



To: Economic Affairs Interim Committee

From: Board of Social Work Examiners and Professional Counselors

Date: June 10, 2013

Subject: HB525 – SWP response to the Economic Affairs Interim Committee questions

1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

The Board of Social Work Examiners and Professional Counselors believe in the mission of the board: The profession of Social Work, Professional Counseling and Marriage and Family Therapy profoundly affects the lives of people of this state. It is its purpose to provide for the common good by ensuring the ethical, qualified, and professional practice of Social Workers, Professional Counselors and Marriage and Family Therapists.

The regulation of Social Workers, Professional Counselors and Marriage and Family Therapists through licensure serves the public interest by protecting society's most vulnerable individuals, including those who struggle against suicidal ideations, major depression, bi-polar disorders, or schizophrenia. We believe this is a strong rationale for the three components of our work, licensing, regulation, and discipline of the health care providers under our authority. It is critical that Montanans trust their health care provider. The Board of Social Work Examiners and Professional Counselors works to insure that confidence is earned by evaluating the education, clinical experience, knowledge, and character of each licensure applicant. When that confidence is broken, the board is available to address the circumstances and impose necessary change.

2. If your profession/occupation were not licensed, what public protection would be lost?

The board finds that the vast majority of licensees performs in an exemplary way and deserves high praise. The board feels it is even more imperative that these high standards are maintained. The failure to regulate those who would pursue a career as Social Workers, Professional Counselors or Marriage and Family Therapists would expose the public to a predictable and increased risk of harm due to incompetence. The board is very committed to the regulation of safe counseling care. They achieve this through regulating education programs, clinical supervision requirements and a national exam that measures minimum competence for each of the credentials under their jurisdiction. Without licensing and regulation, anyone could claim to be a licensee. The board believes that a system of licensing and regulation increases the credibility of mental health professionals with the public, and increases the public's trust in those professionals. We also believe the board plays an important role in making sure professionals in Montana deliver high quality services to their patients, clients and consumers. Additionally, were it not for the Board of Social Work Examiners and Professional Counselors' disciplinary process, citizens would be left on their own to pursue remedies against mental health professionals they believe have engaged in incompetent, unprofessional or unethical practices. This would be extremely difficult, as lay people do not understand the knowledge necessary to become a mental health professional. Nor would they understand the training and credentials required.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

Yes. A license by definition provides evidence of meeting minimum standards of education, supervision, and competence. As with any profession that requires a large body of knowledge and specific training, only fellow mental health professionals can truly evaluate whether an individual meets the standards of the profession. The Montana board was established in 1983 regulating only Licensed Clinical Social Workers (LCSW) at the time. In 1985 Licensed Clinical Professional Counselors (LCPC) were added to the boards' authority and in 2009 Licensed Marriage and Family Therapists (LMFT). The Board of Social Work Examiners and Professional Counselors is comprised of experienced professionals in the professions they oversee. As required by law, the Governor appoints a seven member board; three members must be Licensed Social Workers, and three must be Licensed Professional Counselors; one member must be appointed from and represent the general public and may not be engaged in social work. The knowledge and expertise of the board members is the best method to deal with oversight issues. Across the United States virtually every state and the District of Columbia regulate Social Workers, Professional Counselors and Marriage and Family Therapist in some fashion. The purpose of creation of a board is oversight of health, safety, and welfare of consumers. Without a board, the consumer has no recourse to appeal to in the event of unethical practice.

4. Does your Board deal with unlicensed practice issues? If yes, what types of issues?

Yes. The board is notified of the conduct of individuals who present themselves as having appropriate education and training to address or handle issues for which they are not qualified. The licensing process assures mental health professionals have received the necessary training and are competent to practice. Without licensing, we as regulators do not know the level of a person's training or body of knowledge.

An issue of unlicensed practice could be a simple misunderstanding, in which a person is reported to the board because he or she has mistakenly advertised as a "counselor" as a generic label. This representation is acceptable. Legally, the same individual is not permitted to use the title of Licensed Clinical Social Worker, Licensed Clinical Professional Counselor or Licensed Marriage and Family Therapist without having met the licensure requirements. Or it could be as serious as a person acting as licensed professional, diagnosing and treating mental illnesses without a license. Likewise, it might involve someone acting in a blatantly fraudulent manner making false claims about mental health services.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

For qualified individuals, the process of licensure is not difficult. Individuals wishing to work as a mental health profession would desire licensure as part of an ethical and best practices means of working in the profession. It protects the licensee as well as the public. If one is not licensed, much confusion, at best, and damage, at worst is risked to the public. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession. The Legislature declares that the board shall set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as License Clinical Social Workers, Licensed Clinical Professional Counselors and Licensed Marriage and Family Therapists. The State of Montana qualifications are closely aligned with existing national standard for the credentials under the jurisdiction of the board. Additionally, board statute provides for a variety of

exemptions including a provision for a temporary license in the event of an out of state licensee working in Montana for a limited number of days. The board does not prevent anyone from earning a living; rather they prevent unqualified practitioners from earning a living at the expense of consumers. Recognition by licensure of these qualifications upholds the high standards of the profession. Licensees are privileged professionals with access to the public under what can be very vulnerable circumstances and so should be under scrutiny to be licensed and to keep that license.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The board and department staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. Having a mix of public and professional members who serve together on the board is another safeguard. Three credentials are regulated by the board. The Board of Social Work Examiners and Professional Counselors relies on its members to announce any association or circumstance that might lead to bias or the perception of bias when addressing the tasks put before it. In addition, the board has three built-in checks on potential bias. First, the board is diverse. Of the seven seats no profession holds enough seats to create a quorum or win a majority if all members vote. Three seats are held by Licensed Clinical Social Workers and three seats are held by Licensed Clinical professional Counselors. Second, the board includes one public member seat which is not held by a licensee. We believe this provides even more diversity, as our public member has no vested interest in any of the professions the board oversees. Third, when a complaint enters the compliance process, the two panels involved, Screening and Adjudication are comprised of different members of the board. This insures that a board member who is involved in screening a case is not involved in adjudicating that same case.

7. Does the profession or occupation have one or more Associations that could provide oversight without the need for a licensing board? Why not use the Association as the oversight body?

The Board Social Work Examiners and Professional Counselors views its role differently from the roles played by the professional associations which many of our licensees belong. The Board's role is to protect the public through the rules and statutes it enforces. In contrast, the professional associations work to promote, enhance and advocate on behalf of their respective professional members. At this time, the Board of Social Work Examiners and Professional Counselors is unaware of any effort by a professional association to share or assume the duties assigned to the board by statute or rule.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

Yes. Insurance companies are aware of the advantage of a licensing board being able to determine the qualifications of mental health service providers. The licensees overseen by the Board Social Work Examiners and Professional Counselors must be licensed in order to bill a "third party payer" such as an insurance provider. The board is not aware of any alternative billing method.

9. What are the benefits of a Board being part of the licensing and discipline process instead of the department handling one or both?

The board has the expertise of the Licensed Social Worker and Licensed Professional Counselor members who understand the technical aspects of the profession and one public member to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board. It is vital that the nuances of each practice are understood. Board members who serve on screening and adjudication panels yield to the expertise of their counterparts to best determine outcomes of reviewed cases. The Board Social Work Examiners and Professional Counselors is made up primarily of experienced and knowledgeable mental health professionals. As such, board members have a clear understanding of the education, training and knowledge base needed to qualify as a professional in their respective areas of expertise. They also understand the terminology of their respective professions. Therefore, it is appropriate and wise for the board to set the standards of licensing and professional practice.

10. Is there an optimum ratio between licensees, board size, or public representation?

There may be. We can report that the size of our board works well, in terms of both license review and the disciplinary process with one exception. Currently the Licensed Marriage and Family Therapist credential is not represented on the board. The board has licensed Marriage and Family Therapists since 2009. The majority of these licensees hold a dual credential, i.e. a Social Worker or Professional Counselor license in addition to the Marriage and Family Therapist license. Since 2009, board members have pined over the need to have a "pure" LMFT seated at the table in dealing with issues that arise for that particular license. The board has also requested the LMFT Association return to the legislature and request the board be expanded to include a seat for LMFT. The response received from the Association cited a limit in financial resources to support lobbying efforts to enact a new law. The board intends to pursue future requests of the Association for a board seat for Licensed Marriage and Family Therapist. For now, a seven person board will suffice in meeting the work load.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

The regulating entity must have adequate knowledge of standards of care, with which the board is already uniquely equipped because of its professional members. A disinterested third party would spend significant time and money learning the profession and hiring consulting mental health professionals in various areas of the profession to address issues as they arise. Fraud issues such as insurance billing and Medicare/Medicaid deception are not uncommon. A board of licensees of the profession is very invested in monitoring their own profession and also has expertise in the scope of practice of that profession and specifically the safety issues needing monitoring and boundaries.

12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

The scope of practice involving counseling is shared by other licensed mental health professionals. While some of this overlap is expected, it is important to assure that a licensee's practice is not allowed to expand beyond the content and level of education and training associated with the license they hold.

The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. Licensed professionals should not exceed their scope of practice. Such conduct would be considered unprofessional and would be subject to discipline by the board which regulates that individual's practice. If the conduct entered into another board's area of professional expertise, then the second board would be justified in taking action for unlicensed practice. In many cases, the best course of action, and that recommended by the board is for the individual to seek an additional license to avoid a scope of practice issue. The Board of Social Work Examiners and Professional Counselors recognizes that issues such as scope of practice will arise periodically, and will continue to work cooperatively with other regulatory boards. Cooperation can resolve issues and we have confidence in the strong working relationships among boards and staff.

13. Should any board have the ability to limit use of certain terminology to only a licensee?

Because of the public trust in the Professional Counseling, Social Work and Marriage and Family Therapy professions, the use of the terms LCSW (Licensed Clinical Social Worker), LCPC (Licensed Clinical Professional Counselor, and LMFT, (Licensed Marriage and Family Therapist) should be limited to those holding the qualifications to be duly licensed.

Finally, the board is aware that this committee received comments at its final meeting of 2012. The board listened with great concern over the comments and would like to respond and provide an update to the committee of actions taken since that time. Two individuals raised a number of concerns regarding the board's processes involving complaints of misconduct by licensees at the September 11, 2012, Economic Affairs Interim Committee. The committee requested a response, and the board's understanding is that Ms. Vivian Hammill, the Chief of Staff for the Schweitzer administration, had already written to address those concerns. The board does not wish to provide redundant responses to the committee's request; however, the board would welcome an opportunity to provide further information to the committee should it so desire. In addition, the board believes that the Department of Labor and Industry has implemented policy changes related to the conduct of meetings and disciplinary proceedings by all boards that will address some of the committee's and citizens' concerns. Finally, with the enactment of SB 64, the board believes that complaints will be reduced significantly, because licensees will have immunity from disciplinary actions arising from parenting evaluations.

The board looks forward to providing you with any additional information you may need.