

## Boards, Ricketts at odds

*Gender identity language a conflict source for a decade*

NANCY HICKS

Two state licensing boards that oversee psychologists and mental health counselors have been at odds with two Nebraska governors and the Nebraska Catholic Conference for almost a decade over sexual orientation and gender identity language in their rules.

The two licensing boards -- the Board of Psychology and the Board of Mental Health Practice -- have been unable to update their rules because they have refused to compromise on these issues.

And it looks like that impasse will continue, after the administration of Gov. Pete Ricketts recently rejected both sets of rules and provided its own draft of acceptable language.

That proposed language -- which strips out antidiscrimination protection based on sexual orientation and gender identity -- "is completely unacceptable and egregious," said Dr. Anne Talbot, president of the Nebraska Psychological Association, which represents psychologists across the state.

Her group will oppose the administration's proposed changes when the issue is before the state licensing board May 31.

And the state Board of Mental Health Practice, which regulates social workers, marriage and family therapists and other mental health counselors, voted at a recent meeting to retain the sexual orientation and identity language in its new proposed rules, thus rejecting the administration version.

Both groups have consistently wanted to make sure sexual orientation and gender identity are covered by anti-discrimination language in their licensing rules.

And both licensing boards have said they want to require professionals to make thoughtful referrals when the counselor or psychologist doesn't want to or can't provide counseling related to these issues.

But the Nebraska Catholic Conference objected to the sexual orientation language in 2008 public hearings and want referral language that allows a counselor who has moral objections to give a client a list rather than make a more thoughtful referral.

Health and Human Services administrators for both Ricketts and former Gov. Dave Heineman have refused to approve the licensing rules that cover these issues, and they sat in limbo for years.

Last month the Ricketts administration rejected proposed rules for both organizations, and provided its own draft of acceptable language. That draft removes any reference to sexual orientation or gender identity and in the mental health practice rules includes the referral language that many professionals find objectionable.

The Board of Mental Health Practice recently voted unanimously to retain the proposed anti-discrimination language covering sexual orientation and gender identity in a new set of proposed rules, knowing it has the potential to kill their proposed regulations again.

The Board of Psychology is expected to discuss the draft of its rules offered by the administration at a March 31 meeting.

Updating the old regulations is important in order to keep up with trends in technology and practice, said Susan Feyen of Omaha, who represents social workers on the Board of Mental Health Practice.

For example, the board currently has no way to regulate a counselor in another state counseling people in Nebraska using telehealth equipment, she said.

Outdated supervision requirements in the current rules for psychologists has hurt efforts to recruit and retain doctorate psychology candidates, said William Spaulding, professor of psychology at the University of Nebraska-Lincoln.

Many professionals licensed by both groups are adamant the anti-discrimination and appropriate referral language be included in their licensing rules.

In a memo to board members, board chair Dale Battleson of Omaha, pointed out the anti-discrimination language has been “overwhelmingly endorsed” during public hearings and “firmly supported” by previous board actions. Sign up for our daily news email

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This is not a political issue, he said in that memo. “It is meant to protect the public, including Nebraskans with a history of disenfranchisement and prejudice.”

“It does not reflect a desire to shape public policy, but rather reflects the board’s desire to hold social workers, professional counselors and marriage and family therapist to a higher level of standard...”

Two state associations representing marriage and family therapists and social workers also objected to the proposed changes made by the administration at the board meeting.

“I encourage you to reject the administration’s proposal and write regulations that best protect the public,” said Terry Werner, executive director of the Nebraska chapter of the National Association of Social Workers, in a letter to the board.

Before the recent action by the Ricketts administration, the Board of Psychology and the Nebraska Psychological Association had been trying to work with HHS to get their proposed rules approved, according to Talbot.

Instead of continued work, the administration rejected the proposed rules and sent back their own version.

No one knows who wrote the draft rules, returned to the state board last month, said Talbot. “We have no information on who wrote them, but there was no consultation with the state association or the licensing board,” she said.

The state association will recommend the board reject the “so-called revision,” she said.

## Local view: What's behind the licensing impasse?

ANNE TALBOT

Nancy Hicks' article on the extended battle psychologists and other professionals have had in asserting our responsibility to retain nondiscriminatory language regarding sexual orientation and gender identity ("Boards, Ricketts at odds," March 11) provides an informative outline of this struggle and what is at stake. For nearly a decade the Nebraska Department of Health and Human Services and two successive governors have allowed a religious group to assert undue influence on the signing of updated licensing regulations. Here is some further discussion to clarify the importance of the issue and the motivations behind the impasse.

First, this issue is not just about referring people for "counseling" -- clinical psychologists diagnose and treat the full range of mental illnesses, including very serious ones. Our patients are often extremely vulnerable, at high risk for suicide and other calamities. The governor wants to allow psychologists to turn patients away without consideration of their stability or the public's safety. This would be comparable to emergency room physicians ignoring accident victims who offend their deeply held convictions.

The new regulations that the governor is holding hostage reflect psychologists' role in high-risk, high-stakes health care decision-making. They would update critically important diagnosis and assessment standards that affect how people are determined to be mentally ill, legally competent, eligible for disability benefits, not guilty by reason of insanity and subject to civil commitment. In addition, our outdated regulations are impairing our ability to recruit the best and brightest new psychologists. In some cases new university faculty who are licensed in other states are unable to juggle research and teaching demands of the tenure struggle while meeting Nebraska requirements. The new regulations would fix this.

These have nothing to do with the reasons the governor is holding up the regulations. The real reason remains somewhat obscure. The Nebraska Constitution requires that the purpose of health care licensing is to protect the public. Allowing psychologists to discriminate according to their deeply held convictions protects nobody, not even psychologists. No psychologist anywhere has ever been prosecuted, successfully sued or disciplined for refusing to treat anybody. In fact, we are trained to not treat people when our personal convictions may interfere with our effectiveness. But when we do decline to treat people we must also protect their safety and the public's. This often requires more than handing them a phone book and showing them the door. Incredibly, this debate is about whether it's OK for a psychologist to do no more than that, if patients offend our deeply held convictions, no matter how suicidal, distressed, agitated, angry, homicidal, psychotic, demented, confused or dangerous they may be.

It is also government overreach and regulatory micromanagement at its worst, to prescribe in licensing regulations a canned minimum response for such a huge range of situations. Sometimes a referral can be as simple as looking practitioners up in a directory. Sometimes it's an extremely sensitive and risky situation with potentially catastrophic outcomes. The accepted way of regulating this complexity is to hold practitioners accountable for using their professional judgment to make a referral that ensures the patient will make it safely to the next caregiver. There has never been a need to change that.

There is a deeper, even more troubling side to this debate. For some, applying "conscience clause" logic to mental health creates opportunities to confront, berate, and bully those who offend one's deeply held convictions. For some, simply informing patients that not all practitioners have the same deeply held beliefs is too much to ask. For health care professionals, this violates the very first of Hippocrates' rules -- do no harm. This impasse is an extreme case of a mean-spirited solution looking for a defenseless problem. The only justification given by any state official is that the Catholic Conference demands it. It only makes sense as a politicization of health care regulation, to promote discrimination against vulnerable people on behalf of a special interest, with disregard for public safety or the public interest.

Anne Talbot is president of the Nebraska Psychological Association Board of Directors.