

TO: The Oregon House Health Care Committee
FR: Larry Conner MA LPC, COPACT Government Relations Chair
DA: January 26, 2017
RE: HB 2361



Chair Greenlick and Members of the Committee:

The Coalition of Professional Associations of Counselors and Therapists (COPACT) represents the Licensed Professional Counselors (LPCs) and Marriage and Family Therapists (LMFTs) whose professions are regulated by the Oregon Board of Licensed Professional Counselors and Therapists (OBLPCT).

COPACT supports OBLPCT's mission of public safety through the vetting and licensing of certain mental health professionals. Oregon's revised statutes task OBLPCT with establishing "procedures to review the complaints of clients of licensees of the board. Upon receipt of a complaint under ORS 675.715 to 675.835 against any licensed or unlicensed person, the board shall conduct an investigation as described under ORS 676.165." (ORS 675.785)

The phrase "licensed or unlicensed person" presents a conundrum for OBLPCT and its sister board, the Board of Psychological Examiners (OBPE). The jurisdiction of those boards is clear when the complaint is against a licensee, or provider who clearly should be licensed based on their education and advertised services. However, the ORS leaves significant ambiguity in the case of an unlicensed provider who is not practicing the diagnosis and treatment of mental or behavioral health and who does not possess the appropriate educational credentials for licensure, but may identify themselves as a "counselor" or "therapist." Most of these focus their skills on bodily energy systems, spirituality models, or therapeutic models not licensed in Oregon. Examples include Bioenergetic Counselors, Yoga Counselors, Hypnotherapists, and Art or Dance therapists.

• COPACT has been working on this issue for many years and has the following observations:

1. COPACT believes that alternative providers are a functional and important part of the mental healthcare community. They offer services to persons who believe they cannot benefit from mainstream mental health services provided by licensed mental health providers. Rather than forcing those clients to accept services they don't trust or want, licensed mental health providers should recognize their need for alternative services.
2. COPACT understands OBLPCT and OBPE receives legitimate complaints about a small number of unlicensed alternative providers who are taking advantage of their clients by claiming to be able to treat serious mental health diagnoses without any training or expertise to do so, or by abusing their clients sexually or financially. Because of the ambiguous statutes regarding jurisdiction, when OBLPCT or OBPE receives a complaint about an unlicensed alternative provider, the board staff often open an investigation and pursue the complaint to determine whether the practitioner should have been licensed by one of the boards. If the practitioner was not under the jurisdiction of one of the Boards, there is almost no recourse beyond a civil lawsuit by the client against the practitioner. The boards feel they cannot carry out their public safety duties in those cases.
3. COPACT wants to work with the state to establish clear boundaries for practitioners, both licensed and lawfully unlicensed, and provide accessible remedies for clients. However,

COPACT does not believe the solution is for OBLPCT to offer oversight to alternative providers. Because those providers can lawfully practice their profession without a license from a state board, and therefore do not pay licensing fees to OBLPCT, OPBE or any other board, it would be a disservice both to licensees and their patients to allow the board to use a budget made up of fees from licensees to investigate non-licensees.

4. COPACT does not believe that removing the education exemption will fully address the problem. OBLPCT enforces a code of ethics that applies only to Licensed Professional Counselors and Licensed Marriage and Family Therapists. It would be a legal conundrum in a court if OBLPCT disciplined an alternative provider for violating a code of ethics that he/she had never agreed to follow. If OBLPCT receives a complaint about an alternative provider who has been sexually active with a client, or who has taken money from a client and not provided any services in return, the only thing OBLPCT would be able to do is to issue that provider a cease and desist order and in some cases, a fine for practicing without a license. Alternative providers who are working in bad faith to take advantage of their clients will merely choose to change the name of their businesses and continue on as before. Changing the LPC/LMFT statute as proposed by OBLPCT and OBPE will not protect the public in the ways intended. It will, however put many hundreds of alternative providers, who are working with integrity on behalf of their clients, in a place of fear of losing their ability to operate their businesses.

5. COPACT believes that explicitly extending jurisdiction of OBLPCT and/or OBPE to non-licensed alternative providers would in fact be a very large expansion of government regulation. The boards have proposed removing language that limits their jurisdiction to counselors and therapists who possess certain education credentials. Their proposals would lead to brand new regulations for many hundreds if not thousands of practitioners, and likely serious disruption to their livelihoods.

6. Unlike the term “physician,” “nurse,” or “psychologist,” which convey universal meaning and indicate a level of education and licensing, the terms “counselor” and “therapist” have much broader and diverse meanings in our common vernacular. In the case of “counselors” and “therapists” who are not practicing mental health, the state has made a policy decision that these practitioners may advertise and provide certain services without any license, which means the state has decided these professions do not need to be regulated outside basic consumer protection and criminal codes. Allowing OBLPCT the latitude to investigate these practitioners without also requiring them to be licensed is a major departure from current policy.

COPACT believes the solution to the question of unlicensed alternative providers is for the state to provide access to a well-defined remedial path for clients harmed by practitioners who are exempt from licensing. COPACT offers two proposals, but endorses neither and would be open to working with the state on other solutions:

1. The first, and potentially most challenging, option is for the state to require regulation of these alternative “counselors” and “therapists,” by creating a board of alternative providers with an ethical code that applies only to them. For example, one subset of alternative providers, the music therapists, asked the legislature in 2015 to set up a licensing board under the Office of Health Licensing. The State of Vermont has taken this approach.

2. Alternatively, the legislature could amend statutes regarding consumer protection to explicitly cover alternative providers sexually or financially abusing clients and/or offering misleading or harmful care to someone with a serious mental illness. When a licensing board receives a complaint and determines the provider in question is not within their jurisdiction, the board would have somewhere to refer the aggrieved client, where they can seek remediation within established consumer protection or criminal complaint pathways. The state of Montana has taken this approach.

COPACT is fully committed to finding a workable solution to the problems cited by OBLPCT and OBPE. We believe working together with the two oversight boards, alternative providers, and other mental health provider professional organizations, we can arrive at a solution that will work to protect the public from destructive alternative providers without creating a situation where ethical alternative providers fear the loss of their livelihoods, and Oregonians who need alternative forms of care can receive what they need.