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## The 1994 ACA Model Legislation For Licensed Professional Counselors

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# The 1994 ACA Model Legislation For Licensed Professional Counselors

Harriet L. Glosoff, James M. Benshoff, Thomas W. Hosie, and Dennis R. Maki

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*Model legislation seeks to facilitate uniformity of counselor licensure laws and promote accepted professional standards. The text of the model bill as endorsed by the 1994 American Counseling Association Governing Council is provided with commentary accompanying those sections in which significant changes have occurred. The article concludes with 15 specific suggestions based on experiences gained in the development and implementation of previous legislation for licensed professional counselors.*

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The goal of advancing the counseling profession and protecting the public has remained the intention of licensure by demanding high professional practice and preparation standards. A model for legislation serves as a prototype for state laws that regulate the counseling profession. It provides direction for counselors and their leadership in states that do not currently have licensure laws, for those in states that are in the process of revising their current laws, and for those in states with counselor credentialing laws that are facing sunset or legislative review. In addition, it serves as the standard against which proposed state legislation may be evaluated for endorsement and support by the American Counseling Association (ACA). Through providing model legislation, ACA as a professional organization strives to facilitate uniformity of counselor licensure laws across the nation and to promote the most currently accepted professional standards.

Before the passage of the Virginia licensure law for professional counselors in 1975, there was no state law that defined or regulated the profession of counseling. This left the profession in a state of legal limbo. That is, while counseling was not expressly forbidden (except where the laws regulating psychology specifically limited activities of professional counselors), it was not legally recognized as a profession either (Brooks, 1986). At about the same time, ACA developed a model counselor licensure law that promoted the doctoral degree as the standard for licensing. By 1979, ACA had revised its model licensure law, citing a master's degree and supervised experience, rather than a doctoral degree, as the entry requirements for the profession and licensure. This model was updated in 1981 and again in 1989.

The 1989 model legislation was the first to be endorsed by the ACA Governing Council and was published in the *Journal of Counseling and Development* (Bloom et al., 1990). The 1989 model served the profession well; between January 1990 and early 1994, 7 states enacted counselor credentialing laws, bringing the total to 42 states with such laws. Although 57% of these states have enacted counselor credentialing laws that regulate the practice of counseling, 43% of state counseling laws still provide title protection only. There has been, however, an increasing trend to enact practice acts. In fact, in the past 5 years, 7 states reopened their title laws and enacted practice acts. During this same period, however, professional counselors and their credentialing laws were presented with legal challenges regarding what professional counselors can and cannot do as part of their scope of practice.

Periodically reviewing and revising the model legislation is essential to reflect changes within the profession and experiences in

states that have sought or achieved counselor licensure. Throughout the most recent revision process, ACA actively sought input from division, branch and regional leaders, and members as well as from leaders of other counseling and counseling-related organizations with interests in credentialing of professional counselors. Some of these included the American Association of State Counseling Boards, the Council for Accreditation of Counseling and Related Educational Programs (CACREP), the Council on Rehabilitation Education (CORE), the Commission for Rehabilitation Counselor Certification (CRCC), the National Board for Certified Counselors (NBCC), and the National Rehabilitation Counselors Association. Feedback from professional meetings, written feedback received at ACA, and input from other individuals and organizational representatives were incorporated. On the basis of comments received, a revised version titled the "1994 Model Legislation for Licensed Professional Counselors" ("1994 model") was drafted. The ACA Professionalization Committee voted unanimously to adopt it and then sent it forward to the Governing Council, which endorsed the current model at its April 1994 meeting.

The 1989 and 1994 model laws share the philosophy that state licensure laws define who licensed professional counselors are and legalize the general practice of counseling within each state. The credentialing of specialists within counseling remains under the purview of professional credentialing organizations such as NBCC and CRCC. Primary goals in revising the 1989 model were to update, simplify, and clarify language; expand the scope of professional practice and definitions of counseling; bring the model in line with current ACA policies; incorporate what has been learned through recent state licensure efforts; and reflect current thinking about counselor credentialing standards.

The 1994 model establishes a comprehensive scope of practice for professional counselors that is representative of the broad continuum of services provided by professional counselors in the general practice of professional counseling and across specialty areas. The most significant changes from the 1989 model include the following: expanded definitions (Section 6) that are more inclusive of the broad range of activities engaged in by professional counselors across specialty areas; revised educational requirements and coursework (Section 7.2) to reflect current standards and practices in the field; reduced requirements for the number of years of supervised experience and the number of required hours in immediate (face-to-face) supervision (Section 7.2); deletion of licensed associate counselors; addition of endorsement as an alternative to reciprocity agreements (Section 9); addition of a new section that considers applicants educated in a

foreign country (Section 10); addition of a new section that defines sexual misconduct by Licensed Professional Counselors as a felony (Section 12.1); addition of a new section advocating the treatment of impaired practitioners (Section 12.3); and deleting the exemption for government employees and including an exemption for state-certified employees (Section 13.2).

The text of the 18 sections constituting the 1994 ACA Model Legislation for State Licensure of Professional Counselors follows. Many sections clearly articulate their intention and are self-explanatory. The reader is referred to the excellent commentary provided by Bloom et al. (1990) for a discussion of those sections that have essentially remained unchanged. Those sections of the 1994 model that are significantly different from the 1989 model are accompanied here by commentary.

## **THE 1994 ACA MODEL LEGISLATION FOR STATE LICENSURE OF PROFESSIONAL COUNSELORS**

### **1. STATEMENT OF POLICY**

It is declared to be the policy of the state of \_\_\_\_\_ that the activities of those persons who render services to the public in the counseling area and use the title Licensed Professional Counselor be regulated to ensure the protection of the public health, safety, and welfare.

### **2. SHORT TITLE**

This Act may be cited as the Professional Counselor Licensing Act.

### **3. ENABLING CLAUSE**

To regulate the practice of counseling and the title, Licensed Professional Counselor, in the state of \_\_\_\_\_; to create a Professional Counselor Licensure Board; to prescribe the duties and powers of said Board; to provide for the examination, licensure, and regulation of professional counselors; to establish minimum academic degree requirements for professional counselors; to establish guidelines and procedures for the revocation or suspension of a license; to fix penalties for the violation of this Act; to impose licensure fees; to provide for the use of funds received.

### **4. ESTABLISHMENT OF PROFESSIONAL COUNSELOR LICENSURE BOARD**

The Board shall consist of seven members who have been residents of the state of \_\_\_\_\_ for a period of six months. Members are appointed by the Governor within sixty (60) days of the effective date of this Act.

Of the seven Board members, two shall be public members and five shall be Licensed Professional Counselors or persons who are eligible to be licensed; one who is a counselor educator, one who is employed in the private sector, one who is employed in the public sector, and two practicing professional counselors at large.

Licensed Professional Counselor members shall be appointed by the Governor. Any nationally recognized association representing professional counselors may submit recommendations for Board members to the Governor. The composition of the Board should reflect the demographic composition of the population of the state.

On or before (two years after the law takes effect), all members of the Board, with the exception of the public members, shall be licensed under this Act. The two public members of the Board shall be members of the general public who:

(a) are accessible to inquiries, comments, and suggestions from the general public;

(b) may not be or ever have been a Licensed Professional Counselor or in training to be a Licensed Professional Counselor;

(c) may not have a household member or member of the immediate family who is a professional counselor or in training to become a professional counselor;

(d) may not be employed or have been employed in a commercial or professional field related to professional counseling;

(e) may not have a household member or immediate family member who is employed or has been employed in a commercial or professional field related to professional counseling; and

(f) may not have had within two years before appointment a substantial financial interest in a person regulated by the Board.

The term of a Board member is three years. The terms of the members of the Board are staggered as required by the terms of the members serving on the Board on \_\_\_\_\_. At the end of a term, a member continues to serve until a successor is appointed and qualifies. A member of the Board may not serve more than two full three-year terms.

The Governor may remove a member for incompetency, misconduct, or neglect of duty, provided the adopted hearing procedures for such actions have been fully executed.

Each member of the Board is entitled to reimbursement for expenses under the standard Board travel regulations, as provided for in the state budget. In addition, Board members shall be compensated in accordance with relevant state law when engaged in authorized Board activities.

### **5. POWERS AND DUTIES OF THE PROFESSIONAL COUNSELOR LICENSURE BOARD**

From among its members, the Board shall annually elect a chairperson, a vice-chairperson, and a secretary. The manner of election of officers, their duties, and their terms of office shall be as the Board determines.

In addition to the powers set forth elsewhere in this law, the Board shall adopt and revise, with appropriate legal sanctions, rules and regulations to carry out the provisions of this law.

In addition to the duties set forth elsewhere in this law, the Board shall:

(a) meet at least twice per year, at the times and places that it determines. Attendance by five or more Board members at an official Board meeting shall be considered a quorum.

(b) maintain a registry of all current Licensed Professional Counselors. This registry shall be a public record, available to the Licensed Professional Counselors, state agencies, and the general public on request.

(c) maintain a registry of approved supervisors as defined in Section 6.3 of this Act.

(d) establish continuing education requirements for Licensed Professional Counselors.

(e) adopt the prevailing standards of acceptable professional practice promulgated by the American Counseling Association. This code of ethics may be supplemented as determined necessary by the Board.

(f) investigate complaints concerning the conduct of any person licensed or unlicensed whose counseling activities are regulated by the Professional Counselor Licensing Board.

(g) revoke, suspend, or fail to renew a license which it has authority to issue for just cause as enumerated in rules and regulations of the Board, through a graduated and consistently implemented hearing process.

(h) submit an annual report to the Governor which includes complete information regarding complaints filed against individuals and the disposition of complaints.

(i) adopt an examination that the Board considers appropriate to determine the eligibility of an applicant to become a Licensed Professional Counselor. The Board shall establish the additional criteria necessary to evaluate the qualifications of individuals applying for licensure.

(j) assess fees for the issuance and renewal of licenses to cover the administrative and operating expenses of the Board.

(k) pay all funds collected under this law into the general fund of this state, with such funds designated specifically for the administration of this Act.

## 6. DEFINITIONS

### 6.1 Practice of Professional Counseling

Practice of Professional Counseling shall mean the application of mental health, psychological, and human development principles in order to: (a) facilitate human development and adjustment throughout the life span; (b) prevent, diagnose, and treat mental, emotional, or behavioral disorders and associated distresses which interfere with mental health; (c) conduct assessments and diagnoses for the purpose of establishing treatment goals and objectives; and (d) plan, implement, and evaluate treatment plans using counseling treatment interventions. Counseling treatment interventions shall mean the application of cognitive, affective, behavioral, and systemic counseling strategies, which include principles of development, wellness, and pathology that reflect a pluralistic society. Such interventions are specifically implemented in the context of a professional counseling relationship.

(a) The practice of professional counseling includes, but is not limited to:

1. individual, group, and marriage and family counseling and psychotherapy;
2. assessment;
3. crisis intervention;
4. diagnosis and treatment of persons with mental and emotional disorders;
5. guidance and consulting to facilitate normal growth and development, including educational and career development;
6. utilization of functional assessment and counseling for persons requesting assistance in adjustment to a disability or handicapping condition;
7. consulting;

8. research; and

9. referral.

(b) The use of specific methods, techniques, or modalities within the practice of professional counseling is restricted to professional counselors appropriately trained in the use of such methods, techniques, or modalities.

### 6.2 Assessment

Assessment shall mean selecting, administering, scoring, and interpreting psychological and educational instruments designed to assess an individual's attitudes, abilities, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral disorders and the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations.

### 6.3 Approved Supervisor

Approved Supervisor shall mean any Licensed Professional Counselor or other qualified supervisor as determined by the Board who has five years of counseling experience and documents to the Board the completion of training in counseling supervision that included content and experiences relevant to the supervision of counselors, and provides the Board a statement detailing the person's supervision philosophy, orientation, and experience.

### 6.4 Consulting

Consulting shall mean the application of scientific principles and procedures in counseling and human development to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, be it an individual, a group, or an organization.

### 6.5 General Supervision

General Supervision shall mean supervision in which the supervisor is available to the supervisee either in person or by a communications device.

### 6.6 Immediate Supervision

Immediate Supervision shall mean supervision in which the supervisor is physically with the supervisee and either discussing or observing the supervisee's practice.

### 6.7 Licensed Professional Counselor

Licensed Professional Counselor shall mean a person licensed under this Act to practice professional counseling as defined in Section 6.1.

### 6.8 Referral

Referral means evaluating and identifying needs of a counselee to determine the advisability of referral to other specialists, informing the counselee of such judgment, and communicating as requested or deemed appropriate to such referral sources.

### 6.9 Research

Research means a systematic effort to collect, analyze, and interpret quantitative and qualitative data that describe how social characteristics, behavior, emotion, cognitions, disabilities, mental disorders, and interpersonal transactions among individuals and organizations interact.

## Commentary

Legislative definitions serve two primary purposes: (a) to provide a reference point for consistent understanding of terms used throughout the Act, and (b) to delineate the services that come under the scope of practice of Licensed Professional Counselors. Three definitions require further discussion. The definition of the *practice of professional counseling* used in this Act is similar to that in the 1989 model law in that it emphasizes a wellness orientation. It does, however, contain more explicit references to services provided by professional counselors across the entire mental health continuum, including the diagnosis and treatment of persons with mental and emotional disorders, the use of psychological and educational tests, the performance of psychotherapy, and the assessment and counseling of persons with disabling or handicapping conditions. This definition is considered to be representative of the broad range of practices engaged in by professional counselors. Rather than implying that all Licensed Professional Counselors are expert in the provision of all of these services, this definition provides legal protection for professional counselors who are practicing within their scope of expertise. Without this protection, those Licensed Professional Counselors practicing within their scope of expertise (e.g., career counseling, crisis intervention, assessment, or individual counseling) may find themselves legally prevented from rendering the very services for which they have been trained.

The term *approved supervisor* takes into consideration that supervisors may hold credentials other than that of a Licensed Professional Counselor. These may be members of related helping professions, or the Board may decide to accept those professionals who are eligible for, but do not hold, licensure. This is especially important in geographic areas where there may be a shortage of qualified Licensed Professional Counselors to serve as supervisors, such as rural areas and areas in which licensure for professional counselors may not exist. The definition also recognizes that experience as a counselor is not in itself enough to be an approved supervisor by requiring training in counselor supervision. States are encouraged to expand on what this means on the basis of the types of training opportunities available to counselors in their state. States also are referred to the *Ethical Guidelines for Counseling Supervisors* adopted by the Association for Counselor Education and Supervision (1993).

The term *supervision* is used in reference to the types of academic and professional experiences applicants must document in order to be licensed. There is a great difference between supervised experiences that involve direct observation of an applicant's work and those that afford the applicant with the opportunity to consult with a supervisor should a need arise. This is addressed by including definitions of both *general* and *immediate* supervision.

## 7. REQUIREMENTS FOR LICENSURE

### 7.1 License Application

Upon examination of applicants' credentials, the Board may, by a majority of the Board members present and voting, consider such credentials adequate evidence of professional competence and recommend to the chairperson of the Board that a license be approved.

The Board shall issue a license as a Licensed Professional Counselor to each applicant who files an application in such a manner as the Board prescribes, accompanied by such fee as the Board shall require, who meets the requirements in Section 7.2, and who furnishes satisfactory evidence of the following to the Board. That the applicant:

- (a) has reached the age of majority as defined in this state;
- (b) is a citizen of the United States or has declared his or her intention of becoming such;
- (c) has no record of moral turpitude as indicated by the following evidence:

1. The applicant who has never been convicted of a felony or crime involving moral turpitude must submit letters of recommendation from two persons not related to the applicant and a sworn statement from

the applicant stating that he or she has never been convicted of a felony or crime involving moral turpitude; or

2. If the applicant has been convicted of a felony or crime involving moral turpitude, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a Licensed Professional Counselor. This may be established by the production of (A) documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least three years has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge, and (B) any collateral evidence and testimony as may be requested by the Board that shows the nature and seriousness of the crime, the circumstances related to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes, and any other evidence necessary for the Board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses.

(d) has declared to the Board and agrees to continue to declare areas of professional competence through a Statement of Professional Intent, describing the intended use of the license, the client populations with whom the applicant will work, any areas of counseling specialization, and the counseling procedures the applicant plans to utilize, including the applicant's theoretical orientation and preferred intervention strategies; and

(e) has passed a written examination as prescribed by the Board.

### 7.2 Education and Experience Requirements For Licensure

The Professional Counselor Licensure Board in its rules and regulations shall establish criteria for determining what constitutes supervised experience.

Persons fulfilling supervised experience requirements under this section of the Act shall be subject to all of the applicable provisions of the Act. The Board may deny an application for a license by, or take other disciplinary action against, a supervisee who is found to have violated the Act.

A person who has met the requirements put forth in Section 7.1 of this Act may be issued a license as a Licensed Professional Counselor if that person:

- (a) has successfully completed a minimum of 60 graduate semester hours in counseling from a regionally accredited institution of higher education, including an earned master's degree in counseling consisting of a minimum of 48 semester hours, or an earned doctoral degree in counseling. The 60 graduate semester hours must include study in each of the areas listed below, as defined in rules and regulations, and supervised practicum/internship experiences in a counseling setting.

1. The helping relationship, including counseling theory and practice;
2. Human growth and development;
3. Lifestyle and career development;
4. Group dynamics, processes, counseling, and consulting;
5. Assessment, appraisal, testing of individuals;
6. Social and cultural foundation, including multicultural issues;

7. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
8. Marriage and/or family counseling/therapy;
9. Research and evaluation; and
10. Professional orientation and ethics.

(b) has acquired a minimum of three thousand (3,000) hours of supervised experience in the practice of professional counseling as defined in Section 6.1, performed over a period of not less than two (2) years under the supervision of an approved supervisor as defined in Section 6.3 and can demonstrate to the satisfaction of the Board that the 3,000 hours of required supervised experience:

1. was performed under the general supervision of an approved supervisor;
2. included a minimum of one thousand two hundred (1,200) hours of direct counseling with individuals, couples, families, or groups; and
3. included a minimum of one hundred (100) hours spent in immediate supervision with an approved supervisor as defined in Section 6.6.

### 7.3 Examinations

The Professional Counselor Licensure Board shall make specific provisions for examination of applicants for licensure at least once each year.

#### Commentary

The discussion related to the changes and language in this section is critical because it contains operational standards that define a professional counselor. The second paragraph of Section 7.2 specifically gives the Board the authority to regulate the practice of supervisees. The Board may deny any supervisee application for licensure or take disciplinary action against a supervisee who violates any provision of the Act. Applicants must complete a minimum of 60 graduate hours in counseling from a regionally accredited institution and have a master's degree of 48 semester hours or a doctoral degree in counseling. As of July 1994, 11 states (26% of states with enacted counselor credentialing laws) included the completion of 60 graduate semester hours as a licensure requirement (Glosoff, 1994). The 60 semester hours in the 1994 model must include a supervised practicum/internship and study in the 10 areas listed in Section 7.2(a). These requirements constitute a rigorous and comprehensive program enabling individuals to begin their supervised experience. Satisfying the presupervision requirements provides the base for further training through supervision, which enables individuals to become competent in the practice of professional counseling described in Section 6.1. Forty-eight graduate semester hours is the minimum standard for a counselor education program (of any type of specialty area) to be accredited by CACREP. Graduates from these programs can become licensed after completing post-master's coursework to meet the 60 semester hour requirement and to ensure the inclusion of coursework in all 10 areas of study.

It is important to note that Section 7.2(a) requires study in each of the 10 areas listed. Although this is based on the general areas of practice defined in Section 6.1 of the 1994 model, this does not mean that a person must necessarily have a course that specifically and singularly focuses on each of these areas. Boards will need to address through regulations how each candidate's coursework will be evaluated. Most typically, course titles are used to determine the content covered. In addition, most Boards allow for one course to satisfy the requirements in more than one area. For example, courses in appraisal of individuals may include readings and discussion on diagnosis and treatment planning; courses in career development may require students to spend a considerable amount of time on adult development; and principles

of multicultural aspects of counseling may be infused throughout a counselor's training program. Hollis and Wantz (1994) noted an increase in the number of required marriage and family courses in counselor education programs. This is one area of study that was added to the model during the revision process. It is strongly recommended that the Board members consult with counselor educators in their states before finalizing regulations specific to coursework requirements. In some states, there may be a number of different degrees and titles granted by counselor training programs. Thus, the licensure bill will need to include an option by which graduates from these programs are able to be licensed.

Options to include degree or coursework "primarily" or "predominantly" in counseling have been previously recommended. However, Boards need to define these terms either within the licensure statute itself or within Board rules. One means of defining these terms is to require study in the areas, or a subset of the areas, listed in Section 7.2(a). Master's degree graduates from CACREP-accredited and like programs will meet a subset of 8 of these requirements, and may meet all 10 required areas without additional post-master's coursework. Boards also need to be fully aware that, in most cases, graduates from CORE-accredited programs will meet licensure requirements. Rather than placing emphasis on titles for areas of study, Boards need to evaluate the contents of study areas completed by rehabilitation counseling program graduates. A full listing of training requirements and competencies for rehabilitation counseling programs has been articulated by CORE (Council on Rehabilitation Education, 1991).

The term *practicum/internship*, rather than one or the other, is included in the model to allow for flexibility in the wording of titles used by counseling training programs to designate this type of experience. It is recommended that Boards develop rules that describe acceptable types of experiences, including the number of hours required, to meet the requirements for practicum/internship. It is further suggested that Boards consult with counselor educators in their states, along with referring to the CACREP accreditation standards (Council for Accreditation of Counseling and Related Educational Programs, 1994), which require both practicum and internship experiences. In addition, because the term *counseling setting* in relation to practicum/internship experiences is not defined in the 1994 model, Boards may wish to define types of settings, along with types of activities engaged in by counselors-in-training, that constitute practice and internship experiences.

Thirty four states (81%) that credential professional counselors require at least 2 years supervised experience before a candidate can be licensed in the general practice of professional counseling. The majority of these states (65%) specifically cite 2 years as the minimum number of years needed to be supervised. Eight states (19%) note a specific number of supervised hours (ranging from 1,000 to 4,000 hours) required but not a specific number of years. This requirement is used to ensure that supervisees have extensive experience in the practices of counseling listed in Section 6.1. Specifying the number of hours (3,000) is a means of determining and enforcing the requirement. Supervisees who are employed at least 36 hours a week will be able to satisfy the requirement in approximately 2 years. During the 3,000-hour requirement, supervisees practice under the general supervision of the supervisor. Supervisors are required to oversee all aspects of supervisee performance.

To guarantee that supervisees gain experience in the practices of counseling, 1,200 of the 3,000 hours must be in the direct practice of counseling as defined in this section. Boards need to define, in their rules, the specific requirements for supervisees during their supervision experience to ensure that supervisees have ample experience within each of the required areas. Supervisors are required to provide 100 hours of immediate supervision, which can be met by meeting once a week for 50 weeks a year. During these meetings, supervisors must review supervisees' current cases and provide evaluation and feedback on supervisee performance. Supervisors are responsible to the Board for the quality of supervision experience they provide supervisees. Boards must develop rules and inform supervisors of their specific responsibilities. It is suggested that no more than 50% of the supervision hours be given during group supervision and that supervisors not work with more than four supervisees at one time.

As for Section 7.3, during the initial years after passage of a licensure law, Boards may wish to schedule examinations twice a year. This will be helpful in meeting the needs of the large numbers of applicants who typically

apply for licensure during that time. In choosing an examination, Boards must ensure that the theoretical bases and practical applications for each of the areas covered in the practice of counseling (Section 6.1) are included. It is also suggested that an examination covering knowledge of the state's licensure law, Board rules, and the code of ethics endorsed by the Board also be included in the examination process.

## 8. RENEWAL OF LICENSING AND CONTINUING EDUCATION

Counselors licensed under this Act shall be required to submit biennially at the time of renewal a license renewal fee to be established by the Board. No license shall be renewed unless the renewal request is accompanied by evidence satisfactory to the Board of the completion during the previous twenty-four (24) months of relevant professional continuing education experiences and an updated Statement of Professional Intent. The continuing education requirements of the Board shall be mailed to all licensed counselors one (1) year prior to the renewal date.

## 9. RECIPROCITY/ENDORSEMENT

(a) The Board may enter into a reciprocal agreement with any state that credentials professional counselors if the Board finds that the state has substantially the same or higher licensure requirements.

(b) The Board may license any resident of the state who is currently credentialed as a professional counselor or an equivalent title in another jurisdiction of the United States if the individual has met the same or higher requirements.

(c) The Board shall delineate in rules and regulations procedures regarding the verification of an applicant's credential(s) from another jurisdiction.

(d) The Board will not license by reciprocity or endorsement any applicant who is under investigation in this or another jurisdiction for an Act that would constitute a violation of this law until such a time as the investigation is complete. When deciding such a case, the Board will determine what, if any, rules of discipline cited in this law apply.

### Commentary

This section enables the Board to enter into reciprocity agreements with other states. However, because of the differences in state laws, reciprocity agreements can be very complicated and difficult to create. "Grandparenting" within other states is a major difficulty in creating agreements. Also, states can modify their laws and/or regulations that may void existing agreements. Within this section, the Board is also empowered to grant licenses to individuals from other states by endorsement of their credentials when those credentials meet existing requirements. This allows the Board to review the credentials required of individuals to be licensed in other states and, on an individual basis, grant a license based on these requirements. The intent of the model is to establish requirements to ensure the competent practice of professional counseling. Individuals licensed years ago in other states may not have been required to attain the specific educational and supervisory requirements within the 1994 model. Boards can, however, adopt rules specifying the amount of training, experience, and current examination scores that will enable such individuals to become licensed through endorsement. It is advantageous for Boards to develop reciprocal agreements to share information about applicants and individuals under investigation. To avoid liability in sharing information about applicants, Boards may wish to require applicants to sign a waiver form as part of their application.

## 10. APPLICANTS EDUCATED IN FOREIGN COUNTRIES

The Board may grant a license to practice professional counseling to an applicant who completed an educational program in a college or university in a foreign country if the applicant meets the following requirements:

(a) meets all requirements of this chapter except for Section 7.2(a); and

(b) demonstrates to the satisfaction of the Board that the applicant's experience, command of the English language, and completed academic program meet the standards of a relevant academic program of an accredited educational institution within the United States. If they do, the applicant shall be considered to have received the education from an accredited educational institution as required by this Act and rules adopted under it.

### Commentary

In the previous model licensure law, no provision was included for counselors who had completed their educational programs abroad. This section was added in response to society becoming increasingly mobile. It provides a way for counselor licensure boards to consider and evaluate qualifications of counselors whose educational programs (because they were located outside of the United States) do not meet the requirement of being "a regionally accredited institution of higher education" (Section 7.2(a)). Boards then have responsibility for determining whether the preparation of these applicants is equivalent to that of applicants who have graduated from regionally accredited colleges and universities. Because most Boards require applicants to provide evidence of courses taken and how these courses meet licensure requirements, separate forms for those applicants educated outside the United States may not be necessary. Conversely, coursework titles and transcript designations may not translate easily. It will be up to applicants to provide necessary educational information in a manner that the Board can interpret. Although this may create some additional work for Board members, it is presumptuous to believe that counselors trained in the United States, using models and titles with which Board members are familiar, are the only ones capable of providing quality counseling services.

## 11. PRIVILEGED COMMUNICATION

Any communication made by any person or persons to a Licensed Professional Counselor in the course of professional services rendered by the Licensed Counselor shall be deemed a privileged communication. No person licensed under this Act, nor that person's agent, may be subpoenaed or otherwise compelled to disclose such privileged communication, with the following specified exceptions:

(a) When there is a clear and immediate probability of physical harm to the client, to other individuals, or to society and the Licensed Professional Counselor communicates the information only to the potential victim, appropriate family member of the potential victim, or law enforcement or other appropriate authorities;

(b) With the written consent of the client, or, in the case of death, legal incompetence, or a minor with the written consent of his or her parent, a legal guardian, or conservator or other person authorized by the courts;

(c) When the client waives such privilege by bringing suit against the Licensed Professional Counselor;

(d) When the Licensed Professional Counselor is rendering professional counseling services in a court-appointed capacity; or

(e) When the client introduces mental condition as a claim or defense in any civil or criminal action.

## 12. PROTECTION OF THE PUBLIC

### 12.1 Unlawful Practice

It shall be unlawful for any person to engage in any of the following acts:

(a) Engage in the practice of counseling without first having complied with the provisions of this Act and without holding a valid license as required by this Act.

(b) Represent themselves by the title "Licensed Professional Counselor" or "Licensed Counselor" without being duly licensed according to the provisions of this Act.

(c) Make use of any title, words, letters, or abbreviations which may reasonably be confused with a designation provided by this Act to denote a standard of professional or occupational competence without being duly licensed.

(d) Materially refusing to furnish the Board information or records required or requested pursuant to this Act.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$500 for each offense and not more than \$5,000 for each offense, and in addition may be imprisoned for a term not to exceed twelve (12) months. The third or any subsequent conviction for violation of this section during a thirty-six month period shall constitute a felony. All client fees received for professional services rendered under these unlawful conditions of professional service shall be refunded to the client by the guilty party.

Any professional under the purview of this Act who commits sexual misconduct with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact, commits a felony of the third degree; however, a second or subsequent offense is a felony of the second degree. The giving of consent by the client to any such act shall not be a defense to these offenses.

### 12.2 Grounds For Denial, Suspension, or Revocation

1. The Board may deny, suspend, or revoke any license granted under the Professional Counselor Licensing Act for any of the following reasons:

(a) Use of drugs or alcohol or both, to an extent that impairs the individual's ability to engage in the practice of professional counseling.

(b) The individual has been convicted of a felony and, after investigation, the Board finds that the individual has not been sufficiently rehabilitated to merit the public trust.

(c) Current investigation of the person in this or another jurisdiction for an act which would constitute a violation of this law until such time as the investigation is complete. When deciding such a case, the Board will determine what, if any, rules of discipline cited in this law apply.

(d) Use of fraud, deception, misrepresentation, or bribery in securing any license issued under this Act or in obtaining permission to take an examination given or required pursuant to the provisions of this Act.

(e) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation.

(f) Incompetence, misconduct, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of a Licensed Professional Counselor.

(g) Violation of, or assisting or enabling any individual to violate, any provision of this Act or any rule or regulation adopted under this Act.

(h) Impersonation of any person holding a license or allowing any individual to use a license or diploma from any school to obtain licensure under this Act.

(i) Revocation or suspension of license or other authorization to practice counseling granted by another state, territory, federal agency, or country upon grounds for which revocation or suspension is authorized by the Professional Counselor Licensing Act.

(j) The individual is mentally ill or physically disabled to an extent that impairs the individual's ability to engage in the practice of professional counseling.

(k) Assisting or enabling any person to hold oneself out to the public as a Licensed Professional Counselor who is not licensed under the provisions of this Act.

(l) The issuance of the license is based on a material mistake of fact.

(m) Violation of any professional trust or confidence.

(n) Use of any advertisement or solicitation that is false, misleading, or deceptive to the general public or person to whom the advertisement is primarily directed.

(o) Failing to respond within 30 days to a written communication from the Board concerning any investigation by the Board, or failing to make available any relevant records with respect to any investigation about the licensee's conduct or background.

2. No license may be denied, suspended, or revoked under Subsection 1 of this section without prior notice and opportunity for a hearing, except that the Board may, without prior notice or hearing, suspend for up to one (1) year the license of any person convicted of a crime as set forth in Subsection 1(b) of this section. The burden of proof shall be on the Board in any proceeding to suspend or revoke a license. No license may be denied, suspended, or revoked under this Section except by majority vote of the Board.

3. Any person may file a complaint with the Board seeking denial, suspension, or revocation of a license issued or to be issued by the Board. Such complaint shall be in a form prescribed by the Board and shall be verified under oath by the complainant. If the Board determines that a complaint alleges facts which, if true, would require denial, revocation, or suspension of a license, it shall promptly institute a hearing. Whenever the Board is of the opinion that a complaint does not allege facts which warrant a hearing, the complaint may be dismissed.

4. No board member shall be liable in a civil action for any act performed in good faith in the execution of his or her duties under this Act.

### 12.3 Treatment Program for Impaired Practitioners

The Board shall establish rules and regulations pertaining to treatment for impaired practitioners.

## 12.4 Procedures

1. The Board shall conduct its proceedings in accord with the provisions of this chapter. Any person may be heard by the Board in person or may be represented by an attorney. Every vote and official act of the Board shall be entered into record. All hearings and rule-making proceedings shall be open to the public.

2. The Board shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation. Subpoenas shall be issued by the Board upon application by any party to a proceeding before the Board and a showing of general relevance and reasonable scope. When a subpoenaed witness fails to appear, the Board may apply to the Court for an order requiring the person subpoenaed to appear before the Board to testify and to produce books, papers, or documents.

3. One or more Board members or a hearing examiner appointed by the Board shall preside at the hearings.

## 12.5 Ethical Violations

The Board shall have the power to suspend or revoke the license of any person licensed by the Board and found guilty of violating ethical or professional standard as defined by the Board as set forth in Section 5(e) of this Act.

Any sanction of suspension for violation of Sections 12.1, 12.2, or 12.5 upon order of the Board shall not be for a period of greater than one (1) year, and any license thereby sanctioned shall not be allowed to practice counseling in this state until the termination of the suspension period and subsequent timely review by the Board. The sanction of revocation by the Board for violation of Sections 12.1, 12.2, or 12.5 shall be for a period of at least three (3) years from the date such revocation is legally effective. The Board may, on favorable action by a majority of the Board members present and voting, recommend reinstatement.

## Commentary

The fundamental purpose of any licensure law is to protect the public from unqualified practitioners by establishing qualifications, setting standards for practice, and providing mechanisms and procedures for imposing sanctions on practitioners who violate these standards. This section addresses several different aspects of protection of the public and includes a number of important additions or modifications to strengthen this part of the model as compared with previous model licensure laws for professional counselors. In particular, this section has added new language to address the following: sexual misconduct by counselors (Section 12.1), counselors under investigation in another jurisdiction (Section 12.2), procedures related to suspension or revocation of license (Sections 12.2 and 12.4), treatment programs for impaired professionals (Section 12.3), and extension of the maximum period for sanctions (Section 12.5).

Section 12.1 of the 1994 model also increases maximum fines for unlawful behavior from \$1,000 to \$5,000 and contains language that addresses the serious ethical and legal issues of sexual misconduct by a counselor involving a current or former client. Many believe that this is one of the most harmful breaches of ethical responsibilities and merits strong criminal sanctions. On the legal side of the issue, it has been estimated that cases involving alleged sexual relationships between clients and therapists account for up to 45% of professional liability payments rendered over the last 10 years (Corey, Corey, & Callanan, 1993). The 1994 model recommends that counselors who violate professional standards regarding sexual conduct be charged with a third-degree felony crime for first offenses and a felony of the second degree for all subsequent offenses. The counselor is held responsible for inappropriate sexual contact even if the client is determined to have given voluntary consent.

The purpose of including such provisions in a counselor licensure law is to make a strong public statement about the need to protect the public from counselors who violate ethical standards regarding sexual contact with clients. California, Colorado, Wisconsin, and Minnesota currently consider it a criminal offense to have sexual contact with a client (Corey et al., 1993). It is important to note that not all states will allow such a provision in counselor licensure laws, and some states have laws that would supersede these guidelines. Counselors in each state should check with their state attorney general to determine what is allowable in their particular state. Additional language was included in this section to allow a Board in one state to temporarily deny a license to anyone who is currently being investigated in another state for any act that would violate the counselor licensure law in the state in which the applicant seeks to be licensed. Following completion of the investigation, the Board must determine what rules and procedures apply to the applicant under consideration. This section is an attempt to promote communication and cooperation among counselor licensure boards and to preclude licensure of a counselor who may have violated licensure laws elsewhere. It is suggested that Boards contact the National Clearinghouse on Licensure, Enforcement, and Regulation and the American Association of State Counseling Boards for assistance in developing regulations addressing Section 12.

Bloom et al. (1990) noted that "it may be important to include . . . a specific subsection . . . detailing the specific investigatory procedures to be outlined where disciplinary action will be considered by the board" (p. 521). The 1994 model specifies investigatory procedures aimed at ensuring due process related to denial, suspension, or revocation of licenses and empowers the Board to subpoena the attendance and testimony of witnesses, along with the production of all materials that the Board deems relevant. It also serves notice that licensed counselors must cooperate with the Board in any investigation of their conduct or background. In addition, this section clarifies the rights of counselors under investigation to due process, including the right to prior notice and a hearing. Finally, language has been added to preclude individual board members from being held liable for the reasonable performance of duties associated with their membership on the licensure board.

As a profession, counseling affirms the ability of individuals to be rehabilitated, make new choices, and create new lives for themselves. The 1994 model recognizes the need to offer opportunities for impaired counselors to resume the practice of their profession after undergoing appropriate treatment. It is left to individual Boards to establish their own rules and regulations related to impaired practitioners.

The maximum period of suspension for ethical violations has been extended from 6 months to 1 year. This change is intended to emphasize the seriousness of ethical violations and to make a stronger statement regarding protection of the public. It is, however, important to reiterate that each state may have existing statutes or regulations in place that may dictate the length of suspension or other consequences that may be imposed on licensed professionals.

## 13. EXEMPTIONS

### 13.1 Exemption of Other Professionals

Nothing in this Act shall be construed to apply to the activities and services of qualified members of other professions, such as physicians, psychologists, registered nurses, or social workers performing duties consistent with the laws of this state, their training, and any code of ethics of their professions, provided they do not represent themselves by any title or practice description in the manner prescribed in Section 6 of this Act.

### 13.2 Exemption of State-Certified Employees

Nothing in this Act shall be construed to apply to the activities, services, and use of an official title on the part of a person certified by the state to render counseling or counseling-related services, provided such persons are performing these activities within the scope of their employment.

### 13.3 Exemption of Graduate Students and Trainees

Nothing in this Act shall be construed to apply to the activities and services of a student, intern, or trainee pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study, provided that such a person be designated, for example, a "counselor intern."

### 13.4 Exemption of Nonresidents

Nothing in this Act shall be construed to apply to the counseling activities and services of a nonresident rendered not more than thirty (30) days during any calendar year, provided that such a person is duly authorized to perform such activities and services under the laws of the state or county of that person's residence.

### 13.5 Exemption of Clergy

Nothing in this Act shall be construed to apply to the activities and services of a rabbi, priest, minister, or clergy person of any religious denomination or sect provided such activities and services are within the scope of the performance of regular or specialized ministerial duties.

### 13.6 Exemption of Volunteer Workers

Nothing in this Act shall be construed to apply to the activities, titles, and descriptions of persons offering volunteer or professional services for public and private nonprofit organizations or charities provided that these persons are approved by the organizations or agencies for whom the services are rendered.

### Commentary

It is ideal to have the fewest exemptions possible because each exemption represents a group of practitioners who are not regulated in their delivery of services. It is rarely possible, however, to have a licensure law enacted without some exemptions included, primarily because of political realities such as (a) competing groups of mental health professionals playing out turf battles by lobbying for or against licensure bills; (b) the concerns of agency administrators about the fiscal impact of having to hire licensed professionals; and (c) the large numbers of certain individuals, such as many addictions counselors who may never meet the standards set forth in state statutes (Bloom et al., 1990). Some groups may have sufficient influence over lawmakers to jeopardize the passage of a licensure law if they are not specifically excluded from its requirements.

In addition to political realities, there are other factors that influence the need to include exemptions to licensure laws. Restrictions on service providers are particularly important to consider when examining the availability of mental health services in both rural and inner-city areas where there may be a shortage of qualified practitioners who meet licensure requirements, especially in public health and mental health settings. It can be argued that exemptions place undue hardship on those practitioners, usually persons in private practice, who are not exempt by requiring them to meet different standards than those persons working in exempt positions. Conversely, exempting counselors who practice in the public sector relegates both the clients and counselors in that sector to a "second-class" status. Interestingly, Bloom et al. (1990) noted that the various governmental agencies that first complain about possible regulations later require their employees to meet the credentialing requirements in order to preserve credibility with funding sources.

A balance must be found in exemptions to a statute to avoid restricting the trade of those persons who are unlikely to pose a risk of harm to the public. Those persons exempt from meeting the statute's standards ideally include members of other established professions with established standards of training and ethics or who are regulated by another board (Sections 13.2 and 13.5), as well as those persons in training as a graduate student or doing

their postacademic training under the auspices of a qualified supervisor (Section 13.3).

Although members of other professions may provide counseling-related services, they cannot represent themselves to the public as counselors. The exemption of persons certified by the state to render counseling and counseling-related services within their employment duties typically applies to state-regulated school employees, such as counselors, psychologists, and speech pathologists. This exemption does not allow these individuals to render counseling services as private practitioners, nor does it permit them to present themselves to the public as Licensed Professional Counselors.

The clergy is one of the most frequently mentioned professions exempted from licensing laws in the social science professions. Legislators view the freedom of religious practices guaranteed by the state to include counsel given by clergy on personal matters. Again, this does not preclude requiring licensure for members of the clergy who offer counseling services outside of their pastoral duties. It also is suggested that those persons providing counseling services on a limited basis (Section 13.4) be extended the professional courtesy of an exemption for a limited time period (e.g., 30 days). Finally, volunteers (Section 13.6) provide an invaluable community services, often taking on tasks that do not attract professionals, and it is extremely difficult to enforce restrictions on their practice (Bloom et al., 1990).

## 14. LICENSE WITHOUT EXAMINATION ("GRANDPARENTING" CLAUSE)

During the first twelve (12) months following the effective date of the regulations of this Act, the Board will issue to any person upon application the license of Licensed Professional Counselor, provided that the applicant has a master's degree in counseling or a related professional field and meets the requirements of Section 7.1 of this Act, and further provided that the Board shall have the power to consider waiving all or part of the supervisory requirements associated with the experience requirement of Section 7.2(b) based upon the professionally relevant work experience of the applicant before application for licensure. The Board shall also require such applicants to file a Statement of Professional Intent as described in Section 7.1(d) and a Statement of Professional Disclosure as described in Section 15. The Board may waive written examination of such applicants.

### Commentary

The primary change in this section relates to deletion of oral and/or situational examinations as an alternative to written examinations during the grandparenting period. In recent years, oral examinations have tended to be eliminated as a part of the licensure process (e.g., Virginia) because of lack of standardization and questions regarding the defensibility of licensing decisions made on the basis of oral questioning and responses. The inherent subjectivity in such exams increases the likelihood of litigation by examinees who are not passed by the Board. Thus, the 1994 model reflects changes in procedures by state boards.

## 15. PROFESSIONAL DISCLOSURE

Any individual, or employer for such an individual, who is licensed under this Act may not charge a client or receive remuneration for professional counseling services unless, before the performance of those services, the client is furnished a copy of a Professional Disclosure Statement. This Professional Disclosure Statement shall be displayed in a conspicuous location at the place where the services are performed, and a copy of the statement shall be provided to the client on request. The Professional Disclosure Statement shall contain:

(a) The name, title, business address, and business telephone number of the professional counselor performing the services.

(b) The formal professional education of the professional counselor, including the institutions attended and the degrees received from them.

(c) The professional counselor's areas of specialization and the services provided.

(d) In the case of a person licensed under this Act who is engaged in a private individual practice, partnership, or group practice, the person's fee schedule listed by type of service or hourly rate.

(e) At the bottom of the first page of the disclosure statement, the words "This information is required by The Professional Counselors Licensure Board, which regulates all Licensed Professional Counselors."

(f) Immediately beneath the statement required by Item (e) of this subsection shall appear the name, address, and telephone numbers of the Board.

## 16. SEVERABILITY CLAUSE

The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such a declaration shall not affect the parts that remain.

### Commentary

This section may not be self-explanatory to individuals unaccustomed to working with legislation. No changes were made to this section that protects the integrity of the overall law in the event that any modifications need to be made to any of its individual sections. Without this clause, a challenge to any section of the law would constitute a challenge to the law itself.

## 17. REPEALER CLAUSE

No part of this law shall be deemed invalidated by any other currently existing law.

### Commentary

This section also was left intact to cover situations in which any parts of the counselor licensure law conflict with other state laws. This clause prevents the repeal of the entire counselor licensure law due to conflicts between individual sections (or specific language) and other state laws.

## 18. EFFECTIVE DATE

This Act shall become effective immediately upon its passage and approval by the Governor.

## GUIDE FOR IMPLEMENTATION

A guide to the implementation of the various sections that collectively define the 1994 model is presented here to assist counselors in their efforts to legislate new or amended licensure laws. The following 15 lessons have been learned through previous efforts to enact licensure for professional counselors. As the cliché goes, those who are unaware of history are destined to repeat it. It is hoped, as a result, that professional counselors will benefit from these experiences and continue to advance the profession and ensure public protection with greater effectiveness and efficiency (and less frustration).

1. In today's budget-conscious legislatures, cost factors play a tremendous role in the outcome of any proposed legislation. Many legislators do not consider it cost effective to establish a separate

regulatory board for each mental health profession. Rather than enacting a legislation that creates a separate board for professional counselors, 16 of the 42 states (38%) with counselor credentialing laws enacted laws that created omnibus boards. These boards regulate two or more related professional groups, such as professional counselors and social workers. It is important to note that although these laws establish collective boards that share overhead expenses, the laws also provide for the separate regulation of each type of mental health professional (e.g., separate departments and regulations for professional counselors, social workers, and marriage and family therapists).

2. Listing the regulation of the practice of counseling first in the Enabling Clause is important in that it reinforces that the law does more than control the use of counseling-related titles. It is important to understand that practice acts are often perceived by other professional groups as more threatening than title protection acts and, therefore, are typically more strenuously opposed. Because of this, many states agree to counselor credentialing laws that do not regulate the practice of counseling. Unfortunately, attempting to change a title act that is on the books to a practice one is a risky undertaking because the entire law is open to challenge and counselors in a state may actually lose ground. Therefore, it may be more beneficial to wait a year or more and enact a strong practice act as opposed to obtaining passage of a weaker one with the hope of strengthening it later on.

3. Just as practice acts tend to be more threatening than title protection acts, so does more comprehensive scope of practice language in a bill. The more comprehensive the scope of practice, the more strenuously the licensure law tends to be opposed to other professional groups. Comments regarding the enactment of practice acts also apply here. Many states find it difficult to reopen their laws to expand the scope of practice of Licensed Professional Counselors. Because of this, it may be more beneficial to wait to introduce a bill in order to build support among colleagues in peer professions (or at least diminish opposition). The leaders in each state must assess the benefits and disadvantages to the passage of a licensure law that prevents Licensed Professional Counselors from offering services for which they have the education, training, and supervised experience.

4. Legislation should specify an adequate number of board members needed to accomplish the work of the Board. From experience across the states, seven seems to be a number that is workable, not unwieldy or too costly for the state while being enough to get the work done and represent the various groups of people involved. Logic would also dictate that an odd number of board members will prevent the occurrence of tie votes. In addition to ensuring representation by counselor educators and practitioners in both public and private settings, provisions for the appointment of public members are critical. This is an important recognition that the actions of the Board have direct impact on the consumers of counseling services. Counselors must be aware of their state's political processes and know the most effective vehicles for offering advice to the Governor's office for the appointment of board members. It is equally important that state branches find a way to include all interested professional groups (e.g., branch divisions and other counseling-related state associations, such as branches of the National Rehabilitation Counseling Association) in developing a list of nominees who can best represent the various publics to be affected by the licensure law while attempting to reflect the demographic composition of the population. Because being a sole public member among a group of professional counselors may be intimidating, it is strongly recommended that two public members be appointed to the Board to increase their comfort level in voicing

citizens' concerns and perspectives. The three-year term of office stipulated within Section 5.4 is thought to be convenient for a specific commitment from individuals willing to serve while also limiting any one person's influence on the Board. Individuals may serve two terms.

5. The Board is given the authority to adopt and revise rules and regulations to carry out the provisions of the law. The specific regulations for enacting the provisions will occur through the rules adopted by the Board. States have different procedures for promulgating and enacting rules. Boards need to be knowledgeable of the specific procedures involved because much of their time will be dedicated to creating and changing rules to carry out the provisions of the law. Almost all the provisions of the law will need rules for their implementation. Boards have the opportunity to modify and clarify provisions of the law by writing rules that reflect the intentions of the Board.

6. It is recommended that the Board adopt the *ACA Code of Ethics and Standards of Practice* (American Counseling Association, 1995) to govern counselors in the state. The literal adoption of the ACA code may not be possible in some states. However, within its rules, the Board can adopt the content of the code for the state and modify the wording to read as a state code. The recently adopted ACA code (American Counseling Association, 1995) is thought to be sufficiently comprehensive so that Boards do not need to consider specific ethical codes for different counseling specialties. Since ACA periodically revises the Code of Ethics, it is helpful to include language such as, "Licensed professional counselors shall comply with prevailing standards of acceptable professional counseling as promulgated by the ACA in April 1995 and any subsequent revisions or additions about which this Board issues a notice."

7. The need for specialty licensing standards has been deliberately omitted in the 1994 model. This stance is in keeping with ACA policy on specialty standards that recommends certification of specialties and not licensure. Thus, specialty certification may be pursued in addition to licensure to inform clients of the counselor's further study and experience in a particular area.

8. The Board will need to adopt rules and written forms to investigate client complaints. The primary duty of the Board is to regulate the conduct of licensees. Therefore, the Board can spend much of its time reviewing and investigating complaints and holding hearings. The information forms used must request the necessary information for the Board to accurately assess the need for an investigation. Each state will have specific laws and rules governing due process procedures and hearings. The Board must adopt rules congruent with state requirements.

9. Some Boards choose to have an examination constructed for them, whereas most Boards have adopted an already existing examination produced by a national examination group. The major consideration for the Board in adopting an examination is to be sure that the test is a valid instrument in determining the competence of counselors for the roles defined in Section 6.1 of the 1994 model.

10. The Board must require sufficient fees to pay expenses. Often, legislators require assurance that the licensing Act will not cost the state additional funds. Thus, the fees levied need to be sufficient to support all of the Board's activities. Even though the Act is created to protect the public, it often must be demonstrated that counselors are willing to bear the cost of guaranteeing this protection. It is important to investigate the costs of Board operations and have detailed information on costs and anticipated fees for review by legislative fiscal review committees.

The 1994 model recommends that funds collected by the Board be deposited in the general fund of the state, with such funds being designated for administration of the Act. This procedure is used to enable new Boards to gain start-up funds previous to collecting fees. The 1994 model does not specifically mention examination fees. The costs of national examinations change, and the Board should include examination costs in Board rules that can be changed much more easily than the Act itself.

11. The Statement of Professional Intent is extremely important in regulating the practices of counselors. It is a means by which the Board can determine that counselors are following the provisions of the Act for which they are appropriately trained (see Section 6.1(b)). State licensure laws may differ on the specific practices of counselors, and the Statement of Professional Intent enables the Board to see the counselor's understanding and intentions for that particular Act. Also, an applicant's Statement of Professional Intent and Professional Disclosure Statement (see Section 15) should be reviewed for congruence before a license is issued. The Professional Disclosure Statement provides both the Board and clients basic professional information about the counselor rendering services. It also provides clients with contact information for the Board and is one important way in which Licensed Professional Counselors are held accountable. As with the Statements of Professional Intent, Boards may require the updating of Disclosure Statements at the time of license renewal. It is further suggested that both the Statement of Professional Intent and the Professional Disclosure Statement be reexamined in light of counselors' training and supervised experience since originally being granted a license.

12. The two-year time period for continuing education is thought to be sufficient to ensure that counselors are knowledgeable of current practices in the field and that their Professional Disclosure Statement remains current. Boards need to specify in their rules the types of activities that constitute continuing education and the qualifications of continuing education providers. Some Boards require providers to register with the Board and provide annual outlines of their workshops. Other Boards accept the provider lists published by national groups such as the National Board for Certified Counselors. Monitoring continuing education activities can be extremely time consuming for a Board. Some Boards rely on counselors "honestly" reporting their continuing education activities, which is consistent with their code of ethics, and then randomly selecting a portion of the renewals for verification. Individuals selected are required to furnish the documentation from providers that verifies their participation.

13. Privileged communication is a legal concept, typically granted to clients of professionals such as attorneys, physicians, and psychologists, that protects the confidentiality of communications between the professional and his or her client. The principle underlying privileged communication is that clients should have the privilege of keeping the information confidential that was disclosed to a professional in confidence (Hopkins & Anderson, 1990). Privileged communication applies "only when the professional is called as a witness in a court of law" (Hopkins & Anderson, 1990, p. 10), and the privilege belongs to the client. Although a counselor appearing in court may always claim that communication with the client is privileged information, "judges are reluctant to expand the privileges in the absence of state legislation" (Hopkins & Anderson, 1990, p. 11).

The inclusion of privileged communication clauses in counselor licensure laws provides an essential legal basis for counselors to assure their clients of confidentiality in most cases. Of course, there are times when the state's need for specific information outweighs the

individual's right to privacy. The exceptions noted in Section 11 are those typically found in most privileged communication statutes. They are presented with a hope to achieve a balance between individuals' rights and the need to provide for the protection of society as a whole.

14. Licensure laws do not, theoretically, seek to exclude those practitioners who have been providing a reputable service. It is often difficult for persons who have been practicing for many years to document the types of training and supervision they received earlier in their careers. Disallowing these practitioners to continue offering services can be considered restraint of trade and can open the Board to litigation. Because of this, almost all disciplines have allowed for a transition period for those persons who have been in practice for specified lengths of time, to be determined through regulations. If these practitioners are providing unethical or substandard services, action can be taken against them on this basis; this seems to be a more balanced manner in which to protect the public than to simply not allow the practitioners to continue in their work.

15. The 1994 model recommends that licensure bills take effect immediately upon being signed by the Governor. Although provisions will need to be made for the licensing process to "get up and running," an immediate effective date prevents possible lengthy delays in implementation of the new law (Bloom et al., 1990).

### CONCLUSION

Counselors and their state leaders are strongly encouraged to use the language of this document when developing their licensure laws. However, it is inevitable that each state's law will reflect compromises, conditions, and political realities specific to that state. State regulatory boards must develop their own regulations to supplement licensure laws once they are enacted. These regulations have a great deal of influence on the practice of counseling, and counselors are urged to be actively involved in their development. The 15 lessons presented here have been learned through experiences throughout the nation as ACA has worked with counselors to influence legislation. It is hoped that these points will be helpful as counselors continue to advance the profession and provide for public protection through further activity using the 1994 model as a guide.

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### Additional Information

- American Association of State Counseling Boards, 14 Ruby Field Court, Baltimore, MD 21209. Phone: 410/486-8127.
- American Counseling Association (ACA) and divisions, 5999 Stevenson Avenue, Alexandria, VA 22304. Phone: 703/823-9800.
- Commission for Rehabilitation Counselor Certification (CRCC), 1835 Rohlwing Road, No. E, Rolling Meadows, IL 60008. Phone: 708/394-2104.
- Council for Accreditation of Counseling and Related Educational Programs (same address as ACA). Phone: 703/823-9800, ext. 301.
- Council on Rehabilitation Education (same address as CRCC). Phone: 708/394-1785.
- National Board for Certified Counselors, 3-D Terrace Way, Greensboro, NC 27403. Phone: 910/547-0607.
- National Clearinghouse on Licensure, Enforcement and Regulation, c/o Council of State Governments, 3560 Iron Works Pike, P. O. Box 11910, Lexington, KY 40578-1910. Phone: 800/626-2250.
- National Rehabilitation Counselors Association, 8807 Sudley Road, Suite 102, Manassas, VA 22110-4719. Phone: 703/361-2077.

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