behaviour exibited or received by an individual', 'intrapsychic awareness', 'behavioral methods', 'new age therapy' and 'holistic therapy'. The added terms should at least fall into the catagory of Mental Health need as defined by the Statute which is 'a cognitive, behavioral, emotional, mental, or social dysfunction'. Some of them are far outside the intent of the Statutes. 'Guidance' may not have anything to do with mental health. 'Pastoral mental health counseling' cannot be separated from spiritual health counseling as will be noted by actual example later. 'Treatment or therapy for addiction' may not have anything to do with mental health - for example detox. 'Personal analysis' may not have anything to do with mental health - for example pre-marital counseling. 'Intrapsychic awareness' isn't defined anywhere I know of but in any case it doesn't sound like a treatment for dysfunction. 'Increase of ability' doesn't sound like a treatment for dysfunction either.

THESE RULES ARE NOT A CLEAR STATEMENT OF THE LAW:
The law must be clearly and precisely stated so that there is no question who it affects. None of the new terms are defined and some of them do not even have a dictionary meaning. Some of these terms are very vague, broad generalizations, especially the terms 'other mental health services', 'intrapsychic', 'personal analysis', 'new age', 'holistic', 'treatment or therapy for addiction', and 'pastoral mental health counseling'. Some of these terms include religious activities which should not be under the regulation of the Board of Unlicensed Mental Health Service Providers or any other government body.

THESE RULES ARE TOO BROAD AND GENERAL:
The definition of Mental Health Services in these rules is so broad and so vague that it could include almost any exchange of any nature purporting to improve livingness in any way between individuals or

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St. Paul, MN 55103

groups. It could include everything from the summer youth camp counselor who has an intense interpersonal relationship with their campers that changes the whole life of the campers (I can produce actual cases) to a psychic reader which at worst is harmless nonsense. Lest the Board of Unlicensed Mental Health Services Providers claim summer camp counselors are exempt under 9000.0100 subpart 4 Section B or C, in many cases the primary purpose of these camps is to handle social, interpersonal, and intrapersonal dysfunctions by interpersonal and behavioral methods including dance, music, & recreation. Some of these camps are run by churches, most are non-profit, but the dedicated counselors are often paid less than minimum wage. They can ill afford the filing fee imposed by these rules or the unnecessary interference of government in a successful operation.

Further, while I do not personally agree with the psychic readers, they are dealing with spiritual matters and any regulation of them is therefore regulation of the church by government which the law should not condone.

THESE RULES ARE NOT REASONABLE:
The Statement of Need and Reasonableness does not give any statistics or even any indication of a problem that needs regulation beyond the definition of mental health services provider given in the Statutes. Government should not be involved in regulating anything that is not a specific threat to the public.

THESE RULES VIOLATE SEPARATION OF CHURCH AND STATE:
These rules clearly violate separation of church and state. The supposed exclusion of spiritual counseling or pastoral care by clergy is a contradiction of terms because it cannot be separated from mental health service as defined. This puts the Board of Unlicensed Mental Health Service Providers in a position of regulating the Church in matters of the Spirit where it clearly should not be.

I am a retired navy chaplain representing the Reorganized Church of Jesus Christ of Latter Day Saints. I am a graduate of the Oberlin Graduate School of Theology and did my clinical pastoral care training at the Riverside Methodist Hospital in Columbus, Ohio. I have worked with many faiths, some of them non-christian, and some of them considered by others to be cults. I am aware of how easy it would be to lose our religious freedoms by allowing even a little encroachment. Historically, churches have been a strong deterant to tryanny and governments have tried to weaken their effectiveness by various subtile ways. The vagueness and counterdiction of terms of these Rules is typical of such action. The authors claim it is harmless now and later interpret the rules to suit their own purposes. The Executive Director of the Board of Unlicensed Mental Health Services Providers stated in an open public meeting that the

purpose of these Rules was to regulate the individual who put up a shingle to operate independently. This is not stated or even implied in these Rules as written.

In a good many cases, problem behaviour, marital difficulties, anxieties, drug problems, and other mental health problems are a result of spiritual malfunctions. An actual case in point, a young navy wife began acting strangely, trashed her government housing and was locked up in the psych ward of the local navy hospital. Her husband asked me as a chaplain to visit her which I did. When I arrived she threw a coke bottle at me and trashed the hospital room. I stopped the orderlies who were going to restrain her and waited until she calmed down. After some gentle probing by me she made confession of a sin she had committed and I offered her the forgiveness of God. That handled the problem completely. By definition in these rules, that was a mental health service. I feel it was purely the purview of the church and a spiritual service even though it obviously affected her mental health. Had I not intervened, she would have been treated as a mental health problem by a psychiatrist, probably to her detriment with tranquilizers or other control drugs. I used this example because it was fairly clear cut. Most are going to be more complicated but in my experience of over 30 years in the ministry, few cases of mental ill health can be separated from spiritual ill health.

In order to avoid encroachment of the State on religion even by accident, this rule must be rewritten or eliminated altogether.

THE PROCEDURES FOR ADOPTING THESE RULES WERE NOT IN GOOD FAITH:
It should be noted that there were over 25 objections to this Rule but there was no hearing because only 19 of them specifically asked for a hearing. To me this shows the Board's intentions are not in good faith and wants to railroad this Rule through as is, with most of those it affects unaware of how it could be interpreted or unaware of it at all. Further, I volunteered to be on the Board to use my experience to help put the Rules in acceptable form. Despite my exceptional qualifications someone made sure I wasn't appointed to the Board.

Should these Rules be approved as written, they will have to be challenged in the courts.

Please provide me with a copy of your decision.

Sincerely,

Delbert J. Cory

DELBERT J. CORY

Copy to: Board of Unlicensed Mental Health Service Providers

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525 PARK STREET
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TELEPHONE: (612) 297-2040
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April 6, 1990

Mr. Glen Hillestad
9669 East 123rd Street
Hastings, MN 55033

Re: **In the Matter of the Board of Unlicensed Mental Health Adoption of rules Relating to Filing of Unlicensed Mental Health Care Providers**

Dear Mr. Hillestad:

I am the attorney in the Attorney General's Office, Public Finance Division, that reviewed the Unlicensed Board's Adopted Rule for legality. I received and considered your comments regarding the legality of the rule.

In my review of the rule for legality, I had several concerns with the rule and informed the board I could not approve the rule in its submitted form without certain changes. The board's attorney and executive director agreed with my suggestions and subsequently withdrew the rule from consideration by the Attorney General's Office. I understand they plan to make the suggested changes and re-submit the rule as amended to the Attorney General.

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Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

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While the amendments to the rule may not alleviate all your concerns, the changes may resolve some of the issues. Thank you for letting us know your concerns and your participation in the rulemaking process.

Very truly yours,

MARTHA J. CASSERLY
Special Assistant
Attorney General

cc: Robert Sullivan

7 Feb 1990

Dear Mr Humphrey

We have a board operating in this state called the "Board of Unlicenced Mental Health Providers". I attended one of their meetings and found they want to regulate counciling in churches. This is unconstitutional

I also note that they have quietly done their work without letting people affected know about it. It has not been publicised.

A public hearing is needed on this

Sincerely
Glen Hallestad

March 26, 1990

Dear Honerable Mr Humphry,

I am addressing the rules of the "Board of Unlicensed Mental Health Providers."

I believe that these rules are unconstitutional in that our forefathers in their wisdom provided for the separation of church and state. Any effort of the state to license religious ministers violates this basic precept.

Diana Candell

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Government Services Section
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525 Park Street
St. Paul, MN 55103

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OFFICE OF ATTORNEY GENERAL
PUBLIC FINANCE DIVISION
525 PARK ST. FLOOR #5
ST. PAUL, MN 55155
ATTN: PATRICIA KNUTE

DEAR ATTORNEY GENERAL:

THE NEW PROPOSED PERMANENT RULES REGARDING PASTORAL CARE MENTAL HEALTH COUNSELING MAKES ME VERY ANGRY. I CAN'T BELIEVE MY TAX DOLLARS ARE BEING SPENT ON THIS LEGISLATION, BECAUSE MINISTERS ARE ALREADY LISCENSED BY THE STATE SO THESE RULES ARE OVER LEGISLATION AND SHOULD BE IMMEDIATELY THROWN OUT.

ALSO, ISN'T THERE SOMETHING IN THE CONSTITUTION ABOUT RELIGIOUS FREEDOM? THESE NEW RULES ARE CLEARLY UNCONSTITUTIONAL BECAUSE THEY VIOLATE THE FIRST AMENDMENT. GOVERNMENTS HAVE NO RIGHTS PASSING RULES THAT AFFECT OUR RELIGIOUS FREEDOM. IT SICKENS ME THAT PEOPLE HAVE TO KEEP SUCH A CLOSE WATCH ON LEGISLATION TO ENSURE THE FREEDOMS OF EVERY PERSON IN THE STATE.

SINCERELY

David Sill

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Office et the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

3-29-90

Dear attorney Hanes,

I feel it is totally against my rights as a citizen not to have my minister come to my house to council my family.

I have heard about the new proposed permanent rules of the board of unlicensed Mental Health Providers: This is totally against the constitution and I propose that it is vetoed.

Sincerely,
Judy Sweeman

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Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

To the Honorable Mr. Humphrey,

I'm writing this letter in regards to Board of Licensed Mental Health Providers. To make pastors or counselers of any church require a license to give advise or counsel someone is plainly unconstitutional. I cannot believe someone in such a high position in our government, such as you, would pass this law. I thought the constitution was there for our protection.

Besides Ministers <u>are already</u> licensed by the state, so this is over legislation.

Government & Religion <u>must</u> stay seperate.

Sincerely,

Susan Hellmann

29- March, 90

Dear Sir,

I've seen the rules as layed out by the "Board of unlicensed Mental Health Service Providers." I think it should be known that Dianetic and Scientology counselors are licensed thrud the International Hubbard Ecclesiastical League of Pastors (I HEIP). It is I HEIP's responsibility to see that licenses are adhered to and practioners remain qualified to do counseling-

also psychologists, psychiatrists and others are already licensed with the state.

It would seem that this new agency is superfluous resulting in a waste of tax payers money-

Sincerely,
Hal Cordoba

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