



TO: Higher Education and Professional Practice Committee

FROM: Johanna Duncan-Poitier

SUBJECT: Practice Alerts: the latest developments in the Office of the Professions to prevent professional misconduct and protect the public

DATE: January 30, 2007

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

How do practice alerts, the latest developments in the Office of the Professions to *prevent* professional misconduct, further Regents goal three, "the public will be served by qualified, ethical professionals who remain current with best practice in their fields and reflect the diversity of New York State?"

Reason(s) for Consideration

For information

Proposed Handling

For discussion at the February 2007 meeting of the Higher Education and Professional Practice Committee.

Procedural History

N/A

Background Information

Through an innovative approach to professional regulation, the Board of Regents and the State Education Department are committed to ensuring that the public is "served by qualified and ethical professionals who remain current with best practice in their fields." Ensuring sound professional practice requires a commitment to high quality professional services, swift justice for professionals facing disciplinary charges, and easily accessible information for consumers and professionals. The formula for a state-of-the-art system of professional regulation is based on the equation,

**"Prevention + Prosecution=
Public Protection"**

Education and information are critical to the prevention of professional misconduct and the quick identification of unlicensed professional practice. Career-long education and training for professionals help to *prevent* professional misconduct before it occurs and contributes to safe professional practice. Safe professional practice reduces complaints, harm to the public and the need for costly and time-consuming misconduct investigations and prosecutions.

Under the direction of the Board of Regents, the Office of the Professions and the State Boards for the Professions have developed practice alerts and guidelines to provide licensees with important information that impacts their professions and suggest good practices relevant to common issues faced by practitioners in the field. While the advisories cannot be used as the basis for a charge of professional misconduct, they encourage professionals to engage in a high standard of practice by alerting them to possible pitfalls and suggesting ways to avoid them while providing appropriate, competent services. The guidelines, which are benchmarked by other states, are one example of our work to help professionals practice soundly and *prevent* situations that could lead to charges of misconduct. A recent edition of the New York State Dental Association (NYSDA) newsletter praised the Department's new 2006 guidelines for good practice for licensed dental professionals. According to the newsletter, the guidelines "provide a valuable service in that they reinforce the critical importance of communication and documentation in safeguarding your practice and your license."

Practice alerts are developed based upon a careful analysis of disciplinary data, including complaints and charges. A study was undertaken using disciplinary data in the profession of psychology, for example, to assess the impact of practice alerts on licensees and to identify areas where licensees might benefit from additional alerts. The study found that there were comparatively fewer complaints in areas in which practice alerts had been written and made available to licensees. While various factors, including numerous outreach and education activities conducted by the Department and the State Boards influence this trend, the findings of this study strongly suggest that practice alerts have an important role in preventing professional misconduct.

***An Example of a Newly Developed Practice Alert:
Professional Standards of Care in Mental Health Practice***

We are pleased to share with you the most recent practice alert in the series of alerts to provide guidance to licensed professionals. This practice alert was developed over two years by the State Boards for Psychology, Social Work, and Mental Health Practitioners, in collaboration with staff in the Office of the Professions and professional associations. The attached practice alert has received recognition and praise within this country and globally from as far away as New Zealand.

The issue of "evidence-based" or "empirically-based" practice has recently received a great deal of attention in the mental health literature, and policy statements from a variety of professional and governmental organizations have been formulated on this subject. This issue has stimulated a great deal of discussion and debate about how to define "best treatment practices" within the health and mental health professions. The Board studied a large number of documents and the manuals, which have been developed with the support of the federal government, related to evidence-based practice, as well as reviewing other literature and opinions related to best treatment practices.

professions with the aim of protecting the public and ensuring the maintenance of professional standards of care. Since practitioners, not procedures, are licensed, it is the professional who must ultimately exercise professional judgment based upon the person's knowledge, training, and experience in determining how to intervene with those individuals who seek assistance. A manual, data base, or research study cannot substitute for the practitioner's contemporaneous assessment of the client's needs, abilities, and functional status. Thus, best treatment practice can be viewed as an integration of the current treatment literature with the professional's judgment and experience regarding the unique factors that will impact a particular client's course of care over time. Research should inform practice, but it cannot replace professional judgment given our current state of knowledge.

The Practice Alert is based on a "standard of reasonableness" as the basis for a professional standard of care in health and mental health practice. It is not intended to judge, accept, or reject any theory or form of practice, but to advise that licensed professionals who engage in the health and mental health practices of diagnosis, assessment, treatment, prevention, and rehabilitation should be familiar with current literature as well as the unique features of specific situations when exercising professional judgment to ensure competent practice and avoid harm.

Recommendation

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N/A

Timetable for Implementation

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N/A

PRACTICE ALERT

PROFESSIONAL STANDARDS OF CARE IN MENTAL HEALTH PRACTICE

Advisory Notice: The following advisory constitutes a general discussion of the issues that may arise when a licensee provides professional services. The discussion is intended to alert practitioners to questions and concerns that they may want to consider with their legal counsel, if necessary, and is not to be construed as a directive or other requirement to take any particular action. The Advisory cannot be used as the basis for a charge of professional misconduct. The statements are generally based upon statutory and regulatory provisions relating to the practice of psychology, social work, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis, but are not legal interpretations of any of these provisions. The citations to the provisions are included to add clarity to the discussion.

INTRODUCTION

The issue of “evidence-based” or “empirically-based” practice has recently received a great deal of attention in the mental health literature and policy statements from a variety of professional and governmental organizations have been formulated on this subject. This issue has stimulated a great deal of discussion and debate about how to define “best treatment practices” within the health and mental health professions.

The Boards for Psychology, Mental Health Practitioners, and Social Work have chosen to prepare this Practice Alert on this topic to elucidate some of the key concepts as they relate to licensed practice in New York.

The Office of the Professions licenses and regulates health and mental health professions with the aim of protecting the public and ensuring the maintenance of professional standards of care. Practitioners, not procedures, are licensed. As such, it is the professional who must ultimately exercise professional judgment based upon the person’s knowledge, training, and experience in determining how to intervene with those individuals who seek assistance. A manual, data base, or research study cannot substitute for the practitioner’s contemporaneous assessment of the client’s needs, abilities, and functional status. Thus, best treatment practice can be viewed as an integration of the current treatment literature with the professional’s judgment and experience regarding the unique factors that will impact a particular client’s course of care over time. Research should inform practice, but it cannot replace professional judgment given our current state of knowledge.

Professional Standards of Care in Mental Health Practice

This Practice Alert is a general discussion of the practice issues a licensee may be faced with in those situations in which concerns about *best treatment practice*, including *evidence based practice*, vis-à-vis their professional practice are raised. Practitioners are advised that this discussion serves as a guideline not as a directive or mandate to pursue

a course of action. This Alert is based on a review of professional misconduct complaints lodged against psychologists in New York State, the majority of which warranted no formal disciplinary action. However, information about some of the licensees' actions and/or inactions regarding ethical and legal standards of practice may be useful to others to avoid courses of action which may lead to complaints regarding professional standards of care.

Licensed health or mental health professionals in the State of New York are individuals who have met the regulatory requirements for licensure and provide services within their scopes of practice. The regulations governing the practice of these professions in New York set a standard of care which requires competent and adequate provision of care to the public (see Part 29 of the Rules of the Board of Regents on Unprofessional Practice and Section 6509 of Title VIII of the Education Law on Professional Misconduct). Compliance with the Rules of the New York State Board of Regents and State law is designed to promote good practice.

Practitioners should be aware of the efforts within and outside of the profession to make practitioners accountable to their clients/patients by using treatments/interventions discussed in the research literature as being effective. The concern is not new; research has been ongoing for at least 50 years.

The scientific base for the practice of health and mental health services is undisputed. Indeed those licensed to practice in New York State have met the regulatory requirements to engage in practice, which include coursework in theoretical models, research methodologies and practice models for assessment, consultation, diagnosis, and intervention/treatment, as well as having completed various supervised training requirements in the provision of these services.

There is no universally agreed upon consensus on what constitutes "evidence" in evidence based practice (e.g. case based vs. experimental studies; evidence from efficacy trials as opposed to clinical experience and expertise; process therapies which emphasize practitioner competency/skills/qualities, therapeutic alliance vs. specific techniques). All types of evidence may be important in making professional decisions.

This includes but is not limited to the following recommendations:

- As an informed practitioner, exercise professional judgment when providing professional services.
- Become familiar with the body of rules governing the practice of the professions in New York State.
- Be sensitive to professional ethics.
- Stay abreast of current issues in the health and mental health literature, especially the literature in your area(s) of expertise.
- Critically evaluate the context, including source, application, and results, of publicized findings regarding issues.
- Be aware of the issues concerning best practice, empirically supported treatments, and evidence-based practice by taking courses, attending conferences/workshops, etc. to maintain continuing professional competence.
- Be aware of the usual and customary practice in an area.
- Know the boundaries of and utility of interventions chosen.
- Know the limitations/restrictions of patient characteristics as benefiting from empirically supported treatments to determine whether the recommended treatment is applicable.
- Make efforts to insure culturally competent practices which reflect knowledge of the impact of diversity on human behavior.
- Document your professional decisions about appropriate client care needs in your records, demonstrating your awareness of ethical and legal codes of professional

practice.

- When you select treatments, be appropriately trained to implement these treatments competently.
- Regardless of the policies, practices or contracts with third party payers or other outside external agencies and entities, know that treatment decisions are ultimately the responsibility of the practitioner.