

# Suspect Treatment:

## State's lack of scrutiny allows unscreened sex offenders and unethical counselors to treat addicts

*This report was prepared for the California Senate  
Rules Committee*

May 13, 2013



*Prepared by John Hill*

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## Executive Summary

J.M. found his way onto the state's registry of sex offenders by having sex six times with a 12-year-old girl, the daughter of his father's live-in girlfriend. The girl had been the victim of a previous rape. Two years later, in 1999, he was in trouble again, this time for molesting a 15-year-old. After he violated probation, a Los Angeles judge tacked another three years onto his sentence.

Shortly after leaving prison, J.M. registered with one of seven California organizations authorized to certify drug and alcohol counselors. The registration allowed him to work in a field in which the number one complaint from clients is sexual misconduct.

While registered as a counselor, J.M. was convicted of a drug offense. For one-third of the time he was registered to provide counseling to addicts, he was sentenced to sit behind bars.

J.M.'s case illustrates some of the shortcomings in the state's oversight of those entrusted to counsel alcoholics and other addicts.

Californians who seek help

### **Becoming a counselor in California**

To begin working as a drug and alcohol counselor in a treatment program regulated by the Department of Alcohol and Drug Programs (ADP), an individual must register with one of seven private organizations. No experience is required. These "certifying organizations" have been approved by a national accreditor. Within five years of registering, counselors must meet education, training and testing requirements and become certified. Counselors who can demonstrate a hardship may be granted a two-year extension. ADP investigates complaints made against both registrants and certified counselors. The certifying organization may also investigate. ADP can order the certifying organization to revoke a counselor's registration or certification, or to take other disciplinary action.

for addictions must rely on a system that allows them to be treated by registered sex offenders and other serious felons, as well as counselors facing current drug and alcohol charges and those already revoked for misconduct, an investigation by the Senate Office of Oversight and Outcomes found. Counselors can easily flout education and training requirements.

For three decades, the state and the treatment industry have been unable to agree on a framework to give the state the authority to credential counselors. Instead, California created a public-private hybrid that precludes criminal background checks and leaves gaps that can be exploited by counselors who move between seven private organizations that register and certify them. Under the current system, these private organizations register novice counselors. When they achieve a certain level of training and experience, the organizations certify them. Despite its lack of involvement in this certification process, the state is in charge of investigating when counselors break the rules.

About 36,000 registered or certified counselors work in 2,534 private and publicly funded drug and alcohol programs, ranging from luxury residential rehabs to DUI and outpatient programs. This workforce is key to the successful treatment of alcoholics and other addicts. Demand for their services will grow as people newly insured under the Affordable Care Act seek help for substance dependence.

Many counselors draw from their own struggles with alcoholism and drug addiction to excel at a difficult job for not much pay. But some come to the profession with serious criminal backgrounds that raise questions about their fitness to treat clients, who are often at one of the most vulnerable points in their lives.

California is one of only two states among the nation's 15 largest that makes no attempt to review counselors' criminal backgrounds. Even within California, drug and alcohol counselors are the only health-related profession not required to undergo these checks. Among those who submit to screening are acupuncturists, dental hygienists, optometrists and veterinarians.

Our investigation found 23 sex offenders permitted to work as counselors. The actual number is undoubtedly much higher – we focused only on those whose names were unusual enough that we could confirm that the counselor and sex offender were one in the same.

Most are rapists and pedophiles. K.F., for instance, was convicted in Los Angeles of 110 counts of lewd acts upon a child for molesting four children in three separate families. He had been hired to babysit the victims, who



ranged in age from a 6-month-old infant to a 9-year-old. Upon release from prison in 2005, he signed up with one of the state's seven private organizations accredited to certify drug and alcohol counselors.

Sex offenses are not the only cause for concern. In one case detailed in our report, a Santa Rosa woman with four theft convictions became a counselor and stole \$55,000 from a client.

Almost all other large states want to know about serious convictions before credentialing drug and alcohol counselors, even if the disclosure doesn't automatically disqualify them. Among the 14 other states we contacted – accounting with California for two-thirds of the U.S. population – only Pennsylvania resembles California in neither requiring a criminal background check nor asking applicants to report their criminal histories. (Two others that require criminal background checks for licensing allow some unlicensed counselors to treat clients.)

Some bar applicants if they've been convicted of certain crimes. Others look at each case individually. Some do fingerprint-based computer searches. Others trust applicants to report their own criminal histories. There are almost as many approaches as states. What they all have in common is an attempt to screen out individuals who could put clients at risk.

In Part II of this report, we show how California also is unusual in its lack of a system for detecting arrests or convictions that occur after someone has become a counselor. The entities that might act on such information – the state, certifying organizations and treatment programs – have no way of being alerted if a counselor with a history of addiction has suffered a relapse, possibly jeopardizing their clients' recoveries. Our investigation found several cases in which counselors racked up DUI or drug convictions or committed sex offenses while employed as counselors.

Part III reveals that California's counselor workforce includes health-care professionals who have lost their credentials for misconduct. Among them are certified nurse assistants found to have abused patients, a San Bernardino County doctor who prescribed dangerous medications over the Internet to patients he'd never met, including an addict, and a nurse who stole the identities of elderly and deceased patients at a San Bernardino hospital. Several other states contacted by the oversight office say they consult a national database of disciplined health care professionals before licensing or certifying drug and alcohol counselors.

Our review also turned up counselors who've been barred from receiving Medicare or Medi-Cal payments as the result of misconduct, including an Orange County counselor who was part of a conspiracy to steal \$250,000

from patients at an extended care hospital, and a San Leandro nursing home owner convicted of inflating bills by almost \$3 million.

Part IV illustrates how California's system is so lax it can be easily manipulated by those who have been disciplined. We found cases in which counselors revoked for misconduct kept working by simply signing up with another certifying organization. An Orange County counselor, for instance, had his certification revoked for getting paid to compile clients' names on a referral list for an insurance company, a major breach of confidentiality. He signed up with a different organization and kept working.

The ability to easily evade regulators represents a gaping loophole in California's system. While the state's seven certifying organizations are required to check with their counterparts to see if a counselor has ever been revoked, the regulation states that this must be done only upon certification. But counselors can work for five years before they must become certified.

Even that loophole does not explain the case of O.Z., a counselor in Hawaiian Gardens. The state Department of Alcohol and Drug Programs (ADP) ordered her certification revoked after an investigation found that she was living with a client, a blatant violation of ethical standards. Less than a month after ADP's investigation, O.Z. registered with a different certifying organization, the Breining Institute, and continued working. Two years later, Breining certified her. Before taking this step, Breining was required by regulation to check to see if she had ever been revoked and to notify ADP if it chose to certify her. ADP says it was never notified.

Other cases underscore the flimsiness of the system. A San Bernardino counselor and her boyfriend embezzled \$136,000 from the program where they both worked. She had registered with two certifying organizations, but only one revoked her, allowing her to keep providing treatment.

In another case, a program allowed a Modesto counselor to keep performing admissions, a counselor function, even after his certifying organization revoked him for having an affair with a client. After the counselor admitted a patient who was too sick to be there, who later died, ADP interviewed him but failed to note that his registration had been revoked. Even then, he continued to work at the same program until he registered with a different certifying organization and someone made a complaint to ADP.

In a related problem, as described in Part V, some counselors are flouting a state regulation that requires them to get the training and education qualifying them for certification within five years of registering. We found 52 counselors who appear to have gone past the five-year deadline by

simply changing registration from one certifying organization to another. S.J., a counselor in Riverside, registered with Breining five days before she hit the five-year limit with California Association of Alcoholism and Drug Abuse Counselors. When her renewal date arrives in 2015, S.J. will have worked nine years without certification. The number of counselors working past five years could have been higher if we had been able to test cross-registrants in all seven certifying organizations.

This is an opportune time for an overhaul of the counselor certification system, since ADP is scheduled to be disbanded in July 2013, and its duties handed over to the Department of Health Care Services, which plans to take a fresh look at many of ADP's practices.

The report makes several recommendations. In light of our findings, the Legislature may want to reconsider past efforts to give the state the authority to license and/or certify counselors. Alternatively, the state could authorize and require certifying organizations to do criminal background checks and subsequent arrest notifications, and set up an advisory panel of industry professionals to evaluate criminal histories and make recommendations.



## Background

For more than three decades, California has been struggling with the question of whether to require drug and alcohol counselors to be credentialed, and if so, who should be in charge of that process – the state or private entities.

The result today is a hybrid system filled with gaps and inconsistencies. As long ago as 1980, those in the recovery business discussed the possibility of state certification of drug and alcohol counselors. But until 2005, the state's only requirement was that counselors pass a tuberculosis test. The state Department of Alcohol and Drug Programs set criteria for directors who ran treatment programs, but not for the counselors who worked there.

In 2000, voter approval of Proposition 36, which allowed treatment instead of incarceration for non-violent drug offenders, led to calls for professionalization of the counselor workforce. Senate Bill 537 in 2001 required the Department of Consumer Affairs to determine whether the state should license drug and alcohol counselors and, if so, what standards to put in place.

The bill was vetoed by Gov. Gray Davis. One concern was that requiring counselors to be licensed would reduce their numbers just as demands on treatment programs increased as a result of Proposition 36. In his veto message, however, Davis acknowledged some need to impose standards. He directed ADP to come up with regulations for certifying counselors.

As the regulations were being considered, treatment programs and organizations that certify counselors again warned against strict standards that would prevent too many people from becoming counselors, a problem they said had been encountered by other states that set the bar too high.

The regulations went into effect on April 1, 2005. They delegated the certification of counselors to ten private organizations, which must be accredited by a national organization. (The number of certifying

organizations has since decreased to seven.) They required all counselors either to register with or become certified by one of the organizations. Those who register must get certified within five years. For the first time, the regulations set minimum standards for certification, including a score of at least 70 percent on a test, work experience and formal classroom education on drug and alcohol counseling.

One provision required that five years after the regulations went into effect – 2010 – treatment programs would have to assure that 30 percent of their treatment staffs were certified.

The regulations included a code of conduct. They made ADP responsible for investigating complaints against counselors. Within 90 days of receiving a complaint, ADP is required to send a written order to a counselor’s certifying organization specifying what corrective action, if any, must be taken. Before certifying a counselor, the private organizations are required to check with their counterparts to determine if a counselor has ever been revoked.

Since the regulations took effect in 2005, there have been several failed attempts to scrap this hybrid system in favor of state control. These efforts are detailed in Part I of this report.

**Organizations that register and certify counselors must be accredited by a national organization. Currently, there are seven.**

<b>Addiction Counselor Certification Board of California</b>	Lakewood
<b>American Academy of Health Care Providers in the Addictive Disorders</b>	Solano Beach
<b>Board of Certification of Addiction Specialists</b> (affiliated with California Association of Addiction Recovery Resources)	Sacramento
<b>Breining Institute</b>	Sacramento
<b>California Association of Drinking Driver Treatment Programs</b>	Sacramento
<b>California Certification Board of Alcohol and Drug Counselors</b>	Sacramento
<b>Indian Alcoholism Commission of California, Inc.</b>	Redding

The governor's proposed budget for the 2013-14 fiscal year calls for ADP to be disbanded and its functions, including counselor oversight, handed over to the Department of Health Care Services.

About 36,000 Californians are registered or certified drug and alcohol counselors, according to ADP. With the implementation of the Affordable Care Act, many newly-insured people are expected to seek treatment. The federal government and insurers, meanwhile, may impose greater standards on providers. In combination, these developments are likely to lead to greater scrutiny of California's system of overseeing those who provide drug and alcohol treatment.





## **I. California's lack of criminal background checking means sex offenders and other serious offenders can become counselors**

Our investigation found 23 sex offenders who have been registered or certified to work as drug and alcohol counselors since 2005, when counselors first became subject to regulation.

The number is undoubtedly much higher. Our examination included only the three largest of the seven certifying organizations, and focused on names that were so unusual that we could determine with certainty that the sex offender and the counselor were the same person.

While the presence of registered sex offenders in drug and alcohol rehabs raises questions on its own, it points to a larger problem: California is one of the few large states that does not require drug and alcohol counselors to undergo criminal background checks. Some states don't demand background checks, but require applicants to self-report criminal histories. California doesn't do even that.

The Senate Office of Oversight focused on sex offenders for two reasons. No other criminals are required to register and have their names included in a public database. We were able to cross-check that database against lists of drug and alcohol counselors. And counselors with sex-offender pasts are perhaps the most dramatic example of the pitfalls of the state choosing to ignore criminal histories. Their names are posted on a public registry because they are considered dangerous even after they have served their time. Those who work as drug and alcohol counselors enter a field that relies to an unusual degree on trust – and honoring of boundaries – between counselor and client.

Sex offenses are not the only crime of concern in the treatment industry, however. Our investigation found a case in which a woman with an extensive history of theft got certified as a counselor and stole \$55,000 from a client.

Among the registered sex offenders identified in our investigation were some who committed crimes 40 years ago, and others who got into trouble in the past decade. Some have worked for or are now employed by drug and alcohol programs. In other cases, we were not able to confirm experience in the treatment industry. Some may have registered and never found work as a counselor.

Most are rapists and child molesters.

Our report uses only the initials of the offenders. Our investigation focuses on the pitfalls of the system set up by state government, not the actions of individuals. It should also be noted that, despite their criminal histories, these individuals apparently violated no law or regulation by working as counselors. In cases described later in this report, in which counselors appear to have engaged in misconduct, we are providing full names to the Department of Alcohol and Drug Programs.

J.M. was convicted of two sex crimes before he registered to work as a drug and alcohol counselor. He had sex six times with a 12-year-old daughter of his father's live-in girlfriend, who had been a victim of a previous rape. Two years later, in 1999, he was convicted of molesting a 15-year-old.

Shortly after leaving prison, J.M. registered with the Breining Institute, one of seven California organizations authorized to certify drug and alcohol counselors.

K.F. was convicted of 110 counts of lewd acts upon a child in 1995 after he molested four children he was babysitting in three separate families. The children ranged in age from an infant to a 9-year-old. The Los Angeles District Attorney made a special allegation that K.F. had violated a position of trust and engaged in "substantial sexual contact" with the victims. In sentencing him to 20 years in prison, the judge recommended that he be committed to a prison that specialized in pedophiles.

Upon his release in 2005, K.F. registered with the Breining Institute. He let his registration lapse two years later. Our investigation could not determine whether K.F. worked as a counselor.

S.N. was working in a private home as a registered nurse, taking care of a disabled 9-year-old boy and his 6-year old sister, when he was accused of taking the girl's hand while she sat on his lap on several occasions and putting it on his penis or groin. He served almost eight months of a one-year jail term. In 2001, the California Board of Registered Nursing revoked his license. S.N. also admitted a history of drug use and was convicted of possession of marijuana and methamphetamine after his release from jail.

In 2005, he registered with the California Association of Alcoholism and Drug Abuse Counselors, or CAADAC. Five years later, he was certified as a counselor. In 2011, he passed the test to become a higher-level counselor. S.N. has been working for a substance abuse treatment program in Murrieta for several years.

M.H. was sentenced to six years in prison in 2003 after being found guilty of lewd acts upon his stepdaughter in El Dorado County. He had been molesting the 13-year-old girl for several months.

The girl told a detective that she would zip herself into a sleeping bag at night, hoping that it would protect her.

“She described being afraid of him because when he would discipline her or spank her, it would really hurt,” the detective testified. “So she had this fear if she said anything or did anything, he would hurt her.”

In 2011, M.H. was certified as a counselor by the California Association of Addiction Recovery Resources, or CAARR. He let it lapse a year later. Our investigation was not able to determine what treatment programs, if any, employed M.H.

H.D. was sentenced to six years in 1986 for forcing a 12-year-old boy in Los Angeles to engage in a sexual act. Shortly after getting out of prison in 1990, he put on a ski mask and pulled a gun on two women sitting in a parked car and demanded their money. When one woman said “I’m pregnant, don’t hurt me,” he replied, “I don’t care. I just got out of prison,” according to the victim’s testimony. He made off with a ring and a wallet, but was caught after one of the victims realized she recognized him as a former classmate. He was sentenced to another 11 years and eight months.

In 2011, more than a decade after getting out of prison, he registered as a drug counselor with The Breining Institute, and recently renewed his registration until 2015. He has worked at a drug treatment center in Los Angeles.

B.T. admitted to forcing sex upon her ex-girlfriend in 2007 in Los Angeles and was sentenced to a year in jail and five years of formal probation. She registered with CAADAC in 2010 and 2011, during which time she worked for a drug treatment program in Downey. She let her registration expire. In 2012, she was convicted again, this time for grand theft.

C.S. became a registered sex offender as the result of a conviction in 1984. C.S. and a friend met a group of girls in a Pasadena park, and offered one of them a ride home. Instead, they took her to the home of C.S.’s friend.

The two young men each took her by an arm, forced her into the house and raped her. C.S. was sentenced to 12 years after pleading guilty to three counts of forcible rape.

In 2011, he registered as a counselor with CAADAC. The registration expired a year later. On his Facebook page, C.S. says that he worked as a counselor, although our office could not verify his workplace.

H.H. was sent to prison for three years in 1997 after the daughter of his live-in girlfriend told her counselor that he had been molesting her, starting when she was 13. The girl, who had been sexually abused in a different case between the ages of five and seven, told Oakland police that she was afraid to tell anyone because she didn't want to cause problems between her mother and H.H. After being released from prison in 1999, he earned a certificate to be a drug and alcohol counselor with the Breining Institute. At the age of 48, he got a college degree. He is now a master's level registered addiction specialist and works for the state in vocational training.

In an interview, H.H. said that he has struggled throughout his career as a counselor to avoid the stigma of being on the sex offender registry.

"I deal with it every day," he said.

After going through addiction treatment himself, he worked as a volunteer while he was going through community college. When he became a paid temp, he disclosed his past to his supervisors and his co-workers. The clients found out as well. Some didn't care, H.H. said, but others did. He told those clients they had the right to request another counselor.

He became focused on helping those, like himself, who were having a hard time re-entering society after addiction or, in some cases, sexual offenses. He did an internship with the state, and decided to apply for a permanent position. Although he was not asked on his application to disclose his criminal history, he revealed it to his supervisor, knowing that it would come out eventually.

"I try to get them to know me," he said. "I tried to be proactive."

In another 15 cases, we were able to confirm that a registered sex offender had registered or been certified as a counselor. But we could determine little else about the circumstances and details of the original offense or the subsequent work history.

## **Do sex offenders pose a danger to clients?**

Many researchers have found that, contrary to widespread belief, sex offender recidivism rates are lower than those of other criminals.

It's also worth noting, however, that researchers believe that well over half of sexual assaults never come to light.

And putting sex offenders in positions of trust as counselors raises unusual issues.

“Obviously, the main risk is that you could have someone in a counseling position who has quite a bit of control over a client,” said Maia Christopher, executive director of the Association for the Treatment of Sexual Offenders in Beaverton, Oregon. That power can be even greater if the client has been ordered into treatment by a court, or is seeking drug or alcohol counseling as part of a child custody dispute.

“A counselor can have a large say in a person’s life,” Christopher said. That could make the client vulnerable to unwanted sexual advances, she said.

Another risk is that a client who has not been told of a counselor’s background could feel betrayed, especially if the client has been a victim of abuse in the past, Christopher said.

“The violation of trust could come with secrecy and a lack of disclosure,” she said.

Many factors could play into whether a sexual offender can work safely as a counselor. If the offense involved children, Christopher said, “that doesn’t necessarily preclude them from working with adults.” Even then, she said, it would be important to establish safeguards.

In addition, some research has indicated that many sexual offenders do not always stick to a preferred victim type. Those who assault children may also target adults, according to a 2003 study by the Colorado Department of Corrections.

Another variable is how long the behavior continued – was it a one-time transgression or a pattern? And what type of setting will the counselor be in? It may be more fitting to have a sexual offender lead group sessions than to engage in individual therapy, which involves greater intimacy.

## **Sex crimes not the only concern**

Although our investigation focused on counselors who committed sex offenses, we came upon one case demonstrating the value of screening for other types of crimes.

Before being certified as a counselor in 2005, S.M. had racked up four theft-related convictions. In 1999, she stole more than \$400 worth of merchandise from a supermarket in Sonoma County and was sentenced to one year in jail. During that time, she underwent substance abuse treatment and decided to become a counselor.

“My personal goal is to be a self-sufficient woman, and to be (finally) a productive member of society,” she wrote to a judge. “I want very much to work in some capacity in the recovery field.”

In October 2009, S.M. was working as a counselor at a treatment center in Santa Rosa. One of her clients was a 60-year-old disabled woman who had been a drug addict and was receiving methadone treatment. The woman had also been under psychiatric care, according to a brief filed by Attorney General Kamala Harris in an ensuing appellate court case.

During the counseling sessions, the client told S.M. that she had just inherited \$100,000. She said she felt lonely and isolated. The counselor began visiting her at home. S.M. persuaded the woman to loan her \$6,000 for one business venture and another \$50,000 to underwrite another project, a counseling center. Six months later, the woman demanded that S.M. return the \$6,000 and account for the \$50,000 investment in the counseling center, according to the attorney general’s brief. When the counselor refused, the woman called the police. S.M. admitted to the police that she never started a business and that the money for the counseling center “was all gone.” She was sentenced to two years in prison.

A criminal background check would have revealed S.M.’s history of theft and might have prevented her from becoming a counselor.

## **Other states review criminal histories**

Most other large states have decided that, even if they don’t automatically disqualify felons from working as counselors, they at least want to know about criminal histories. The Office of Oversight called 14 states, accounting with California for two-thirds of the U.S. population. Only Pennsylvania neither required a criminal background check nor asked applicants to self-report criminal histories.

Other states take a variety of approaches. Some rely on fingerprint checks, while others use names and identifying information such as Social Security numbers. Some don't do background checks but require applicants to self-report and sanction those who fail to do so. Some specify crimes that disqualify a person from working as a drug and alcohol counselor; others look at the circumstances of each case before making a decision.

Many of the states that require background checks do it when counselors first register to work, even if they are just interns or assistants. Others wait until counselors achieve the other requirements – education and experience – needed to apply for full-fledged certification or licensing. (California is unusual in requiring almost nothing for someone to register and start working as a counselor. Other states require not only criminal background checks, but a modicum of training, proof of employment or a commitment from a supervisor to monitor the trainee's activities.)

In Texas, certain crimes – including sexual offenses against children or clients – disqualify a person from working as a counselor regardless of how long ago the crime occurred, said Stewart Myrick, director of the state's Licensed Chemical Dependency Counselor program. For other crimes, including sexual assault, people can apply with no restrictions after a certain time, ranging from three to 15 years depending on the seriousness of the offense.

Even in some of the states that don't specify disqualifying crimes, officials said that an applicant with a history of sexual offenses would likely be rejected.

"If it's child abuse, you will never be certified," said Amy Peloquin, director of the Florida Certification Board, a private non-profit that certifies counselors. (Florida, however, does not require everyone who works in a treatment program to be certified, just that they be overseen by one "qualified professional" such as a certified counselor or other health care licensee.)

New York is in a transition from asking applicants to self-report to mandatory criminal background checks. While disqualifying crimes are not written in statute, applicants with histories of violent crimes, crimes against children or sexual abuse such as rape don't get approved, said Sandy Alsum, credential unit manager of the New York State Office of Alcoholism and Substance Abuse Services. Because recovering addicts are a vulnerable population, the state has concluded that allowing counselors with those kinds of backgrounds is too risky. The state requires applicants whose criminal histories involve substance dependence to be out of treatment for a full year before working in the field, Alsum said.

Arizona also does not spell out disqualifying crimes. The state considers how long ago the crime occurred, whether it's connected to the duties of being a counselor, and what the applicant has done since being convicted.

Similarly, New Jersey considers each case, but someone with a history of rape or pedophilia would likely have a tough time becoming a counselor, said Richard Bowe, executive director of the Addictions Professionals Division of The Certification Board, a non-profit that contracts with the state to do education and testing.

Several states require that applicants with criminal histories wait a certain interval before being certified or licensed as a counselor. The Florida non-profit that does certifications, for instance, requires that an applicant be crime-free for five years. North Carolina, like Texas, specifies in statute how much time must pass according to the severity of the offense. A sex offender would have to wait 20 years after all aspects of the sentence were completed, including probation. After that, the applicant would be treated as any other, said Barden Culbreth, associate director of the North Carolina Substance Abuse Professional Practice Board.

In Virginia, a state board will convene an informal hearing to review an application if the applicant has been convicted of a felony in the prior ten years. The state, however, does not do a criminal background check, relying instead on applicants to self-report.

In Massachusetts, counselors can be licensed by the state or certified by a private organization, although neither credential is required for those who work

	Credentialing authority	Type of screening
<b>AZ</b>	state	criminal background check
<b>CA</b>	7 private orgs	none
<b>FL</b>	1 private org	criminal background check
<b>GA</b>	1 private org	employers
<b>IL</b>	1 private org	employers
<b>MA</b>	state/ private org	criminal background check
<b>MI</b>	state/ private org	employers
<b>NJ</b>	state/ private org	criminal background check
<b>NY</b>	state	criminal background check
<b>NC</b>	state	criminal background check
<b>OH</b>	state	applicants self-disclose
<b>PA</b>	1 private org	none
<b>TX</b>	state	criminal background check
<b>VA</b>	state	applicants self-disclose
<b>WA</b>	state	criminal background check

Source: Interviews with state officials



in a drug treatment programs. Applicants for the state license must go through a criminal background check. Those with serious offenses must arrange an evaluation by an independent psychologist or social worker, said Michael Morini, program coordinator for the state's Bureau of Substance Abuse Services.

There are almost as many approaches to licensing and certifying counselors as there are states. In Ohio, for instance, the state relies on applicants to report their own criminal histories, but formal background checks are not required until they are hired to work in a program.

Michigan requires counselors in publicly funded agencies to be certified by a private organization. While the certifying organization does not do criminal background checks, treatment programs are required by their state contracts to do them, said Jeffrey Wiefelich, treatment section manager in Michigan's Bureau of Substance Abuse.

Regardless of the variations, California and Pennsylvania stand out as the only two large states that make no attempt to screen most drug and alcohol counselors. The only exception in both states is treatment programs that counsel adolescents. In California, all staff in those programs must submit to criminal background checks, which are reviewed by ADP for crimes against children, or drug and alcohol offenses.

The lack of screening of drug and alcohol counselors is also an anomaly among health-related professionals within California. Many of these professionals are regulated by boards within the Department of Consumer Affairs. Those who must undergo fingerprint-based screening include marriage and family therapists, licensed clinical social workers, psychologists, acupuncturists, dental hygienists, dentists, doctors, naturopaths, optometrists, osteopaths, physical therapists, physician assistants, podiatrists, nurses, respiratory care specialists and veterinarians.

Some professionals not in the health care field are subject to criminal background checks, including accountants, funeral directors, contractors, court reporters, professional fiduciaries, and security guards.

California law does not generally specify crimes that would disqualify applicants from working in these professions. Rather, regulators review cases to determine if the crime was substantially related to the functions and qualifications of the profession.

Even in the absence of blanket prohibitions, however, "if you're a sex offender, you're not going to be a nurse or a dentist," said Russ Heimerich, spokesman for the Department of Consumer Affairs.

## **Legislature rejected a bill that would have required screening of counselors**

In 2009, the Department of Alcohol and Drug Programs sponsored Senate Bill 707, which would have required criminal background checks for drug and alcohol counselors. The bill by Sen. Mark DeSaulnier also would have made sweeping changes to the regulation of the profession, giving the state the responsibility of registering, certifying and licensing counselors. It died in the Senate Appropriations Committee.

SB 707 was the latest in a series of failed attempts over several years to give the state a stronger hand in regulation of drug and alcohol counselors. One would have put counselors under the jurisdiction of the Board of Behavioral Sciences in the Department of Consumer Affairs. Another would have created a separate board in Consumer Affairs.

SB 707 required applicants to submit to a fingerprint-based state and federal background check through the California Department of Justice. The bill specified circumstances in which the Department of Alcohol and Drug Programs would be required to deny or revoke a license, certification or registration.

The legislation barred registered sex offenders from working as counselors. It also disqualified applicants with more than five criminal offenses over two years and those with a violent offense in the past three years. The bill was amended to allow applicants with violent felonies to work as counselors three years after conviction upon written approval of their parole officers. It gave ADP the option to reject those whose convictions substantially related to the practice of alcohol and drug counseling, a standard similar to the one used in many other health-related professions in California.

ADP argued that SB 707 would protect the public from dangerous or incompetent counselors. But several interest groups were opposed, including one of three largest organizations that certify counselors, the California Association of Addiction Recovery Resources (CAARR). The main objection was that the new requirements would make it harder for people to enter the field, leading to shortages in a profession known for low pay and high turnover. One opponent estimated that the new requirements, including the criminal background check, would cost an applicant \$1,000 – a steep hurdle in a low-paying profession. They also raised the possibility that criminal background checks would exclude those with drug and alcohol convictions, traditionally a big part of the counselor workforce valued for their real-life experience.

After the bill died, CAARR and the two other big certifying organizations – CAADAC and the Breining Institute – joined with other stakeholders in proposing an alternative. Senate Bill 1203 required fingerprint-based state and national criminal background checks when a person applied to become a counselor. The bill, also authored by Sen. DeSaulnier, required ADP to bar registered sex offenders, as well as those convicted of three or more felonies in a five-year period, and anyone convicted of a violent felony in the past five years. Like SB 707, it allowed an exception for applicants who had been convicted three or more years earlier and obtained permission from their parole officers. SB 1203 also died in committee.

Counselors have long been sensitive to the issue of criminal background checks. Many got into counseling while in recovery from their own addictions, which often involved scrapes with the law. Several years before the DeSaulnier bills, some nervous CAARR counselors called the association when ADP suggested instituting criminal background checks, said Executive Director Susan Blacksher.

If the state did start requiring criminal background checks, CAARR officials said they would advocate regulators reviewing each case to see if the circumstances reflected on the applicant's fitness to work as a counselor, as happens in some other states and among other health professionals in California.

CAADAC, another of the three biggest certifying organizations, also favors that approach, said past president Warren Daniels. People with criminal pasts can become good counselors, he said. Daniels knows – he got out of prison in 1973 after committing a number of serious offenses. Not only has he had a clean record since: he oversaw the innovative financing and construction of a new Grass Valley wellness center that includes substance abuse and mental health treatment.

Despite that caveat, CAADAC believes criminal background checks are long overdue. The association has been pushing ADP to require them for years, Daniels said. In 2004, the state suggested that the certifying organizations do their own criminal checks, he said. But absent a state regulation expressly authorizing it, the certifying organizations believed that screening applicants would expose them to liability.

CAADAC considered including a criminal background check as part of a counseling license it issues. (The license is not recognized by California law.) But licensees objected that the association, unlike an employer or a government body, couldn't demand checks, Daniels said. CAADAC's lawyers agreed.

As an employer, Daniels requires criminal screening. Indeed, some drug and alcohol programs go beyond the requirements of the law. But most do not, Daniels said.

The Breining Institute, the other large certifying organization, said in written responses to our questions that it has advocated criminal background checks for many years. But such a step raises questions, Breining wrote, such as what crimes should disqualify an applicant, and who should decide – the state, the certifying organization, or the employer. In general, Breining favors leaving it to the employer except in cases of crimes deemed so egregious that they should bar someone from ever becoming a counselor.

## **II. Certifying organizations and state have no way of being alerted if a counselor commits a crime**

Our investigation found several cases in which people already certified as drug and alcohol counselors were convicted of crimes. Many of these convictions involved drugs or alcohol, in clear violation of the treatment industry taboo against counselors abusing substances themselves.

These cases could have been detected. Many government agencies that do criminal background checks also get information about arrests or convictions that occur after a person has been licensed or certified. This is known as a “rap-back” system.

But because ADP and the organizations that certify drug and alcohol counselors don’t do criminal background checks, they get no information about subsequent arrests or convictions. This is a problematic omission for drug and alcohol counselors. Many have struggled with their own addictions. If they relapse as counselors, professionals in the field consider it crucial to keep them away from clients who are trying to stay sober themselves.

F.S. registered with CAADAC in 2009 and worked as counselor at an outpatient treatment program in Los Angeles. Three years later – in June 2012 – he was charged in Orange County with possession of cocaine. He pled guilty and got three years probation, in addition to the five days in jail he had already served. A few months later, in December, he violated probation when a urine test came back positive for cocaine and he stopped going to treatment. The court ordered him to go into a more intensive program.

While his court case was unfolding, in October 2012, F.S. registered as a counselor with a second certifying organization, the Breining Institute.

J.M., one of the sex offenders who registered as a counselor, also had a drug conviction after serving his time. He registered to work as a

counselor with the Breining Institute in 2005 and maintained his registration by paying his biannual fee until 2009. In August 2006, he pled guilty to felony drug possession and was sentenced to serve 16 months in state prison and had to register as a drug offender.

His prison sentence for drug possession amounted to one-third of the time he was registered to provide drug counseling.

Our investigation found four other individuals charged with driving under the influence while they were certified or registered to work as drug and alcohol counselors. One had a blood alcohol level of .20 percent, more than double the legal limit. In a fifth case, a woman in Victorville who was registered with Breining for two years was clearly having substance abuse problems. She was convicted during those two years of domestic battery, assault with a pliers and screwdriver, and theft of a vehicle. She was ordered by the court to undergo drug and psychiatric treatment.

In one of the DUI cases, E.D. was charged with driving with a blood alcohol level of .09 in June 2011, two years after registering with the Breining Institute and CAADAC. He also was working as a counselor for Breining, which in addition to educating and certifying counselors provides treatment. He pled no contest to a reduced charge of reckless driving under a section of the code that allows the conviction to be counted as a DUI prior in subsequent convictions. He was sentenced to attend a 12-hour class.

The program that ran the class: the Breining Institute, where E.D. was registered as a counselor and worked as a counselor.

In an interview, E.D. said the incident occurred when he tried to help a friend during an emergency and got into a fender-bender. He said he had a beer two or three hours earlier, and was far below the legal limit of .08 blood alcohol content, despite what the court records say.

He said he reported it to Breining, his employer, even though he wasn't required by law to do so. "I'm kind of a truthful guy," he said.

Breining, if it knew about E.D.'s conviction, would have been required as his employer to report him to ADP. The department would have initiated an investigation. Breining said it could not comment on his case because it's a confidential personnel matter. ADP said it has not received a complaint about E.D.

In December, E.D., who previously had been registered with Breining, became certified. He said he left the Breining Institute in February 2013,

and is now working as an independent contractor.

Our investigation found two other individuals who were convicted of sex offenses after registering or being certified as counselors.

B.L. registered with CAADAC in March 2006. Just three months later, he was charged in Riverside County with continuous sexual abuse over several years of two girls under the age of 14 who lived with him (court documents do not specify their relationship). He was sentenced to 12 years in prison. His CAADAC registration expired a year later. It's likely that he never worked as a counselor, since his conviction came so soon after his registration. But neither the state nor his certifying organization knew about it. In other health care fields in California, the licensing board would have been notified and likely would have revoked his license even though he was in prison.

J.C. was certified as a counselor by CAADAC in 1994. Three years later, he was charged with multiple counts of rape after two step-daughters accused him of assaulting them over several years when they were teenagers in San Diego almost a decade earlier. He pled guilty to assault with intent to commit rape, sodomy or oral copulation, and was sentenced to 180 days in jail. J.C. continued to work as a chemical dependency counselor until 1999.

In an interview, J.C. said he gave up trying to find work in the field after a job interview in which he described the details of his crime.

“The guys were O.K., but the women were hostile,” he said.

He said he enjoyed being a counselor. He recalled a couple coming up to him with tears in their eyes. The woman thanked him for saving her husband.

“I was one of the best at it,” he said. “I watched some of these people fall apart and rebuild themselves.”

But he admits that being a counselor is a sensitive position of trust. Someone with a sex conviction should be scrutinized, he said.

“What’s the history?” he said. “How long ago did it happen? Someone would have to be responsible for that person. If you’re hiring a guy to counsel men, you probably won’t have that much of a problem.”

## **Other states stay on top of subsequent arrests**

Many of the states that require criminal background checks also try to track arrests or convictions that occur after counselors have been credentialed. Some arrange to be automatically alerted. Others rely on the counselors themselves or their peers to report arrests or convictions. Several require counselors who have committed a crime involving drugs or alcohol to undergo assessment or treatment before returning to the job.

In Florida, counselors must report an arrest within 72 hours of being released from custody. Others who are aware of a counselor running afoul of the law often get in touch with the non-profit board that licenses them, said Amy Peloquin, the board's director.

Counselors have been revoked for failing to report, she said. The nature of the crime may indicate that a counselor has relapsed. In those cases, counselors are required to go on inactive status and can't be reinstated until a qualified professional who's assessed the counselor signs a return-to-duty statement.

In Texas, statute allows the regulatory agency to take action when a counselor is charged with a crime. But the state usually holds off until conviction, said Stewart Myrick, the program director. Counselors who have relapsed are likely to be suspended, he said, but can be reinstated after they've met the requirements imposed by the court. Myrick's agency also offers a peer assistance program for counselors in danger of relapse.

Ohio relies on counselors to report when they have been convicted of a felony or misdemeanor, and disciplines those who do not, said Amanda Ferguson, acting director of the Ohio Chemical Dependency Professionals Board. A DUI conviction would likely result in some form of discipline, probably including monitoring and monthly or quarterly treatment reports, she said. Most counselors who have had a relapse would be barred from seeing clients, unless the relapse was minor and the counselor is seeking treatment. As in Florida, counselors would need to obtain a statement that they are fit for duty.

Arizona also requires counselors to self-report. All health care providers in Arizona are required to report felonies and many misdemeanors within 10 days, and must disclose all arrests when they renew their licenses.

Some states get information about subsequent arrests, but not right away. In Washington, the state patrol does a quarterly report of licensees who have been arrested. Licensed counselors in Massachusetts submit to a new criminal background check when they apply for renewal every two years. North Carolina relies on self-reporting. As in other states, counselors can



get into more trouble for failing to report than for committing the crime. A counselor who has been convicted of a DUI or drug offense must be assessed by a peer who tries to determine if the counselor has a serious problem or “drank too much at a wedding,” said Culbreth, the North Carolina board’s associate director. The case is seen as more serious if the counselor has a history of alcoholism or drug addiction.

### **California relies on employers to report subsequent crimes**

Lacking either a rap-back system or any requirement that counselors self-report crimes, ADP depends on the programs it licenses to alert the state when counselors they employ are arrested or convicted. This arrangement assumes that employers know about the crimes and, if they do, fulfill their legal obligation to report.

Considering the cases we uncovered in our investigation, it’s clear that one or the other is not occurring.

Warren Daniels, past president of CAADAC, said he requires criminal background checks of counselors in his Grass Valley treatment center. He said he also gets notifications of subsequent arrests.

“I pay the extra whatever it costs to do that,” he said. Counselors with substance abuse histories are told that they must stay sober, and are subject to “reasonable suspicion” drug testing.

But Daniels believes that many employers don’t go beyond the letter of the law, which does not require criminal background checks or subsequent arrest notifications. That would mean employers have no systematic way of learning about crimes committed by their counselors. Many probably never come to light.

Susan Blacksher, CAARR’s executive director, said even when an employer finds out about a crime, a quirk in state law allows counselors to sidestep consequences. ADP interprets the law as giving it jurisdiction over only counselors who work for programs that ADP licenses or certifies. A counselor who relapses or commits a criminal offense, Blacksher said, can simply quit to avoid disciplinary action. She said she knows of cases in which an employer moved a counselor into an administrative position or failed to notify the state because it didn’t want to lose the worker.

CAARR, she said, always suspends counselors who have relapsed, then gives them a chance to get back into treatment and return to the job. But that assumes that CAARR finds out about the relapse from the employer.



### **III. Some counselors have been in trouble with other health care licensers**

California, unlike some states, does not require certifiers to check with other health care licensers to see if would-be drug and alcohol counselors have run into troubles that would indicate they might not be fit to treat clients.

Our investigation found that such inquiries would bear fruit. We identified a doctor, a nurse, six certified nurse assistants and a nursing home worker who had been banned from their fields before becoming drug and alcohol counselors. In some cases, these health care professionals may have lost their licenses because of their own struggles with substance abuse, a common path to becoming a drug and alcohol counselor. But a review of records in these cases shows that drug or alcohol abuse was not always the primary cause for disciplinary action.

T.T. was decertified as a nurse assistant in 2002 after an investigation found that she jerked a nursing home resident out of bed, causing pain and redness in both of the resident's wrists. Several years later, she started working at treatment centers and in 2012 registered as an intern with the Breining Institute.

P.H., in training to become a nurse assistant, was denied certification in 2006 after a coworker said she saw him pushing down a nursing home resident. Breining certified him as a counselor in 2010.

In an interview, P.H. said he was falsely accused by a boss with whom he'd had a public argument about a week earlier. After losing his certification, he said, "I had to find a way to rebuild my life." He worked as a volunteer at after-school programs for young people and was hired on as a counselor. He now works for a treatment program that provides counseling in prisons. No one has ever brought up his experience as a certified nurse assistant, he said. But checking administrative actions, he said, would be "a good idea."

The Department of Public Health would not disclose its reasons for

decertifying four other nurse assistants that our investigation found were registered or certified as drug and alcohol counselors. The six that we identified by no means represent a definitive total. As with registered sex offenders, we focused only on those with names that were uncommon enough that we could be certain the counselor and the decertified nurse assistant were one and the same.

E.W. surrendered his medical license in 2005 when an investigation found that he had been prescribing dangerous medicines through an Internet site to patients he never met. In one case, the Redlands doctor prescribed narcotic analgesics to a woman addicted to them. In revoking his license, the Medical Board of California cited another case from 1993 in which E.W. was found to have engaged in sexual misconduct with two patients. In that case, the board put him on probation for five years and suspended his license for 45 days.

In the 2005 agreement to surrender his license, E.W. agreed that if he ever applied to be licensed or certified “by any other health care agency in the State of California,” all of the charges in the Medical Board case would be deemed true.

In 2011, E.W. registered to work as a counselor with the Breining Institute. His registration expired in January 2013.

G.Y. was working as a licensed vocational nurse in 2003 when she was arrested on suspicion of stealing the identities of elderly and deceased patients at the Riverside hospital where she worked. She was convicted of three counts of identity theft, one count of committing a crime against an elder, one count of grand theft and one count of petty theft. According to press accounts at the time, she told a probation officer that she had started taking methamphetamine to stay awake for double shifts and was stealing to support her habit. She was sentenced to three years in prison.

She registered with Breining in 2012 and is listed on the website as active. She has worked recently at a residential program for young men and women and a methadone clinic.

In some other states, these cases would have been uncovered and reviewed to see if the circumstances should preclude the person from becoming a drug and alcohol counselor.

In Washington, for instance, information about all health care providers is maintained on the same database. Someone who had been disciplined as a nurse or doctor and tried to become a counselor would be flagged. The state also checks names on the National Practitioner Data Bank,

a congressionally mandated compilation of adverse licensure actions, medical malpractice payments and actions taken against an individual's credential by professional societies, hospital privileging boards, peer review organizations or private accreditors.

If the applicant's name shows up on either of these lists, a team reviews the case to determine what restrictions, if any, should be placed on the license, or whether it should be denied altogether.

Arizona also consults the National Practitioner Data Bank and investigates any prior actions taken against an applicant.

In California, some certifying organizations elect to ask applicants to disclose prior licenses, even though they're not required to.

North Carolina, by contrast, requires applicants to report any previous administrative actions in other health-related fields. The application is a sworn statement, so the state can deny a license or impose other penalties if an applicant fails to disclose.

New York takes a similar approach, asking applicants to disclose other licensing actions both at the time of the initial application and again when a credential is renewed. Any prior administrative actions are reviewed by a committee to determine if the behavior that led to the discipline reflects on the person's suitability to work with clients in drug or alcohol treatment.

Texas checks with three other mental health boards that handle licensed professional counselors, marriage and family therapists, and social workers. Beyond that, the state doesn't look into other adverse actions unless it gets a tip.

Florida, on the other hand, does not check any prior licensing actions.

"Gosh...we may start doing that now," Amy Peloquin, director of certification for the Florida Certification Board, wrote in an email after receiving a question from the oversight office.

### **Some counselors show up on lists of ineligible Medicare and Medi-Cal providers**

We cross-checked lists of counselor names against a source that is not consulted by any of the states we contacted: individuals who have been excluded from receiving Medicare and Medi-Cal payments because of misconduct including fraud or other criminal activity. Like the National

Practitioner Data Bank, which is not publicly available, these lists also contain people who have been subject to adverse administrative actions such as license revocations.

The database included O.P., who was convicted of felony burglary and theft from an elder adult as part of a conspiracy by several people at an extended care hospital to steal more than \$150,000 from patients. The scam, which took place over three years, involved getting Medi-Cal payments for all of the patients' care, then requiring the patients to pay a share of their bills. For his part in the conspiracy, O.P. was sentenced to a year in jail. The court forbade him to work as a caretaker or housekeeper or in any facility that specialized in care of the elderly.

He registered with Breining to work as a counselor in 2011 and in recent years has been employed by a drug treatment center in Orange County.

In 2004, G.S. was banned from getting Medicare or Medi-Cal payments for 25 years and sentenced to six-and-a-half years in prison after being found guilty of fraudulently inflating bills at his San Leandro nursing home by almost \$3 million over four years. He registered as a Breining counselor in 2011 and is still active.

In 2003, J.U., another owner of a business that engaged in Medicare-fraud amounting to \$27,500, was excluded from getting payments for 10 years. The U.S. Department of Health and Human Services noted that his convictions in that case also included identity theft and forgery. Three years later, he was convicted of grand theft. The following year, in 2007, he registered with CAADAC. His registration lapsed three years later. During that time, he worked for a treatment center in Compton.

M.O. was excluded from Medicare payments for five years after a criminal conviction related to the delivery of Medicare or Medi-Cal goods or services. He registered with Breining between 2010 and 2012. He is affiliated with a non-residential treatment center in Carson certified by ADP.

## **IV. California’s fragmented regulatory system allows banned counselors to keep working**

The oversight office found several counselors who were able to keep working despite having their registrations or certifications revoked. They simply signed up with a different certifying organization.

In most states, the so-called “jumpers” likely would be detected because a single state agency or non-profit organization is in charge of credentialing counselors and disciplining them. In these centralized systems, a counselor would have to fabricate a new identity to conceal a revocation. That’s also the case with other health-related professions in California. Doctors stripped of their licenses by the Medical Board of California, for instance, could not jump to a different credentialing body and keep practicing.

Drug and alcohol counselors, by contrast, can pick from seven certifying organizations. The organizations are supposed to check with their counterparts to make sure that an applicant has not been ordered revoked by ADP. But the regulation states that the check must be done only when the organization certifies counselors, not when they register.

That leaves a gaping loophole. Regulations allow counselors to work for five years without being certified, meaning that a revoked counselor could go that long without being detected. After five years, that same counselor might be able to register with another of the certifying organizations and keep working. (That phenomenon is detailed in Part V of this report.)

In one case we examined, the counselor’s earlier revocation was not a hindrance even when she became certified.

O.Z. lost her certification after a 2010 investigation found that she lived with one of her clients, a blatant violation of ethical standards that prohibit social or sexual relationships between counselors and clients. O.Z. denied living with the client even after the client’s parole officer had confirmed that they shared the same address. ADP ordered CAADAC to

revoke O.Z.'s certification.

Less than one month after ADP's investigation, O.Z. registered with a different certifying organization, the Breining Institute. Two years later, in November 2012, Breining certified her as a counselor. O.Z., who has a history of property crimes and drug offenses, changed jobs around the time ADP ordered her certification to be revoked. She now works for a treatment program based in San Francisco.

In its written responses to our questions, the Breining Institute pointed out that the regulations are silent as to the consequences of a prior revocation, stating only that it must be disclosed. In the case of O.Z., Breining wrote, the CAADAC and ADP websites state only that she was revoked, without further explanation.

“Why was she revoked? Non-payment of CAADAC membership dues?” Breining wrote. The organization said that the lack of detail makes it impossible to come to an informed decision about whether she should be certified. (Breining could have obtained ADP's report on O.Z., which is a public document.)

While the regulations appear to allow a revoked counselor to be certified by a different organization, they do require the organization to document the reasons and notify ADP within 48 hours. That did not occur in the case of O.Z., ADP told our office.

In other cases, the revoked counselor registered but never sought certification. That meant their certifying organizations were not required to check with their counterparts to see if they had been revoked.

ADP ordered the certifying organization CAARR to revoke M.G.'s certification after a 2006 investigation found that she had a sexual relationship with a client. The state was unable to substantiate another allegation that M.G. had threatened a staff member at the San Bernardino treatment center where she worked.

M.G. appealed the revocation, but withdrew her appeal in early 2008. Several months later, she registered with Breining. According to her Facebook page, M.G. continued to work as a drug and alcohol counselor until 2010 – four years after she was first revoked. She has since moved to a different state.

S.K. was revoked as a CAARR counselor in 2009 after an ADP investigation found that she had an inappropriate relationship with a client. The case came to light when she informed her Merced County



treatment center that she was quitting because she had been severely beaten by her boyfriend. Afterwards, other workers realized that a man she had introduced several times as her boyfriend had been a client. ADP's investigation found that S.K. had led several group sessions in which her boyfriend participated as a client.

In September 2009, she registered with a different certifying organization, CAADAC. A year later, her registration expired. After quitting the Merced County program, S.K. went to work for a different program in San Martin, south of San Jose. According to her Facebook page, she graduated from a trucking school in 2011 and is no longer working as a counselor.

The California Association of Drinking Driver Treatment Programs revoked T.L.'s certification in May 2006 after an ADP investigation found that he violated clients' confidentiality. T.L., working at an Anaheim program, got paid to provide a list of participants to an insurance company. State law bars counselors from revealing that someone is in a drug and alcohol program.

T. L. registered with the Breining Institute from 2009 until 2011. He worked at a counseling center in Laguna Hills until 2010 – four years after he was revoked. The oversight office could not determine whether he's been working as a counselor since then.

The case of L.S. demonstrates a twist on this theme. Unlike the counselors described above, she did not sign up with a different certifying organization after having her initial certification revoked. Rather, she started off getting certified by two different organizations. When she got in trouble, only one revoked her. She then was able to continue working under the certificate she had with the other.

In late 2007, L.S. and her boyfriend were arrested and charged with embezzling money from a Victorville treatment center where he had been director and she had worked as office manager. At the time of arrests, L.S. had been certified by both CAADAC and the Breining Institute.

In 2008, after agreeing to pay back the \$136,000 they stole, L.S. and her boyfriend were each sentenced to 180 days in jail, to be served on weekends. At some point that year, after doing its own investigation, CAADAC revoked her certification. ADP did not do a separate investigation. The Breining site continued to show that she was active.

In February 2010, ADP got a tip that L.S. was working at an outpatient treatment program in Barstow. It found that L.S. was still listed as having a current certification with the Breining Institute. But, because the

program where L.S. was alleged to be working had closed, ADP decided that it lacked jurisdiction. Instead, ADP forwarded the information about L.S.'s conviction to the Breining Institute.

Breining's website profile of L.S. never changed. "No public record of discipline or administrative actions," the website states.

In its written answers to our questions, the Breining Institute said that the codes of conduct in force at the time of L.S.'s conviction – Breining's and the one written in state regulation - did not prohibit embezzlement. Under an updated code that went into effect in 2012, "Breining could discipline this counselor," according to the written response.

### **Revoked counselor kept working and ADP didn't notice**

The case of R.G. is yet another variation on the theme: he continued to work at the same program performing counselor functions after being revoked – even after ADP interviewed him in an investigation. He was only fired when ADP started investigating a tip that he had signed up with a different certifying organization.

In May, 2010, ADP suspended R.G. after finding he had engaged in a social relationship with a former client. The client said it had gone beyond friendship, describing in detail an affair she had with R.G., who had also been involved in the client's post-treatment care. Her husband backed up her account. He said that when he found out one afternoon that his wife wasn't where she was supposed to be, he drove by R.G.'s house and saw her van there. ADP also documented 158 texts and phone calls between R.G. and the former client over two months. But after R.G. told the investigator that the allegation of an affair was an "absolute lie," ADP found that there was "no evidence" of an affair, and only suspended him.

CAARR, R.G.'s certifying organization, decided to go further and revoked his registration.

About a year later, the treatment center where R.G. worked became the focus of an ADP investigation into allegations that the program was admitting clients too sick to be there. ADP substantiated the charges but allowed the program to keep operating. Several weeks later, a client died.

In its investigation of that death, ADP interviewed R.G., who had admitted the client despite evidence of serious illness, including yellow skin and eyes and tremors. He told investigators that unless a client "fell down," he wouldn't recognize symptoms that required medical attention because he was not a doctor.

ADP looked through R.G.'s personnel file and discovered that, despite extensive training as a counselor, he was not certified as one. What ADP's report failed to note, however, was that he had his registration revoked while working as a counselor at the same program. ADP cited the program for allowing someone who was not a counselor to admit clients.

In response to our questions, ADP said that it sent a notice to R.G.'s certifying organization, which in turn was required to notify R.G. and his employer that he'd been revoked.

"It was the facility's responsibility to ensure that (R.G.) did not provide counseling services once his certification was revoked," ADP wrote.

Yet R.G. continued to work at the same Modesto treatment facility. In January 2012, he registered as a counselor with the Breining Institute. Several weeks later, ADP got a tip that the revoked counselor had registered with Breining. Around that time, the Modesto treatment center fired him, saying it had just become aware of the CAARR revocation, which occurred almost two years earlier.

How did Breining let R.G. sign up? A Breining representative told ADP that his use of a shortened version of his first name on his application would have "interfered" with the organization's ability to cross-check with others to see if he had previously been registered or certified. In addition, the Breining official told ADP, R.G. denied on his application that he had ever had another credential or been subject to disciplinary actions.

In April 2012, after receiving an ADP order, Breining revoked R.G.'s registration.

### **Certifying organizations supposed to cross-check**

A current regulation requires the seven certifying organizations to check with one another to see if applicants' registrations or certifications were ever revoked – but only when they seek certification, not when they register.

In addition, the regulation does not address exactly what the cross-checking should include. Is it enough for the organizations to check the name? Or should they also match other identifiers, such as birthdates and Social Security numbers? Those extra steps would guard against applicants providing minor variations on their names, as happened in the case of R.G., or even completely fictitious names. It would also account for legitimate occasions for name changes, such as marriage.

The regulation is silent on these matters, leaving it up to certifying organizations to decide how deep to dig.

CAARR told the oversight office that, if an applicant's name is similar to one on another organization's database, it calls the organization to see if the date of birth and Social Security number are the same. CAARR also plans to start collecting driver's license numbers from its counselors and posting photographs on its website to better enable programs and other certifying organizations to identify individuals.

Blacksher, CAARR's executive director, said she believes counselors should only be able to register with one organization, a step that could plug some of the obvious gaps in tracking them.

CAADAC checks with other certifying organizations before an applicant for certification is approved to take the test. CAADAC does not check other identifiers such as Social Security numbers or dates of birth because they are not available on the certifying organizations' websites.

Breining does not provide such identifying information to other certifying organizations out of confidentiality and privacy concerns. It does provide that kind of data to ADP as the agency charged with enforcing regulations. Breining believes that many current problems could be fixed by the wider use of a centralized database. Such a database could maintain internal records, including dates of birth and Social Security numbers, that could be shared among the certifiers but not released to the public.

## **V. Counselors can circumvent requirement to get certified in five years**

Counselors can flout a state regulation that requires them to become certified five years after registering by simply signing up with a different certifying organization, our investigation found.

ADP regulations approved in 2005 imposed the five-year limit. Individuals can work as counselors with no education or training by registering with one of the certifying organizations. But the state wanted to assure that inexperienced counselors were working towards the standards required for certification. Five years was seen as a reasonable interval for registrants to meet the requirements. Counselors who failed to achieve certification within five years would be revoked, unless the certifying organization granted a two-year hardship extension. The regulation also required that 30 percent of a program's counseling staff be certified.

But it contained a flaw: With seven or more certifying organizations at any given time, counselors who had reached the five-year limit with one organization could register with another.

To test whether this is happening, the oversight office examined CAADAC registrants who later registered with Breining. We chose this approach because the data we received from CAADAC included the original registration dates of counselors, and the dates their registration expired. This could be matched with start and end dates available on the Breining website. If the same data had been available for other certifying organizations, we may have found other instances of registered counselors who appear to have violated the regulation.

Even within the constraints of our methodology, we found 52 counselors who exceeded the five-year limit by switching registration from CAADAC to Breining.

Four of these will have gone without certification for nine years or more by the time their current Breining registrations come up for renewal. Six have either worked for eight years or more or will hit that number by the time they must renew. Another 19 have worked for seven years with no certification, or will by their renewal date. Eighteen are approved for six years, and five for more than five years.

Breining wrote in response to our questions that it believes the five-year limit applies only to counselors who are working in programs overseen by ADP. Some who have registered as Breining counselors may not fit that definition. A registered counselor, for instance, might work for a county government, and be outside ADP's purview and not subject to the regulation. It's up to ADP, in its regular field audits of drug and alcohol programs, to determine if a counselor is subject to the five-year ceiling and is complying with regulation, Breining wrote.

ADP disagrees. In a written response to our question, ADP stated that someone who registered but was not working in a program overseen by ADP still would have to be certified in five years.

The timing of many of the cases we reviewed suggests intent to sidestep the five-year ceiling – counselors signed up with Breining just as time was running out with CAADAC.

S.J., a counselor in Riverside, registered with CAADAC from January 31, 2006 until February 28, 2011. On February 23 of that year, five days before she hit the five-year limit with CAADAC, S.J. registered with Breining. She recently renewed that registration. When her renewal date arrives in 2015, S.J. will have been registered for more than nine years without being certified. An online service that includes a database of medical providers lists her employer as a treatment program licensed by ADP.

T.W., a Los Angeles counselor, registered with CAADAC until he reached the five-year limit on December 30, 2010. Less than three weeks later, he registered with Breining. On his renewal date on January 16, 2015, he will have gone nine years without being certified. His personal website says he works as a substance abuse counselor.

Several other counselors followed the same pattern. P.M., for instance, signed up with Breining in 2011 two weeks before his CAADAC registration reached the cap. He works for a narcotic treatment program licensed by ADP, according to an online search. V.S. registered eight days before hitting the maximum. We could not determine where V.S. has worked.

In other cases, the dates don't match up as closely, but the counselor's

tenure as a registrant far surpasses the five years set by regulation. G.L., a Culver City counselor, hit her five-year limit with CAADAC on June 30, 2011. Ten months earlier, she had registered with Breining. By the time she must renew her registration, on August 31, 2014, she will have been able to work without a certification for nine years and two months.

Despite our review suggesting that the problem is pervasive, ADP has taken action against counselors for exceeding the five-year limit only five times.

In one of these cases, M.G. registered with CAADAC and another certifying organization, CADDTP, but she hit the five-year limit with both organizations in 2011. In January 2012, she registered with Breining. Four months later, ADP did an investigation and ordered Breining to revoke her registration.

In November 2012, ADP issued a bulletin to certifying organizations and programs licensed or certified by the state to remind them of the five-year limit.

“ADP has noticed a trend in the increase in the number of counselors whose five year registration period has expired, but who continue to provide counseling services,” the bulletin stated.

ADP said it has cited treatment programs for employing counselors who have not been certified in five years.

### **In balkanized system, records are often inconsistent or misleading**

Our investigation turned up many instances of public databases containing inconsistent or misleading information, potentially hampering treatment programs and members of the public who want to verify the status of a counselor.

This seems to be a by-product of California’s balkanized system of credentialing counselors. In most large states, the government or a single private entity maintains counselor records. In California, as many as 10 private organizations and the state keep their own data, leading to gaps and inconsistencies.

In one example, the Breining Institute lists many of its counselors as “active” even though their renewals dates have passed.

In a random sample of 200 Breining counselors, our investigation found 73 who were listed as active despite having renewal dates in the past – a

total of 36 percent. A.L., for instance, was due to renew his certification a decade ago on March 23, 2003, but his “current status” is active.

The oversight office also happened upon one case in which a counselor was erroneously listed as “inactive.”

Breining wrote in response to our questions that the “active” and “inactive” status listings for counselors are “short hand references,” and that the real status can be gleaned from the renewal date. Still, the apparent inconsistency may be confusing to a program or a member of the public.

Some inconsistencies involved confusing contradictions between databases. One counselor is listed as suspended on ADP’s website. That same counselor is listed on CAARR’s website as active. CAARR spells his last name differently. Another counselor shows up on ADP’s website as revoked, while CAADAC has her as “expired.” The ADP website does not reflect that the counselor was also registered with Breining, which lists her as “active,” despite the fact that her renewal date was in 2009.

G.D. shows up as “revoked” on ADP’s website, with the certifying organization listed as CAARR. Yet G.D. was certified by CAADAC, not CAARR. On the CAADAC website, his status is listed as “pending” rather than “revoked.”

J.M. is listed on ADP’s website as “revoked.” Yet CAADAC’s website shows his status as “expired.” ADP’s website did not mention that he was also certified by Breining, whose website lists him as “active” with no record of disciplinary action, despite the fact that his renewal date was in 2002.

Recently, some of the certifying organizations combined their databases, in part to plug gaps and inconsistencies. Yet our investigation came upon one case in which a counselor’s revoked status, reflected on the websites of ADP and the certifying organization, does not show up on the combined site, where her status is left blank.

### **What’s the truth about counselor G.D.?**

- According to the state ADP’s website, G.D.’s certification was revoked in 2011.
- ADP lists his certifying organization as CAARR.
- In fact, G.D. was not certified by CAARR, but by another organization, CAADAC.
- CAADAC’s website says that G.D.’s certification expired in 2011, but lists his status not as “revoked” but “pending.”



## Recommendations

Under Gov. Jerry Brown's proposed budget for the 2013-14 fiscal year, the Department of Alcohol and Drug Programs is scheduled to be dismantled on July 1, 2013, with most of its duties, including oversight of counselor certification, handed over to the Department of Health Care Services. Much attention and work will no doubt be dedicated in coming months to making this a smooth transition. But once the dust settles, the Senate Office of Oversight and Outcomes believes that officials should consider drastic changes to California's system for credentialing counselors:

- Because many shortcomings of the current system stem from the complications of seven private organizations sharing oversight with the state, the Legislature should once again consider putting the state firmly in charge of licensing and/or certifying counselors. This change could be phased in over several years to allow certifying organizations to shift to an emphasis on education and training. In this scenario, the state could require fingerprint-based criminal background checks for anyone working as a counselor. The background check should include "rap-back" notifications of subsequent convictions, as now occurs with other health-care professionals licensed by the Department of Consumer Affairs. The state agency that oversees counselors could establish guidelines for assessing criminal histories. The oversight office recommends that cases be considered under a general principle – such as fitness to function as a counselor – rather than automatic disqualification for specified convictions.
- Alternatively, the state agency that oversees counselors should promulgate a regulation authorizing and requiring certifying organizations to perform criminal background checks. In this case, the state could still establish guidelines for assessing criminal histories, and could set up an advisory panel of experts from within the treatment industry to evaluate and make recommendations on individual cases.
- If the state does not institute fingerprint-based criminal background checks with subsequent arrest notifications, it should promulgate a regulation requiring registered and certified counselors to notify

their certifying organizations within a certain time frame if they have been arrested. The regulation should also specify sanctions for counselors who failed to comply.

- The state department that oversees counselors should write a regulation requiring either the state, if it takes over counselor credentialing, or the certifying organizations to check individuals applying to work as counselors against the National Practitioner Data Bank. The regulation should include guidelines for how prior administrative actions against an applicant would be evaluated.
- The state department that oversees counselors should amend current regulations to require certifying organizations to check with their counterparts, upon registration rather than certification, to see if a counselor has ever been revoked. The department should delete a regulation that appears to give certifying organizations the discretion to certify counselors who have previously been revoked.
- If the state does not take over counselor credentialing, it should develop a regulation specifying the methods certifying organizations should use to cross-check applicants. The regulation should require certifying organizations to share identifiers other than names, such as driver's license numbers, dates of birth or Social Security numbers. The regulation should clarify that certifying organizations are required to check with each other to see if a registrant has already reached the five-year limit for working without certification with another organization.
- The state department that oversees counselors should clarify through regulation its authority to sanction certifying organizations for failing to adequately vet those they register and certify.
- The Senate may want to consider legislation to extend the jurisdiction of the department that oversees counselors to those who are not working in programs licensed or certified by the department.
- The department that oversees counselors should consider a change in regulations to make exceptions to the requirement to become certified in five years for those who have left the field for a time.

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