

BACKGROUND ON COUNSELOR LICENSING EXEMPTION IN OREGON

A Summary: November, 2015

All states require professional counselors to go through a licensing process. In order to be licensed, a master's degree, a period of supervised practice and passing scores on one or more examinations are required. States vary in the specifics of coursework and the number of hours of supervised experience needed for licensure.

Oregon is the only state that has a licensing exemption law for counselors still on the books. *In some states, if individuals practice without credentials, they can lose license eligibility and conceivably face criminal charges.*

Note: Several states do not yet regulate newer professions such things as "coaching", and other self-improvement practices that may employ some counseling techniques.

Other states have such regulations in a research stage.

NATIONAL TREND: Individuals who charge for mental health related services must prove that they are qualified to do so by becoming licensed by the state.

Why Licensure by the State?

- Licenses are held to an enforceable Code of Ethics, which delineates ethical counseling practice. State Boards provide an established process for dealing with concerns and taking disciplinary actions when ethics are violated.
- Licenses must complete regular continuing education in order to maintain their license or certification. This ensures that licensees are up to date on developments and best practices in the profession, so that they can provide high-quality services.
- Licenses can advertise their credentials: Licensed Professional Counselor (LPC) or Licensed Mental Health Therapist LMHP). Such designations ensure the public that a counselor has met certain specified standards for safe and competent practice, including all education, experience, supervision and testing requirements.
- Licensing counselors in a state assures that only individuals with the appropriate academic preparation and experience are treating patients. This maintains a level of safety and confidence for both patient and counselor.
- Only licensed individuals can bill health insurance for their professional services. Why? Insurance companies require "quality assurance"--some guarantee that they are paying for services that have been offered by qualified individuals.

When Someone doing Counseling is not Licensed by the State:

- There is no way to hold the person to an enforceable *Code of Ethics*. The person may or may not even be aware of the tenets of ethical practice. (IE: Charging in advance for services not yet rendered). If an individual receiving services is harmed, there is no real recourse for them--other than a lawsuit which is expensive (hiring an attorney), intimidating, and time consuming.
- There is no way to ensure that the person doing "counseling" has been professionally or formally educated in the field; no way to know if he/she is engaging in best practices (evidence based practice); and no guarantee that the individual is keeping up with developments in the field.
- Unlicensed persons are free to employ whatever idiosyncratic methods they may have read about, heard about or even made up on their own, without any backing of research.

Critics of State Licensing Laws for Mental Health Professions:

Most critics cite restraint of fair trade laws, and believe that anyone who wants to counsel others (or do just about anything without formal training) has the right to do so. They generally believe that licensing laws are on the books to protect the profession from competition or as intrusions of government into people's private lives.

Reality: Most states (including Oregon) have a shortage of licensed professional mental health counselors, so this argument lacks weight.

Brief History of Mental Health Licensing Law in Oregon:

- The Mental Health Licensure movement began nationally in 1976.
- The effort to establish licensing laws for professional counselors and marriage and family therapists began in Oregon in 1981.
- The first licensing law for LPC's and LMFT's was enacted in Oregon in 1989.
- Amendments followed in 1993, 2009, and 2013.

Issues of Agreement Among Legislators:

1. Intent to be clear to the public--members of the public have a right to know that persons who present themselves as "counselors or mental health therapists" have the requisite education, training, supervision, and tested qualifications to do so.
2. Persons holding themselves out to be counselors and mental health therapists need to have "legal credentials so they can be held accountable for their actions"; a way to

establish "effective peer review"; and a means to have the "professional and ethical standards of their profession monitored".

3. State licensure is the best way to accomplish maximum knowledge and safety for the public, and monitoring of the mental health professions.

4. A bill to license professional counselors is "a badly needed bill" (Gov. Goldschmidt, 1987). This was agreed upon by most members of the profession, by counseling organizations, by members of the public and by most legislators.

5. The qualifications of some individuals who are doing counseling should be assumed, and they should be exempt from licensing laws: IE: Members of the ordained clergy (already have at least Master's Degrees and training in Pastoral Counseling; employees of state mental health agencies who are trained counselors, etc.).

Issues of Disagreement Among Legislators:

1. Various differences over grandfathering clauses in the legislative bills submitted ("reciprocity"). Both Gov. Atiyeh and Gov. Goldschmidt vetoed bills that either admitted too many possibly unqualified individuals from states with lower standards than Oregon or because there were not sufficient provisions in the bills to "protect the public peace, health, and safety" (HB 2802 and SB 260).

2. Budgetary limits in establishing another Board which was a concern of Ways and Means. It "got lost in the budget crunch struggles and died in Ways and Means".

3. Some Ph.D. psychologists opposed the various bills because they feared that standards of training would be lowered for licensed individuals.

4. ***** Difficulty with "sunset review" provisions: NOTE: All bills submitted between 1981 and 2013 were concerned about the hardship that would be caused for current counselors who Master's degrees in Counseling and had established practices, but did not meet all of the qualifications being proposed for licensure.**

There were also questions about whether or not current counselors would have enough time to go through the licensing process, while maintaining their professional obligations. These concerns, and these concerns alone, were the guiding energy behind the exemption in ORS 675.825, 3,4.

*****ORS 675.825 3, 4 were originally intended as temporary laws, (for reasons stated above) but they have never been repealed.**

Today:

The original intent of ORS 675.825, 3, 4 was to protect *current* individuals with Master's Degrees (primarily) who had *existing* counseling/mental health practices in Oregon but

whose education, supervision, or counseling experience did not qualify them to apply for licensure. No one wanted to put these individuals out of business, or require that they cease their practices to prepare for a licensure exam.

Most of the individuals for whom this law was enacted are either retired or deceased.

The exemption in ORS 675.825, 3, 4 was intended to have a sunset provision, but this got lost, mostly in the discussion over grandfathering.

As a result, this law is being used today for an entirely different and unintended purpose: **To legitimize any individual who wishes to practice counseling without the educational training, supervision, or tested qualifications to do so. People without Bachelor's degrees can advertise self-taught counseling services to the unsuspecting public and charge the same rates that a licensed professional charges--or more. This puts the public at risk, especially those who are most vulnerable, desperate, or who might lack the psychological sophistication to discern an unlicensed "counselor's" qualifications.**

Proposal:

This law needs to be changed, amended or given a sunset date, while protecting those current professionals who have Master's degrees in counseling (or a related field) and have established professions as counselors or marriage and family therapists.

Educationally qualified professionals who, in good faith, believed that this law did not require them to become eligible for licensing, should not be penalized by any changes in the law.

This is not a Fair Trade Restriction issue: There is a shortage of qualified mental health professionals in Oregon.

This proposal ONLY ADDRESSES those individuals who hold themselves out to practice mental health counseling or marriage and family therapy as defined by law. It does not include life coaches, yoga practitioners, tarot card readers, or any others groups not engaged in counseling and marriage and family therapy as defined by Oregon law.