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## Mindfulness and the Need to Minimize the Risk of Harm: A Proposal to Implement and Enforce Standards for Secular Mindfulness Practice

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A PROPOSAL TO IMPLEMENT AND ENFORCE STANDARDS

**Mindfulness and the Need to Minimize the Risk of Harm:  
A Proposal to Implement and Enforce Standards  
for Secular Mindfulness Practice**

Michael Falick

May 2020

Dr. Melissa Jean and Dr. Andrew Olendzki

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This program has enriched my life in ways I sought and in ways I could never have imagined. What a gift!

With much metta and caring,

Mike Falick

May 2020

**Abstract**

While Western mindfulness practice is indeed beneficial for many participants, the research now clearly demonstrates that for some meditators, there are attendant potential risks. These potential risks to practitioners require a level of care from those individuals (and corporations) that disseminate mindfulness practice. Historically, in traditional Buddhist practice, mindfulness was but one of the eight factors on the Noble Eightfold Path. An important component of traditional practice strongly relies on ethics in the delivery of the practice. A formalized standard of care for modern, secular mindfulness practices, and a method to implement and enforce that standard, will greatly enhance safety and mitigate risks for both practitioners and teachers. Given the longstanding use of the “do no harm standard” in medicine, and the formalized governmental, regulatory, and licensure procedures applicable to medical and therapeutic practices, these fields offer the closest conventions upon which to base a proposed standard of care and a structure to implement and enforce standards for secular mindfulness practice and mindfulness-based interventions.

*Keywords:* Mindfulness, mindfulness-based interventions, secular mindfulness, standard of care, ethics, *sīla*, regulation, license

## Table of Contents

Copyright .....	ii
Acknowledgements .....	iii
Abstract .....	iv
Table of Contents .....	v
Thesis .....	1
Rationale Paper	
Literature Review .....	3
Traditional Buddhist Ethics .....	4
The Benefits of Secularized Practice .....	5
Ethical Considerations .....	7
Risks Associated with Mindfulness Practice and the Need for Standards .....	10
Historical Development of Standards of Care .....	14
<i>Hippocratic Oath</i> .....	15
<i>Coombs v. Beede</i> .....	16
Development of a Standard of Care for Secular Mindfulness Practice .....	17
Criteria to Utilize for the Standard of Care for Secular Mindfulness Practice .....	19
Standard of Care for Secular Mindfulness Practice and Method for Implementation and Enforcement .....	21
Applicable Standards of Care in Professions that Engage Directly in Well-Being .....	22
<i>American Medical Association (AMA)</i> .....	23
<i>American Psychological Association (APA)</i> .....	25
Existing Regulatory and Licensing Structures in Well-Being Fields .....	27
Existing Standards in Mindfulness Practices.....	28

*Mindfulness Based Stress Reduction (MBSR)* ..... 29

*Mindfulness Based Cognitive Therapy (MBCT)*..... 31

*International Mindfulness Integrity Network (IMIN)* ..... 34

*Mindfulness-Based Interventions: Teaching Assessment  
Criteria (MBI:TAC)* ..... 35

*International Mindfulness Teachers Association (IMTA)* ..... 38

Proposed Standard of Care and Regulatory Structure for  
Mindfulness Practices ..... 40

Conclusion ..... 41

Appendix A: Hippocratic Oath..... 44

Creative Project

    Model Practice Act for the Regulation of Secular  
    Mindfulness Practice and Mindfulness-Based Interventions..... 45

References ..... 75

**Mindfulness and the Need to Minimize the Risk of Harm:****A Proposal to Implement and Enforce Standards****in Secular Mindfulness Practices**

“A fool is characterized by his/her actions. A wise person is characterized by his/her actions.  
It is through the activities of one's life that one's discernment shines”  
~ Lakkhana Sutta: Characterized (by Action) (Thanissaro, 1997)

Mindfulness practice in the United States has evolved over the past 40 years, and, in many ways, has become detached from the traditional moorings of its Buddhist foundations. Traditional Buddhist practice is based on the “Dhamma of the Four Noble Truths and the noble truth that the path to the cessation of suffering is the Noble Eightfold Path – right view, right intention, right speech, right action, right livelihood, right effort, right mindfulness, and right concentration (Gethin, 1998, p. 164). As such, mindfulness is but one of the eight factors on the Noble Eightfold Path. Moreover, as Stephen Batchelor (2017) notes, right mindfulness, as a component of Buddhist practice, “is not a marginal practice among Buddhists” (p. 167). Indeed, “mindfulness is the seventh element of the noble eightfold path, the doctrine the Buddha declared to constitute the very heart of his teaching” (Batchelor, 2017, p. 167). The combined Eightfold Path factors create a systemic structure that relies strongly on ethics for both teachers and practitioners.

By contrast, as secular mindfulness has developed in the West since the 1970s, it has focused on meditation and has been presented as a “solution” to many different types of issues, from addiction to pain; from reactivity to stress-management; and as a means to create more productive workers and more efficient soldiers. As a recent article in *Current Opinion in Psychology* discussed, “the very meaning of the word ‘mindfulness’ has remained elusive and open to interpretation, morphing into different dimensions in various contexts and settings” (Grossman, 2019, p. 102). As Grossman (2019) states, “[y]ou name it, and mindfulness can be defined, operationalized, and offered as a fresh, new promise for better living” (p. 102).



The separation of mindfulness from its historic ethical foundation has led to the development of the term “McMindfulness” which describes “a kind of compartmentalized, secularized, watered-down version of mindfulness . . . [m]editation for the masses, drive-through style, stripped of its essential ingredients, prepackaged and neatly stocked on the shelves of the commercial self-help supermarkets” (Compson, 2017, p. 32). The McMindfulness critique is “focused on a fear that mindfulness, presented as a ‘secularized’ version of a Buddhist practice, is thereby . . . available for exploitative and unethical applications” (McCown, 2017, p. 2). As an example, McCown (2017) offers that “mindfulness training may be aimed to make corporate employees both more productive and more docile” (p. 2).

Until very recently, secular mindfulness in the form of “mindfulness as solution” has been presented as a panacea, and there has been scant attention to potential risk factors for practitioners or those who teach the practice. However, an ever-increasing body of research supports the existence of potential risks for some mindfulness practitioners. As a result, it is evident that a formalized standard of care, grounded in both the historical, ethical principles and the modern medical and therapeutic well-being fields, would greatly enhance safety and mitigate risks for both practitioners and teachers.

This paper examines (1) the historical ethical foundations of mindfulness, (2) the risks attendant to mindfulness practitioners and teachers in modern, secular mindfulness practices, and mindfulness-based interventions (MBIs), and (3) the need for a defined standard of care. This paper then discusses the historical development of standards of care in healthcare and therapeutic fields and the criteria that could be included in standards for secular mindfulness practice. This paper concludes with the creation of a defined standard of care and structure to implement and enforce the proposed standard of care for secular mindfulness and mindfulness-based interventions.

This proposal is a beginning point designed to foster discussion and a pathway toward approval. These discussions, and indeed the full engagement of the mindfulness community,

will be required in order to obtain input and ultimate acceptance for this proposal. From that point, the mindfulness community will be able to present the public and their respective jurisdiction's legislators and regulators with research and evidence-based standards and a community-approved regulatory and enforcement structure to enforce those standards.

### **Literature Review**

This Literature Review is intended to provide the support, both from a historic and risk basis, for the need to create and implement a standard of care for mindfulness practices. To do so, this Literature Review begins with a discussion of traditional Buddhist ethics for mindfulness, the benefits of secularized mindfulness practice, and the ethical considerations for modern secular mindfulness practices and mindfulness-based interventions. The Literature Review then discusses the potential risks associated with mindfulness practices and the need for standards. A discussion of the historical development of standards of care follows and includes the historical development of legal standards of care in the United States. This Literature Review then advocates for the development of a standard of care for secular mindfulness practice and the criteria to be utilized for that standard of care.

To evolve a proposed standard of care for secular mindfulness practice and a method for implementation, standards of care and existing regulatory and licensing structures in other well-being professions including medicine, psychology, and social work are examined. Existing standards in Mindfulness Based Stress Reduction (MBSR) and Mindfulness Based Cognitive Therapy (MBCT) as well as efforts to create a standard of care for mindfulness practices by the International Mindfulness Integrity Network (IMIN), the Mindfulness-Based Interventions: Teaching Assessment Criteria (MBI:TAC), and the International Mindfulness Teachers Association (IMTA) are also discussed.

### Traditional Buddhist Ethics

“[M]indfulness features alongside several other qualities required for progress to awakening, all of which are based on a firm foundation in virtuous conduct.”  
~ (Anālayo, 2018, p. 35).

Historically, the focus of Buddhist mindfulness meditation has been “to recognize the compounded nature of all phenomena, so that the impermanence (of all things) . . . is accepted, leading to the cessation of suffering (*Dukkha*)” (Buttle, 2015, p. 5). As Monteiro (2017) states, “[t]he core teachings of Buddhism are that life is challenging because of our reactivity to the inevitable pain of being human [and] becoming resistant, clinging, or confused about the direct experience itself” (p. 147). The solution offered by the Buddha is to “become aware and awake to the myriad ways we avoid reality and to engage in a rigorous practice of clarifying and concentrating the mind,” and the solution “begins with ethics, which is cultivated from an aspiration to be virtuous in thought, word, and action, and from that base to cultivate wisdom and compassion in how we live our lives” (Monteiro, 2017, p. 147). The Buddhist concept of ethics is grounded in the observance of *sīla* (often translated as right conduct) (Bodhi, 2016, p. 45). As Bodhi (2016) observes, “Buddhism, with its non-theistic framework, grounds its ethics not on the [Western] notion of obedience, but on that of harmony. In fact, the commentaries explain the word *sīla* by another word, *samādhāna*, meaning ‘harmony’ or ‘coordination’” (p. 45).

Right Mindfulness is an interlocking component of the Eightfold Path. Bhikkhu Bodhi (2016) describes the importance of the Buddhist practice of mindfulness and states, “[m]indfulness serves as the guard charged with the responsibility of making sure that the mind does not slip away from the object to lose itself in random undirected thoughts” (p. 78). Bodhi (2016) notes that mindfulness “keeps watch over the factors stirring in the mind, . . . expel[s] [hindrances] before they can cause harm. . . [and] observe[s] . . . note[s] . . . [and] discern[s] phenomena with utmost precision until their fundamental characteristics are brought to light” (p. 78). Bodhi (2016) further provides that *sati*, the Pali word frequently (and perhaps oversimplistically) translated as “mindfulness” includes “presence of mind, attentiveness or

awareness . . . [which] differs profoundly from the kind of awareness at work in our usual mode of consciousness” (p. 75). In the Buddhist context “*sati* is an important aspect of developing *bodhi* (awakening) and the final liberation (*nibbana*) . . . [and] in traditional Buddhism also has an important ethical dimension” (Frisk, 2012, p. 53).

Bodhi (2016) explains that in the practice of right mindfulness, “the mind is trained to remain in the present, open, quiet, and alert, contemplating the present event” and concludes that right mindfulness “is an ethically sensitive mental function. . . [in which] the presence of well-established mindfulness enables quick recognition of the arising of unwholesome and detrimental associations and reactions at the sense doors” (pp. 75, 233). More specifically, Right Mindfulness is “to be diligently aware, mindful and attentive with regard to (1) the activities of the body (*kāya*), (2) sensations or feelings (*vedanā*), (3) the activities of the mind (*citta*) and (4) ideas, thoughts, conceptions and things (*dhamma*)” (Rahula, 1974, p. 48). As a result, while “early Buddhist thought clearly recognizes the potential of mindfulness to lead to physical health and psychological well-being, the *satipaṭṭhāna* [the Buddha’s discourse on mindfulness] has its predominant function as the direct path to the realization of *nirvāṇa*” (Anālayo, 2015, pp. 71, 87).

### **The Benefits of Secularized Practice**

Contemporary practices that invoke a prohibition against wanting things to be other than they are – that limit the role of remembrance, discernment, and intentionality – may restrict us to a mode of unquestioning acceptance of whatever oppressive forms are dominant in the present moment.  
~ (Greenberg & Mitra, 2015, p. 77).

Beginning in the 1970s, practitioners brought the Buddha’s teachings to the West and modified the ancient practices to accommodate Western, individualistic society. In 1980s, the Mind and Life Institute began to facilitate formal regular dialogues between the Dalai Lama and prominent scientists and clinicians, as well as regular summer research meetings, to explore mindfulness and mindfulness practices (Van Dam et al., 2017a, p. 37). As mindfulness gained traction, researchers explored the benefits of mindfulness in an ever-increasing variety of fields (Van Dam et al., 2017a, p. 37). Based on this research, Western, secularized mindfulness

practice has been employed as an “intervention” and has been promoted as a treatment for specific issues such as stress reduction, chronic pain management, mood disorders, improvement of mental and emotional health, and to address health behaviors such as overeating and substance dependence (Wong et al., 2018; Goyal et al., 2015; Chiesa & Serretti, 2014; Grant, 2014; Hofmann et al., 2010; Vieten et al., 2018).

As it has evolved, Western mindfulness practice has focused on meditation, which has been described as a “mind-body technique that refers to a broad variety of practices with the general goal of training the mind through regulation of attention and/or emotion to affect body functions, symptoms, and state of being” (Hilton et al., 2017, p. 453). Bowen et al. (2017) explain that mindfulness practitioners learn “gentle, nonjudgmental and curious exploration of experience, mindfulness . . . [in order] to approach challenging or aversive experiences . . . rather than reactively avoiding them” (p. 214). Through repeated practice over time, the individual may achieve “increasing awareness and allowing acceptance [and] gentle interoceptive exposure to these internal aversive phenomena” (Bowen et al., 2017, p. 214).

Additionally, Daubenmier et al. (2014) have stated that through mindfulness practice, “rather than identifying with thoughts and emotions as accurate reflections of ‘me’ or ‘reality,’ thoughts and emotions are experienced as passing mental events — which may or may not be valid — occurring in a larger field of awareness” (p. 12). Daubenmier et al. (2014) conclude that in this way, mindfulness may “prevent escalation of dysfunctional cognitive and emotional patterns and allow for the occurrence of more adaptive responses” (p. 12). Iglesias (2019) summarizes these benefits and states

As we continue to practice, [mindfulness] becomes resistance to our own mental habits (e.g. rehearsing the past or planning for the future). We are resisting the tyranny of my own unexamined habits and accumulated triggers. In mindfulness meditation we gently resist these tendencies of the mind. This resistance takes energy and focus, which is why mindfulness meditation is active, not passive, a workout not a vacation. This

resistance is an exertion of power which leads to liberation and authentic freedom. (pp. 397-398)

Research has also demonstrated that mindfulness practice can improve health outcomes for stress-related conditions, reduce pain symptoms, improve emotional regulation, help with anxiety and depression, reduce addictive behavior, increase the ability to pay attention, and cultivate states of well-being (Winston, 2019, p. 202). The neuroscience research even shows structural brain changes in long-term meditators (Winston, 2019, p. 202). Winston (2019) further states that the mindfulness research is “particularly robust . . . that mindfulness can be helpful with anxiety and depression” (p. 202). Indeed, a recent study found that even informal meditation practice provides meaningful benefits (Fredrickson et al., 2019, p. 1).

While mindfulness has been known to have positive effects for millennia, the research described by Daubenmier et al. (2014) used neuroimaging to quantify the impact of mindfulness on physical well-being (p. 15). Further research has also used objective physiologic data to measure heart rate, ECG, and skin conductance levels, and found that “acting with awareness through mindfulness and reflection in rumination predicted higher levels of persistence, while non-judgment, non-reactivity, and brooding did not predict persistence” (Feldman et al., 2014, p. 157). A comprehensive meta-analysis of 209 studies concluded that mindfulness interventions are effective interventions for psychiatric disorders including depression, social anxiety, obsessive-compulsive, bipolar disorder, attention deficits disorder, and addiction (Khoury et al., 2013, pp. 769-770). A recent study also suggested that mindfulness practice may have the potential to delay the onset and progression of dementia (Ng et al., 2020, pp. 1, 11-12).

### **Ethical Considerations**

“Problems, no matter how challenging, might be seen as rich opportunities for ongoing learning on all our parts within a robust ethical framework and ongoing collective inquiry.”  
~ Jon Kabat-Zinn (Kabat-Zinn, 2017, p. 1132)

While there are undoubtedly significant benefits to mindfulness practice, the question of whether ethics should be part of the delivery of secular mindfulness has been described as “a

tinderbox discussion with lines drawn between Buddhist traditionalists and secular modernists” (Monteiro, 2017, p. 154). This disagreement centers on “the role of ethics in the secular practice of mindfulness and . . . the apparent decontextualization of mindfulness from its original embeddedness in the practice of ethics” (Kearney & Hwang, 2018, p. 285). At its core, the debate is between those who insist that ethics are “implicit in the deportment of the teacher and that making [ethics] explicit inappropriately imposes values . . . and other[s] [who]. . . insist explicit ethics [are] honest and respectful of the origins and purpose of mindfulness” (Monteiro, 2017, p. 154).

As discussed above, “mindfulness in the Buddhist canonical sense is not ethically neutral – it is . . . an attention framed within the intention and conduct that leads to the liberation from suffering” (Compson, 2017, p. 32). Secular mindfulness, however, “generally lacks a comparable ethical framework to help individuals identify wholesome and unwholesome actions” (Chen & Jordan, 2018, p. 1). As a result, ethical principles have been minimized which “has caused some scholars to worry that [secular practice] may encourage self-indulgence and have limited capacity to promote wellbeing because it does not address the underlying thoughts and behaviors that may perpetuate ill-being” (Chen & Jordan, 2018, p. 1). As Lama Jampa Thaye stated in an impassioned plea in a 2018 article entitled *The Dangers of Diluted Buddhism*,

[i]t is crucial, however, that the temptation to assimilate Buddhism to the ruling ideologies of our age—scientism, ideological fanaticism, and a ruthless self-absorption masquerading as spirituality—be resisted. Such temptations lead to what we might term ‘fake Buddhism.’ Though this has many features, perhaps the most significant is its determination (knowingly or in ignorance) to sever the necessary connection among ethics, meditation, and wisdom—the three trainings that comprise the backbone of all Buddhist traditions. (Thaye, 2018)

Chen and Jordan (2018) note that “[i]t is important[t] to determine the effects of these modern mindfulness practices and any consequences of divorcing mindfulness practices from

instruction in the ethical principles of Buddhism” (p. 1). Greenberg and Mitra (2015) assert that “contemporary mindfulness approaches that do not directly address ethics are incomplete” and that “[w]ithout a clear commitment to alleviating individual suffering in a manner that does not increase suffering for others, [MBIs] might . . . be reinforcing passivity and maintaining oppression for teachers, students, and others” (pp. 75, 77). Compson (2017) further states that the “distinction between right and wrong mindfulness has important ethical implications [because] when mindfulness is no longer nested in the context of the eightfold path, . . . it is vulnerable to mis-use” (p. 32).

However, other respected voices in the mindfulness community argue that it is unnecessary to include ethics in MBIs. Jon Kabat-Zinn (2017), the creator of Mindfulness Based Stress Reduction (MBSR), believes that ethics are already “built into [MBSR] practice through the principles of the Hippocratic tradition along with a willingness among MBSR teachers to maintain a collective honesty through communication among themselves” (Kearney & Hwang, 2018, p. 286). Still others have argued that “mindfulness training includes the cultivation of virtuous qualities such as nonjudgmentalism, openness, acceptance, compassion and kindness, making the[] explicit addition [of ethics] redundant” (Kearney & Hwang, 2018, p. 286).

Kabat-Zinn does acknowledge that “for certain opportunistic elements, mindfulness has become a business that can only disappoint the vulnerable consumers who look to it as a panacea” (Kabat-Zinn, 2017; Hyland, 2017, p. 335). Stanley (2013) concludes that “[f]rom an early Buddhist perspective, it is largely our ethical conduct, not how we pay attention or practice mindfulness meditation (or not), which determines our psychological health” (p. 160). Stanley (2013) posits that “[f]uture practice and research might instead adopt a revised understanding of mindfulness as an embodied and ethically sensitive practice of present moment recollection” (p. 161). To overcome the intractable debate detailed above, Compson (2017) has seeks to limit the inquiry to a simple question – is the form of mindfulness offered by MBIs helpful to reduce suffering? (pp. 39-40). Compson (2017) states that the important



question to ask is whether “mindfulness, as currently construed . . . reliably and meaningfully impact[s] matters that human beings care deeply about . . . like . . . sickness, old age, and death?” (p. 40)

To counter the concerns that secular practice is ethically deficient, the Dalai Lama “has steadily been making the case . . . for what he calls ‘secular ethics’ – values that are common to and even transcend specific religions, like compassion, care, kindness, and generosity” (Hasenkamp, 2019, p. 129). Monteiro (2017) has identified three areas in which the issue of ethics surfaces in MBIs such as Mindfulness Based Stress Reduction (MBSR) and Mindfulness Based Cognitive Therapy (MBCT), as well as most other MBIs:

- The training received and offered to effectively use mindfulness approaches.
- The sensitivity with which Buddhist (or the very least Buddhist-informed) concepts are translated and implemented within populations that may not be comfortable or resonate with them.
- The awareness of the impact of mindfulness practices on individuals and groups who may misappropriate their use. (p. 150)

### ***Risks Associated with Mindfulness Practice and the Need for Standards***

[T]he notion that mindfulness and meditation can be a cure-all for countless conditions and problems, including trauma, has had . . . unintended consequences.  
~ Willoughby Britton (Treleaven, 2018, p. x).

The discussion of ethics is not merely an academic debate. Several studies conducted since 2016 have found that there are significant risks associated with secular mindfulness practice that are often disregarded. (Lindahl, Britton, Cooper, & Kirmayer, 2019, p. 1). In a comprehensive study, Lindahl et al. (2017) researched the “range of meditation-related effects described by Buddhist practitioners in the West . . . report[ed] as unexpected, challenging, difficult, distressing, or functionally impairing” (p. 5). Lindahl et al. (2017) also explored the methods for “practitioners [to] prevent, manage, navigate, or integrate such experiences . . . [and for] teachers [to] guide their students through such experiences” (p. 5).

The Lindahl et al. (2017) study involved experienced meditators “who had challenging meditation experiences that are often under-reported,” and for each such experience, the study participants reported on 59 categories of “meditation related effects” (pp. 13-14, 15-16, 27, and S4 File). The study found that the categories *Fear, anxiety, panic, or paranoia, Positive affect, Somatic energy, and Re-experiencing of traumatic memories* had similar frequencies for all participants, and that “a number of participants also reported challenging or difficult experiences . . . in the context of daily practice” (Lindahl et al., 2017, pp. 16, 26).

These identified adverse effects are especially problematic for mindfulness practitioners who have sustained trauma. Indeed, Lindahl et al. (2017) note that “traumatic flashbacks are now listed in the [mindfulness-based interventions] guidelines under ‘risks to participants’” and for meditators who have sustained trauma, “it was not uncommon for them to report a re-experiencing of traumatic memories, and even practitioners without a trauma history similarly reported an upwelling of emotionally charged psychological material” (pp. 4, 19).

In addition, Magyari (2016) advises that the scientific basis for mindfulness practice related traumatic challenges results from “the primary effect of trauma on the brain, [which is] chronic and easily triggered fight/flight/freeze reactivity” (p. 340). In a recent interview on this subject, researcher Willoughby Britton addressed this risk and stated that “[w]hen I did my . . . trainings, there was a lot of emphasis on mindfulness being about turning toward the difficult . . . And often that can be re-traumatizing . . . it can destabilize the system. . . . and it can be dissociating” (Abrahams, 2018).

As Cebolla, Demarzo, Martins, Soler, and Garcia-Campayo (2017) discovered, “[c]uriously, th[e] issue [of meditation-related risks] is not addressed in the main mindfulness protocols (MBSR, MBCT) or in most studies on MBIs. (p. 6). As a result, the researchers find that “[i]t seems that the expansion of mindfulness in the West has been associated with a gentle, positive vision of the technique, without the necessary balance related to the negative

consequences of any practice” (Cebolla, Demarzo, Martins, Soler, & Garcia-Campayo, 2017, p. 6).

This lack of attention to potential adverse consequences is particularly difficult to comprehend given that “[m]any Buddhist literary sources describe how meditation practices are expected to lead to perceptual, affective, epistemic, and behavioral shifts that lie beyond the scope of the health-related outcomes that are the concern of [MBIs] and associated scientific research” (Lindahl et al., 2017, p. 2). As a result, it should not be a surprise that “[t]here is a small but accumulating body of research suggesting that sometimes people engaged in meditation may experience adverse (i.e., psychologically distressing or disturbing) psychological effects” (Compson, 2018, p. 1). As Compson (2018) found, “[t]his distress can be momentary or, in more serious cases, lasting, and with long-term ramifications. These experiences may occur in religious contexts, such as during Buddhist meditation retreats, or in secular contexts, such as during practices associated with mindfulness-based interventions (MBIs)” (p. 1).

In 2019, Baer, Crane, Miller, and Kuyken (2019) sought to further define “harm” in the context of MBIs (p. 1). Their research concludes that “harm” occurs when, “after exposure to the [MBI] (whether the participant completes it or drops out), . . . the participant's symptoms or level of functioning are worse than beforehand and this deterioration is sustained, attributable to the program, and more severe than it would have been without the program” (Baer et al., 2019, pp. 6-7).

Britton also issued research findings in 2019 that demonstrate that “very few MBI trials actively measure adverse effects, relying instead on passive monitoring, which can underestimate the actual frequency by more than 20-fold” (p. 162). Indeed, Britton’s (2019) analysis reveals that “the most frequently used measure of mindfulness, the Mindful Attention Awareness Scale (MAAS) actually measures deficiencies of mindfulness (i.e. it measures mindlessness)” (p. 163). Britton (2019) concludes that “[m]ost MBI studies use data only from the treatment completers and lack data from long-term follow-ups and dropouts – the groups

most likely to have negative effects” (p. 163). Hyland (2017) also reports that “[o]n th[e] crucial point [of reporting of negative impacts of mindfulness experiences], recent meta-analytical studies have discerned the positive skewing of results in 124 mindfulness treatment trials with the suggestion that wishful thinking may have led to negative outcomes going unpublished” (p. 338).

As further support for the potential need to attend to risk, Van Dam et al. (2017a) recently authored two studies related to mindfulness and mindfulness-based interventions. In the first study, the authors discuss the difficulty presented in popular culture with the broad, often poorly-defined meaning of “mindfulness” (Van Dam et al., 2017a, p. 5). These differences in definitional accuracy of the term “mindfulness” have resulted in studies that fail to differentiate between the various types of mindfulness practices and in flawed comparisons between “fundamentally different states, experiences, skills, and practices” (Van Dam et al., 2017a, p. 5).

In addition, Van Dam et al. (2017a) found that research regularly fails to identify adverse effects in mindfulness and that only 25% of meditation trials actively assessed adverse effects (p. 13). Included in this lack of attention to risk of harm to participants were increased risk of “suicidality, depression, negative emotions, and flashbacks during meditation for individuals with trauma histories” (p. 13-14).

In a follow-up article, Van Dam et al. (2017b) provided additional support for their concerns and identified that statistically, even simple meditation practice “may result in adverse experiences” and that even if the adverse event rate for practitioners is only 5%, that would translate to a rate of “meditation-related negative side effects . . . in almost 1 million U.S. adults per year” including potentially extremely serious effects such as psychosis and suicide (p. 2-3). Van Dam et al. (2017b) found that “serious negative side effects occurred for 12% of the sample (of 60 Buddhist meditation practitioners) within 10 days after initiating practice, 25% of participants encountered adversities while practicing less than an hour per day, and 30% had

adverse experiences in daily practice” which suggests that “simple practice, not just intensive retreats may result in adverse experiences” (p. 2).

To address these potential risks, the Clinical and Affective Neuroscience Laboratory (CLANlab) at Brown University, co-directed by Dr. Britton and Dr. Lindahl, has published its online *Meditation Safety Toolbox* which includes the latest research on trauma and mindfulness, as well as screening tools and teacher guidelines (Meditation safety toolbox, n.d.). Additionally, David Treleaven’s 2018 book, *Trauma-Sensitive Mindfulness: Practices for Safe and Transformative Healing*, provides extensive explanatory support and constructive suggestions for meditation practice and trauma (Treleaven, 2018). Treleaven has also created an online *Trauma Sensitive Mindfulness* community that meets regularly via Skype (Treleaven, n.d.).

As Baer et al. (2019) aptly conclude, “[t]he ethical obligation to do no harm requires us to . . . better understand the risks for participants in [MBIs], including what forms of harm might occur, how often they occur, who is most susceptible, and how harmful effects can be prevented or remediated” (p. 11). Based on the known risks and availability of techniques to mitigate that risk, the development of ethically appropriate standards of care for mindfulness practice is imperative.

### **Historical Development of Standards of Care**

[A clinician is] under a duty to use that degree of care and skill which is expected of a reasonably competent practitioner in the same class to which he belongs, acting in the same or similar circumstances.  
~ (*Blair v. Eblen*, 1970).

Standards of care have existed for thousands of years. From the Hippocratic Oath to the adoption by United States’ Courts, regardless of the area of expertise, standards of care have evolved to require minimum skills for those who provide services in order to protect society. As Wheeler & Bertram (2015) state, “[t]he standard of care is the yardstick against which [] professional behavior [is] evaluated” (p. 25). “Practices that lie outside the standard of care’s

guidelines are generally considered to be negligent or otherwise substandard, and these generally include practices that are illegal and/or unethical” (Standard of care, 2017).

From the first express application of standards of care by the Maine Supreme Court in *Coombs v. Beede*, an 1896 case that imposed a standard of professionalism for architects, to the implementation of standards of professional conduct in nearly every profession and trade (e.g., law, medicine, psychology, social work, architecture, plumbing, construction), ethical standards are widely accepted as the norm today. These standards, discussed below, form the basis of the development of a standard of care for mindfulness practice.

### ***Hippocratic Oath***

The concept of an articulated standard of care is far from a new construct. Indeed, Hippocrates of Kos, who interestingly was a contemporary of the Buddha (460 – 377 BCE), advanced what has since become known as the Hippocratic Oath and provided that the caregiver committed to “do no harm or injustice” to their patients (North, 2002)<sup>1</sup>. The ethics of this oath and the foundational principals of Buddhism share a common intent to reduce suffering.

According to Hippocrates, “the physician had to examine a patient, observe symptoms carefully, make a diagnosis and then treat the patient” (Yapikakis, 2009, p. 508). In this way, Hippocrates established the basics of clinical medicine as it is practiced even today (Yapikakis, 2009, p. 508). The physician promises “wherever he goes to assist the sick, refrain from injustice and sexual mischief, and keep secrets . . . . That the exclusive purpose of the physician should be to provide help to his patient is a command that seems obvious” (Yapikakis, 2009, p. 508).

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<sup>1</sup> (See The Hippocratic Oath, Appendix A).

***Coombs v. Beede***

In the United States, the development of legally enforced standards of care began with the Maine Supreme Court's 1896 decision in *Coombs v. Beede*. In that case, the Court considered a claim of negligence by an architect and held that

[t]he responsibility resting on an architect is essentially the same as that which rests upon the lawyer to his client, or upon the physician to his patient, or which rests on anyone to another where such person pretends to possess some skill and ability in some special employment, and offers his services to the public on account of his fitness to act in the line of business for which he may be employed.

The *Coombs v. Beede* Court concluded that “[t]he undertaking of an architect implies that he possesses skill and ability . . . sufficient to enable him to perform the required services at least ordinarily and reasonably well; and that he will exercise and apply in the given case his skill and ability, his judgment and taste, reasonably and without neglect” *Coombs v. Beede*, 36 A 104 (Maine S. Ct. 1896). Frederic Reamer (2014) analyzed the impact of *Coombs v. Beede* and found that “[u]nder the common law doctrine of standard of care . . . courts usually seek to determine what a typical, reasonable, and prudent (careful) practitioner with the same or similar education and training would have done under the same or similar conditions” (Reamer, 2014).

While sometimes clear, the standard of care can prove complex and “well-educated, skilled, thoughtful, and careful practitioners in every profession may disagree with colleagues about the best course of action in complex circumstances, perhaps because of their different schools of thought, training, and experience” (Reamer, 2014). As examples, Reamer (2014) states that “extraordinarily talented oncologists, civil engineers, and clinical social workers may reach different conclusions in complicated cases” and concludes that “[d]ifferences of opinion do not necessarily mean one or more of them is wrong; rather, in complex cases, ordinary, reasonable, and prudent minds may reach different conclusions” (Reamer, 2014).

In 1985, the Mississippi Supreme Court decided *Hall v. Hilbun*, 466 So.2d 856 (Miss. S. Ct. 1985), which clarified the standard of care in a medical malpractice case. In that case, the Court held that

[m]edical malpractice is a legal fault by a physician or surgeon. It arises from the failure of a physician to provide the quality of care required by law. When a physician undertakes to treat a patient, he takes on an obligation enforceable at law to use minimally sound medical judgment and render minimally competent care in the course of services he provides. A physician does not guarantee recovery... A competent physician is not liable per se for a mere error of judgment, mistaken diagnosis or the occurrence of an undesirable result. (Moffett & Moore, 2011, p. 110)

### **Development of a Standard of Care for Secular Mindfulness Practice**

“If you want to meditate, I would suggest that you seek out a teacher who knows meditation and does not have any ulterior motives. That would be someone who can honestly and sincerely guide you from the teacher’s own meditation experience. If the person has not meditated and does not know anything about meditation and simply claims to be a meditation teacher, then definitely that person could mislead and misguide you.”

~ (Gunaratana, 2019, pp. 263-264).

Given the concerns that mindfulness is overused as a panacea and that there are risks attendant to the practice, a well-developed standard of care for MBIs seems advisable. Nevertheless, there is currently no formal, widely adopted standard of care applicable to secular mindfulness practice and to MBIs. In addition, the idea that practitioners should be informed of the risks and provided with the information to make informed decisions is also often absent from current mindfulness practice.

The importance of a standard of care for mindfulness originates in the Buddha’s own words from the *Mahavagga*: “Come, friends . . . dwell pervading the entire world with a mind imbued with lovingkindness . . . compassion . . . altruistic joy . . . equanimity without ill will” (Hyland, 2017, p. 346). In the modern context, Kabat-Zinn states that “[f]rom the start, originating within a hospital and academic medical center, MBSR was of necessity rooted in the



ethical soil of the Hippocratic Oath, namely, to first do no harm” (Kabat-Zinn, 2017, p. 1130). Baer et al. (2019) confirm that “[i]n ostensibly nonclinical settings such as workplaces, where [MBIs] may be offered by non-mental-health professionals, harm might arise when teachers lack skills for screening participants for psychological symptoms and managing mental health emergencies” (p. 10). Baer et al. (2019) conclude that “because harm can arise through ethical violations, knowledge of professional ethics is necessary for managing issues related to informed consent, confidentiality, and other ethical concerns” (p. 10).

An additional criteria to consider is advanced by Lindahl et al. (2019) who advocate a “person-centered approach” in which the practitioner maintains autonomy and which “is determined through dialogue with [the participants] and by consideration of their lifeworld and social context; it is not simply assumed or imposed by others” (p. 17). Baer et al. (2019) also assert that the delivery of mindfulness practices should include a careful assessment of potential participants and exclusion criteria should include substance dependence, suicidality, psychosis, PTSD, severe depression, severe social anxiety, and recent bereavement, divorce, or other personal crisis, except where the MBI is specifically focused on these issues (pp. 10-11).

Compson (2018) notes that “it is important for MBI clinicians to become familiar with the stages of [traditional Buddhist] insight . . . [because] even novice meditators engaging in an 8-week MBI sometimes progress quickly through the initial stages of insight” (p. 8). As a result, “being able to recognize the stages of insight allows for instructions that are tailored to the individual student’s needs . . . [and] adjust the practice instructions accordingly to increase the effectiveness of the participant’s practice, and therefore possibly of the MBI itself (Compson, 2018, p. 8). Baer et al. (2019) confirm that “[m]indfulness teachers need training in the mental health conditions they are likely to encounter, and [in] how to recognize and work with the meditation-related challenges that participants may experience” (p. 11).

Crane and Kuyken (2019) recently reported that “[t]he teacher is key in Mindfulness-Based Programs (MBPs) in creating the conditions for learning and transformation” (Crane & Kuyken, 2019, p. 6). As a result, one method to inculcate a standard of care into the dissemination of mindfulness practices is the development of methods to assess mindfulness teacher competency, including the MBCT adherence scale (MBCT-AS), the Mindfulness-Based Relapse Prevention adherence and competence scale (MBRP-AC), and the Mindfulness-Based Interventions – Teaching Assessment Criteria (MBI-TAC) (Baer et al., 2019, pp. 9-10).

However, Monteiro (2017) cautions that while “training as a mindfulness practitioner/teacher is available . . . [with a] focus on attaining deliverable skills and are measured by competencies in various domains . . . [w]hat is not given opportunity . . . is necessary time for the cultivation of the individual so that the ethical frame is eventually embodied” (p. 151). Evans et al. (2015) further supports idea and finds that “[t]he way in which the teacher embodies the spirit and essence of the practices is a key ingredient of mindfulness-based classes” (p. 573).

A recent editorial by Crane et al. (2017) identified the ingredients for MBP teachers including “competencies which enable the effective delivery of the MBP . . . the capacity to embody the qualities and attitudes of mindfulness within the process of the teaching . . . [and] knowledge of relevant underlying theoretical processes which underpin the teaching for particular contexts or populations” (p. 993). Crane et al. (2017) conclude that “[c]larity and precision are needed both to maintain the integrity of the original programs and to support ongoing research into new programs, innovations, and developments” (p. 997).

### **Criteria to Utilize for the Standard of Care for Secular Mindfulness Practice**

Rather than being harsh, authoritative rules, [Buddhist] precepts are intended to be standards that can support mindfulness practice and the cultivation of safety.  
~ (Treleaven, 2018, p. 65).

As a starting point, Reamer (2014) suggests that “while [health care professionals] cannot always agree on a singular standard of care in complex ethics cases, [they] can agree

on the process or procedure that ordinary, reasonable, and prudent [professionals] should follow when they must make difficult ethical decisions, even when, in the end, we may not reach consensus.” To arrive at these standards, Reamer (2014) identifies the following as “the most helpful steps”:

- Identify the . . . values, duties, and obligations that conflict.
- Tentatively identify all viable courses of action and the participants involved in each, along with the potential benefits and risks for each.
- Thoroughly examine the reasons in favor of and opposed to each course of action considering relevant personal and professional values, codes of ethics and ethical standards, ethical theories, and legal principles.
- Consult with thoughtful colleagues, supervisors, and ethics experts.
- Make the decision and document the decision-making process.

In his 2019 book, *Patient Safety Ethics: How Vigilance, Mindfulness, Compliance & Humility Can Make Healthcare Safer*, John D. Banja describes the need for standards and states that “when a client or patient does suffer unnecessary or reasonably preventable harm, the professional has failed to uphold his or her dutiful promise of delivering competent, standard-of-care services” (pp. 8-9). Standards should be evidence-based so that “if harm occurred by way of an unjustifiable deviation from the standard of care . . . then that harm should be deemed preventable . . . [because] [n]o patient should be expected to endure [harm]” based on violations of the standard of care (Banja, 2019, pp. 44, 45).

Banja’s (2019) discussion of an evidence-based standard of care is instructive and ranges from the best evidence determined by “meta-analytic studies of the aggregated results of well-conducted randomized clinical trials” to “discrete randomized trials with large, multicentered, double-blinded, placebo (or standard-of-care) controls that have survived enough peer review to appear in prestigious high-impact publications” to the least persuasive evidence

found in “observational and cohort studies, case series, individual case reports, and clinical anecdotes” (pp 192-193). Perhaps most importantly for a field in its early stages of evidentiary development such as mindfulness, Banja (2019) observes that “standards of care are evolutionary rather than static, and . . . providers have an obligation to stay abreast of new techniques and developments” (p. 203). Banja (2019) concludes that “changes [in medical knowledge] do not occur seamlessly, but by fits and starts . . . each of which starts out as an experimental agent with imperfectly known risks, and each of which involves a departure from what most physicians are doing . . . in providing care for their patients” (p. 203).

This paper recognizes that the above-detailed steps will need to be utilized to obtain input and ultimate acceptance for this proposal, and to arrive at viable community-approved standards and a regulatory and enforcement structure. As such, what follows is a suggested framework and Model Practice Act to begin this critical conversation.

#### **Standard of Care for Secular Mindfulness Practice and Method for Implementation and Enforcement**

First, it is inevitably the personal responsibility of each person engaging in this work to attend with care and intentionality to how we are actually living our lives, both personally and professionally, in terms of ethical behavior. An awareness of one’s conduct and the quality of one’s relationships, inwardly and outwardly, in terms of their potential to cause harm, are intrinsic elements of the cultivation of mindfulness as I am describing it here.

~ Jon Kabat-Zinn (Kabat-Zinn, 2011, p. 294)

Historically, Right Mindfulness has been defined as the ability to be diligently aware, mindful and attentive with regard to (1) the activities of the body (kāya), (2) sensations or feelings (vedanā), (3) the activities of the mind (citta) and (4) ideas, thoughts, conceptions and things (dhamma). (Rahula, 1974, p. 48)

As part of the development of these abilities, mindfulness practice improves the “ability to distinguish what is wholesome from what is unwholesome in order to cultivate the former and renounce the latter” (Hickey, 2019, p. 211). Indeed, as author and renowned mindfulness expert Dan Siegel (2007) has stated,

[m]indfulness in its most general sense is about waking up from a life on automatic and being sensitive to novelty in our everyday experiences. . . . Instead of being on automatic and mindless, mindfulness helps us awaken, and by reflecting on the mind we are enabled to make choices and thus change becomes possible. (p. 5)

While the historical and modern utility of mindfulness practices have been increasingly subjected to quantitative and qualitative research, as stated above, standards of care are often vague or entirely absent. Based on the determination of both the potential benefit and harm to teachers and participants, and to remediate the lack of an overarching applicable standard of care, the remainder of this paper explores the following in order to evolve a viable standard of care for secular mindfulness practice:

1. Identify applicable standards of care in professions that engage directly in human well-being;
2. Identify existing standards of care in mindfulness-based interventions (MBSR, MBCT, IMIN, MBI:TAC, International Mindfulness Teachers Association);
3. Utilize provisions of existing standards of care in the well-being professions to develop a standard of care for mindfulness practices;
4. Identify existing regulatory and licensing structures in well-being fields;
5. Adapt components of existing regulatory and licensing structures in the well-being professions to propose a method for regulation of mindfulness practices.

### **Applicable Standards of Care in Professions that Engage Directly in Well-Being**

Healthcare and other professions that engage in well-being in the United States are subject to well-defined standards of care. In most states, there are extensive regulations that govern mental health practices, and most states have officially adopted the codes of ethics of professional associations as the licensing boards' standard for their profession under their jurisdiction (Zur, n.d.). Zur (n.d.) notes that the standard of care is also informed by case law,

federal and state laws and regulations, consensus among professionals, and consensus in the community.

The American Medical Association (AMA) and American Psychological Association (APA) provide their respective professions with detailed ethical guidelines and standards that support the caregivers as well as those for whom they care. Many other organizations that provide mental, emotional, and physical treatment have also adopted similar codes of ethics and promulgate extensive directives and regulations to ensure delivery of services that meet accepted standards of care (see, e.g., National Association of Social Workers (n.d.); Association for Experiential Education (n.d.); American Physical Therapy Association (n.d.); American Counseling Association, n.d.).

#### ***American Medical Association (AMA)***

The American Medical Association (AMA) has utilized the Hippocratic Oath as the oath of the medical profession for many years, it is therefore not a surprise that the AMA has been at the forefront for decades in the development of its extensive standards, code of ethics, rules, and procedures to enforce discipline in the event of violations. The AMA Principles of Medical Ethics state that “[a]s a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self” (American Medical Association, n.d.-a). The AMA Ethics Code includes a specific provision on informed consent which states that “informed consent to medical treatment is fundamental in both ethics and law. It helps patients make well-considered decisions about their care and treatment”. (American Medical Association, n.d.-d).

The AMA includes a mechanism for the discipline of members who violate the standards espoused in the Ethics Code. AMA Code of Medical Ethics Opinion 9.4.3 provides that Incompetence, corruption, dishonest, or unethical conduct on the part of members of the medical profession is reprehensible. In addition to posing a real or potential threat to patients, such conduct undermines the public’s confidence in the profession. The

obligation to address misconduct falls on both individual physicians and on the profession as a whole. (American Medical Association, n.d.-c)

In the event of a disciplinary proceeding, the AMA further states that

[t]he goal of disciplinary review is both to protect patients and to help ensure that colleagues receive appropriate assistance from a physician health program or other service to enable them to practice safely and ethically. Disciplinary review must not be undertaken falsely or maliciously. (American Medical Association, n.d.-c)

The AMA Ethics Code imposes a duty on physicians to report colleagues “whose behavior is incompetent or unethical in keeping with ethics guidance.” (American Medical Association, n.d.-c). Additionally, the AMA finds that “medical societies have a civic and professional obligation to:

- (a) Report to the appropriate governmental body or state board of medical examiners credible evidence that may come to their attention involving the alleged criminal conduct of any physician relating to the practice of medicine.
- (b) Initiate disciplinary action whenever a physician is alleged to have engaged in misconduct whenever there is credible evidence tending to establish unethical conduct, regardless of the outcome of any civil or criminal proceedings relating to the alleged misconduct.
- (c) Impose a penalty, up to and including expulsion from membership, on a physician who violates ethical standards. (American Medical Association, n.d.-c)

Importantly, the AMA Ethics Code fully supports self-regulation of the medical profession. The Code provides that “[s]ociety permits medicine to set standards of ethical and professional conduct for physicians. In return, medicine is expected to hold physicians accountable for meeting those standards and to address lapses in professional conduct when they occur” (American Medical Association, n.d.-c). The AMA’s self-regulation includes opinions on the following: sexual boundaries, physician education and training, physician wellness, peer

review and disciplinary action, physician involvement in health care institutions, physician promotion and marketing practices, and physician interactions with government agencies (American Medical Association, n.d.-c).

### ***American Psychological Association (APA)***

Like the AMA, the American Psychological Association (APA) has developed ethical standards which “set forth enforceable rules for conduct as psychologists . . . [in terms that] are written broadly, in order to apply to psychologists in varied roles, although the application of an Ethical Standard may vary depending on the context” (American Psychological Association, 2017, p. 2). Importantly, the APA notes that while the Ethical Standards are not exhaustive, “[t]he fact that a given conduct is not specifically addressed by an Ethical Standard does not mean that it is necessarily either ethical or unethical” (American Psychological Association, 2017, p. 2).

The APA limits application of its Ethical Principles and Code of Conduct and provides that the “Ethics Code applies only to psychologists' activities that are part of their scientific, educational, or professional roles as psychologists” (American Psychological Association, 2017, p. 2). These limitations are further defined to include the following: “clinical, counseling, and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design and evaluation; and administration” (American Psychological Association, 2017, p. 2). Moreover, the APA applies the Ethics Code to each of these activities “across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions” (American Psychological Association, n.d.-xx). Purely private conduct of psychologists is not governed by the Ethics Code (American Psychological Association, n.d.-xx).

The APA Ethics Code includes provisions for Competence, Human Relations, Privacy and Confidentiality, Advertising and Other Public Statements, Record Keeping and Fees,



Education and Training, Research and Publication, Assessment, and Therapy (American Psychological Association, 2017, pp. 3-20). Ofer Zur (n.d.) describes the standard of care in psychotherapy and counseling, and states that “[t]he standard of care has been defined as the usual and customary professional standard practice in the community.” To analyze whether particular actions are compliant with the standard of care, Zur (n.d.) proposes that psychotherapists ask themselves questions such as:

Does my conduct violate state or federal law, the licensing boards regulations or an ethical principle?

Is there a court case imposing a duty on me which is relevant to this case?

What would a respected peer, who uses a similar theoretical orientation, working with a similar type of client in a comparable type of community, say about [this] intervention[]?

Zur (n.d.) urges that proof that behavior is within the standard of care requires that the therapist keep good clinical records and provides minimum guidelines for record-keeping.

In addition to its comprehensive delineation of principles and Ethics Code, the APA also provides information to the public to determine potential violations of the Ethics Code (American Psychological Association, n.d.). The potential violations include the categories of Multiple Relationships, Confidentiality, Informed Consent, Expertise, Billing, and End of Therapy (American Psychological Association, n.d.).

In order to enforce applicable standards of care and its Ethics Code, the APA has created an Ethics Committee and developed its Rules and Procedures (American Psychological Association, 2018). The APA states that

The fundamental objectives of the Ethics Committee (hereinafter the Committee) shall be to maintain ethical conduct by psychologists at the highest professional level, to educate psychologists concerning ethical standards, to endeavor to protect the public against harmful conduct by psychologists, and to aid the Association in achieving its objectives as reflected in its Bylaws. (American Psychological Association, 2018, p. 3).

The Rule and Procedures “outline the objectives and operating rules for the Ethics Committee . . . as well as procedures for adjudications against APA members for violations of the APA Ethics Code or other relevant authorities” (American Psychological Association, 2018, p. 3).

The APA Ethics Committee investigations of unethical conduct are handled under two different pathways:

1. show cause proceedings based on actions taken by other governmental or private bodies against an APA member; and
2. actions based on complaints filed against APA members by other members, non-members, or the Ethics Committee. (American Psychological Association, 2018, p. 3)

If, after the investigation, the Ethics Committee determines that an ethics violation has occurred, the Rules and Procedures provide available sanctions that include reprimand, censure, expulsion or voiding of membership, stipulated resignation, or probation (American Psychological Association, 2018, pp. 6-7).

### **Existing Regulatory and Licensing Structures in Well-Being Fields**

As described above, most existing professional associations in the well-being fields (e.g., AMA, APA, NASW, and ACA) have created extensive Ethics Codes and procedures to enforce disciplinary responses for violations. These disciplinary processes carry punitive weight largely due to the threat of loss of the license to practice required for most of the healing professions. A state-granted medical license is required for every practicing physician (American Medical Association, n.d.-e). Similarly, in order to practice psychology, one must become licensed through the particular state's licensing board (American Psychological Association, n.d.-d). Social workers and professional counselors are also required to be licensed (National Association of Social Workers, n.d.; American Counseling Association, n.d.).

For the medical profession, state medical boards “serve the public by protecting it from incompetent, unprofessional, and improperly trained physicians” (Carlson & Thompson, 2015, p. 311). To accomplish this objective, medical boards “ensure that only qualified physicians are

licensed to practice medicine and that those physicians provide their patients with a high standard of care” (Carlson & Thompson, 2015, p. 311). Carlson and Thompson find that “state medical boards license medical doctors, investigate complaints investigate complaints, discipline physicians who violate the medical practice act, and refer physicians for evaluation and rehabilitation when appropriate” (Carlson & Thompson, 2005, p. 311).

While every state has its own license requirements for each of these professions, and each state’s requirements, from education to testing to minimum continuing education differ, there are extensive commonalities among all governmental regulatory processes. In order to obtain a medical license, the state medical board evaluates applicants based on the applicant’s qualifications, including undergraduate and graduate medical education, work history, and personal character (Carlson & Thompson, 2015, p. 311). In addition, all applicants must “successfully complete a rigorous examination designed to assess their ability to apply knowledge, concepts, and principles of health and disease that constitute the basis for safe and effective patient care” (Carlson & Thompson, 2015, p. 311). Licensure for psychologists, social workers, and counselors have similar requirements (American Psychological Association, 2017; National Association of Social Workers, n.d.; American Counseling Association, n.d.).

### **Existing Standards in Mindfulness Practices**

Mindfulness is anomalous among professions that provide interventional well-being support in its lack of a license requirement and regulatory and enforcement process. To date, efforts to instill broadly applicable standards of care have been largely unsuccessful. That is not to say, however, that there are no standards in mindfulness practice or mindfulness-based interventions. Several of the best-known mindfulness-based interventions, including Mindfulness Based Stress Reduction (MBSR) and Mindfulness Based Cognitive Therapy (MBCT) have focused on standardization in the delivery of their respective programs and have developed standards and processes.

***Mindfulness Based Stress Reduction (MBSR)***

From its inception, Jon Kabat-Zinn, the founder of Mindfulness Based Stress Reduction (MBSR), “has presented an openness to change,” as explicitly stated in the MBSR training materials which provide that

[w]e emphasize that there are many different ways to structure and deliver mindfulness-based stress reduction programs. The optimal form of its delivery will depend critically on local factors and on the level of experience and understanding of the people undertaking the teaching. Rather than “clone” or “franchise” one cookie cutter approach, mindfulness ultimately requires effective use of the present moment as the core indicator of the appropriateness of particular choice. (McCown, Reibel, & Micozzi, 2011, p. 139)

Additionally, as the original structured MBI, MBSR is perhaps the most researched of the MBIs (Vago, Gupta, & Lazar, 2019, p. 144). The MBSR Standards of Practice provide that MBSR “is a well-defined and systematic patient-centered educational approach which uses relatively intensive training in mindfulness meditation as the core of a program to teach people how to take better care of themselves and live healthier and more adaptive lives” (Santorelli, 2014).

While the MBSR Standards of Practice recognize that “delivery . . . depend[s] critically on local factors and on the level of experience and understanding of the people undertaking the teaching,” MBSR involves “key principles and aspects of MBSR which are universally important to consider and to embody within any context of teaching” (Santorelli, 2014). MBSR instructor training mandates the structure, methods, and key program characteristics of an MBSR program and include a specifically defined structure and methods. (McCown, Reibel, & Micozzi, 2011, pp. 137-139).

While MBSR offers community choice, the MBSR curriculum includes the following specific requirements:

Structure and Methods

- a) Group Pre-program Orientation Sessions (2.5 hours) followed by a brief individual interview (5-10 minutes)
- b) Eight-weekly classes 2.5-3.5 hours in duration
- c) An all-day silent retreat during the sixth week of the program (7.5 hrs)
- d) “Formal” Mindfulness Meditation Methods:
  - Body Scan Meditation* - a supine meditation
  - Gentle Hatha Yoga* - practiced with mindful awareness of the body
  - Sitting Meditation* - mindfulness of breath, body, feelings, thoughts, emotions, and choiceless awareness
  - Walking Meditation*
- e) “Informal” Mindfulness Meditation Practices (mindfulness in everyday life):
  - Awareness of pleasant and unpleasant events
  - Awareness of breathing
  - Deliberate awareness of routine activities and events such as: eating, weather, driving, walking, awareness of interpersonal communications
- f) Daily home assignments including a minimum of 45 minutes per day of formal mindfulness practice and 5-15 minutes of informal practice, 6 days per week for the entire duration of the course
- g) Individual and group dialogue and inquiry oriented around weekly home assignments including an exploration of hindrances to mindfulness and development and integration of mindfulness-based self-regulatory skills and capacities
- h) Incorporation of exit assessment instruments and participant self-evaluation in Class 8
  - Total in-class contact: 30+ hours
  - Total home assignments: minimum of 42-48 hours

- Total group Orientation Session time: 2.5 hours

(Santorelli, 2014; McCown, Reibel, & Micozzi, 2011, pp. 137-138). The weekly classes follow a form template for each of the sessions and silent retreat (McCown, Reibel, & Micozzi, 2011, pp. 140-142). MBSR facilitates adherence to its curriculum through its Authorized Curriculum Guide and Standards of Practice and requirement for certification prior to authorization to teach the MBSR program (Santorelli, Meleo-Meyers, & Koerbel, 2017; Santorelli, 2014).

### ***Mindfulness Based Cognitive Therapy (MBCT)***

Like MBSR, Mindfulness Based Cognitive Therapy (MBCT) provides a structured program to teach mindfulness skills in a specific sequence. MBCT teacher training is required to include the following components:

- Offers a coherent, stepped approach, describing progress from novice to advanced MBCT teacher.
- Integrates formal teaching with workshops/residential mindfulness trainings, skills training and supervision/mentoring.
- References as benchmarks the training guidelines published in the MBCT manual as well as broader guidelines for mindfulness-based interventions such as the UK Network Good Practice Guidelines.
- Uses the Mindfulness-based Interventions Teaching Assessment Criteria (MBI-TAC) both to support MBCT teacher learning but also to assess competency when teachers graduate training programs, are selected to teach on clinical trials or apply to be listed on a MBCT teacher listing. To more fully capture the particularities of MBCT teacher competency, an MBCT overlay is being developed.
- Expects MBCT teachers to work within the ethical codes of their professional

bodies. If they do not have such a code, training and attention to codes set out by the most relevant professional body are suggested as a safeguard and to promote good practice.

- Is evidence-based relying on and generating the best available evidence to inform the training. (Segal, et al., 2018)

MBCT also includes prerequisites prior to the commencement of the MBCT Training Pathway that are fairly stringent:

1. An experiential understanding of mindfulness through personal mindfulness practice. This would normally be for at least a year before entering the training pathway.
2. Participation in a structured 8-week MBCT program as a participant. This is to understand the program experientially, including having used the core mindfulness practices that are taught in MBCT.
3. The knowledge and key competencies to deliver a structured therapeutic approach. This would normally include a (professional) qualification(s) that enables the person to teach MBCT with the target population and in the context in which they plan to teach safely and effectively. For example, for MBCT for depression a professional degree in one of the mental health disciplines that qualifies them for clinical practice. This would include the use of structured, evidence-based therapeutic approaches to mental health (e.g., cognitive-behavioral therapy), the knowledge / skills to work with clinical populations and the knowledge/skills to identify and manage risk. Individuals with an interest in teaching MBCT to other populations and/or in non-clinical contexts could potentially participate in training. However an evaluation of the fit of their educational and vocational background with the intended population/context would be required. This may require additional training alongside the training

pathway in for example ethics and safeguarding/risk assessment and management.

4. Knowledge and experience of the population to which MBCT will be delivered, including experience of teaching, therapeutic, or other care provision.
5. Skills to work with individuals and groups. (Segal, et al., 2018)

Lastly, the MBCT training curriculum states that upon successful completion of the training, trainees should be able to

- Understand and critique the main MBCT theoretical underpinnings and evidence base.
- Describe the MBCT curriculum and the rationale for different elements.
- Articulate clear rationales for patient selection and undertake MBCT assessment / orientation sessions.
- Have the requisite skills to lead mindfulness practices and support clients in learning and developing mindfulness practices.
- Have the necessary skills to lead all aspects of the MBCT programme and support clients' learning.
- Choose appropriate methods to evaluate MBCT's accessibility and effectiveness and interpret these evaluation data.
- Judge when MBCT is appropriate for a particular population and context and maximise MBCT's accessibility to people from diverse cultures and with different values. Be aware of safeguarding and risk issues and be competent to manage these issues in practice.
- Reflect on the ethical framework of MBCT teaching and apply this to complex issues arising in clinical practice.
- Sustain a regular personal mindfulness practice, reflect on its relevance to MBCT teaching and embody this learning in MBCT teaching.



- Reflect on their learning and development, evaluate progress, engage actively with supervision and set goals for on-going learning. (Segal, et al., 2018)

The criteria, structure, curricula, standards, and prerequisites for MBSR and MBCT provide valuable guidelines for the development and implementation of systems to implement standards for mindfulness practices and mindfulness-based interventions. Three groups have made efforts to create these types of standards – the International Mindfulness Integrity Network (IMIN), The Mindfulness-Based Interventions: Teaching Assessment Criteria (MBI:TAC), and the International Mindfulness Teachers Association (IMTA).

### ***International Mindfulness Integrity Network (IMIN)***

The International Mindfulness Integrity Network (IMIN), was formed in 2016 by a group of mindfulness-based teaching organizations, and began “to compare and contrast, analyze and synthesize” the “standards, pathways, procedures and criteria that have been developed over many years, and put into practice in various organizations and trainings, with MBSR and MBCT being primary exemplars in the field” (International Mindfulness Integrity Network, n.d., pp. 2, 3). IMIN sought to “offer a comprehensive and robust set of minimal requirements for the teaching of MBPs [Mindfulness Based Programs] and the training of MBP teachers” (International Mindfulness Integrity Network, n.d., p. 3).

In 2017 IMIN released its Framework for the Integrity of Mindfulness-Based Programs (International Mindfulness Integrity Network, n.d., pp. 1-23). IMIN clearly states that its Framework is just that – a “*framework* of criteria that may be subject to adaptations” (International Mindfulness Integrity Network, n.d., p. 3). IMIN further states that

[p]lacing ethics first in this document points toward the *ethos* of mindfulness, the very *spirit* of this work, which holds compassion, inclusion and ethical behavior as the primary impulse for our mindfulness practice, and from that, our teaching. (International Mindfulness Integrity Network, n.d., p. 3)

The IMIN Framework begins with a section entitled Ethics for Teachers and Teacher Trainers that is particularly instructive:

[T]hese criteria have been carefully selected to cover all the aspects of secular mindfulness-based programs (MBP) or MBP teacher training. They represent international best practice standards so any local adaptations that may dilute these guidelines need to be carefully considered, and not done solely for competitive reasons. It is recommended that local or regional organizations involved in reviewing the quality of local training organizations and teachers adopt these ethical standards, and set up processes to ensure consistency in practice. (International Mindfulness Integrity Network, n.d., p. 5)

This paper recommends that the IMIN Framework be utilized, in its entirety, (together with the MBI:TAC and IMTA certification as discussed below) as the basis for licensure of Mindfulness Professionals, and incorporates the IMIN Framework into the Model Act, discussed below and in Appendix B. In addition, as the IMIN Framework is modified, a Board of Mindfulness Professionals created by the Act may choose to incorporate those guidelines into their regulations.

***Mindfulness-Based Interventions: Teaching Assessment Criteria (MBI:TAC)***

A second recent effort to create standards is found in the Mindfulness-Based Interventions: Teaching Assessment Criteria (MBI:TAC) which was “collaboratively developed by teaching teams within the Centre for Mindfulness Research and Practice at Bangor University, the Oxford Mindfulness Centre at Oxford University, and CEDAR at Exeter University” (MBI:TAC, n.d.). The purpose of the MBI:TAC assessment criteria is to “enable the teaching of Mindfulness-Based Interventions (MBIs) to be assessed for adherence and competence” (Crane, et al., 2018, p. 3). The MBI:TAC was developed “in the context of . . . MBSR and . . . MBCT. . . [and] is now being used . . . to review competence and adherence of other MBIs . . . .” (Crane, et al., 2018, p. 3).

The MBI:TAC “is used to assess the competence of trainee mindfulness teachers” (MBI:TAC, n.d.). As the MBI:TAC website states,

During the first year of teacher training, trainees are marked assuming that the average competency level will be ‘advanced beginner’, in the second and third year of training, trainees are marked assuming that the average level will be one step higher than ‘advanced beginner’ – that of being a ‘competent’ teacher. Offering rich feedback is a core part of trainee development, when being assessed on the MBI:TAC, equal weight is given to summative comments (what the trainee is doing well on) and formative comments (where the trainee could improve). Feedback is as supportive and as specific as possible to enable trainees to feel confident in what they do well, and also highlighting areas for improvement. MBI:TAC. (n.d.)

More specifically, the MBI:TAC focuses on “intervention integrity” which describes “the degree to which an intervention is implemented as intended [across] three dimensions: adherence, differentiation, and competence,” further defined as follows:

1. ‘Adherence’ refers to the extent to which the teacher/therapist both applies the appropriate ‘ingredients’ at the appropriate time points, while also refraining from introducing methods and curriculum elements that are not recognised as part of the approach.
2. ‘Differentiation’ refers to the degree to which the approach can be distinguished from other approaches.
3. ‘Competence’ is a more complex dimension, and refers to the teacher’s skill in delivering the intervention. (Crane, et al., 2018, p. 3)

The MBI:TAC measures six domains of competence:

Domain 1: Coverage, pacing and organisation of session curriculum

Domain 2: Relational skills

Domain 3: Embodiment of mindfulness

Domain 4: Guiding mindfulness practices

Domain 5: Conveying course themes through interactive inquiry and didactic teaching

Domain 6: Holding the group learning environment (Crane, et al., 2018, p. 5)

The MBI:TAC asserts that its integrity verification is important for the following four reasons:

1. In research trials, delivering the teaching (as intended and to a sufficiently high quality) is a key variable in interpreting the results, and may well influence outcome for participants. In order to be sure of this, research trial governance needs to include systems to assess levels of adherence, differentiation and competence.
2. These issues are not confined to research trial contexts. In training contexts, clarity is needed regarding the particular skills that are developed, and systems should be in place to ensure that the training achieves its aims.
3. In the context of university-validated postgraduate teacher training programs (such as those offered at the UK universities of Bangor, Oxford and Exeter), formal assessment of teaching practice is required for the award of academic credits. For this purpose, assessment criteria and the assessment process must be entirely clear and transparent.
4. Systems to check teaching integrity are also an important ingredient in successful intervention implementation. MBIs are increasingly commissioned and implemented in the UK National Health Service and other settings. In the drive to implement a promising approach, however, there is a risk that the very factors that give rise to its promise are lost through a dilution of its integrity as it is rolled out. Nationally agreed benchmarks and governance assessing readiness to teach can help ensure that slippage from the core model does not take place during the transition from research to practice (Crane & Kuyken, 2012, Rycroft-Malone et al., 2014 & 2017). (Crane, et al., 2018, p. 3)

This paper recommends that the MBI:TAC (Crane, et al., 2018) be utilized, in its entirety, together with the IMIN Framework, and IMTA certification (discussed below) as the basis for evaluation of mindfulness training programs and of Mindfulness Professionals and incorporates the MBI:TAC into the Model Act, discussed below and in Appendix B. In addition, as the MBI:TAC is modified, a Board of Mindfulness Professionals created by the Act may choose to incorporate those guidelines into their regulations.

### ***International Mindfulness Teachers Association (IMTA)***

The International Mindfulness Teachers Association (IMTA) was formed in 2019 by a group of well-recognized mindfulness teachers and seeks to provide guidelines and to oversee national and international mindfulness teacher education and training standards to ensure teaching and education programs continue to meet a level of depth and rigor needed to serve students and clients at the highest level and standardize the mindfulness teaching profession. (International Mindfulness Teachers Association, n.d.)

As stated in the IMTA's vision statement, the IMTA desires to be "the lead guiding professional association for the mindfulness field" and

a central place where the general public can come to identify high-quality, accredited training programs and institutions, as well as nationally and internationally credentialed and certified mindfulness teachers. (International Mindfulness Teachers Association, n.d.)

Currently, the IMTA serves three functions. First, it has created a method for mindfulness practitioners to apply for IMTA membership, which entitles those who pay the full membership fee to be included in the IMTA geographically searchable directory (International Mindfulness Teachers Association, n.d.). Second, the IMTA accredits Mindfulness Teacher Training Programs, "offers a 200-hour IMTA Accredited Mindfulness Teacher Training Program,

Professional Level [and] plans to offer a 500-hour IMTA Accredited Mindfulness Teacher Training Program, Advanced Level (International Mindfulness Teachers Association, n.d.).

Finally, the IMTA has created a certification for mindfulness teachers. Students who have successfully completed an IMTA-Accredited Mindfulness Teacher Training Program are eligible to apply for a three-year certification at one of two certification levels:

1. After completing a 200-hour program, qualified teachers will earn the title: "CMT-P," or "IMTA Certified Mindfulness Teacher, Professional Level." Initially, this certification will launch with a "Provisional" certification designation until the Credentialing Committee launches the assessment exam. Candidates will have one year to take the exam. Upon passing, the "Provisional" designation will drop.
2. After completing a 500-hour program, advanced professionals will earn the title: "CMT-A," or "IMTA Certified Mindfulness Teacher, Advanced Level" certification. (International Mindfulness Teachers Association, n.d.)

Eventually, the IMTA's website states that it intends to create an Ethics Board to "address grievances and promote the highest ethical standards in the field," develop accreditation for specialized programs, and serve as a clearinghouse for continuing education for mindfulness teachers and facilitators (International Mindfulness Teachers Association, n.d.).

This paper recommends that the IMTA's Accredited Program 200-Hour requirements be utilized, together with the IMIN Framework and MBI:TAC, as the basis for evaluation of mindfulness training programs and of Mindfulness Professionals and incorporates these accreditation requirements into the Model Act, discussed below and in Appendix B. Moreover, as the International Mindfulness Teachers Association creates ethical guidelines or any other program evaluation criteria, a Board of Mindfulness Professionals created by the Act may choose to incorporate those guidelines into their regulations.

### **Proposed Standard of Care and Regulatory Structure for Mindfulness Practices**

As has been asserted throughout this paper, a standard of care for mindfulness practice is critical to the continued evolution and safe application of the practice, both for practitioners and for teachers. As the AMA provides, “a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self” (American Medical Association, n.d.-xx). *The goals for MBIs should be no different.*

To date, the mindfulness community has engaged in efforts to support voluntary ethical constructs and assessment criteria. These efforts have had limited success due to a variety of factors that include cost, apathy, lack of comprehensive community engagement, competition, and denial of risk. While many MBIs, including MBSR and MBCT, require training and/or certification, and a number of teacher certification programs have been created, there are currently no formal requirements that must be met for an individual to teach mindfulness practices. In addition, a failure to meet the recognized standard of care, which would result in discipline in any other licensed healing practice, carries no such consequence in the MBI context.

As with all the other well-being fields discussed, the method to best meet the objective and protect participants, teachers, and potentially the long-term viability and reputational integrity of the mindfulness community, is through a system of regulation that requires state licensure combined with a self-regulatory body that investigates and disciplines professionals who violate the ethical mandates of the profession.

To that end, a Model Practice Act for the Regulation of Secular Mindfulness Practice and Mindfulness-Based Interventions (Model Practice Act) is proposed for each state/territory to legislatively create. The Model Practice Act creates a self-regulatory organization in each state/territory governed by a Board of Mindfulness Professionals. The Model Practice Act is intended to foster discussion in the secular mindfulness community, and if desired, to serve as a

draft proposal for state legislatures to create a detailed framework to license and regulate secular mindfulness practice and mindfulness-based interventions.

Perhaps the most challenging aspect of the Model Practice Act is found in Section 1.04 which defines “Mindfulness Practices.” The definition is intended to incorporate the breadth of different teaching practices, from short open sits to lengthy silent retreats. It is further intended that, as with the standards of care discussed previously, the standard of care to be applied to determine whether a particular Mindfulness Practice has met the standard of care will likely depend on the context in which the Mindfulness Practice is offered and delivered. The teacher’s expertise necessary to meet the standard of care will similarly be dependent on the type of Mindfulness Practice offered.

The research that led to the development of this proposed Model Practice Act for the Regulation of Secular Mindfulness Practice and Mindfulness-Based Interventions (MPA) included an extensive investigation of existing regulatory systems for well-being professions, and included reviews of medicine, psychology, social work, therapy, and counseling. Each of these fields is granted statutory authority to create a self-regulatory organization, and these professions have generally then created a governing board to issue licenses and to regulate their respective professions. The regulations typically include specific disciplinary processes for defined violations of standards of care. Of the professions examined, the Model Social Work Practice Act created by the Association of Social Work Boards most closely approximated the intent of this thesis (Association of Social Work Boards, n.d.). As a result, this proposed MPA is largely based on, and in some instances, is identical to, the Model Social Work Practice Act.

## **Conclusion**

Are there in this teacher any states based on greed, hatred, or delusion such that, with his mind obsessed by those states, while not knowing, he might say, “I know,” or while not seeing he might say “I see,” or he might urge others to act in a way that would lead to their harm and suffering for a long time?

~ Majjhima Nikaya 95 (Olendzki, 2016, p. 102).



Over the past 40 years, mindfulness has rapidly grown and the research supports extensive health and wellness benefits. Many, indeed most, secular mindfulness practitioners and teachers have positive experiences that enhance their lives. However, recent research also demonstrates the need to exercise care to mitigate the risk of harm in some instances.

The historic foundations of mindfulness are grounded in ethics and include care for the wellbeing of practice participants. Western mindfulness, secularized to remove the religious implications of the practice, has at times transformed mindfulness into an intervention but failed to provide adequate training for teachers and adequate warnings to participants. In so doing, known and potential risks to practitioners have not been given proper attention. The result has been harm to participants, and the risk remains to future participants and teachers.

From the time of Hippocrates, Western medicine has responded to risk with a commitment to “do no harm.” As a result, standards of care have evolved and now include well-established legal principals, thousands of court decisions, and substantial academic writing that can be utilized as the criteria for standards. Given the known risks to mindfulness practitioners, that are now supported by a number of research studies, a formal standard of care is warranted for secular mindfulness and mindfulness-based interventions.

This standard of care, embodied in the proposed Model Practice Act for the Regulation of Secular Mindfulness Practice and Mindfulness-Based Interventions, creates a legally recognized and empowered self-regulatory organization. The Board of Mindfulness Professionals authorized by the Practice Act establishes standards of minimal mindfulness professional competence, methods to fairly and objectively address complaints, and a procedure that ensures due process in the event removal of incompetent and/or unethical practitioners from practice becomes necessary. The Model Practice Act strongly urges Boards to incorporate the prior work of the International Mindfulness Integrity Network, the Mindfulness-Based Interventions Teaching Assessment Criteria (MBI:TAC), and the certification criteria created by the International Mindfulness Teachers Association.

In order for the Model Practice Act to move from theory to legislation, much work remains. The secular mindfulness community has already begun to acknowledge the need for standards and certification (e.g., INIT, MBI:TAC, IMTA). However, unlike every other healing profession, secular mindfulness operates without a regulatory framework, a governmentally sanctioned license, and a procedure for enforcement in the event of misconduct. As such, participants and teachers operate without well-defined standards of care and are therefore at risk of harm.

The Buddha asked

Are there in this teacher any states based on greed, hatred, or delusion such that, with his mind obsessed by those states, while not knowing, he might say, “I know,” or while not seeing he might say “I see,” or he might urge others to act in a way that would lead to their harm and suffering for a long time? (Olendzki, 2016, p. 102).

As was the case in the fifth century B.C.E., the mindfulness community today can embrace the ideals of fully embodied practice and present-moment, non-judgmental awareness, while also acknowledging and resolving to address the potential risk of harm to participants and teachers. The benefits of secular mindfulness are clear, as is the opportunity to engage in this critical conversation. It is hoped that this paper creates a sense of purpose, direction, and urgency for the secular mindfulness community.

## APPENDIX A

**HIPPOCRATIC OATH**

I swear by Apollo the physician, and Asclepius, and Hygieia and Panacea and all the gods and goddesses as my witnesses, that, according to my ability and judgement, I will keep this Oath and this contract:

To hold him who taught me this art equally dear to me as my parents, to be a partner in life with him, and to fulfill his needs when required; to look upon his offspring as equals to my own siblings, and to teach them this art, if they shall wish to learn it, without fee or contract; and that by the set rules, lectures, and every other mode of instruction, I will impart a knowledge of the art to my own sons, and those of my teachers, and to students bound by this contract and having sworn this Oath to the law of medicine, but to no others.

I will use those dietary regimens which will benefit my patients according to my greatest ability and judgement, and I will do no harm or injustice to them.

I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a pessary to cause an abortion.

In purity and according to divine law will I carry out my life and my art.

I will not use the knife, even upon those suffering from stones, but I will leave this to those who are trained in this craft.

Into whatever homes I go, I will enter them for the benefit of the sick, avoiding any voluntary act of impropriety or corruption, including the seduction of women or men, whether they are free men or slaves.

Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private.

So long as I maintain this Oath faithfully and without corruption, may it be granted to me to partake of life fully and the practice of my art, gaining the respect of all men for all time. However, should I transgress this Oath and violate it, may the opposite be my fate.

(North, 2002)

## **MODEL PRACTICE ACT<sup>2</sup> FOR THE REGULATION OF SECULAR MINDFULNESS PRACTICE AND MINDFULNESS-BASED INTERVENTIONS**

The research that led to the development of this proposed Model Practice Act for the Regulation of Secular Mindfulness Practice and Mindfulness-Based Interventions (MPA) included an extensive review of existing regulatory systems for well-being professions, and included reviews of medicine, psychology, social work, therapy, and counseling. Each of these fields are granted statutory authority to create self-regulatory organizations, and these professions have frequently implemented Boards to regulate the issuance of licenses and to regulate their respective professions, including specific disciplinary processes for defined violations of standards of care. Of the professions examined, the Model Social Work Practice Act created by the Association of Social Work Boards most closely approximated the intent of this thesis (Association of Social Work Boards, n.d.). As a result, this proposed MPA is largely based on, and in some instances, is identical to, the Model Social Work Practice Act.

This MPA is, at its core, designed to protect the public. The MPA provides a resource to legislatures and Mindfulness Boards and establishes standards of minimal mindfulness professional competence, methods to fairly and objectively address complaints, and a procedure that ensures due process in the event removal of incompetent and/or unethical practitioners becomes necessary. The MPA is intended to facilitate greater standardization of terminology and regulation from jurisdiction to jurisdiction which will promote increased public transparency for mindfulness practices and mindfulness-based interventions. Standardization also promotes consistency in legal decisions related to licensure, training, continuing education, discipline and other Board activities. The MPA serves as a resource to member boards and legislatures to promote public protection through regulation of mindfulness practice and mindfulness-based interventions.

To develop standards, regulations, and criteria, it is recommended that Boards review and utilize the criteria, guidelines, frameworks, and curricula developed by the INIT, MBI:TAC, and IMTA.

### **MODEL MINDFULNESS PRACTICE ACT**

#### **Article I. Title, Purpose, and Definition**

##### **Section 1.01. Title.**

This Act shall be known as the “[Jurisdiction/State/Principality/Territory] Mindfulness Practice Act.”

##### **Section 1.02. Legislative Declaration.**

The practice of Secularized Mindfulness Practices and/or Mindfulness-Based Interventions (collectively “Mindfulness Practices”) by a Mindfulness Professional in [State/Territory] is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that Mindfulness Practices, as defined in this Act, merit and receive the confidence

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<sup>2</sup> This proposed Model Practice Act is based on the Model Social Work Practice Act promulgated by the Association of Social Work Boards (Association of Social Work Boards, n.d.).

of the public and that only qualified persons be permitted to engage in Mindfulness Practices in [State/Territory]. This Act shall be liberally construed to carry out these objectives and purposes.

### **Section 1.03. Statement of Purpose.**

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective regulation of Mindfulness Practices; the licensure of Mindfulness Professionals; the licensure, control, and regulation of persons, in or out of this state, that practice Mindfulness Practices within this state.

### **Section 1.04. Mindfulness Practices.**

Subject to the limitations set forth in this Act, Mindfulness Practices means the application of secular practices, theory, knowledge, methods, and ethics to teach, assist or enhance the following for individuals, couples, families, groups, organizations, and communities:

- (a) The intentional cultivation and/or development of a way of being in a wise and purposeful relationship with one's experience, both inwardly and outwardly. It is cultivated by systematically exercising one's capacity for paying attention, on purpose, in the present moment and non-judgmentally.<sup>3</sup>
- (b) The intentional cultivation and/or development of full awareness of one's experience in each moment, equally open to whatever it has to offer and free of the domination of habitual, automatic, cognitive routines that are often goal oriented and, in one form or another, related to wanting things to be other than they are.<sup>4</sup>
- (c) The intentional cultivation and/or development of practices for the purposes identified in 1.04(a) or 1.04(b).<sup>5</sup>

### **Section 1.05. Definitions.**

- (a) Approved Provider of Continuing Education means an individual, group, professional association, school, institution, organization, or agency approved by the Board to conduct educational program(s).
- (b) Approved Mindfulness Practices Program means a school or educational program that teaches Mindfulness Practices and that has been approved by the Board.
- (c) Board or Board of Mindfulness Professionals means the Board of Mindfulness Professionals created under this Act.
- (d) Case Management means a method to plan, provide, evaluate, and monitor services from a variety of resources on behalf of and in collaboration with a Client.
- (e) Client means the individual, couple, family, group, organization, or community that

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<sup>3</sup> (Feldman & Kuyken, 2019, p. 1).

<sup>4</sup> (Feldman & Kuyken, 2019, p. 1).

<sup>5</sup> (McCown, Reibel & Micozzi, 2011, pp. 137-140).

seeks or receives Mindfulness Practices services, as defined in section 1.04, from an individual Mindfulness Professional or an organization. Client status is not dependent on billing or payment of fees for such services.

- (f) Supervision means an interactional professional relationship between an Approved Supervisor and a Mindfulness Professional that provides evaluation and direction over the supervisee's practice of Mindfulness Practices and promotes continued development of the Mindfulness Professional's knowledge, skills, and abilities to engage in the practice of Mindfulness Practices in an ethical and competent manner.
- (g) Continuing Education means education and training which are oriented to maintain, improve, or enhance competent Mindfulness Practices.
- (h) Consultation means an advisory professional relationship between a Mindfulness Professional and a person with particular expertise, with the Mindfulness Professional legally and ethically maintaining responsibility for all judgments and decisions regarding service to the Client.
- (i) Conviction means conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no contest plea, a plea of nolo contendere, and a guilty plea.
- (j) Electronic Mindfulness Practices Services mean the use of computers (including the Internet, social media, online chat, text, and email) and other electronic means (such as smartphones, landline telephones, and video technology) to (a) provide information to the public, (b) deliver Mindfulness Practices to Clients, (c) communicate with Clients, (d) manage confidential information and case records, (e) store and access information about Clients, and (f) arrange payment for Mindfulness Practices services.
- (k) Examination means a standardized test or examination of Mindfulness Practices knowledge, skills and abilities approved by the Board.
- (l) Felony means a criminal act as defined by this state or any other state or by definition under federal law.
- (m) Final Adverse Action means any action taken or order entered by the Board, whether through a consent agreement, as the result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against a Licensee, applicant or individual which is public information under applicable law and which impacts the licensure status or record, practice status or record, or other related practice privileges. Final Adverse Actions include, in addition to the above and without limitations, denial of licensure applications, denial of licensure renewal applications, and surrender of licensure. Board actions or orders are Final Adverse Actions irrespective of any pending appeals. To the extent applicable, Final Adverse Actions under this statute are intended to encompass, at a minimum, all actions that require reporting to state or federal authorities.
- (n) Independent Practice means practice of Mindfulness Practices outside of an organized setting, such as a social, medical, or governmental agency, in which the Mindfulness Professional assumes responsibility and accountability for services provided.

- (o) International Mindfulness Integrity Network (INIT) means the International Mindfulness Integrity Network.
- (p) International Mindfulness Teachers Association (IMTA) means the International Mindfulness Teachers Association.
- (q) Licensee means a person duly licensed or registered under this Act.
- (r) Mindfulness-Based Interventions Teaching Assessment Criteria (MBI:TAC) means the Manual, Summary, and Addendum promulgated by Crane, et al. (2018) and any amendments or revisions thereto.
- (s) Mindfulness Professional means a person duly licensed to practice Mindfulness Practices under this Act.
- (t) Mindfulness Practices is defined in section 1.04.
- (u) Program of Continuing Education means an educational program offered by an Approved Provider of Continuing Education.

## **Article II. Board of Mindfulness Professionals**

### **Introductory Comment to Article II**

The state's first step in regulating Mindfulness Practices is the establishment of a way in which the regulations will be administered by the creation of the Board. Article II of the Act defines and creates the Board and specifies elements necessary to its formation, organization, and operation. Each section in this article covers elements that AMP considers necessary to the proper formation and efficient operation of the Board. Several of these sections, especially those containing innovative or infrequently used provisions, are supplemented by explanatory comments.

One of the most important guiding principles of this Article, and in fact the Act as a whole, is the philosophy that the public is best served when statutes focus on general areas, and provide a framework within which the Board develops rules that effectively respond to the regulatory needs in that jurisdiction. It is impossible for legislatures to enact comprehensive provisions dealing with all the matters with which a Board may be confronted, or to somehow legislatively anticipate the changing conditions of the professions and the delivery of mental health and social services. Statutes are the best way to articulate the overarching values and intent of regulation, but are extremely impractical tools for responding to public needs in a timely way. Statutes should create goals, guidelines, and policies in general areas, and allow the Board to provide specifics in its rules. Consequently, AMP recommends that Boards be granted adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 2.12 of the Act is designed to accomplish this objective.

Among the sections of Article II that may be of particular interest are Sections 2.02 and 2.03(b), pertaining to the inclusion of public members as Board members; and Section 2.07, which provides ground and procedures for removal of Board members.

### **Section 2.01. Designation.**

The responsibility for enforcement of the provisions of this Act is hereby vested in the Board of Mindfulness Professionals (Board). The Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

### **Section 2.02. Membership.**

The Board shall consist of \_\_\_\_\_ members, [\_\_\_\_ of whom shall be a representative of the public, and the remainder] [each] of whom shall be licensed Mindfulness Professionals.

Note: The number of Board members should be determined by each individual jurisdiction according to its particular requirements. Individual jurisdictions may wish to consider Board composition that reflects the diversity of practice environments and interests within their borders. Variable factors such as population, number of licensed Mindfulness Professionals, and other local considerations, may all be relevant in determining the number of Board members needed to most effectively enforce the Act. In the event a jurisdiction prefers to limit Board membership to currently licensed Mindfulness Professionals, the bracketed language pertaining to a public member should be deleted, as should Section 2.03(b). AMP believes public representation on regulatory Boards is extremely important, and recommends an adequate number of consumer members be included. The inclusion of public members is an effective way to ensure that the public is being adequately served and protected by the Board.

### **Section 2.03. Qualifications.**

- (a) Each Mindfulness Professional who serves as a member of the Board shall at all times as a Board member:
- (1) Be a resident of this state;
  - (2) Be currently licensed and in good standing to engage in Mindfulness Practices in this state;
  - (3) At the time of appointment, have been actively engaged in Mindfulness Practices, for at least \_\_\_\_\_ out of the last five (5) years; and
  - (4) Have at least \_\_\_\_\_ years of experience in Mindfulness Practices.
- (b) Public member(s) of the Board shall be residents of this state who have attained the age of majority and shall not be, nor shall ever have been a Mindfulness Professional or the spouse thereof, or a person who has ever had any material financial interest in the provision of Mindfulness Practices services or who has engaged in any activity directly related to Mindfulness Practices.

Note: Specific qualifications for the public member(s) have been deliberately omitted from this section. Reliance has been placed on the Governor to determine what attributes an individual should possess in order to meaningfully serve on a Board. In order to assure that such a member would be truly independent in judgments, those who have a possible substantial relationship with the profession are rendered ineligible by this section.

### **Section 2.04. Selection of Board Members. (Alternative 1)**

The Governor shall appoint the members of the Board in accordance with other provisions of



this Article and the state constitution.

#### **Section 2.04. Selection of Board Members. (Alternative 2)**

The Mindfulness Professionals shall choose members of the Board in accordance with other provisions of this Article and the state constitution, in a manner approved by the Board.

Note: The method of selection of Board members is to be determined in each jurisdiction.

#### **Section 2.05. Terms of Office.**

- (a) Except as provided in subsection (b), members of the Board shall serve for a term of years, except that members of the Board who are selected to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.
- (b) The terms of the members of the Board shall be staggered. Each member shall serve until a successor is selected and qualified.
- (c) No member of the Board shall serve more than two (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

#### **Section 2.06. Vacancies.**

Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled in the manner prescribed by Section 2.04.

#### **Section 2.07. Removal.**

- (a) A Board member may be removed pursuant to the procedures set forth in subsection (b) herein, upon one or more of the following grounds:
  - (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
  - (2) The misuse of office by a member of the Board to obtain pecuniary or material gain or advantage personally or for another through such office;
  - (3) The violation by any member of the laws governing Mindfulness Practices; or
- (b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this state, or other applicable laws.

#### **Section 2.08. Organization.**

- (a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to the conduct of its business. The Chairperson shall preside at all meetings of the Board and shall be responsible for the performance of all of the duties and functions of the Board required or permitted by this Act. Each additional officer elected by the Board shall perform those duties customarily associated with the position and such

other duties assigned from time to time by the Board.

- (b) Officers elected by the Board shall serve terms of one year commencing with the day of their election and ending upon election of their successors and shall serve no more than three (3) consecutive full terms in each office to which they are elected.
- (c) The Board may employ an Executive Director to serve as a full-time or part-time employee of the Board. The Executive Director shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

#### **Section 2.09. Compensation of Board Members.**

Each member of the Board shall receive as compensation the sum of \$\_\_\_\_\_ per day for each day on which the member is engaged in performance of the official duties of the Board and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

#### **Section 2.10. Meetings.**

- (a) The Board shall meet at least once every three (3) month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.
- (b) The Board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.
- (c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by the Administrative Procedures Act.
- (d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by this Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.
- (e) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.

#### **Section 2.11. Employees.**

The Board may, in its discretion, employ persons in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and to the fulfillment of the Board's responsibilities as defined by the Act.

#### **Section 2.12. Rules.**

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act. Such rules shall

be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

Note: The authority of a Board to adopt, amend, and repeal rules is an extremely important power. AMP encourages Boards to fully exercise this authority by adopting rules to more specifically set forth regulatory issues. This not only enhances the protection of the public, but also benefits the Board when it becomes necessary to interpret the Act. Further, rules help to maintain consistency in the application of the Act as membership on the Board changes through the appointment process.

It is recommended that when the Board promulgates rules, the Board review and utilize the criteria, guidelines, frameworks, and curricula developed by the INIT, IMTA, and MBI:TAC.

### **Section 2.13. Powers and Responsibilities.**

- (a) The Board shall be responsible for the control and regulation of Mindfulness Practices in this state including, but not limited to, the following:
  - (1) The licensing by Examination or by licensure transfer of applicants who are qualified to engage in Mindfulness Practices under the provisions of this Act;
  - (2) The renewal of licenses to engage in Mindfulness Practices;
  - (3) The establishment and enforcement of compliance with professional standards of practice and rules of conduct of Mindfulness Professional engaged in Mindfulness Practices;
  - (4) The determination and issuance of standards for recognition and approval of certification programs whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training;
  - (5) The enforcement of those provisions of the Act relating to the conduct or competence of Mindfulness Professionals practicing in this state, investigation of any such activities related to the practice or unauthorized practice of Mindfulness Practices, and the suspension, revocation, or restriction of licenses to engage in the practice of Mindfulness Practices;
  - (6) With probable cause that an applicant or Licensee has engaged in conduct prohibited by this Act or a statute or rule enforced by the Board, the Board may issue an order directing the applicant or Licensee to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this section, every applicant or Licensee is considered to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the Board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;
  - (7) The collection of professional demographic data;
  - (8) The issuance and renewal of licenses of all persons engaged in Mindfulness Practices; and

- (9) Inspection of any licensed person at all reasonable hours for the purpose of determining if any provisions of the laws governing Mindfulness Practices are being violated. The Board, its officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to Mindfulness Practices.
- (b) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules made pursuant thereto, which shall include, but are not limited to, the following:
- (1) The Board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of Mindfulness Practices for the protection of the health and welfare of the public and/or whose activities assist and facilitate the work of the Board.
  - (2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the state, provided:
    - (i) Such funds are awarded for the pursuit of a specific objective which the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;
    - (ii) Such funds are expended for the pursuit of the objective for which they are awarded;
    - (iii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act.
    - (iv) Such funds are kept in a separate, account; and
    - (v) Periodic reports are made concerning the Board's receipt and expenditure of such funds.
  - (3) The Board may establish a Bill of Rights for Clients concerning the services a Client may expect in regard to Mindfulness Practices services.
  - (4) Any investigation, inquiry, or hearing which the Board is empowered to hold or undertake may be held or undertaken by or before any member or members of the Board and the finding or order of such member or members shall be deemed to be the order of said Board when approved and confirmed as noted in Section 210(d).
  - (5) It is the duty of the Attorney General [State's Attorney] to whom the Board reports any violation of this Act which also is deemed as violative of applicable criminal statutes to cause appropriate proceedings to be instituted in the proper court in a timely manner and to be prosecuted in the manner required by law. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that public's interest will be adequately served in the circumstances by a suitable written notice or warning.

- (5) The Board shall have the power to subpoena and to bring before it any person and to take testimony either orally or by deposition, or both, in the same manner as prescribed in civil cases in the courts of this State. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing which the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board.
- (6) In addition to the fees specifically provided for herein, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Rules adopted hereunder.
- (8) Cost Recovery.
  - (i) If any order issues in resolution of a disciplinary proceeding before the Board, the Board may request the Administrative Law Judge/Hearing Officer (ALJ/HO) to direct any Licensee found guilty of a charge involving a violation of any laws or rules, to pay to the Board a sum not to exceed the reasonable costs of the investigation and prosecution of the case.
  - (ii) In the case of an Agency, the order permissible under (i) above may be made as to the corporate owner, if any, and as to any Mindfulness Professional, officer, owner, or partner of the Agency who is found to have had knowledge of or have knowingly participated in one or more of the violations set forth in this section.
  - (iii) The costs to be assessed shall be fixed by the (ALJ/HO) and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) (ALJ/HO), the (ALJ/HO) shall not increase any assessed costs.
  - (iv) Where an order for recovery of costs is made and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in the \_\_\_\_\_ Court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any person directed to pay costs.
  - (v) In any action for recovery of costs, proof of the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
- (9) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.
- (c) Notwithstanding any other law to the contrary, the Board shall, on a timely basis, publicize Final Adverse Actions ultimately determined against any individual. Publication of such Final Adverse Actions shall include, but not be limited to, reporting to any applicable federal or state repository of final disciplinary actions. The board shall also timely report to

any databank Final Adverse Actions maintained by an association of which the board is a member.

Note: This provision allows for the creation of a Client Bill of Rights. A Bill of Rights establishes what a Client may expect when obtaining Mindfulness Practices services. Customarily, the Bill of Rights contains a set of Client expectations that would be translated into standards of professional practice, and/or codes of conduct for the Mindfulness Professional. If a Board chooses to establish a Bill of Rights, the Bill must be consistent with standards of practice codes of ethics, and regulations that the Board has adopted under this Act. Boards need to be careful to avoid inadvertently expanding the role and responsibilities of the Mindfulness Professional through a Bill of Rights.

### **Article III. Licensing.**

#### **Introductory Comment to Article III**

Article III of the Act sets out the requirements for initial licensure of Mindfulness Professionals, as well as licensure transfer and renewal. As in other parts of the Act, this Article establishes basic criteria, and delegates the authority for implementing those criteria to the Board. The Board exercises this authority by utilizing appropriate enforcement mechanisms and issuing specific rules. For example, in the area of initial licensure, the Act would be implemented by the Board's approval of Mindfulness Practices training and/or certification programs, specifications of the Examination to be used, and establishment of all other prerequisites that must be met by each applicant to whom it issues a license.

To determine licensing requirements, the Board should be guided by the criteria, guidelines, frameworks, and standards developed by the INIT, IMTA, and MBI:TAC.

This article, as well as the entire Act, also reflects AMP's efforts to develop and continue uniform standards for the transfer of licensure. The Mindfulness Practices profession has become increasingly mobile, and Boards need to examine the ways in which differing standards between jurisdictions may be affecting the public's access to qualified Mindfulness Professionals.

#### **Section 3.01. Unlawful Practice.**

- (a) Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the practice of Mindfulness Practices unless duly licensed as a Mindfulness Professional under the applicable provisions of this Act.
- (b) No individual shall offer Mindfulness Practices or use the designation Mindfulness Professional or any other designation indicating licensure status or hold themselves out as practicing Mindfulness Practices as a Mindfulness Professional unless duly licensed as such.
- (c) Any individual who, after hearing, shall be found by the Board to have unlawfully engaged in Mindfulness Practices shall be subject to a fine to be imposed by the Board not to exceed \$[ ] for each offense. [Each such violation of this Act or the rules promulgated hereunder pertaining to unlawfully engaging in Mindfulness Practices shall also constitute a (misdemeanor) punishable upon conviction as provided in the criminal code of this state].
- (d) Nothing in this Act shall be construed to prevent members of other professions from

performing functions for which they are duly licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are engaged in the practice of Mindfulness Practices or that they are licensed to engage in the practice of Mindfulness Practices or as a Mindfulness Professional.

- (e) An individual licensed and in good standing as a Mindfulness Professional in another jurisdiction may, upon prior written application to and approval by the Board, engage in Mindfulness Practices in this jurisdiction within the scope of practice designated by such license no more than 30 days per year without applying for a license. Practice privileges under this paragraph shall apply only if the requirements for a license in such other jurisdiction are substantially similar to the requirements for licensure in this jurisdiction. The 30-day period shall commence on the date of approval by the Board of the written application. The practitioner who provides services under this paragraph shall be deemed to have submitted to the jurisdiction of the applicable Board and be bound by the laws of this state.
- (f) Individuals who have at any time surrendered any professional license under threat of administrative disciplinary sanction or in response to administrative investigation, or have any professional license currently under suspension, revocation, or agency order restricting or limiting practice privilege, with the exception of expired or lapsed licenses due to voluntary non-renewal of such license, are ineligible to practice under Section (e).

Note: Section 3.01 establishes the basis for this Article by making it unlawful for any unlicensed person to engage in the practice of Mindfulness Practices, and by enabling the Board to exact penalties for unlawful practice.

Boards are often confronted with the problem of preventing unlicensed individuals from engaging in one or more facets of Mindfulness Practices. Most practice acts do not give the Board jurisdiction and authority to take action against individuals other than those who are licensed or seeking licensure. Thus, Boards must rely on the difficult task of persuading local prosecutors to take criminal action against persons not licensed to practice Mindfulness Practices. This gap in jurisdictional authority makes it difficult to effectively prevent unlicensed practitioners from engaging in illicit practice.

Language in this section clearly allows Boards the authority to control unlicensed practice. The regulation of the practice of Mindfulness Practices, including jurisdiction over unlicensed practice, has a reasonable and rational relation to public health, safety, and welfare. See, e.g., *State v. Wakeen*, 57N.W.2d 364 (Wis., 1953). cf. *State v. VanKeegan*, 113 A. 2d 141 (Conn., 1955), and *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955). For this reason, vesting power in the Board to regulate illicit practice would not appear to violate constitutional due process requirements. Because monetary fines are not generally considered criminal sanctions, it can be strongly argued that there are no constitutional barriers that would restrict the impositions of fines by a Board. See, e.g., *Helvering v. Mitchell*, 303 U.S. 376 (1938); *City of Waukegan v. Pollution Control Board*, 311 N.E.2d 146 (Ill., 1974); *County Council for Montgomery County v. Investors Funding Corp.*, 312 A.2d 225 (Md., 1973); and *Roday v. Hollis*, 500 P. 2d 97 (Wash., 1972).

### **Section 3.02. Qualifications for Licensure by Examination as Mindfulness Professional**

To obtain a license to engage in Mindfulness Practices, an applicant for licensure by Examination must provide evidence satisfactory to the Board that the applicant:

- (a) Has submitted a written application in the form prescribed by the Board;
- (b) Has attained the age of majority;
- (c) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *[insert reference to authorizing state statute]* and applicable federal law. The *[state agency responsible for managing fingerprint data e.g. the department of public safety]* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All good moral character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws;
- (d) Has graduated and received certification from an Approved Mindfulness Practices program;
- (e) Has successfully passed an Examination or Examinations prescribed by the Board; and
- (f) Has paid all applicable fees specified by the Board relative to the licensure process.

Note: Defining precisely what constitutes good or bad character has caused health regulatory Boards and courts considerable difficulty, and a review of applicable case law reveals a considerable variance in the judicial opinions concerning the interpretation of good character requirements. Nevertheless, the courts have uniformly enforced such requirements, reasoning that because health regulatory Boards are composed primarily of members of the profession being regulated, they are capable of applying character standards to their professions with relevance and specificity.

The public has the right to expect the highest degree of integrity from members of the Mindfulness Practices profession. Boards have a duty to ensure that these expectations are realized. From this perspective, requirements of good moral character for licensure can be expected to be sustained by the courts so long as their enforcement is reasonably related to protection of the public health, safety, and welfare. Even when grounded in public protection, issues involving moral character may lead to concerns about the potential for this qualification to be misused by Boards. Although there are many legal ways to ensure that the good moral character issue is not misapplied, including state and federal civil rights legislation, Boards need to be extremely sensitive to character judgments made. Practice act provisions that bear a reasonable relationship to the purpose of protecting the public welfare will generally be regarded as constitutionally acceptable by most courts, so long as the enforcement by Boards is reasonably related to the protection of the public.

### **Section 3.03. Examinations.**

- (a) Any Examination for licensure required under this Act shall be administered to applicants often enough to meet the reasonable needs of candidates for licensure. The Board shall be ultimately responsible for determining the content and subject matter of each Examination and the time, place, and dates of administration of the Examination. If applicable, the Board may confer with and rely upon the expertise of an Examination entity in making such determinations.
- (b) The Examination shall document that the applicant meets the standard for minimum



competence to engage in the relevant Mindfulness Practices. The Board may employ, cooperate with, and contract with any organization or consultant in the preparation, administration, and grading of an Examination but shall retain the sole discretion and responsibility for determining which applicants have successfully passed such an Examination.

- (c) The Board shall have the authority to limit the number of attempts on the Examination in order to protect the integrity and security of the Examination and to ensure minimum competence.

#### **Section 3.04. Qualification for Licensure by Endorsement.**

To obtain a license by endorsement at the equivalent designation and subject to Article IV of this Act, an applicant currently licensed as a Mindfulness Professional in another jurisdiction must provide evidence satisfactory to the Board, subject to Article III, Section 311, that the applicant (1) has submitted a written application and paid the fee as specified by the Board; and (2) has presented to the Board proof of an active Mindfulness Practices license in good standing.

#### **Section 3.05. Renewal of Licenses.**

- (a) Licensees shall be required to renew their license at the time and in the manner established by the Board, including the form of application and payment of the applicable renewal fee. Under no circumstances, however, shall the renewal period exceed three years.
- (b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that such Licensee has annually completed at least \_\_\_\_\_ Continuing Education hours from a Program of Continuing Education.
- (c) If a Mindfulness Professional fails to make application to the Board for renewal of a license within a period of two years from the expiration of the license, such person must reapply as an initial applicant for licensure and pass the current licensure Examination; except that a person who has been licensed under the laws of this state and after the expiration of the license, has continually practiced Mindfulness Practices in another state under a license issued by the authority of such state, may renew the license upon completion of the Continuing Education requirements set forth by the Board and payment of the designated fee.

#### **Section 3.05. Continuing Mindfulness Practices Competence.**

The Board shall, by rule, establish requirements for Continuing Education in Mindfulness Practices, including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section and the continued competence of practitioners.

#### **Article IV. Enforcement.**

##### **Introductory Comment to Article IV**

The enforcement power of the Board is at the very heart of any practice act. In order to fulfill its responsibilities, the Board must have authority to discipline individuals or Mindfulness Professionals who violate the act or its rules, including the ability to prohibit these individuals from

continuing to threaten the public. The Board must be able to stop wrongdoers, discipline them, and where appropriate, guide and assist them in rehabilitation.

This Act's disciplinary provisions were drafted with the purpose of granting the Board the widest possible scope within which to perform its disciplinary functions. The grounds for disciplinary actions were developed to ensure protection of the public while giving Boards the power to expand or adapt them to changing local conditions. The penalties outlined under the Act give the Board the flexibility to tailor disciplinary actions to individual offenses.

#### **Section 4.01. Grounds, Penalties, and Reinstatement.**

- (a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the license of, or fine any person pursuant to the Administrative Procedures Act or the procedures set forth in section 4.02 herein below, upon one or more of the following grounds as determined by the Board:
- (1) Unprofessional conduct as determined by the Board;
  - (2) Practicing outside the scope of practice applicable to that individual;
  - (3) Conduct which violates any of the provisions of this Act or rules adopted pursuant to this Act, including the Standards of Practice;
  - (4) Incapacity or impairment that prevents a Licensee from engaging in the practice of Mindfulness Practices with reasonable skill, competence, and safety to the public;
  - (5) Subject to any laws of the State/Territory of \_\_\_\_\_, conviction of a Felony (as defined under state, provincial, or federal law);
  - (6) Any act involving moral turpitude or gross immorality;
  - (7) Violations of the laws of this jurisdiction, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government;
  - (8) Misrepresentation of a material fact by an applicant or Licensee (i) in securing or attempting to secure the issuance or renewal of a license; or (ii) In statements regarding the Mindfulness Professional's skills or efficiency or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with Mindfulness Practices including, but not limited to, false or misleading advertising;
  - (9) In statements regarding the Mindfulness Professional's skills or efficiency or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the practice of Mindfulness Practices including, but not limited to, false or misleading advertising;
  - (10) Engaging or aiding and abetting an individual to engage in the practice of Mindfulness Practices without a license, or falsely using the title of Mindfulness

Professional;

- (11) Failing to pay the costs assessed in a disciplinary matter pursuant to this Act or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;
  - (12) Being found by the Board to be in violation of any of the provisions of this Act or rules adopted pursuant to this Act;
  - (13) Conduct which violates the security of any licensure Examination materials; removing from the Examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing Examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing Examination; paying or using professional or paid Examination-takers for the purpose of reconstructing any portion of the licensing Examination; obtaining Examination questions or other Examination material, except by specific authorization either before, during or after an Examination; or using or purporting to use any Examination questions or materials which were improperly removed or taken from any Examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing Examination;
  - (14) Communicating with any other examinee during the administration of a licensing Examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing Examination any books, equipment, notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or impersonating any examinee or having an impersonator take the licensing Examination on one's behalf;
  - (15) Being the subject of the revocation, suspension, surrender or other disciplinary sanction of a Mindfulness Practice or related license or of other adverse action related to a Mindfulness Practice or related license in another jurisdiction or country including the failure to report such adverse action to the Board;
  - (16) Being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent or mentally ill, chemically dependent, mentally ill and dangerous to the public;
- (b) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing not to practice Mindfulness Practices and to enter an approved treatment and monitoring program in accordance with this section, provided that this section should not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act or an offense relating to a controlled substance in a court of law of the United States or any other state, territory, or country or a Conviction related to sexual misconduct.
- (1) A Licensee who is physically or mentally impaired due to mental illness or

addiction to drugs or alcohol may qualify as an impaired Mindfulness Professional and have disciplinary action deferred and ultimately waived only if the Board is satisfied that such action will not endanger the public and the Licensee enters into an agreement with the Board for a treatment and monitoring plan approved by the Board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the agreement and all other applicable terms of subsection (b)(2). Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the licensee from the provisions of this section and the Board may activate an immediate investigation and disciplinary proceeding. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the Licensee may apply for permission to resume the practice of Mindfulness Practices upon such conditions as the Board determines necessary.

- (2) The Board may require a Licensee to enter into an agreement which includes, but is not limited to, the following provisions:
  - (i) Licensee agrees that the license shall be suspended or revoked indefinitely under subsection (b)(1).
  - (ii) Licensee will enroll in a treatment and monitoring program approved by the Board Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith.
  - (iii) Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith
  - (iv) Licensee consents to the treating physician or professional of the approved treatment and monitoring program reporting to the Board on the progress of Licensee at such intervals as the Board deems necessary and such person making such report will not be liable when such reports are made in good faith.
- (3) The ability of an impaired Mindfulness Professional to practice shall only be restored and charges dismissed when the Board is satisfied by the reports it has received from the approved treatment program that Licensee can resume practice without danger to the public.
- (4) Licensee consents, in accordance with applicable law, to the release of any treatment information to the Board from anyone within the approved treatment program.
- (5) The impaired Licensee who has enrolled in an approved treatment and monitoring program and entered into an agreement with the Board in accordance with subsection (b)(1) hereof shall have the license suspended or revoked but enforcement of this suspension or revocation shall be stayed by the length of time the Licensee remains in the program and makes satisfactory progress, and

complies with the terms of the agreement and adheres to any limitations on the practice imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this section and the Board shall activate an immediate investigation and disciplinary proceedings.

- (6) Any Mindfulness Professional who has substantial evidence that a Licensee has an active addictive disease for which the Licensee is not receiving treatment under a program approved by the Board pursuant to an agreement entered into under this section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall make or cause to be made a report to the Board. Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the Licensee so failing to report.
- (c) Subject to an order duly entered by the Board, any person whose license to practice Mindfulness Practices in this state has been suspended or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals, to petition the Board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the Board. Upon investigation and hearing, the Board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board, also at its discretion, may require such person to complete other requirements including but not limited to passing an Examination(s).
- (d) The Board may in its own name issue a cease and desist order to stop an individual from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order which the Board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the individual's right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.
- (e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.
- (f) Any individual whose license to practice Mindfulness Practices is revoked, suspended, or not renewed shall return such license to the offices of the Board within 10 days after notice of such action.

#### **Section 4.02. Procedure.**

Notwithstanding any provisions of the state Administrative Procedures Act, the Board may, without a hearing, temporarily suspend a license for not more than 60 days if the Board finds that a Mindfulness Professional has violated a law or rule that the Board is empowered to enforce, and if continued practice by the Mindfulness Professional would create an imminent risk of harm to the public. The suspension shall take effect upon written notice to the Mindfulness Professional specifying the statute or rule violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within 20 days

thereafter. The Mindfulness Professional shall be provided with at least 20 days' notice effective with the date of issuance of any hearing held under this subsection.

## **Article V. Confidentiality.**

### **Introductory Comment to Article V**

This section is intended to establish the confidentiality requirements for Mindfulness Professionals, based on the professional relationship between the Mindfulness Professional and Client. Although "confidentiality" and "privileged communication" are related terms, there are important differences between the two concepts. "Confidentiality" is a broad term, and describes the intention that information exchanged between a Mindfulness Professional and a Client is to be maintained in secrecy, and not disclosed to outside parties. "Privileged communication" is a more narrow term that describes the legal relationship between a Mindfulness Professional and Client when a law mandates confidentiality.

This article is titled "Confidentiality" rather than "Privileged Communication" or "Confidentiality/Privileged Communication" because confidentiality provisions include privileged communications, and is intended to give Boards the widest possible latitude.

### **Section 5.01. Privileged Communications and Exceptions.**

- (a) No Mindfulness Professional shall disclose any information acquired from or provided by a Client or from persons consulting with the Mindfulness Professional in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:
  - (1) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, in which instance all recipients of such information are similarly bound to regard the communication as privileged;
  - (2) With the written consent of the person who provided the information;
  - (3) In case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;
  - (4) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the Mindfulness Professional to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or
  - (5) When the person waives the privilege by bringing any public charges against the licensee.
- (b) When the person is a minor under the laws of the \_\_\_\_\_ of \_\_\_\_\_ and the information acquired by the Mindfulness Professional indicates the minor was the victim of or witness to a crime, the Mindfulness Professional may be required to testify in any

judicial proceedings in which the commission of that crime is the subject of inquiry and when the court determines that the interests of the minor in having the information held privileged are outweighed by the requirements of justice, the need to protect the public safety or the need to protect the minor.

- (c) Any person having access to records or anyone who participates in providing Mindfulness Practices or who, in providing any services, is supervised by a Mindfulness Professional, is similarly bound to regard all information and communications as privileged in accord with the section.
- (d) Nothing shall be construed to prohibit a Mindfulness Professional from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children, elderly, and physically and mentally impaired adults, except as prohibited under the applicable state and federal laws.

## **Article VI. Mandatory Reporting.**

### **Introductory Comment to Article VI**

Mindfulness Professionals are in a unique position to know of and evaluate the conduct of other Mindfulness Professionals. This section establishes a Mindfulness Professional's legal responsibility to report activities that may be harmful to Clients, including incompetence, malfeasance, and unethical practice.

Recently, consumer groups and others have voiced concerns that health care professionals often protect each other – either through remaining silent when made aware of substandard practice, or through outright denial of this substandard practice – to the detriment of the public. This perception, no matter how inaccurate, undermines the public's confidence in professional regulation. The inclusion of mandatory reporting provisions provides assurance that professional "protection" that puts the public at risk is itself a violation of this Act.

### **Section 6.01. Permission to Report.**

A person who has knowledge of any conduct by an applicant or a Licensee which may constitute grounds for disciplinary action under this chapter or the rules of the Board or of any unlicensed practice under this chapter may report the violation to the Board.

### **Section 6.02. Mindfulness Professionals.**

- (a) Mindfulness Professionals shall report to the Board information on the following conduct by an applicant or a Licensee:
  - (1) sexual contact or sexual conduct with a Client or a former Client; the Client shall only be named with the Client's consent;
  - (2) failure to report as required by law
  - (3) impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;

- (4) improper or fraudulent billing practices;
  - (5) fraud in the licensure application process or any other false statements made to the Board;
  - (6) conviction of any Felony or any crime reasonably related to Mindfulness Practices;
  - (7) a violation of Board order.
- (b) Mindfulness Professionals shall also report to the Board information on any other conduct by any individual Licensee that constitutes grounds for disciplinary action under this chapter or the rules of the Board.

### **Section 6.03. Courts.**

The court administrator of district court or any other court of competent jurisdiction shall report to the Board any judgment or other determination of the court that adjudges or includes a finding that an applicant or a Licensee is mentally ill, mentally incompetent, guilty of a Felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the applicant or Licensee or commits an applicant or Licensee pursuant to applicable law.

### **Section 6.04. Self-Reporting.**

An applicant or Licensee shall report to the Board any personal action that would require that a report be filed pursuant to this Act.

### **Section 6.05. Deadlines, Forms.**

Reports required by this Act must be submitted not later than 30 days after learning of the reportable event or transaction. The Board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

### **Section 6.06. Immunity.**

Any person, Mindfulness Professional, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under this Act or for otherwise reporting, providing information, or testifying about violations or alleged violations of this Act.

## **Article VII. Other**

### **Section 7.01. Severability.**

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any person or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other persons and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.



**Section 7.02. Effective Date.**

This Act shall be in full force and effect on [date].

**Regulations — Standards of Practice/Code of Conduct.****Introductory Comment to Standards of Practice**

The development of effective regulations is crucial to the implementation of the Act. While the Act provides the framework that establishes the Board's authority, licensure qualifications, and general parameters of practice, the regulations define the standards of professional conduct that constitute safe and legal practice. Regulations provide a mechanism by which the law can be applied. The Board may include additional regulations in its discretion that it deems necessary to enhance public safety and to enforce the provisions and intent of the Act.

As the Board considers these standards and any additional standards, the Board should be guided by the criteria, guidelines, frameworks, and standards developed by the INIT, IMTA, and MBI:TAC.

**Part 1. Standards of Practice.**

**Subpart 1. Scope & Applicability.** The standards of practice apply to all applicants and Licensees. The use of the term Mindfulness Professional within these standards of practice includes all applicants and Licensees.

**Subpart 2. Purpose.** The standards of practice constitute the standards by which the professional conduct of an applicant or Licensee is measured.

**Subpart 3. Violations.** A violation of the standards of practice constitutes unprofessional or unethical conduct and constitutes grounds for disciplinary action or denial of licensure.

**Part 2. General Practice Parameters.**

**Subpart 1. Client welfare.** Within the context of the specific standards of practice prescribed herein, a Mindfulness Professional shall make reasonable efforts to advance the welfare and best interests of a Client.

**Subpart 2. Self-determination.** Within the context of the specific standards of practice prescribed herein, a Mindfulness Professional shall respect a Client's right to self-determination.

**Subpart 3. Nondiscrimination.** A Mindfulness Professional shall not discriminate against a Client, student, or supervisee on the basis of age, gender, sexual orientation, race, color, national origin, religion, diagnosis, disability, political affiliation, or social or economic status. If the Mindfulness Professional is unable to offer services because of a concern about potential discrimination against a Client, student, or supervisee, the Mindfulness Professional shall make an appropriate and timely referral. When a referral is not possible, the Mindfulness Professional shall obtain Supervision or Consultation to address the concern.

**Subpart 4. Professional Disclosure Statement.** A Mindfulness Professional shall effectively communicate and make easily accessible a statement that the Client has the right to do the following:

- A. To expect that the Mindfulness Professional has met the minimal qualifications of education, training, and experience required by the law in that jurisdiction and in all jurisdictions where licensed;
- B. To expect that the Mindfulness Professional has met the minimal qualifications of education, training, and experience required by the law in that jurisdiction and in all jurisdictions where licensed;
- C. To be given a copy of the standards of practice upon request;
- D. To report a complaint about a Mindfulness Professional's practice to the Board;
- E. To be informed of the cost of professional services before receiving the services;
- F. To privacy as allowed by law, and to be informed of the limits of confidentiality;
- G. Limited access to Client information. A Mindfulness Professional shall make reasonable efforts to limit access to Client information in a Mindfulness Profession's office/business to appropriate staff whose duties require access.
- H. Supervision or Consultation. A Mindfulness Professional receiving supervision related to practice shall inform the Client that the Mindfulness Professional may be reviewing the Client's case with the Mindfulness Professional's supervisor or consultant. Upon request, the Mindfulness Professional shall provide the name of the supervisor and the supervisor's contact information.
- I. To be free from being the object of discrimination while receiving Mindfulness Practices services; and

### **Part 3. Competence.**

**Subpart 1. Continued competence.** A Mindfulness Professional shall take all necessary and reasonable steps to maintain continued competence in Mindfulness Practices.

**Subpart 2. Limits on practice.** A Mindfulness Professional shall limit practice only to the competency areas for which the Mindfulness Professional is qualified by licensure and training, experience, or supervised practice.

**Subpart 3. Referrals.** A Mindfulness Professional shall make a referral to other professionals when the services required are beyond the Mindfulness Professional's competence.

**Subpart 4. Delegation.** A Mindfulness Professional shall not assign, oversee or supervise the performance of a task by another individual when the Mindfulness Professional knows that the other individual is not licensed to perform the task or has not developed the competence to perform such task.

#### **Part 4. Practice Requirements.**

**Subpart 1. Assessment or diagnosis.** A Mindfulness Professional shall base services on an assessment or diagnosis. A Mindfulness Professional shall evaluate on an ongoing basis whether the assessment or diagnosis needs to be reviewed or revised.

**Subpart 2. Assessment or diagnosis instruments.** A Mindfulness Professional shall follow standard and accepted procedures for deciding when and how to use an assessment or diagnostic instrument. A Mindfulness Professional shall inform a Client of its purpose before administering the instrument and, when available, of the results derived therefrom.

**Subpart 3. Plan.** A Mindfulness Professional shall develop a plan for services which includes goals based on the assessment. A Mindfulness Professional shall evaluate on an ongoing basis whether the plan needs to be reviewed or revised.

**Subpart 4. Supervision or Consultation.** A Mindfulness Professional shall obtain Supervision or engage in Consultation when necessary to serve the best interests of a Client.

#### **Subpart 5. Informed consent.**

- A. Mindfulness Professional shall provide services to Clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Mindfulness Professionals should use clear and understandable language to inform Clients of the plan of the services, risks related to the plan, limits to services, relevant costs, reasonable alternatives, Client's rights to refuse or withdraw consent, and the time frame covered by the consent. Mindfulness Professionals shall provide Clients with an opportunity to ask questions.
- B. If the Client does not have the capacity to provide consent, the Mindfulness Professional shall obtain consent for the services from the Client's legal guardian or other authorized representative.
- C. If the Client, the legal guardian, or other authorized representative does not consent, the Mindfulness Professional shall discuss with the Client that a referral to other resources may be in the Client's best interest.

#### **Subpart 6. Records.**

- A. A Mindfulness Professional shall make and maintain records of services provided to a Client. At a minimum, the records shall contain documentation verifying the identity of the Client; documentation of the assessment or diagnosis; documentation of a plan, documentation of any revision of the assessment or diagnosis or of a plan; any fees charged and

other billing information; copies of all Client authorization for release of information and any other legal forms pertaining to the Client. These records shall be maintained by the Licensee or agency employing the Licensee under secure conditions and for time periods in compliance with applicable federal or state law, but in no case for fewer than seven years after the last date of service.

- B. Where a Mindfulness Professional or Mindfulness Professional practice ceases operations as a result of a suspension, retirement or death of the owner, sale or other cause, including insolvency, the Licensee, or other individual responsible for supervising the disposition of the practice, shall make every effort to notify the Clients of their right to retrieve current records for a period of six (6) months using all of the following methods:
1. Notification in writing to the Board;
  2. Publication, at least weekly for one month, in a manner whose circulation encompasses the major area of a Mindfulness Professional's former practice, advising clients of the right to retrieve their records for a six (6) month period; and
  3. If applicable, a sign placed at the practice location informing Clients of the right and procedures to retrieve their records
- C. Should any Client fail to retrieve the records within the six (6) month period and unless otherwise required by law, the responsible party shall arrange the destruction of such documents in a manner to ensure confidentiality.

**Subpart 7. Reports.** A Mindfulness Professional shall complete and submit reports as required by law in a timely manner.

**Subpart 8. Exploitation.** A Mindfulness Professional shall not exploit in any manner the professional relationship with a Client, student, or supervisee for the Mindfulness Professional's emotional, financial, sexual or personal advantage or benefit, nor shall the Mindfulness Professional use the professional relationship with a Client, student, or supervisee to further personal, religious, political or business interests.

**Subpart 9. Termination of services.** A Mindfulness Professional shall terminate a professional relationship with a Client when the Client is not likely to benefit from continued services or the services are no longer needed. The Mindfulness Professional who anticipates the termination of services shall give reasonable notice to the Client. The Mindfulness Professional shall take reasonable steps to inform the Client of the termination of professional relationship. The Mindfulness Professional shall provide referrals as needed or upon the request of the Client. A Mindfulness Professional shall not terminate a professional relationship for the purpose of beginning a personal or business relationship with a Client.

## **Part 5. Relationships with Clients and Former Clients**

**Subpart 1. Personal relationships with Clients.** A Mindfulness Professional shall not engage in dual relationships with Clients that compromise the well-being of the Client,

impair the objectivity and professional judgment of the Mindfulness Professional or increase the risk of Client exploitation. When a Mindfulness Professional may not avoid a personal relationship with a Client, the Mindfulness Professional shall take appropriate precautions, such as informed consent, Consultation, or Supervision to ensure that the Mindfulness Professional's objectivity and professional judgment are not impaired.

**Subpart 2. Personal relationships with former Clients.** A Mindfulness Professional may engage in a personal relationship, except as prohibited by Part 5, Subpart 4, with a former client, if the former Client was notified of the termination of the professional relationship. The Mindfulness Professional shall continue to consider the best interests of the former Client, and shall not engage in a personal relationship with a former Client if a reasonable Mindfulness Professional would conclude that the former Client continues to relate to the Mindfulness Professional in the Mindfulness Professional's professional capacity.

**Subpart 3. Sexual contact with a Client.** A Mindfulness Professional shall not engage in or request sexual contact as defined in Part 5, Subpart 5, with a Client under any circumstances. A Mindfulness Professional shall not engage in any verbal or physical behavior which a reasonable person would find to be sexually seductive or sexually demeaning. A Mindfulness Professional shall not sexually harass a Client

**Subpart 4. Sexual contact with a former Client.** A Mindfulness Professional who has provided Mindfulness Practices services to a Client shall not engage in or request sexual contact as defined in Part 5, Subpart 5, with the former Client under any circumstances. A Mindfulness Professional who has provided other Mindfulness Practices services to a Client shall not engage in or request sexual contact as defined in Part 5, Subpart 5, with the former Client at any time if a reasonable Mindfulness Professional would determine that engaging in sexual contact with the Client would be exploitative, abusive, or detrimental to the Client's welfare. It is the responsibility of the Mindfulness Professional to assume the full burden of demonstrating that the former Client has not been exploited or abused either intentionally or unintentionally. The nature of the therapeutic relationship between a Mindfulness Professional and a Client is such that it is inappropriate to ever engage in sexual contact with a current or former Client.

**Subpart 5. Sexual contact defined.** Sexual contact includes but is not limited to electronic exploitation, sexual intercourse, either genital or anal, cunnilingus, fellatio, or the handling of the breasts, genital areas, buttocks, or thighs, whether clothed or unclothed, by either the Mindfulness Professional or the Client.

**Subpart 6. Business relationship with a Client.** A Mindfulness Professional shall not engage in any type of a business relationship with a Client. Business relationships do not include purchases made by the Mindfulness Professional from the Client when the Client is providing necessary goods or services to the general public, and the Mindfulness Professional determines that it is not possible or reasonable to obtain the necessary goods or services from another provider.

**Subpart 7. Business relationship with a former Client.** A Mindfulness Professional may engage in a business relationship with a former Client, if the former Client was notified of the termination of the professional relationship. The Mindfulness Professional shall continue to consider the best interests of the former Client, and shall not engage in a business relationship with a former Client if a reasonable Mindfulness Professional would

conclude that the former Client continues to relate to the Mindfulness Professional in the Mindfulness Professional's professional capacity.

**Subpart 8. Prior Personal or Business Relationships.** A Mindfulness Professional may engage in a professional relationship with an individual with whom the Mindfulness Professional had a previous personal or business relationship only if a reasonable Mindfulness Professional would conclude that the Mindfulness Professional's objectivity and professional judgment will not be impaired by reason of the previous personal or business relationship.

**Subpart 9. Mindfulness Professional responsibility.** A Mindfulness Professional shall be solely responsible for acting appropriately in regard to relationships with Clients or former Clients. A Client or a former Client's initiation of a personal, sexual, or business relationship shall not be a defense by the Mindfulness Professional for a violation of Part 5, Subparts 1 through 8.

**Subpart 10. Others.** Part 5, Subparts 1 through 9 also apply to a Mindfulness Professional's relationship with students, supervisees, employees of the Mindfulness Professional, family members or significant others of a client.

## **Part 6. Client Confidentiality.**

**Subpart 1. General.** A Mindfulness Professional shall protect all information provided by or obtained about a Client. "Client information" includes the Mindfulness Professional's personal knowledge of the Client and Client records. Except as provided herein, Client information may be disclosed or released only with the Client's written informed consent. The written informed consent shall explain to whom the Client information will be disclosed or released and the purpose and time frame for the release of information.

**Subpart 2. Release of Client information without written consent.** A Mindfulness Professional shall disclose Client information without the Client's written consent only under the following circumstances:

- A. Where mandated by federal or state law, including mandatory reporting laws, requiring release of Client information;
- B. The Mindfulness Professional determines that there is a clear and imminent risk that the Client will inflict serious harm on either the Client or another identified individual(s), or that there is a serious threat to public harm. The Mindfulness Professional shall release only the information that is necessary to avoid the infliction of serious harm. The Mindfulness Professional may release this information to the appropriate authorities and the potential victim;
- C. The Board duly issues a valid subpoena to the Mindfulness Professional, as permitted by law.

**Subpart 3. Release of Client records without written consent.** A Mindfulness Professional shall release Client records without the Client's written consent under the following circumstances:

- A. A Client's authorized representative consents in writing to the release;
- B. As mandated by federal or jurisdiction law requiring release of the records;
- C. The Board duly issues a valid subpoena for the records, as permitted by law.

**Subpart 4. Limits of confidentiality.** The Mindfulness Professional shall inform the Client of the limits of confidentiality as provided under applicable law.

**Subpart 5. Minor Clients.** In addition to the general directive in Part 6, Subpart 4, a Mindfulness Professional must inform a minor Client, at the beginning of a professional relationship, of any laws which impose a limit on the right of privacy of a minor.

**Subpart 6. Third party billing.** A Mindfulness Professional shall provide Client information to a third party for the purpose of payment for services rendered only with the Client's written informed consent. The Mindfulness Professional shall inform the Client of the nature of the Client information to be disclosed or released to the third party payor.

**Subpart 7. Client information to remain private.** A Mindfulness Professional shall continue to maintain confidentiality of Client information upon termination of the professional relationship including upon the death of the Client, except as provided under applicable law.

**Subpart 8. Recording/Observation.** A Mindfulness Professional shall obtain the Client's written informed consent before the taping or recording of a session or a meeting with the Client, or before a third party is allowed to observe the session or meeting. The written informed consent shall explain to the Client the purpose of the taping or recording and how the taping or recording will be used, how it will be stored and when it will be destroyed.

## **Part 7. Conduct.**

**Subpart 1. Impairment.** A Mindfulness Professional shall not practice while impaired by medication, alcohol, drugs, or other chemicals. A Mindfulness Professional shall not practice under a mental or physical condition that impairs the ability to safely practice.

**Subpart 2. Giving drugs to a Client.** Unless permissible by state law, a Mindfulness Professional shall not offer medication or controlled substances to a Client. The Mindfulness Professional may accept medication or controlled substances from a Client for purposes of disposal or to monitor use. Under no circumstances shall a Mindfulness Professional offer alcoholic beverages to a Client or accept such from a Client.

**Subpart 3. Investigation.** A Mindfulness Professional shall comply with and not interfere with Board investigations.

## **Part 8. Representation to the Public. Advertising.**

**Subpart 1. Required use of license designation.** A Mindfulness Professional shall use the license designation which corresponds to the Mindfulness Professional's license, after the Mindfulness Professional's name in all written communications related to Mindfulness Professional practice, including any advertising, correspondence, and entries to Client records.

**Subpart 2. Information to Clients or potential Clients.** A Mindfulness Professional shall provide accurate and factual information concerning the Mindfulness Professional's credentials, education, training, and experience upon request from a Client or potential Client. A Mindfulness Professional shall not misrepresent directly or by implication the Mindfulness Professional's license level, degree, professional certifications, affiliations, or other professional qualifications in any oral or written communication or permit or continue to permit any misrepresentations by others. A Mindfulness Professional shall not misrepresent, directly or by implication, affiliations, purposes, and characteristics of institutions and organizations with which the Mindfulness Professional is associated.

**Subpart 3. Licensure status.** Licensure status shall not be used as a claim, promise, or guarantee of successful service, nor shall the license be used to imply that the Licensee has competence in another service. Public statements or advertisements may describe fees, professional qualifications, and services provided, but they may not advertise services as to their quality or uniqueness and may not contain testimonials by quotation or implication.

**Subpart 4. Display of license.** A Mindfulness Professional shall conspicuously display a current license issued by the Board at the Mindfulness Professional's primary place of practice.

**Subpart 5. Client bill of rights including:**

- Professional profile and contact information
- Terms of use, privacy policy, and informed consent
- Guidelines to assist Clients who require crisis services
- Risks of interruption in services
- Consumer information: license/registration number; governmental regulatory body's name and contact information
- Right and contact information to report alleged violations to governmental body

## **Part 9. Fees and Billing Practices.**

**Subpart 1. Fees and payments.** A Mindfulness Professional who provides a service for a fee shall inform a Client of the fee at the initial session or meeting with the Client. Payment must be arranged at the beginning of the professional relationship, and the payment arrangement must be provided to a Client in writing. A Mindfulness Professional shall provide, upon request from a Client, a Client's legal guardian, or other authorized representative, a written explanation of the charges for any services rendered.

**Subpart 2. Necessary services.** A Mindfulness Professional shall bill only for services which have been provided. A Mindfulness Professional shall provide only services which are necessary.

**Subpart 3. Bartering.** A Mindfulness Professional may not accept goods or services from the Client or a third party in exchange for the Mindfulness Professional's services, except when such arrangement is initiated by the Client and is an accepted practice in the Mindfulness Professional's community or within the Client's culture. It is the responsibility of the Mindfulness Professional to assume the full burden of demonstrating that this



arrangement will not be detrimental or exploitative to the Client or the professional relationship.

**Subpart 4. No payment for referrals.** A Mindfulness Professional shall neither accept nor give a commission, rebate, fee split, or other form of remuneration for the referral of a Client.

#### **Part 10. Research.**

**Subpart 1. Informed consent.** When undertaking research activities, the Mindfulness Professional shall abide by accepted protocols for protection of human subjects. A Mindfulness Professional must obtain a Client's or a Client's legal guardian's written informed consent for the Client to participate in a study or research project and explain in writing the purpose of the study or research as well as the activities to be undertaken by the Client should the Client agree to participate in the study or research project. The Mindfulness Professional must inform the Client of the Client's right to withdraw from the project at any time without impact on receipt of Mindfulness Practices.

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