

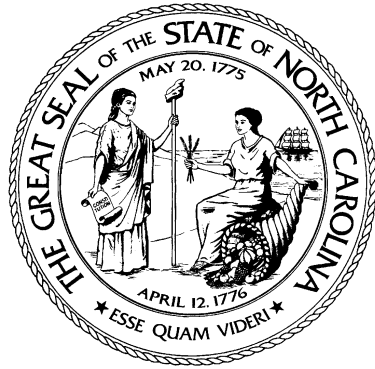
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report

For

SUBSTANCE ABUSE PROFESSIONALS

Senate Bill 705



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

April 27, 2005

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the certification and licensing of substance abuse professionals. This report constitutes both the preliminary and final assessment report.

Representative Drew Saunders

**LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
(2005-2006)**

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PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

- 1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.
- 2) Whether the profession possesses qualities that distinguish it from ordinary labor.
- 3) Whether practice of the profession requires specialized skill or training.
- 4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.
- 5) Whether the public can effectively be protected by other means.
- 6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

SENATE BILL 705
AMEND NC SUBSTANCE ABUSE ACT

BACKGROUND¹

Current Standards.

In 1994, the General Assembly established a certification process for professionals engaged in the assessment, evaluation, and provision of counseling and therapeutic services to persons suffering from substance abuse or dependency. However, the North Carolina Substance Abuse Professional Certification Board's scope of authority is currently limited to title protection licensure or the authority to ensure that Board authorized professional titles such as Certified Substance Abuse Counselor cannot be used by anyone unless they have actually obtained that title officially through the Board. The Board has the authority to investigate complaints about professionals who are either certified by the Board or in the process of becoming certified, but it has no authority to investigate or pursue complaints about unregulated professionals.

The proposed legislation would expand the Board's scope of authority to include practice protection, which would ensure that a person, unless otherwise exempted by statute, would be unable to practice as a substance abuse professional without successful completion of a mandatory licensing process through the Board. A substance abuse professional² is a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.

¹ **Source:** *Response to Questionnaire for the Legislative Committee for New Licensing Boards*. A copy of the questionnaire is attached to this report.

² As defined in G.S. § 90-113.31(8).

The move toward practice protection licensure has earned the support of the state chapters of Psychology, Psychiatry and Social Work as well as the Division of MH/DD/SA, Division of Facility Services, the Division of Medical Services and the Division of Motor Vehicles. Other states have recognized the potential for harm to the public health, safety, or welfare, as there are currently at least 70 boards in the United States and other countries that offer competency-based certification, including all branches of the US Military and the federal Indian Health Services. New York is one of many states that have certification written into state administrative regulations. The following states have practice protection licensure of substance abuse professionals:

COLORADO
CONNECTICUT
LOUISIANA
MAINE
MARYLAND
NEW HAMPSHIRE
NEW MEXICO
OHIO
TEXAS
VERMONT
VIRGINIA
WISCONSIN

CERTIFICATION REQUIREMENTS

Who Must Be Certified.

Under the proposed legislation, it would be a Class 1 misdemeanor to offer or provide substance abuse counseling without being credentialed by the North Carolina Substance Abuse Professional Practice Board. The Board shall establish and publish required standards to credential substance abuse professionals and may use the credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted

deemed status or their successor organizations as guidelines. The Board offers a wide range of credentials available to practitioners from entry level up to and including persons with a master's degree or higher. The range of credentials encompasses persons who practice in substance abuse treatment, substance abuse prevention, substance abuse clinical supervision, substance abuse residential facility programs, and criminal justice settings. Each type of credential carries its own educational, training, and experience requirements. Credentials must be renewed every two years and renewal is conditioned upon meeting various levels of continuing education that differ depending upon the type of credential being renewed.

Certified Substance Abuse Counselor or Certified Substance Abuse Prevention Consultant:

- Meet the requirement for certification pursuant to any applicable statute or rule.
- Meet the minimum education standards.
- Complete the requisite number hours of supervised practical training and supervised experience in the field.
- Obtain a passing score on a written examination administered by the Board. In addition, an applicant for certification as a substance abuse counselor must pass an oral examination administered by the Board.
- Meet all required standards published by the Board.

Certified Clinical Supervisor:

- Meet the requirement for certification pursuant to any applicable statute or rule.
- Meet the minimum education standards.
- Meet the requisite number hours of experience in the field.
- Obtain a passing score on a written examination administered by the Board. In addition, an applicant for certification as a substance abuse counselor must pass an oral examination administered by the Board.
- Meet all required standards published by the Board.

Licensed Clinical Addictions Specialist:

- Meet the requirement for certification pursuant to any applicable statute or rule.
- Meet one (1) criteria of a specified set of four (4) criteria with varied requirements.
- Meet all required standards published by the Board.

Substance Abuse Residential Facility Director:

- Meet the requirement for certification pursuant to any applicable statute or rule.
- Meet the minimum education standards.
- Meet the requisite number of hours of Board approved academic or didactic management specific training or a combination thereof.
- Meet all required standards published by the Board.

Certified Criminal Justice Addictions Professional:

- Meet the requirement for certification pursuant to any applicable statute or rule.
- Meet the minimum education or training standards.
- Meet one (1) criteria of a specified set of six (6) criteria related to supervised work experience
- Pass a certified criminal justice addictions professional written examination.

All applicants in the above-referenced professional positions must submit a complete criminal history record check.

Exemptions from Certification.

This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

Initial Registration Requirements.

General Requirements: The credentialing process is one of graduated steps to ensure that substance abuse professionals have the necessary supervised training. The first step in this graduated process is designation as a 'registrant' Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

- 1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.
- 2) Completes a registration application on a form provided by the Board.
- 3) Provides documentation of three hours of educational training in ethics.
- 4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.
- 5) Provides a complete criminal history record check pursuant to G.S. 90-113.46A.
- 6) Signs a supervision contract provided by the Board that documents the proposed supervision process by an applicant supervisor.

Registration Status Requirements.

Registrant Status: Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

Fees. Fees are set by the Board and cannot exceed the following amounts:

Purpose of Fee	Fee Amount
Certificate of Certification as: <ul style="list-style-type: none"> ○ Substance Abuse Counselor ○ Substance Abuse Prevention Consultant ○ Clinical Supervisor ○ Substance Abuse Residential Facility Director ○ Certified Criminal Justice Addictions Professional 	May not exceed \$475.00
Fee to renew Certificate	May not exceed \$150.00
Certificate of Licensure for a Clinical Addictions Specialist pursuant to deemed status	Shall not exceed \$150.00
Fee to renew License for a Clinical Addictions Specialist pursuant to deemed status	Shall not exceed \$100.00

Purpose of Fee	Fee Amount
Fee to obtain a License for a Clinical Addictions Specialist pursuant to all other procedures authorized by this Article	Shall not exceed \$475.00
Fee to renew License	Shall not exceed \$150.00
Fee to obtain Registration as a Registrant	Shall not exceed \$150.00
Fee to renew Registration	Shall not exceed \$150.00
Fee for Reexamination	\$150.00
Fee for Rescheduling any Examination	Not to exceed \$ 25.00
Fee to obtain written verification or additional copy of a Credential issued by the Board	Not to exceed \$ 25.00
Late Renewal Fee	Not to exceed \$125.00
Fee for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional	Not to exceed \$150.00

Disciplinary Actions. Grounds for disciplinary action for an applicant or credentialed professional include:

- 1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain licensure, certification, or registration or renewal of licensure, certification, or registration.
- 2) The use of drugs or alcoholic beverages to the extent that professional competency is affected.
- 3) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment, including conviction of the offense of driving while impaired.
- 4) Conviction of an offense under any municipal, State or federal law other than traffic laws as prescribed by Chapter 20 of the General Statutes.
- 5) Conviction of a felony or other public offense involving moral turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of licensure, certification, or registration for a minimum of one year.
- 6) An adjudication of insanity or incompetency, until proof of recovery from this condition can be established by a licensed psychologist or psychiatrist.

- 7) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.
- 8) The commission of an act of malpractice, gross negligence, or incompetence while serving as a substance professional, intern, or registrant.
- 9) Engaging in conduct that could result in harm or injury to the public.
- 10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.
- 11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

GOVERNING BOARD

North Carolina Substance Abuse Professional Practice Board. The 19-member North Carolina Substance Abuse Professionals Certification Board already exists. The proposed legislation would change its name to the 'North Carolina Substance Abuse Professional Practice Board' and expand its powers and duties to include licensure. Its membership would remain unchanged³; however, the term of membership would increase from three-year terms to four-year terms.

Powers of the Board. The Board's powers and duties remain similar to the Board's existing powers and duties:

- (1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.
- (1a) Determine the qualifications and fitness of organizations applying for deemed status.

³ Eleven credentialed professionals elected by the credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee, whose five members are elected by the Board. Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services. Three public members, one appointed by each of the following people: the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate.

- (2) Issue, renew, deny, suspend, or revoke licensure, certification, or registration to practice in this State or reprimand or otherwise discipline a license, certificate, or registration holder in this State.⁴
- (3) Deal with issues concerning reciprocity.
- (4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.
- (5) Employ and fix the compensation of personnel and legal counsel⁵ that the Board determines is necessary to carry out the provisions of this Article. The Board may purchase or rent necessary office space, equipment, and supplies.
- (6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.
- (7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.
- (8) Establish fees for applications for examination, registration, certificates of certification, licensure, and renewal, and other services provided by the Board.
- (9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.
- (10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.⁶

⁴ Licensure represents an expansion of the Board's current powers and duties.

⁵ Clarifies that the Board may employ legal counsel.

⁶ Criminal history record checks are not part of the Board's current powers and duties. They would become a necessary condition for licensure under Senate Bill 705.

FINDINGS AND RECOMMENDATIONS

SUBSTANCE ABUSE PROFESSIONALS

Findings. The Legislative Committee on New Licensing Boards finds that the sponsors have met the six criteria by which the Committee judges licensure proposals. Specifically, the Committee finds that:

- 1) The unregulated practice of substance abuse counseling can substantially harm or endanger the public health, safety, or welfare because there is not a regulatory body in place to investigate and resolve allegations of impropriety by substance abuse professionals that are not certified by the North Carolina Board Substance Abuse Professional Certification Board. Examples of impropriety that regulation could curb include: potential misuse of State and federal funding for substance abuse services, sexual activity and harassment of colleagues and clients, overcharging non-English speaking clients, practicing outside the scope of one's practice, practicing while impaired by alcohol or other drugs, creating personal relationships with clients, and overcharging of fees set in statutes such as the State's DWI laws.
- 2) The profession possesses qualities that distinguish it from ordinary labor since professional education and training includes college level degrees and numerous hours of supervised training.
- 3) The practice of substance abuse counseling requires specialized skill or training.
- 4) A substantial majority of the public does not have the knowledge or experience to evaluate the competence of a substance abuse professional.
- 5) The public cannot be effectively protected by other means.
- 6) Licensure would not have a substantial adverse economic impact upon the recipient of the services of a substance abuse professional.

Recommendation. The Legislative Committee on New Licensing Boards recommends the licensing of substance abuse professionals. This assessment report constitutes both the preliminary and final assessment report for the licensure of substance abuse professionals. The report is based on the proposed licensing of substance abuse professionals as set out in Senate Bill 705, the response to the Committee's questionnaire (Attachment), and testimony before the Committee on April 27, 2005.

ATTACHMENT

*Response to Questionnaire for the
Legislative Committee on New Licensing
Boards*

Response to Questionnaire

1. In what ways has the marketplace failed to regulate adequately the profession or occupation?

The system is currently unregulated at least in the private sector. The public sector has some level of checks and balances but, with mental health reform in the state and the move toward more privatization, there will be more and more unregulated professionals providing services. Until recently there has not even been specific graduate degrees in substance abuse counseling. Many of the providers have had degrees not specific to the profession or held no degree at all. The Board currently offers only title protection licensure, not practice protection. Additionally, the population that is served is not likely to report abuses due to the stigma often times attached to those who suffer from addiction. Generally speaking, the Board only becomes involved in these cases when other professionals report their colleagues for abuses. However, since the Board only offers title protection licensure, it can only revoke a credential. It cannot actually stop someone from practicing and harming the public.

2. Have there been any complaints about the unregulated profession or occupation? *Please give specific examples including (unless confidentiality must be maintained) complainants' names and addresses.*

The Board does investigate complaints about professionals but only those who are either certified with the Board or in the process of being certified. The Board has no authority to investigate or pursue complaints about unregulated professionals. For example, the Board recently received a complaint from a District Court Judge. This judge filed a complaint about a substance abuse professional in that area who had post dated a urinalysis. Upon checking, it was determined that this person is not certified or registered with the Board and, as such, the Board has no authority to pursue that person. At best, we can keep that name on file should she ever apply for certification. Since persons who practice only in substance abuse counseling do not have to be certified in order to work but are exempt from regulations of other professional disciplines, this move toward practice protection has earned the support of the state chapters of Psychology, Psychiatry and Social Work as well as the Division of MH/DD/SA, Division of Facility Services, the Division of Medical Services and the Division of Motor Vehicles. Much of that is based upon mental health reform, also, and the state's new Service Definitions of who qualifies to provide treatment services.

3. In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation? *Please give specific examples.*

By not having regulation with new Service Definitions, there is the potential for misuse of state and federal funding for substance abuse services. For example one complaint lodged with the Board concerned a substance abuse counselor who charged Hispanic clients twice what was charged other clients. Since no services were provided through that agency in Spanish, no clients received treatment in their native language anyway. Also it has been reported to us that professionals without supervision have provided services in inappropriate settings such as fast food restaurants. Again, since the Board only offers title protection licensure, revoking the certification does not stop someone from practicing, only from holding themselves out as a certified substance abuse professional.

4. Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?

There is potential for substantial harm or danger by the profession to the public health, safety or welfare. Currently the Board recognizes this by the nature of the complaints lodged with the Board by members of the public and the profession. The Board has received reports of improprieties such as sexual activity and harassment of colleagues and clients, overcharging non-English speaking clients, practicing outside the scope of one's practice as a substance abuse professional, practicing while impaired by alcohol and/or other drugs, creating personal relationships with clients and overcharging of fees set in other statutes such as the state's DWI laws. The Board's ethical code of conduct currently requires that "the substance abuse professional who is aware of unethical conduct or unprofessional modes of practice should report such violations to the appropriate certifying authority (21 NCAC 68.0503 – Competence)." Again, however, since the Board currently has only title protection, revocation of a certification does not keep an individual from practicing and thereby continuing to harm the public.

5. Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? *Please list the other states and any applicable federal law (including citations).*

The potential harm or danger to the public has been recognized by other states. There are currently at least 70 boards in the United States and other countries that offer competency-based certification. This also includes all branches of the United States military and the federal Indian Health Services. Additionally, at least these states have practice protection licensure of substance abuse professionals: Maine, Vermont, New Hampshire, Connecticut, Wisconsin, Maryland, Virginia, Ohio, Louisiana, Texas, New Mexico and Colorado. Many other states have certification written into state administrative regulations such as New York.

6. What will be the economic advantage of licensing to the public?

There is no cost for this process to the public. The fees for licensure and renewal of licensure and all supervision and continuing education are paid by individuals, not public agencies.

7. What will be the economic disadvantage of licensing to the public?

Initially, an economic disadvantage might be that non-licensed providers will no longer be able to practice without obtaining the license. This could, in the short term, limit the number of persons providing services to the public. However, most practitioners will conform to the new law rather than leave the profession so it appears this disadvantage will be only for a limited period of time.

8. What will be the economic advantages of licensing to the practitioners?

The economic advantage to the practitioner is that the public will recognize the competency of the licensed professional. Consumers can take comfort in the fact that training, education and skill level will be uniform for all practitioners, not just the ones who are currently certified.

9. What will be the economic disadvantages of licensing to the practitioners?

The economic disadvantage will be primarily limited to those persons who are not currently certified. Those persons will have to become licensed and maintain that license with its continuing education requirements as well as the associated costs.

10. Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.

Part of this has already been defined by the new Service Definitions of the North Carolina Division of MH/DD/SAS and the Division of Medical Assistance. This clearly outlines who may provide many kinds of services paid for with public dollars. Credentialing by the Board is increasingly required to provide services from DWI Assessment to ongoing treatment for the substance abusing population. Licensure of all professionals will be more recognizable to the public as signifying that all substance abuse professionals have met the same level of competence.

11. Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor.

The substance abuse professional must document (depending upon college degree and credential for which they are applying) up to at least 6,000 hours of supervised substance abuse professional experience, 270 clock hours of substance abuse specific education/training, passing of both a written and an oral examination and maintaining continuing education for renewal specific to the substance abuse profession. These standards meet the standards of the International Certification & Reciprocity Consortium/Alcohol and Drug Abuse, the multi-national organization that sets the standards for substance abuse professionals in this country and abroad.

12. What are other qualities of the profession or occupation that distinguish it from ordinary labor?

The Board offers a wide range of credentials available to practitioners from entry level up to and including persons with a master's degree or higher. This encompasses persons who practice in substance abuse treatment, substance abuse prevention, substance abuse clinical supervision, and substance abuse residential facility program directors. This bill also will include a new credential for substance abuse professionals who practice primarily in a criminal justice setting such as a prison or community based alternative to incarceration program.

13. Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?

This will cover all practitioners of the occupation or profession. It does exempt persons already licensed by other statutorily-based occupational licensing boards such as psychology and social work. However, the statute does already provide a path to substance abuse credentialing for persons licensed by other professional disciplines who have demonstrated a competency in substance abuse services.

14. What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

The number of persons likely to become licensed will probably exceed 3,000. As for the number of persons in the state likely to use the services of these professionals, the Division of MH/DD/SAS reports that in FY 2003, 72,795 persons were treated by the Area MH/DD/SA Programs for substance abuse. This does not include private providers who do not report to the area programs (now Local Management Entities – LMEs). National figures suggest that only one in four people who are in need of treatment services actually present for treatment.

15. What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?

The public needs to know that every practitioner has met the same level of competence needed to be licensed. This cannot be assured if a license or other credential is not required. Additionally, the public needs to know what credentials are available, what is required to obtain those credentials, what level of service can be expected by someone who holds that credential and where to find the professionals who hold these credentials.

16. Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?

The Board does have a well-established code of ethics already written into state administrative code and a voluntary certification program already administered by this Board. The other measures to ensure a minimum quality of service is that the Division of MH/DD/SAS has standards for who is a qualified professional, an associate professional and a paraprofessional. That credentialing is determined by the LME and its contract agencies. All other private agencies not affiliated with LMEs are not required to have any regulating measures.