

Preliminary Evaluation of the State Board of Professional Counselors and Therapists

Recommendation:	Full Evaluation
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Date Established: 1985

Most Recent Prior Evaluation: Full evaluation, 2007
Extended termination date by 10 years to July 1, 2019 (enacted by Chapter 505 of 2008); required follow-up report by October 1, 2010 (submitted)

Composition: 13 members (4 professional counselors, 3 marriage and family therapists, 3 alcohol and drug counselors, 1 art therapist, and 2 consumers)

Staff: Six full-time (executive director, licensing administrator, licensure coordinator, office secretary, alcohol and drug trainee coordinator, board investigator); one part-time contractual board investigator

One programmer position shared with the Maryland Board of Examiners of Psychologists; other shared personnel support the board (assistant Attorney General, investigator, regulations coordinator, fiscal and information technology personnel)

Regulated Entities: Professional counselors, alcohol and drug counselors, marriage and family therapists, art therapists, and behavior analysts (7,522 individuals in fiscal 2016)

Authorizing Statute: Title 17, Health Occupations Article

Evaluation Completed by: Kaitlyn Shulman, Department of Legislative Services, 2016

Overview of Regulatory Activity

The State Board of Professional Counselors and Therapists licenses the practice of clinical and graduate professional counseling, marriage and family therapy, professional art therapy, and behavior analysis. The board also licenses and certifies the practice of alcohol and drug counseling and regulates alcohol and drug trainees. In fiscal 2016, the board regulated more than 7,500 individuals, a 66% increase from fiscal 2007. (See **Appendix 1.**)

There have been a number of legislative changes since the full evaluation in 2007, including altering board composition, decreasing the number of specific credentials issued by the board, reorganizing statutory provisions for clarity, subsequently adding the regulation of professional art therapists and behavior analysts, expanding disciplinary authority, and altering licensing requirements. (See **Appendix 2.**) Chapter 505 of 2008 implemented recommendations from the 2007 full evaluation of the board to address the issues of a complex and unclear statute, board composition that did not reflect the number and type of professionals regulated by the board, and a complex regulatory structure then based around 11 different counseling credentials across three areas of specialization. The addition of two new specializations (professional art therapists in 2012 and behavior analysts in 2014) has caused similar issues to reemerge. The board has promulgated regulations quickly in response to legislative changes, but corresponding changes in its administrative practices have at times been delayed, creating confusion for professional associations and regulated professionals.

Board Regulates 14 Credentials Across Five Areas of Specialization

In total, the board now regulates 14 different credentials across five areas of specialization. (Even though certain credentials are no longer issued, some of them may still be renewed and others have been added.) Having separate education, experience, supervision, and exam requirements for each credential presents significant work for the board in drafting and revising regulations and for staff in terms of administrative effort. While the board has worked with professional organizations to alter and improve education, supervision, and ethics regulations, some professional associations have voiced concerns that the board does not always follow through on agreements and that there is competition between specialties for board time. The board has had to give significant attention to implementing the regulation of new credentials (most recently professional art therapy and behavior analysis) even though more than 90% of regulated individuals are professional counselors or alcohol and drug counselors.

Educational Requirements Are Subjectively Reviewed by Board Staff

Statute lists required coursework and instruction areas for each credential issued by the board; only one accrediting body that could aid in assessing program standards is recognized in statute (the American Art Therapy Association). Thus, course syllabi and educational programs must be subjectively reviewed by board staff to determine if educational requirements are met, which could lead to inconsistencies in the credentialing process.

Administrative Issues Reflected in Website, Licensing System, and Data Accuracy

As noted above, administrative changes necessary to implement statute and regulations have been delayed at times; moreover, such changes are not necessarily communicated effectively to stakeholders. For example, the board's website is poorly organized, out of date, and does not provide key information such as board agendas, meeting minutes, or annual reports. At times, the board has used inconsistent grandfathering periods.

The board procured a new licensing system in response to recommendations in the 2007 full evaluation. The board indicates that its current licensing system is already antiquated, limiting query capability and data integration and at times providing inaccurate data. Responses to data requests for this report indicate inadequate recordkeeping for licensing and certification data, as well as complaints and disciplinary cases. The board is interested in potentially adopting the new licensing system that the State Board of Physicians is developing.

Data Issues Hinder Analysis of Board Performance

The board, while responsive to requests for information, could not provide complete and consistent data on licensing or complaints. After the Department of Legislative Services (DLS) pointed out discrepancies with data provided by the board, as well as contradictions between that data and annual Managing for Results (MFR) data submitted to the Department of Budget and Management, the board provided revised licensing data without explanation. (See **Appendices 1, 3, and 4.**) However, several inconsistencies remain, including the board's data showing no professional art therapists regulated in fiscal 2013, while 32 professional art therapist licenses were issued in that fiscal year, and instances of more licenses issued in a fiscal year than applications received. The board's MFR data indicates that 100% of licenses were issued within 10 days of receipt of a completed application; however, some professional associations noted that applicants sometimes struggle to complete applications due to the complexity of education, supervision, and testing requirements.

Initial complaint data provided by the board showed cases from fiscal 2012 remaining open. The board again provided revised data without explanation after concerns were raised. Revised data (see **Appendix 5**) shows open cases dating only from fiscal 2015. The board could not provide data on the types of complaints received nor the number of complaints received by type of credential. The executive director and the board investigator have alluded to investigation backlogs dating to fiscal 2012, contradicting the revised data and the reported MFR data that 100% of investigations are completed in 180 days in all years. The board investigator noted that he had to recreate case logs from a prior investigator for the period fiscal 2010 to 2014. The board has recently centralized its complaint administration through the executive director and hired a contractual investigator. Although the board's unreliable data makes it difficult to assess complaint trends, it seems that the number of complaints quadrupled from fiscal 2007 to 2012 but has been declining in recent years.

Board in Stable Financial Position with Excessive Fund Balance

After raising fees in fiscal 2015 (for the first time in 14 years), the board is adding to an already healthy fund balance that well exceeds the recommended 25% of annual expenditures. (See **Appendices 6 and 7.**) This action appears to have been taken to address a fiscal 2016 deficit projected by the board's fiscal officer. However, it does not appear that a fee increase was necessary to support the current staffing configuration, and it is unclear what staffing, expenditure, and growth assumptions were used to project future fund balances. The executive director indicates that the ability to increase staff is limited by space constraints, but additional staff may be required to address administrative issues exacerbated by growth in the number of counselors regulated as well as more credentialing requirements. The board's financial position could clearly support additional staff.

Conclusion and Recommendations

Throughout this preliminary evaluation, DLS found inconsistencies in licensing and complaint data, a backlog of complaints, and several administrative issues – generally mirroring concerns raised by professional associations. Although similar issues were raised in the 2007 full evaluation, the board has had to focus its efforts on keeping pace with the significant growth in the number of individuals regulated, as well as with the greater complexity in the types of credentials issued (or only allowed to be renewed). **Therefore, DLS recommends a full evaluation of the State Board of Professional Counselors and Therapists.** The full evaluation should evaluate the following issues:

- **Data Inconsistencies and Systems:** The full evaluation should examine the causes of data inconsistencies, evaluate the board's data systems, and explore alternative systems and associated costs, including adopting the State Board of Physicians' proposed new system.
- **Complaint Backlog:** The full evaluation should examine whether unresolved cases are the result of investigation backlogs or board inaction and compare the data in this report with office files.
- **Credentialing Process:** The full evaluation should explore the board's current process for subjective review of educational requirements, the role of national accrediting bodies and credentialing associations, and the credentialing process in other states. Streamlining and standardizing this process would create consistency, facilitate licensing reciprocity, and reduce administrative burdens on board staff and applicants.
- **Number of Credentials and Specializations Regulated by the Board:** The board regulates a significant number of types of counselors and therapists with multiple levels of licensure. The full evaluation should examine the necessity for each level and specialty and explore how counselors and therapists are regulated in other jurisdictions. The composition of the board as it relates to specializations should also be assessed.

- **Board's Fiscal Status and Fund Balance:** The full evaluation should evaluate whether the board's large fund balance is appropriate based on expenditure projections that take into account any additional resources needed to address the issues raised above.

Appendix 1.
Individuals Regulated by the
State Board of Professional Counselors and Therapists
Fiscal 2012-2016

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Professional Counselors					
Licensed Clinical	2,719	2,938	3,118	3,212	3,411
Licensed Graduate Certified ¹	457	546	679	746	880
	34	38	28	31	28
Alcohol and Drug Counselors					
Licensed Clinical	323	342	343	370	360
Licensed Graduate	4	2	6	7	13
Certified ² (Three Categories)	1,017	1,079	1,087	1,171	1,244
Alcohol and Drug Trainees	998	1,508	920	925	938
Marriage and Family Therapists					
Licensed Clinical	190	184	193	201	222
Licensed Graduate	37	37	53	62	61
Professional Art Therapists³					
Licensed Clinical	0	0	30	61	133
Licensed Graduate	0	0	4	9	6
Licensed Behavior Analysts⁴	0	0	0	74	226
Total Regulated Individuals	5,779	6,674	6,461	6,869	7,522

¹Certified Professional Counselors can continue to renew their credential; however, they cannot be issued a new credential or be reinstated.

²Certified Alcohol and Drug Counselors reflect the totals for three types of credentials: Certified Associate Counselors-Alcohol and Drug; Certified Supervised Counselors-Alcohol and Drug; and Certified Professional Counselors-Alcohol and Drug (CPC-AD). The CPC-AD credential has not been issued since 2012 but may be renewed.

³Regulation of art therapists began in fiscal 2013 despite not being reflected above in that year. See Appendices 3 and 4.

⁴Regulation of behavior analysts began in fiscal 2015.

Source: State Board of Professional Counselors and Therapists

Appendix 2.

Major Legislative Changes Since the 2007 Sunset Evaluation

<u>Year</u>	<u>Chapter(s)</u>	<u>Change</u>
2008	505	Reorganizes and clarifies statutory provisions; repeals certification of professional counselors and marriage and family therapists; expands board membership from 9 to 13 members, adding 2 clinical marriage and family therapists and 2 clinical alcohol and drug counselors; and extends the termination date of the board to July 1, 2019.
2010	708	Modifies education requirements for a clinical marriage and family therapy license and credit hour requirements for certification as a professional alcohol and drug counselor or an associate alcohol and drug counselor.
2012	517/518	Repeals authority to reinstate or issue new Certified Professional Alcohol and Drug Counselor certifications.
	628/629	Requires the board to regulate the practice of art therapy and modify board membership.
	696	Requires the board to maintain a registry of and adopt a code of ethics for trainees under approved supervision.
2013	348	Requires all applicants for a license or certificate to submit to a criminal history records check and requires an additional criminal history records check for licensees every six years.
2014	61	Authorizes the board to issue a cease and desist order or obtain injunctive relief for certain violations, increases the criminal fine to a maximum of \$5,000, and allows the board to assess a civil fine of up to \$50,000.
	328	Requires the board to regulate the practice of behavior analysis and establishes a Behavior Analyst Advisory Committee and a Behavior Analyst Rehabilitation Subcommittee within the board, subject to a separate program evaluation requirement.
2015	368	Alters education and supervision qualifications for licensed clinical and graduate alcohol and drug counselors and certified associate and certified supervised alcohol and drug counselors and clarifies limitations for practicing as a certified associate or certified supervised alcohol and drug counselor.
	457	Requires the board, in specified situations, to require an applicant, licensee, certificate holder, or trainee to submit to a competency examination.

Source: Laws of Maryland

Appendix 3.
Applications Received and Initial Licenses and Certifications Issued
Fiscal 2012-2016

	2012		2013		2014		2015		2016	
	<u>App</u>	<u>New</u>	<u>App</u>	<u>New</u>	<u>App</u>	<u>New</u>	<u>App</u>	<u>New</u>	<u>App</u>	<u>New</u>
Licensed Clinical Professional Counselor	268	240	313	318	233	314	270	286	327	292
Licensed Graduate Professional Counselor	277	40	358	87	505	128	491	323	628	381
Licensed Clinical Alcohol and Drug Counselor	24	10	24	7	32	12	49	14	22	22
Licensed Graduate Alcohol and Drug Counselor	9	6	12	1	11	6	22	3	24	12
Certified Alcohol and Drug Counselor ¹	183	74	156	77	259	68	218	77	188	97
Alcohol and Drug Trainee	380	216	324	243	298	228	228	178	349	199
1 Licensed Clinical Marriage and Family Therapist	8	8	19	12	14	12	25	19	30	27
Licensed Graduate Marriage and Family Therapist	13	5	16	8	19	11	24	22	30	22
Licensed Clinical Professional Art Therapist ²	0	0	40	32	33	30	100	66	12	25
Licensed Graduate Professional Art Therapist ²	0	0	0	0	11	2	7	9	14	6
Licensed Behavior Analyst ³	0	0	0	0	0	0	104	76	155	151
Total	1,162	599	1,262	785	1,415	811	1,538	1,073	1,779	1,234

¹Certified Alcohol and Drug Counselor reflects the totals for two types of credentials: Certified Associate Counselors-Alcohol and Drug and Certified Supervised Counselors-Alcohol and Drug. A third type of credential, Certified Professional Counselors-Alcohol and Drug, has not been issued since 2012 but may be renewed.

²Regulation of Professional Art Therapists began in late 2012 (fiscal 2013) and had a grandfathering period until fiscal 2014.

³Licensing of Behavior Analysts began in fiscal 2015.

Source: State Board of Professional Counselors and Therapists

Appendix 4.
Renewals and Reinstatements Issued
Fiscal 2012-2016

	2012		2013		2014		2015		2016	
	<u>Renew</u>	<u>Rein.</u>								
Licensed Clinical Professional Counselor	875	45	1,565	38	1,089	46	1,707	34	1,702	58
Licensed Graduate Professional Counselor	75	0	96	0	75	0	118	0	149	0
Certified Professional Counselor ¹	29	0	27	0	5	0	23	0	4	0
Licensed Clinical Alcohol and Drug Counselor ²	154	52	199	39	152	63	175	45	203	20
Licensed Graduate Alcohol and Drug Counselor	0	0	0	0	0	0	0	0	4	0
Certified Alcohol and Drug Counselor ^{2,3}	577		615		578		560		713	
Alcohol and Drug Trainee ⁴	0	0	0	0	403	0	375	0	213	0
Licensed Clinical Marriage and Family Therapist	45	2	122	3	54	2	124	4	82	5
Licensed Graduate Marriage and Family Therapist	8	0	5	0	3	0	9	0	13	0
Licensed Clinical Professional Art Therapist ⁵	0	0	0	-0	32	0	70	3	56	0
Licensed Graduate Professional Art Therapist ⁵	0	0	0	0	0	0	0	0	0	0
Licensed Behavior Analyst ⁶	0	0	0	0	0	0	0	0	0	0
Total	1,763	99	2,629	80	2,391	111	3,161	86	3,139	83

¹Certified Professional Counselors can continue to renew their credential; however, they cannot be issued a new credential or be reinstated.

²Reinstatement numbers for Licensed Clinical Alcohol and Drug Counselor also include those for Certified Supervised Counselor-Alcohol and Drug (CSC-AD) and Certified Associate Counselors-Alcohol and Drug (CAC-AD) credentials.

³Certified Alcohol and Drug Counselor renewal numbers reflect totals for three types of credentials: CSC-AD; CAC-AD; and Certified Professional Counselor-Alcohol and Drug (CPC-AD) credentials. The CPC-AD credential has not been issued since 2012 but may be renewed.

⁴Alcohol and drug trainee status is held for a two-year period and can be renewed for another two-year period. Alcohol and drug trainees cannot reinstate. Renewal of trainee status began in fiscal 2014.

⁵Regulation of Professional Art Therapists began in late 2012 (fiscal 2013) and had a grandfathering period until fiscal 2014.

⁶Licensing of Behavior Analysts began in fiscal 2015. The first renewal cycle will be in fiscal 2017.

Source: State Board of Professional Counselors and Therapists

Appendix 5.
Complaints Received and Final Dispositions as of November 2016
Fiscal 2012-2016

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Complaints Received	82	68	76	79	47
Final Disposition of Complaints					
Dismissed	49	48	46	19	15
Referred to another Board/Agency	4	3	5	5	7
Informal Action					
Advisory Letter	21	7	13	1	2
Formal Action					
Denial	6		1		
Revocation	1	1		3	2
Surrender	1	1	1	2	
Suspension		4	4	2	
Probation		4	4	5	2
Reprimand			2	2	
Unresolved	0	0	0	40	19

Note: Exhibit displays the number of complaints received in each fiscal year and the final disposition of that complaint, regardless of when the final disposition was taken. Unresolved complaints are currently under investigation or awaiting board action.

Source: State Board of Professional Counselors and Therapists

**Appendix 6.
Fee Changes Effective September 28, 2015**

<u>Type of Fee Charged</u>	<u>Previous Amount</u>	<u>Current Amount</u>
Application processing	\$75	Certification and trainee status: \$150 Licensure: \$250
Initial application review	\$75	Eliminated
Subsequent application review	\$25	\$50
Pre-application credentials evaluation	\$25	\$50
Certification	\$100	\$100
Licensing	\$100	\$200
Certification renewal	\$150	\$200
Trainee renewal	N/A	\$200
Licensure renewal	\$200	\$275
Late renewal	\$50	\$50
Inactive status (annual)	\$25	\$50
Reinstatement	\$100	Certificate: \$150 License: \$200
Maintenance of letters of intent	\$15	Eliminated
Two-year sponsorship of continuing education programs	\$100	Organization: \$750 Individual: \$300 Individual workshop: \$150
Copying and scanning	N/A	\$2 per page
Out-of-state application processing	N/A	\$250

Source: Code of Maryland Regulations

Appendix 7.
Financial History of the State Board of Professional Counselors and Therapists
Fiscal 2012-2016

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Beginning Balance	\$334,050	\$309,660	\$468,215	\$418,262	\$557,900
Total Revenues	\$585,386	\$773,501	\$644,150	\$850,096	\$976,814
Direct Costs	\$501,702	\$489,948	\$560,262	\$567,982	\$584,460
Indirect Costs	108,074	124,998	133,841	142,476	194,198
Total Expenditures	\$609,776	\$614,946	\$694,103	\$710,458	\$778,658
Revenue Surplus/(Gap)	-\$24,390	\$158,555	-\$49,953	\$139,638	\$198,156
Ending Fund Balance	\$309,660	\$468,215	\$418,262	\$557,900	\$756,056
Target Fund Balance (25%)	\$152,444	\$153,737	\$173,526	\$177,615	\$194,665
% Expenditures Covered by Revenues	96%	126%	108%	120%	125%

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Note: Numbers may not sum to total due to rounding. Fiscal 2016 revenues, expenditures, and ending fund balance are estimates.

Source: State Board of Professional Counselors and Therapists

Appendix 8.
Written Comments of the
State Board of Professional Counselors and Therapists

The board reviewed a draft of this preliminary evaluation and provided these written comments.



STATE OF MARYLAND

DHMH Board of Professional Counselors and Therapists

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Larry Hogan, Governor – Boyd Rutherford, Lt. Governor – Van Mitchell, Secretary

November 29, 2016

Warren G. Deschenaux, Executive Director
Department of Legislative Services
Legislative Services Building
90 State Circle
Annapolis, Maryland 21401-1991

Re: Preliminary Sunset Evaluation

Dear Mr. Deschenaux:

Thank you for the opportunity to provide comments on the exposure draft of the preliminary sunset report on the Board of Professional Counselors and Therapists (the Board). The Board does not object to undergoing a full evaluation. We would however, like to address some of the conclusions drawn in the analysis.

The Board's mission is to protect the citizens of Maryland by setting qualifications, education, training, and experience standards for counselors and therapists and promoting high professional standards for the practice of counseling. The Board agrees that the number of groups it regulates and the number of credentials issued may appear daunting. The Board has worked diligently with stakeholders to implement new licensing groups and develop regulations accordingly. The Board is willing to work with various associations and stakeholders.

The Board agrees that the statutes list specific coursework and instruction areas for each credential. The Board does not concur that licensing staff engages in a subjective review of education requirements. The reviews of education requirements are based on established counseling program criteria from the various state colleges and universities.

The report further states that administrative changes necessary to implement statute and regulatory changes have been delayed at times and not effectively communicated to stakeholders. To support this supposition is the example that the website is poorly organized, out of date, and does not provide key information such as meeting agendas, minutes, or annual reports. The design of the website is under the control of the Departments of Health and Mental Hygiene (DHMH) and Information Technology (DoIT). The website platform was changed this year and the Board has been working to restore and update information on the website.

The Board does not concur with the statement that applications and guidance documents have not been updated in a timely manner. Applications and guidance documents are updated when changes are warranted. The Board is currently in the process of doing a review of the applications and guidance materials.

The Board does not concur with the comments relating to the reliability and accuracy of the data provided. The data provided was accurate and complete and provided in the format requested. The report cites as an inconsistency data showing that no art therapists were licensed in fiscal year 2013 however, in Appendix 3 it shows that there were 32 art therapists licensed in fiscal year 2013. Additionally, it is stated in the report that there were inconsistencies in the data on the number of licenses issued versus the number of applications received in a fiscal year. The data in Appendix 3 reflects the number of applications received and the number of licenses issued in a fiscal year. The number of applications received is different than the number of licenses issued because applications may be processed in the next fiscal year depending on when they were received by the Board.

The Board raised licensing fees at the end of fiscal year 2015; fees had not been raised in more than 14 years. The fee increase occurred in response to an anticipated deficit beginning in fiscal year 2016, brought to the Board's attention by our fiscal officer. The Board has consistently maintained a fund balance of approximately 25%. The current projection has the Board's fund balance exceeding the 25% threshold. A higher fund balance would not be unusual in the first year after a fee increase. The Board expects that the fund balance will be drawn down over time especially since we are pursuing a couple of major projects.

The Board is working with DoIT to procure a new licensing system. The Board is also in the process of procuring an online application system. Since the Board is in the initial phase of procuring these projects it is not clear what the costs will be for an online application system and a new licensing system. The increased fund balance is needed to cover the anticipated cost of a new licensing system and online application system. As you know, it is mandated that a Board raise funds through its fees to pay for the efficient running of the Board. Once the Board of Professional Counselors and Therapists has its new licensing system and online application system we will revisit our fund balance and make determinations about the fee structure.

Preliminary Sunset Evaluation

November 29, 2016

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It is worth noting that the Board since it's last sunset, has taken on the regulation of two new licensure groups (at the behest of others) while the number of Board staff has not increased. Despite these challenges, the Board continues to provide quality customer service and to take its mandate to protect the public very seriously.

The Board strives to keep improving its administrative processes. Since its last sunset review in 2007 the Board believes it has made significant progress and feels this will be evident in the upcoming review. We appreciate the opportunity to respond to the Preliminary Evaluation Report.

Sincerely,

A handwritten signature in black ink that reads "Carol A. Deel, Ph.D." The signature is written in a cursive, flowing style.

Carol A. Deel, Ph.D., LCMFT, LCPC
Board Chair

cc: Van T. Mitchell, Secretary
Tracey DeShields, Executive Director