Potential Expansion of the Health Practitioners' Monitoring Program

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Study Background

- SB 634 (Senator Vogel) and HB 1289 (Delegate Jones) introduced legislation to amend § 54.1-2515 of the Code of Virginia relating to the type of impairments that deem a health practitioner as qualified for voluntary participation in the Health Practitioners' Monitoring Program.
  - Both bills were continued to 2013 and referred to JCHC for study.
  - Study request for 2012 was agreed to by JCHC members.

Health Practitioners' Monitoring Program

- Program was established by Virginia General Assembly in 1997 as the Health Practitioners' Intervention Program (HPIP).
  - In 2009, the name was changed to the Health Practitioners' Monitoring Program (HPMP) to better reflect the primary role of the program.
- Operated by Virginia Commonwealth University, Department of Psychiatry, under a Memorandum of Agreement with the Department of Health Professions (DHP).
  - Oversight and coordination consists of:
    - A Monitoring Program Committee that meets 6 times a year, or as needed, to review program operation, policies and specific cases.
    - A DHP liaison and program manager.
- Annual Budget: $1.8 million
  - Program is funded by professional licensure fees
- September 2012 Enrollment: 579 practitioners

Source: Penelope P. Ziegler, M.D. Medical Director, Health Practitioners' Monitoring Program

Health Practitioners' Monitoring Program

- Provides confidential services for the health practitioner who may be impaired by any physical or mental disability, or who suffers from chemical dependency.
  - Available services include intake, referrals for assessment and/or treatment, monitoring, and alcohol and drug toxicology screens.
- Practitioners who meet certain criteria may receive approval for a stay of disciplinary action.
  - This allows the practitioner to focus on recovery efforts.
  - Disciplinary action may be initiated by the appropriate health regulatory board if the impairment is determined to constitute a danger to clients/patients.
- Advantages
  - Encourages early identification and referral to appropriate treatment.
  - Preserves valuable professionals' ability to return to practice following treatment with ongoing monitoring.
  - Improves practitioner's prognosis for recovery.

Source: Penelope P. Ziegler, M.D. Medical Director, Health Practitioners' Monitoring Program

Health Practitioners' Monitoring Program

Components of Monitoring:

- Participation Contract
  - Agrees to enter HPMP program.
  - Agrees to abstain from alcohol and other drugs.
  - Agrees not to practice until cleared to do so by HPMP.
  - Agrees to provide all relevant medical records and releases.
- Recovery Monitoring Contract
  - Agrees to continued abstinence if indicated.
  - Treatment plan is specified in detail.
  - Drug screening program is specified.
  - Agrees to be responsible to:
    - Follow rules of HPMP
    - Provide timely reports
    - Provide drug screens when selected
    - Not to return to work until approved to do so by HPMP.

Source: Penelope P. Ziegler, M.D. Medical Director, Health Practitioners' Monitoring Program

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Eligibility Requirements for the HPMP Program

- Have an active Virginia license or application and an impairing or potentially impairing condition.
  - Impairment currently is defined in § 54.1-2515 of the Code of Virginia as a physical or mental disability, including but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.
  - "Impairment shall not include kleptomania, pyromania, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavioral disorders*, homosexuality and bisexuality."**

* Emphasis added

**Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions. Last revised July 1, 2009

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Intent of SB 634 and HB 1289

- SB 634 would amend the definition of impairment in § 54.1-2515 of the Code of Virginia as follows:
  - "Impairment" means a physical ~~or~~, mental, *psychological, or behavioral* disability, including, but not limited to substance abuse *or the mismanagement of countertransference*, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.
- HB 1289 would amend the definition of impairment in § 54.1-2515 of the Code of Virginia as follows:
  - "Impairment" means a physical, ~~or~~ mental, *psychological or behavioral* disability, including, but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.
  - Add: **That for the purposes of entry by a health care practitioner into the program created pursuant to § 54.1-2516 of the Code of Virginia, the Director of the Department of Health Professions shall deem the term "impairment" to include mismanagement of countertransference involving sexual misconduct*.**

* Emphasis added

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Mismanagement of Countertransference Involving Sexual Misconduct (MCTSM)

- Transference:
  - The phenomenon whereby we unconsciously transfer feelings and attitudes from a person or situation in the past on to a person or situation in the present. The process is at least partly inappropriate to the present.
- Countertransference:
  - The response that is elicited in the recipient (therapist) by the other's (patient's) unconscious transference communications. Countertransference response includes both feelings and associated thoughts.
- Mismanagement of Countertransference:
  - When a therapist responds to the patient's feelings by committing sexual misconduct on the patient.

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Current Board of Health Professions Sanctioning for Disciplinary Violations

Boards are authorized to take the following actions:

- Close a case after a finding of no violation.
- Offer a Confidential Consent Agreement (CCA), which is not regarded as a disciplinary action, for minor infractions.
- Offer a Consent Order in which the licensee consents to the Board's disciplinary sanction.
- Conduct an informal fact-finding conference and/or formal hearing.
- Disciplinary actions which may be imposed:
  - Reprimand or censure.
  - Monetary penalty.
  - Require supervision, therapy, and/or education (coursework, workshops, training in ethics regarding transference and boundary violations).
  - Probation of one year, two years, or indefinite.
  - Limit a licensee's practice privileges.
  - Suspend or revoke license/certificate.

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Number of Practitioners Regulated by the Behavioral Science Boards, 2011

Behavioral Science Board	Number of Practitioners
Counseling	6,692
Psychology	3,580
Social Work	5,930
Total	**16,202**

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Estimated Number of Sexual Misconduct Cases Per Year for Behavioral Science Boards, 2002-2011

Behavioral Science Board	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	**Total**
Social Work	0	1	3	3	2	1	1	2	0	0	13
Counseling	0	0	1	1	2	3	2	0	1	4	14
Psychology	1	0	2	0	0	1	1	0	2	1	8
Total	1	1	6	4	4	5	4	2	3	5	35

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Proponents' Argument for Including MCTSM as an Impairment for the HPMP

The primary supporter of SB 634/HB 1289 states that:

"Practitioners who violate sexual boundaries have impaired judgment that for the purposes of the HPMP rises to the level of a "mental disability" in that they have severe mismanagement of countertransference, distorted thinking, rationalizations and cognitive distortions that lead them to harm clients."*

* Joseph Lynch, LCSW, CSOTP, "A Review of Factors to Consider in Expanding HPMP" July, 2011.

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Proponents' Argument for Including MCTSM as an Impairment for the HPMP

The current system does not adequately address the problem of MCTSM.

- When the therapist's license is revoked:
  - He/she can continue to practice as an unlicensed behavioral consultant, life coach or in an exempt setting without Board monitoring.
  - Five years after the therapist's license expires, the disciplinary case can no longer be found in the DHP's public database of disciplinary cases, which is a public safety issue.
  - If the therapist continues to practice in an exempt setting (i.e. as an employee of a CSB) and undergoes therapy, receives additional training on boundary violations, is supervised, and performs without incident; it is likely that the license will be reinstated if he/she reapplies.
- When the therapist's license is not revoked:
  - He/she may be required to undergo therapy, but the therapy is not adequately monitored by a Board.
    - In rural areas, it can be difficult to find a practitioner trained in treating practitioners who have engaged in MCTSM.

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Proponents' Argument for Including MCTSM as an Impairment for the HPMP

A change in the law would allow:

- Eligible practitioners to be monitored within the HPMP.
- A comprehensive assessment using one of 4 models designed for use with therapist-perpetrators of MCTSM.
- Screening to determine which practitioners should be allowed to continue in the profession and which are unsafe and should have their license revoked.
- Establishment of an educational service to instruct practitioners on boundaries, cognitive distortions and ethics.
- Possible use of required event-specific polygraph testing to ensure compliance with MPHP contract.
- Establishment of a systematic protocol for dealing with all behavioral science practitioners who have committed MCTSM.

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Proponents' Argument for Including MCTSM as an Impairment for the HPMP

Eligibility for the HPMP would be determined by:

- A systematic assessment of the practitioner using a therapist perpetrator typology.* Only therapists determined to be in categories 1 or 2 would be accepted into the HPMP.
  1. **Uninformed/naïve**
  2. **Healthy or mildly neurotic**
  3. Severely neurotic and/or socially isolated
  4. Impulsive
  5. Sociopathic or Narcissistic Character Disorders
  6. Psychotic or Borderline Personalities
- In addition, a practitioner must admit guilt, express remorse and indicate a strong desire to change.

*Risk model designed by Dr. Gary Schoener

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Opponents' Argument Against the Inclusion of MCTSM as an Impairment for the HPMP

Problematic Conceptualization of Issue:

- MCT is a theoretical construct referring to thoughts and feelings inferred from behaviors that are subject to multiple interpretations.
  - Not all sexual misconduct is the result of MCT. It can be intentional predatory behavior.
- Unlike substance abuse, MCT cannot be objectively measured, lacks a consistent definition and accurate assessment measures, and is not a disorder listed in the DSM IV*.
- Since 2009, the Boards no longer make findings of MCT in disciplinary cases because it is not a provable violation.

* Diagnostic and Statistical Manual of Mental Disorders, version IV.

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Opponents' Argument Against the Inclusion of MCTSM as an Impairment for the HPMP

- Sexual misconduct is not an impairment. It is a failure of professional judgment resulting from a lack of training, knowledge or character. It is an egregious violation of professional ethical code and Board regulations.
  - If SB 634 is enacted, Virginia would be the only state to legally define MCTSM as an impairment.
    - Could provide a defense for sexual misconduct, resulting in therapist-perpetrators being held less accountable for sexual offenses.

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Opponents' Argument Against the Inclusion of MCTSM as an Impairment for the HPMP

Concerns of HPMP

- Funding would be needed to expand the current program.
  - There is no viable mechanism for this type of monitoring within the current program structure.
    - VCU case managers are not trained to monitor management of boundary issues, therefore, expansion to include MCTSM would require either training existing staff or hiring new case managers.
  - It is estimated that only 3-5 practitioners per year would be eligible for the program (given the historically small number of sexual misconduct cases the Behavioral Science Boards have identified). Consequently, expansion would not be cost effective.

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Opponents' Argument Against the Inclusion of MCTSM as an Impairment for the HPMP

Placing Therapists with MCTSM in the HPMP is not a Significant Deviation from Current Board Sanctioning Practices:

- The Behavioral Science Boards' current system of disciplinary action includes:
  - An evaluation to determine whether the practitioner should be allowed to continue in the profession or is unsafe and should have his/her license revoked.
  - The use of license suspension (until practitioner is considered safe to practice) combined with therapy.
  - A monitoring system which includes required quarterly reports from the practitioner, his/her therapist and, if allowed to practice while on probation, supervisor.
  - All treatment therapists must be approved by the Board and maintain consistent communication with the Board.
  - If applicable, the practitioner can be required to receive additional training/education on boundary maintenance, ethics, etc.

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Current DHP Actions

- DHP's practitioner database only includes information on practitioners with a current (unexpired) license or a license that expired in the last 5 years.
  - Prevents the public from more easily determining whether a therapist practicing in an exempt setting has been sanctioned (including revocation, suspension or surrendering of their license) by the Board in the past.
  - However, information on a practitioner for all recorded years is available via phone call to DHP.
- DHP is currently considering a change in policy to retain records in the practitioner database involving the revocation, suspension or surrendering of a license for greater than 5 years.

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Policy Options

Option 1: Provide a written report to the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions without taking further action.

Option 2: Provide a written report to the Senate Committee on Education and Health with a letter indicating that the Joint Commission voted in support of SB 634.

Option 3: Provide a written report to the House Committee on Health, Welfare and Institutions with a letter indicating that the Joint Commission voted in support of HB 1289.

Option 4: By letter of the JCHC Chair, encourage the Department of Health Professions to change agency policy to allow records related to revocation, suspension or surrendering a license to be retained for a significantly longer period of time.

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Public Comments

- Written public comments on the proposed options may be submitted to JCHC by close of business on October 26, 2012. Comments may be submitted via:
  - E-mail: sreid@jchc.virginia.gov
  - Facsimile: 804-786-5538 or
  - Mail to: Joint Commission on Health Care
    P.O. Box 1322
    Richmond, Virginia 23218
- Comments will be summarized and included in the Decision Matrix which will be discussed during the JCHC meeting on November 7.

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Visit the Joint Commission on Health Care website:
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