

ANALYSIS

Mental Health Regulatory Agency Report on Demographic Study and Diversity Plan

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Request: Acknowledge receipt of a report from the Mental Health Regulatory Agency on a demographic study and diversity plan, as directed by a budget note in House Bill 5006 (2021 Session).

Analysis: The Mental Health Regulatory Agency (MHRA) provides administrative and regulatory oversight to two licensing boards that oversee mental health professions in the state, the Board of Licensed Professional Counselors and Therapists (BLPCT) and the Board of Psychology (BOP). Due to legislative interest in gaining a better understanding of licensee demographics and increasing diversity of the mental health workforce, the Legislative Assembly appropriated \$300,000 General Fund to MHRA and directed MHRA, as part of a budget note in House Bill 5006 (2021 session), to engage a third party consultant to study the demographics of the individuals licensed by the boards and devise a plan to increase licensee diversity, including an examination of the boards' application processes, investigation of complaints and allegations related to application disclosures, and the boards' consideration of applicant character and fitness. The budget note further directed MHRA to submit a written report on the study and plan to appropriate legislative policy committees by December 31, 2022, and to present the report to a subcommittee of the Joint Committee on Ways and Means during the 2023 Regular Session.

After a lengthy research and development process, MHRA contracted with Keen Independent Research LLC (Keen) to conduct the study. The study required Keen to examine MHRA's existing policies and procedures; study the demographics of the professionals licensed by BLPCT and BOP; collect and analyze external stakeholder feedback; identify opportunities for and barriers to increasing the diversity of the mental health workforce; and if warranted, recommend changes in policies or practices to support greater diversity of the mental health workforce. Keen began the study in June 2022 and submitted its final report, including recommendations, to MHRA on December 19, 2022. Upon finalizing the report on the demographic study and diversity plan, MHRA submitted the report to the House Interim Committee on Behavioral Health and the Senate Interim Committee on Human Services, Mental Health, and Recovery.

During the study, Keen analyzed policies, procedures, and demographic data; conducted a comparative analysis with other jurisdictions; scanned academic literature and other research for relevant information; and conducted in-depth interviews, focus groups, and a virtual workshop to gather stakeholder feedback, which obtained input from 1,793 individuals. Among the key findings in the report, Keen found:

- **Mental health professionals in Oregon are less diverse than they are nationally and less diverse than Oregon's population:** Approximately 79% of mental health professionals in the United States identify as white compared to 93% in Oregon; 15% identify as African American nationally, as compared to only 2% in Oregon; and 10% identify as Hispanic/Latino nationally, as opposed to only 5% in Oregon. Approximately 75% of Oregon residents identify as white compared to 93% of Oregon mental health professionals. Every race and ethnicity group, except white, is

underrepresented in the mental health workforce relative to their proportion of Oregon's population, especially African American and Hispanic/Latino. Furthermore, Oregon's mental health professionals are less diverse in terms of languages spoken at home than the population of Oregon. For example, 9% of Oregonians speak Spanish at home, but only 6% of Oregon's mental health professionals do. However, approximately 75% of mental health professionals in Oregon are women, which is consistent with the national average.

- **Complaints filed against mental health professionals are not always proportionate to the race, ethnicity, and gender demographics of those professionals:** Practitioners in certain race and ethnicity groups were overrepresented in complaints relative to their proportion of the professions, including African American and Hispanic/Latino psychologists, Hispanic/Latino professional counselor registered associates, and marriage and family therapists associates of color, especially those who are multiracial or American Indian/Alaska Native. Male practitioners were overrepresented in complaints in all professional groups examined. Small numbers of professionals in certain racial and ethnic categories and even smaller numbers of complaints cannot provide the strong answers about the presence or absence of race or gender disparities in complaints. However, even though MHRA is required to investigate all complaints, the overrepresentation of certain racial and ethnic groups in some categories suggests the need to be aware of the potential for bias.
- **Disparities in representation of people of color in mental health professions are not caused by the state's licensing and regulation, but licensing and regulation policies can passively perpetuate or exacerbate inequities and lack of diversity:** The study asked counselors, therapists, and psychologists in Oregon about factors affecting the diversity of the professions resulting in open-ended responses from 1,487 individuals. After conducting a quantitative and qualitative analysis of the responses, the study found that the factors perceived as having the biggest impact on diversity are education programs and financial pressures. Participants most frequently attributed limited diversity in the mental health professions to a lack of diversity in the pipeline of graduates from Oregon's relevant degree programs, particularly the limited diversity of graduates. In other words, the perceived lack of diversity in the professions begins well before licensing and regulation come into play, and MHRA and the boards cannot license candidates who do not exist. The study examined demographic composition of graduate students in a limited sample of relevant degree programs and found that the demographic makeup of students in these programs were like Oregon as a whole: 74% white and 26% racial or ethnic minority. Enrollment that more closely matches the demographics of Oregon's population may help diversify the professions, but even if that occurs, closing the gap in licensed professionals of color compared to the population will take time. Financial barriers to entry to the professions were the second most frequently cited hinderance to diversity, including the cost of education, which can result in sizable student loan debt; unpaid internships; and compensation constraints for registered associates whose services are not covered by private insurance. Many participants reported that the layered financial barriers for practitioners entering the profession could be insurmountable, particularly in combination with other socioeconomic factors that are more likely to pose challenges for people of color, persons with disabilities, and LGBTQ+ individuals. However, one area of growth was identified, finding that enrollment of racial and ethnic minority students in graduate psychology programs in Oregon increased from 27% in 2006-07 to 35% in 2016-17, according to the American Psychological Association.

- Practitioners reported distrust of the complaints and investigation process and outcomes, which is an important equity issue for MHRA to recognize and address:** Qualitative analysis of practitioner comments found some evidence of distrust that complaints and investigations are equitable. Practitioners described processes that are subjective and therefore open to bias, and they expressed concern that processes that are deliberately opaque to protect confidentiality lack checks and balances on potential bias. Practitioners described concerns that investigations and board deliberations may not consider mitigating factors, which might be of particular concern for people of color who are more likely to have past interactions with the criminal justice system, for example. They also expressed concern that the boards employ law enforcement-style investigation techniques, which in turn raised concerns about bias and unfair treatment of practitioners of color.
- MHRA and the boards have opportunities to support diversity in the professions, acting independently or in collaboration with others:** While many participants in the study acknowledged that limited diversity in Oregon’s mental health professions likely originates outside of MHRA and the boards, and there was perhaps little that MHRA and the boards could do to change the “upstream” socioeconomic factors that led to the lack of diversity in the first place, they nevertheless thought there was opportunity for MHRA and the boards to have some influence. For example, more respondents believe MHRA and the boards do have an influence on diversity in the professions (40%) than do not (23%). About three times as many participants described licensing and regulation factors as potential hinderances to diversity than as supportive. Professionals further identified many possible ways that MHRA and the boards could influence diversity that are within their purview, such as regulations, communication, and support, and opportunities and barriers to diversity related to licensing and complaints.

Keen recommended that MHRA and the boards consider taking action to address its findings in five specific areas over time, all of which MHRA has agreed to address:

- 1. Make and sustain a visible, active commitment to diversity, equity, and inclusion (DEI):** This recommendation stems from the impression, even if based on a lack of information, that MHRA and the boards pursue their mission of consumer protection to the exclusion of providing protection for professionals. The logic of this recommendation is as follows: MHRA and the boards exist to protect all consumers; some consumers from historically marginalized groups want to receive services provided by professionals from similar backgrounds but may not receive services because of limited diversity in the professions; therefore, protecting the interest of consumers from historically marginalized groups goes hand in hand with further supporting professionals from marginalized backgrounds and fostering greater diversity in the professions. Among the potential actions for MHRA and the boards, they should make a visible high-level commitment to equity; operate the boards inclusively; identify resource needs to achieve progress on equity; and create systems and opportunities to welcome ideas and feedback.
- 2. Reconsider licensing policies and procedures to support equity:** While most professionals who provided input to the study understood that licensing is not the primary cause of limited diversity in the mental health professions in Oregon, about one-third of the open-ended comments from professionals suggested changes to licensing rules would increase diversity. Among the recommendations were to: reconsider the scope of required disclosures and background check information; consider revised supervised clinical experience requirements, including reducing direct service requirements for licensed professional counselors and licensed marriage and family therapists; consider fee modifications, sliding fee scales based on income, reductions, waivers, or based on installments, to support socioeconomic diversity and encourage service to underserved

populations; facilitate interstate credentialing services and supervision to enable smoother, faster, and more flexible acceptance and portability of licensure; reduce friction points in license renewal, including reducing the frequency for licensed professional counselors and licensed marriage and family therapists to every other year and reduce the psychologist renewal fee; and evaluate possible modifications to the continuing education requirements, including considering ongoing peer support, consultation, or group supervision/support, whether paid or unpaid, as counting towards continuing education.

- 3. Add safeguards around complaints, investigations, and disciplinary actions:** Complaints and investigations have historically been more prevalent for some groups than for others. Bias cannot be ruled out, nor can it be confirmed using available data. It is clear from the study that some practitioners have strong reservations about the fairness of complaints and investigations, and MHRA and the boards should take action to address fears about complaint handling and investigations, even if these reservations are based on a lack of information. Potential actions for MHRA and the boards to take to remedy these issues include requiring MHRA investigators to undergo training in clinical subject matter and investigation approaches that are less associated with policing; prioritize clinical knowledge and experience when hiring investigators; add and/or communicate procedures to safeguard respondent rights and well-being and complainant rights and well-being; revise and potentially expand disciplinary action options, including publishing board sanctioning reference points for consistency, transparency, and reflect board's disciplinary approach and explore restorative justice, mediation, or other technique; and foster transparency and accountability by publishing statistics on complaints and actions relative to demographic data, publishing statistics on the diversity of board membership, and publishing statistics on how frequently the boards reject proposed orders by administrative law judges, including the reasoning behind such decisions.
- 4. Audit and improve communications and service:** Quantitative and qualitative analyses of virtual workshop responses strongly indicated that MHRA and the boards should expand communications and service beyond the current e-newsletters, announcements on the boards' websites, and public notices consistent with the Oregon public meetings law. Many who responded would like MHRA and the boards to be more informative, helpful, and responsive. This theme was present in comments about licensure and renewals, as well as complaints and investigations (among both the complainants and respondents). Some perceived an overly formal tone or generic nature of communications that did not resolve questions or address confusion. Some reported difficulties in getting live support when needed or experienced delays in receiving that support. Some expressed specific concerns about language access and accommodations for persons with disabilities, neurodiversity or other challenges, and perceived service gaps and communication challenges for professionals facing deadlines for action. Potential actions for MHRA and the boards include evaluating and updating communications and services with professionals in ways that welcoming, accessible, helpful, user friendly, and proactively address issues; set and enforce expectations for timely follow-up with professionals and the public; evaluate options to address common questions and enhance understanding about licensing, complaints, and information about MHRA and the boards; increase the frequency and vary the methods of renewal communications to reduce lapses; modify communications for complainants and respondents; and support language access to information that is currently only available in English (PDFs).
- 5. Identify and support changes in factors external to MHRA and the boards to foster equity:** As previously noted, some key barriers in the mental health professions in Oregon are beyond the purview of MHRA and the boards. These include education-related issues, such as a lack of

diversity of students entering and graduating from relevant Oregon degree programs and financial barriers related to tuition costs, unpaid internships and student loans; financial barriers, such as insurance exclusions for services by registered associates, reimbursement and compensation rates, and Medicare exclusion of licensed professional counselor services; and resources and practices to support diverse and equitable workplaces. Many participant comments reflected the belief that MHRA and the boards have some authority over degree programs, education funding, insurers, and employers, which they do not. MHRA and the boards have a role defined by a combination of statutes and policies: licensing and regulation of professionals. Furthermore, MHRA and the boards are further constrained from affecting broader change through influence or advocacy by the Governor's Office, which prohibits agencies from taking a position on any legislation other than supporting legislation that the agency itself introduced that has already been vetted and supported by the Governor's Office. Within these constraints, MHRA and the boards could support diversity by proactively publishing evidence or data available about mental health professionals to help inform the priorities and activities of education programs, employers, and practitioners, and by collaborating with other groups that do not depend on legislation or legislative advocacy to make change.

Going forward, a challenge for MHRA and the boards is to integrate considerations of equity as they fulfill their statutory roles of protecting the public from harm through licensing and regulation of licensed professional counselors, marriage and family therapists, and psychologists in Oregon. Actions taken to support the diversity of the professions must not disregard the consumer protection mission of MHRA and the boards to protect all Oregonians.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends acknowledging receipt of the report.