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STATE REGULATION OF SOCIAL WORK

KENNETH C. KERN*

INTRODUCTION

For the past few years, proposals to license social workers have been introduced into the General Assembly of the State of Indiana¹ as well as the legislatures of approximately thirty-three other states. At the present time, social workers are either licensed or certified in eighteen states and regulatory legislation is pending in sixteen state legislatures.² This article will examine the issues involved in the regulation of social work and predict the impact of the adoption of state regulatory procedures on the social work profession.

DIFFICULTIES WITH STATE REGULATION OF SOCIAL WORKERS

Varying Educational Backgrounds and Work Situations

The regulation of social work involves peculiar problems which have arisen as a result of the historical development of the profession and the difficulty of defining its scope. To begin with, a substantial schism has developed within the social work community. On the one hand, a person can obtain a social work title with relative ease. Yet, responsible practitioners in the field are moving towards increased educational and practical requirements. The training level of persons who consider themselves social workers ranges: on one extreme, there are the non-college trained case workers who take applications for public assistance; on the other, there are clinical social workers with a master's degree and two years' experience who administer psychotherapy to emotionally disturbed patients. In between, individuals with bachelor's degrees function in varying social work positions.

This diversity in education and work situations has hampered efforts to regulate the profession. Even though eighteen states have acts regulating social work, at least ten of these only certify or register social workers and do not require them to fulfill certain requirements in order to practice as licensing acts provide.³

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1. These bills were: S.B. 384 and H.B. 1261 introduced in the 1976 session, H.B. 1271 in the 1975 session and H.B. 1221 in the 1974 session.

2. See Table I *infra*.

3. See Table I *infra*.

Furthermore, the licensing requirements contain so many exceptions that they cannot truly be classified as licensing statutes.⁴

This disparity in the profession divides legislatures when licensing bills are presented. Indeed, the legislators are quick to perceive the problem that social workers have been unable to resolve. Representatives of welfare case workers, union counselors, CAAP workers,⁵ and others understandably question legislation or openly attempt to defeat it because it would force their constituents to be licensed or else lose their jobs. Also, personnel administrators who hire for social work positions on a sub-standard wage scale are fearful that licensing would increase the cost of operating their programs. On the other hand, those social workers who are concerned about the quality of service and the abuses in the social work field press for passage of strict licensing measures. Some of the statutes which have been enacted in the eighteen states noted in Table I reveal the efforts of the legislators to compromise between these positions.

The dialogue during the Senate committee consideration of a social work licensing bill in the 1976 session of the General Assembly of the State of Indiana is illustrative of this diversity of views. At a hearing regarding the bill, various social workers testified to the need for the regulation of social work, alleging abuses which affected the welfare of recipients of social work services. Committee discussion of the establishment of another state agency evoked some of the general opposition which exists whenever a new regulatory process is proposed. In addition, some concern was expressed by the representatives of the state, county, and municipal employees union regarding the grandfather clause,⁶ although that group did not actually oppose the legislation. In addition, the Director of the State Department of Public Welfare opposed the legislation, probably out of concern for the increased cost of operating public welfare departments which might result from licensing. As a result, he suggested that state and county welfare workers be exempt from the requirements of such legislation. This proposal evoked a response from Senator Robert L. Schaffer of Shelbyville, Indiana. The Senator's concern about abuses of welfare recipients by case workers led him to argue that

4. See discussion *infra* at note 12.

5. "CAAP" refers to Community Action Against Poverty, which is one of the remnants of the OEO program.

6. A "grandfather clause" provides that persons already practicing social work may continue to do so even though they cannot meet the requirements of the newly passed legislation.

any bill exempting public welfare workers would exclude so much of the problem which the legislation sought to remedy that passage would be of doubtful value. Still another view was presented at a hearing of the House Human Affairs Committee in the 1976 General Assembly. This committee indicated that while it was not opposed to the regulation of social work, proponents of the legislation needed to delineate those persons such as union counselors, volunteer church workers, and volunteers working in state prisons whom they wished to exclude from the licensing requirements. Clearly, however, such exclusions might undermine the very purpose of the legislation.

Three types of regulatory bills have been utilized to resolve the conflicts described. The first type is a multi-level licensing act which classifies persons according to their professional training and competence.⁷ In general, such legislation requires a minimum of a bachelor's degree for licensure, but higher levels have greater educational and practice requirements. For example, to achieve the highest level, one must hold a Master of Social Work (M.S.W.) degree and have two years' experience. However, some of the legislation also provides for a licensing level for paraprofessionals and licenses persons with less than a bachelor's degree. A second type of regulatory act licenses only private practitioners, exempting everyone else from its provisions.⁸ A third method of

7. See, e.g., MICH. STAT. ANN. § 18.365(1) *et seq.* (Supp. 1975).

8. Such acts including broad exemptions are essentially licensing rather than registration or certification statutes which, unlike licensing bills, do not exclude anyone from practicing social work. This has the effect of exempting some social work-related areas from registration requirements.

An example of one of the broad exclusionary clauses is contained in the Louisiana law, which reads as follows:

Exclusions. No provision of this chapter shall be construed to prohibit: (1) the activities and services of a student pursuing a course of study in an approved social work educational program if these activities and services constitute a part of his supervised course of study; (2) subsidiary workers in the agencies and offices of persons certified to practice board certified social work in this state from assisting in the rendering of services to clients under the personal and responsible supervision and direction of such persons; (3) activities of a psychosocial nature or the use of the official title of the position for which a person is employed by federal, state, parish, municipal, or other political subdivisions, or any educational institution chartered by the state or a private, non-profit agency, hospital or accredited clinic provided that such persons are performing these activities as part of the duties for which they are employed or solely within the confines or under the jurisdiction of the organization by which they are employed, provided further that

resolving the problems presented by social work licensing is to certify or register social workers rather than to license them.⁹ The effect of a certification or registration statute is to register social workers who wish state recognition of their position; but such a statute does not prohibit them from practicing.¹⁰

Defining Social Work

Another obstacle to licensing is the drafting problem of defining social work. In its model bill, the National Association of Social Workers (NASW), defines social work practice as follows:

b. For the purposes of this act, social work practice is defined as service and action to affect changes in human behavior, a person's or persons' emotional responses, and the social conditions of individuals, families, groups, organizations, and communities, which are influenced by the interaction of social, cultural, political, and economic systems. The practice of social work is guided by special knowledge of social resources, social systems, human ca-

they shall not offer to render social work services, as defined in R.S. 37:2703 (2) and (3), to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization by which they are employed; (4) qualified members of other professional groups from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions, provided that they shall not hold themselves out to the public by any title or description of services incorporating the term board certified social worker, or that they shall not state or imply that they are licensed to practice board certified social work. These qualified members of other professional groups shall include, but are not limited to, the following: (a) a physician and surgeon licensed to practice medicine in the State of Louisiana; (b) a licensed psychologist; (c) a priest, rabbi, or minister of the gospel of any religious denomination.

LA. REV. STAT. ANN. § 37:2718 (1974).

9. An example of certification or registration legislation is the Michigan statute which reads as follows:

After April, 1974, an individual shall not represent himself as a certified social worker, social worker, or social work technician unless he is certified and registered under this act.

MICH. STAT. ANN. § 18.365(1) (Supp. 1975).

10. An example of this type of device is found in the California statute regulating social work. It provides as follows:

Social Work without use of title. This chapter does not prevent any person from engaging in social work. It applies only to persons seeking to use the title of registered social worker.

CAL. BUS. & PROF. CODE § 9021 (1975).

pabilities, and the part conscious and unconscious motivation play in determining behavior. The disciplined application of social work values, principles and methods in a variety of ways includes but is not restricted to the following: (1) counseling and the use of applied psychotherapy with individuals, families, and groups and other measures to help people modify behavior or personal and family adjustment, (2) providing general assistance, information, and referral services and other supportive services, (3) explaining and interpreting the psychosocial aspects of a situation to individuals, families, or groups, (4) helping organizations and communities analyze social problems and human needs and provide human services, (5) helping organizations and communities organize for general neighborhood improvement or community development, (6) improving social conditions through the application of social planning and social policy formulations, (7) meeting basic human needs, (8) assisting in problem-solving activities, (9) resolving or managing conflict, and/or (10) bringing about changes in the system.

The consequence of using the NASW bill to define who may be licensed is that people could not engage in activities such as those performed by church volunteers, union counselors, and CAAP workers unless they were qualified as social workers.¹¹ On the other hand, if such a comprehensive definition is not utilized, the practice of social work cannot be regulated to eradicate the abuses which require that some legislation be enacted.

One solution to the difficulty in defining social work has been to incorporate the NASW definition in a licensing statute but then dilute the legislation with exceptions. An example of such a compromise used to regulate social work is the Utah statute:

License required—Social Work defined—Exempt professions. (1) No person may engage in the practice of Social Work unless he is licensed under this act or is under the supervision of a person who is licensed under this act.¹²

The inclusion of broad exemptions in the Utah statute permits people to avoid its requirements. This legislation contains the

11. Use of the quoted NASW definition of social work practice was suggested in the House Committee meeting during the 1976 session of the Indiana General Assembly.

12. UTAH CODE ANN. § 58-35-3 (1974).

customary exemptions for other professionals including physicians, surgeons, psychologists, and attorneys. It also exempts marriage counselors, family counselors, and child counselors.¹³ These exclusions for non-licensed professions allow a person to practice social work by merely calling himself a counselor and not referring to himself as a social worker. Other so-called licensing statutes employ similar devices.

Some licensing statutes appear on their face to include no exceptions; but a careful examination of the activities prohibited by such statutes reveals that they do in fact permit certain persons to avoid the licensing requirements. For example, the Maryland licensing act states,

A person may not intentionally: (1) Practice, or offer to practice, as a social worker in this State without being licensed in accordance with this subtitle¹⁴

It is clear from the terminology of the Maryland statute that one could practice social work in that state so long as he did not refer to himself as a social worker. Theoretically, a licensing statute should prohibit the practice of a profession without a license. However, it is apparent that those states attempting to license social workers have failed since they exempt most people doing social work from having to obtain a license. Therefore, these statutes are more similar to certification or registration acts which merely provide state recognition of social work status.

Difficulties in Analysis of Current Legislation

Finally, new proposals for licensing social workers are complicated by difficulties in analyzing the effects of current legislation on social workers. Two reasons exist for these difficulties: first, there is little data available for use in such a study; second, there are no true licensing statutes. The territory of Puerto Rico is the only area which has a social work regulatory act of long standing; but the National Association of Social Workers indicates that it has no data from this territory. Even if such data were available, it would be difficult to determine what the impact

13.

(3) Nothing in this act shall be construed to prevent qualified physicians, surgeons, psychologists, attorneys, marriage counselors, family counselors, child counselors, or members of the clergy from doing work within the standards and ethics of their respective professions and callings provided they do not hold themselves out to the public by any title or description of services as being engaged in the practice of social work.

Id.

14. MD. ANN. CODE art. 43, § 870 (Supp. 1975).

of regulation has been, since the Puerto Rican statute is not a true licensing statute. Furthermore, it is questionable whether the effects of this legislation could be compared with effects of legislation in other states because of the differences in the socio-economic structure of Puerto Rico and, consequently, in the activity of social workers there.

Moreover, the Association has no data from other states, since most of the state laws were enacted so recently that it is impossible to determine whether they have had an effect.¹⁵ Workers who would not have been licensed under the new laws were allowed to continue practicing under grandfather provisions so there would be no dramatic change in the profession. Thus, it will be impossible to determine the effect of licensing upon the profession for several years.

However, there is some indication that registration acts have been ineffective. The NASW has reported that the registration section of the California law has been so ineffective that the state's legislature is considering repealing this provision. Indeed, the Association has indicated that many social workers who registered initially in California have gained so little benefit from the registration program that they have not renewed their registration. These problems, coupled with the fact that the regulatory legislation enacted in the eighteen states thus far is not true licensing, will continue to make the situation difficult to analyze until legislation licensing social workers is enacted.

NEED FOR REGULATION

A statistical examination seems to indicate that there is a need for regulation of social workers. Reports from the Indiana Department of Mental Health indicate that more therapy hours are administered by social workers than psychiatrists and psychologists combined in the state's mental health clinics.¹⁶ Furthermore, NASW has indicated that the pattern in Indiana is representative of that found throughout the nation.¹⁷

15. See Table I *infra*.

16. This is substantiated by the computer records maintained by the Indiana Department of Mental Health.

17. Indeed, data collected by the United States Department of Labor indicate that while there were 185,000 social workers employed in 1972, there will be 275,000 by 1985, revealing an annual growth rate of 17,500 per year. Occupational Manpower and Training Needs, revised 1974, Bulletin #1824, U.S. Department of Labor, Bureau of Labor Statistics.

The fact that there are licensing procedures in other professions lends support to the position of those who urge passage of legislation regulating social workers. In the fields of medicine and law, the diploma mills have been eliminated as the standards for admission to practice have generally increased. Whether doctors and lawyers perform better now than they did prior to licensing is a matter of conjecture, but no one can seriously argue that the regulation of these groups has had anything but a positive effect. Proponents of bills to license social workers make the same arguments. Through licensing, the educational and professional standards of social workers will be defined and increased, thereby creating more competent practitioners and benefitting the public. Importantly, a person seeking the help of a social worker may be unable to make rational decisions regarding his situation; thus, he should be assured that the person he is consulting is a competent therapist.

CONCLUSION

In spite of the problems presented, it is possible to develop some conclusions and recommendations. The statutes enacted in the eighteen states listed in Table I do not regulate social work because they either are not licensing acts or they include many exemptions. Thus, they cannot be considered statutes which would benefit the public by increasing standards and prohibiting incompetent or unqualified persons from practicing. Their only function is to give those who wish to be called social workers the status of a professional. There is a serious question as to the validity of enacting legislation for this purpose. At the same time, abuses persist because persons without sufficient training and competency are engaging in social work.

There is no easy answer. It seems obvious that one method of correcting the abuses claimed by social workers and others would be to pass legislation which includes licensing provisions. Such legislation would require social workers and professionals to be licensed in order to practice. But before such legislation can be enacted, a better definition of social work must be delineated.

If social work could be defined by describing the intent of the therapist as opposed to describing the activities he performs, it might be possible to devise a regulatory statute which contains licensing provisions offering protection to the public. For example, union counselors do not become involved in psychotherapy. They do give advice on processing applications for public assistance and make referrals to appropriate agencies for family coun-

seling. Thus, they would not need to be licensed. To overcome any objections, an effective definition of social work which should be licensed would probably deal primarily with psychotherapy areas requiring licensing. As such, it would include group psychotherapy, family psychotherapy and individual psychotherapy. Such a definition would exclude many persons who are presently counseling others non-professionally. Therefore, the licensing statute must be designed to set definite limits on social work practice and prohibit others from performing the social work function. In presenting the problem, it is hoped that other interested persons will be encouraged to contribute to the development of a solution.

TABLE I

A resume of the status of licensing activities in the various states follows:

STATE	
Alabama	National Association of Social Workers [hereinafter referred to as NASW] introduced multi-level bill in 1975 in cooperation with Clinical Social Workers.
Arizona	NASW introduced multi-level bill (S.B. 1332) in 1975.
Alaska	NASW reports a licensing bill is being drafted but has not been introduced.
Arkansas	ARK. STAT. ANN. § 71-2801 <i>et seq.</i> (Supp. 1975).
California	(RSW) CAL. BUS. & PROF. CODE § 9070 <i>et seq.</i> (1975). (CSW) CAL. BUS. & PROF. CODE § 9040 <i>et seq.</i> (1975).
Colorado	COLO. REV. STAT. ANN. § 12-63.5-101 <i>et seq.</i> (1975).
Connecticut	NASW introduced a multi-level bill in 1975. A clinical social worker group also introduced a bill. Both died in committee.
Delaware	No information available.
District of Columbia	No activity.
Florida	Multi-level bill introduced in 1975 session but not passed, to be re-introduced.
Georgia	NASW State Council is reviewing situation. No activity at this time.
Hawaii	Bill introduced. Died, but resolution passed to study "qualifications and practice of Social Work."
Idaho	Bill introduced by NASW in 1975, withdrawn. To be re-introduced.
Illinois	ILL. ANN. STAT. ch. 23, § 5301 <i>et seq.</i> (Smith-Hurd 1968).
Indiana	Single level bill introduced in 1975 and died in committee. Multi-level bill introduced in both houses in 1976. Both died in committee.
Iowa	Multi-level bill (S. 1209) introduced in 1975 session.
Kansas	KAN. STAT. ANN. § 75-5346 <i>et seq.</i> (Supp. 1975).
Kentucky	KY. REV. STAT. ANN. § 335. <i>et seq.</i> (1975).
Louisiana	LA. REV. STAT. ANN. § 37:2701 <i>et seq.</i> (1974).
Maine	ME. REV. STAT. ANN. tit. 32, § 4183 <i>et seq.</i> (Supp. 1973).
Maryland	MD. ANN. CODE art. 43, § 870 <i>et seq.</i> (Supp. 1975).
Massachusetts	Multi-level bill introduced in 1975 session.
Michigan	MICH. STAT. ANN. § 18.365 (1) <i>et seq.</i> (Sup. 1975).
Minnesota	NASW studying use of state 1973 Allied Health Credentialing Act.
Mississippi	Multi-level bill (S.B. 168) introduced in 1975 but died in committee.
Missouri	Multi-level bill introduced in 1975 but died in House.
Montana	No information.

STATE

Nebraska	No information.
Nevada	Very little information but there is some indication that work is being done on the drafting of a multi-level bill.
New Hampshire	No information.
New Jersey	Multi-level bill introduced (S.B. 1210).
New Mexico	Multi-level bill introduced in January, 1975 and being retained for 1976 session.
New York	N.Y. EDUC. LAW § 7700 <i>et seq.</i> (McKinney 1972).
North Carolina	No information.
North Dakota	A bill has been drafted licensing Master of Social Work (M.S.W.) degrees and independent practice levels. There is no indication it has been introduced.
Ohio	NASW has drafted a multi-level bill but there is no indication it has been introduced.
Oklahoma	(RSW) OKLA. STAT. ANN. tit. 59, § 1251 <i>et seq.</i> (1971).
Oregon	No information.
Pennsylvania	NASW group is planning on introducing a multi-level bill and clinical social work group is planning on introducing a single-level bill.
Puerto Rico	Puerto Rico Act 171, approved May 11, 1940.
Rhode Island	Rhode Island has a registration bill, R.I. GEN. LAWS ANN. § 5-39-1 <i>et seq.</i> (Supp. 1974). NASW introduced a bill for licensure in 1975 session which has been retained for 1976 session.
South Carolina	S.C. CODE ANN. § 56-1600 <i>et seq.</i> (Supp. 1974).
South Dakota	S.D. COMPILED LAWS ANN. § 36-26-1 <i>et seq.</i> (Supp. 1975).
Tennessee	NASW State Council introduced a bill in 1975 session.
Texas	NASW bill supported by a coalition of interested groups. Was introduced but not passed. A "Social Psychotherapist" bill was introduced and enacted.
Utah	UTAH CODE ANN. § 58-35-1 <i>et seq.</i> (1974).
Vermont	NASW multi-level bill introduced in 1975 session.
Virginia	VA. CODE ANN. § 54-775.4 <i>et seq.</i> (Supp. 1974).
Washington	Multi-level bill introduced in 1975 legislative session, (H.B. 609; S.B. 2629), will be retained for 1975-76 session.
West Virginia	Indication is that a legislative committee within the social work community is working on the drafting of a bill.
Wisconsin	Multi-level bill including independent practice introduced (S.B. 381).
Wyoming	No information.

TABLE II: PROVISIONS CONTAINED IN REGULATORY STATUTES

State (In Order of Enactment)	Year of Enactment First Amended	Type ¹	Exclusions		Privileged Communications	Reciprocity	Continuing Education Provisions Levels ⁸
			Public Employees	Private Employees			
1. Puerto Rico	1934	L		X	No	No	M
2. California—RSW	1945	R	X	X	Yes	Yes	S
—CSW	1968	R					
3. Rhode Island	1961	R	X	X	No	No	S
4. Oklahoma—RSW	1965	R			No	No	S
—SWA							
5. New York	1965	R			Yes	Yes ⁹	M
6. Virginia	1966	R	X		No	No	M
7. Illinois	1967	R			Yes	Yes	M
8. South Carolina	1968	R			No	No	S
9. Maine	1969	R			Yes	No	M
10. Michigan	1972	R			Yes	Yes	M
11. Louisiana	1972	L	X	X	Yes	Yes	S
12. Utah	1972	L ²			No	Yes	M
13. Kansas	1974	L			Yes	Yes	M
14. Kentucky	1974	L	X ⁶		Yes	No	M
15. Arkansas	1975	R			Yes	No	M
16. South Dakota	1975	L ³			Yes	No	M
17. Maryland	1975	L ⁴	X ⁷	X	No	Yes	M
18. Colorado	1975	R ⁵	Information not available		Yes	Yes	M

NOTES TO TABLE II: PROVISIONS CONTAINED IN REGULATORY STATUTES

1. L = licensing bill; R = regulation of title bill.

2. The Utah statute may be the strictest regulatory legislation regarding social work in the United States. The activities prohibited by the Utah statute are quoted in the text at n.12 *supra*. Exemptions from the Utah act include physicians, surgeons, psychologists, attorneys, marriage counselors, family counselors, child counselors, and members of the clergy. UTAH CODE ANN. § 58-35-3 (1974). The exemption is still rather broad with the inclusion of marriage counselors, family counselors, and child counselors. However, the Utah law does appear to be a bona fide licensing statute.

3. The South Dakota statute appears to be a licensing statute and does definitely restrict the private, independent practice of social work without a license. S.D. COMPILED LAWS ANN. § 36-26-17 (Supp. 1975). However, the prohibition against the practice of social work without a license does not appear to actually prohibit the unlicensed practice of social work as a social worker. The section states:

License required for practice-associates to be supervised by social workers. It shall be unlawful for any person or persons to engage in the practice, or attempt to practice social work as a certified social worker, social worker or social work associate without a license issued pursuant to the provisions of this chapter and no social work associate may practice except under the supervision of a certified social worker or social worker.

S.D. COMPILED LAWS ANN. § 36-26-10 (Supp. 1975).

4. The exemptions from the Maryland law are as follows:

This subtitle may not be construed to limit: (a) the activities, services and use of an official title by a person in the employ of a federal, state, county or municipal agency or of other political subdivisions insofar as those services are part of the duties of office or position with the agency. However, an individual in this employ may elect to be subject to this subtitle by applying for a license hereunder; (b) the activities and services of a student in social work pursuing a course of study acceptable to the Board as qualifying as training and experience under the terms of the subtitle, if these activities and services constitute a part of the student's supervised course of study; (c) the activities and services of a licensed physician, certified psychologist, licensed nurse, attorney, or members of the clergy from doing work within the standards and ethics of their respective professions and calling, if they do not hold themselves out to the public by any title, or description of service as being engaged in the practice of social work.

Md. ANN. CODE art. 43, § 861 (Supp. 1975).

5. The act establishes registration for those holding a Master's degree in Social Work or a bachelor's degree with two years' experience and licensure for persons of all other levels.

6. This exclusion is limited to church operated or affiliated agencies.

7. An individual may elect licensure coverage even though exempt as a public employee.

8. Authority to waive qualifying requirements given to Board (N.Y.).

9. M = multi-level; S = single-level.

10. The Louisiana statute also excludes educational institutions.

11. The Utah statute excludes marriage counselors, child counselors and family counselors.

