

Pastoral Counseling/Spiritual Counseling

The statute that defines the authority of the Colorado Department of Regulatory Agencies to license, regulate, and discipline mental health professionals limits the Board's jurisdiction. C.R.S. 12-42-215(1) provided that:

Any person engaged in the practice of religious ministry shall not be required to comply with the provisions of this article; except that such person shall not hold himself or herself out to the public by any title incorporating the terms "psychologist", "social worker", "licensed social worker", "LSW", "licensed clinical social worker", "clinical social work", "LCSW", "licensed marriage and family therapist", "LMFT", "licensed professional counselor", or "LPC" unless that person has been licensed pursuant to this article.

The right to religious freedom, guaranteed by the First Amendment to the United States Constitution, prohibits states from regulating the practice of a religion or from inhibiting religious freedom.

The Mental Health Boards have all adopted rules that distinguish psychotherapy from spiritual counseling based on the practice of a religious ministry. The Colorado State Board of Registered Psychotherapists Rule 1 lists the following factors to be used by the Board in determining whether a person is engaged in the "practice of religious ministry" or in the practice of psychotherapy under the Board's jurisdiction:

1. Whether the client or guardian had received notice or reasonably understood that the therapy in question was part of a religious practice/ministry.
2. Whether the client or guardian was seeking therapy from a religious entity to which the complainant belongs at any time.
3. Whether a written agreement or statement exists indicating the therapy in question was part of a religious practice/ministry.
4. Whether the therapy sessions were conducted in a house of worship or on property belonging to or controlled by a religious entity.
5. Whether the person conducting the therapy normally represented himself or herself as a religious official who was counseling as part of a religious ministry.
6. Whether therapy services were part of an ongoing relationship, formed because the provider is a spiritual counselor to the client.
7. Whether the provider of therapy holds a position of trust within a religious entity.
8. Whether the provider advertises therapy to the general public for a fee.

9. Whether the provider collects fees or expects/requires donations offering, tithes, or other compensation for therapy.
10. Whether the therapy provided is based on any religious orientation or viewpoint.
11. Whether the provider engaged in the practice of therapy is accountable or subject to any religious entity or person for misdeeds or acts of misconduct.
12. Whether the provider of therapy is a member of a religious entity holding tax-exempt status (e.g., does the entity hold 501(c)(3) tax-exempt status?)
13. Whether the provider is trained in theology or any other field, area, or specialty related to the study of the religious or spiritual orientation.
14. Whether the provider has a declaration of religious mission or a statement identifying the religious views or belief of the entity or person.
15. Whether the provider of therapy services is recognized by consumers as a religious minister or spiritual healer.

Other factors in individual cases will also be considered by a Board in determining whether it has jurisdiction over a minister, pastoral counselor, or other spiritual counselor.

C.R.S. 13-90-107(1)(c) provides that a clergy member, minister, priest or rabbi-client privilege exists, and that a clergy member, minister, priest, or rabbi “shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs”. A “priest-penitent” privilege has long existed, which protects communication made by a penitent who confesses sins to a priest or other clergy member. If a church member admits wrongdoing or confesses sins to a minister, expecting absolution and expecting complete confidentiality for any admissions made, then a privilege exists which is inviolate.

C.R.S. 19-3-304(2)(aa)(I) requires that a clergy member must report child abuse or neglect, but states that this requirement does not apply to a person “who acquires reasonable cause to know or suspect that a child has been subject to abuse or neglect during a communication about which the person may not be examined as a witness pursuant to Section 13:90-107(1)(c), C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication”. This language is obviously confusing. What C.R.S. 19-3-304 essentially provides is that if a church member confides or confesses that he or she has committed an act of child abuse in confidence to a clergy member, then a legal privilege exists protection the confidentiality of these statements. If a clergy member has knowledge concerning suspected child abuse or neglect from his or her own observations or from statements made to the clergy member from a victim, then a duty exists to report the suspected child abuse or neglect.

Best Practice for a Pastoral Counselor. When ministers, priests, rabbis, or other clergy members engaged in pastoral counseling as part of their religious ministry, it would be prudent for the clergy member to provide a statement to the person being counseled which acknowledge that the counseling is being conducted as part of a religious ministry, and that the clergy member is not providing psychotherapy or mental health counseling. Such a statement should be signed by the individual who is to receive counseling in order to avoid any confusion regarding the nature of the counseling being provided and to protect the clergy member, in the event that the Department of Regulatory Agencies attempts to exercise jurisdiction over him or her. If a minister or pastoral counselor is licensed by one of the Mental Health Boards, it is essential that the pastoral counselor not use his or her licensure status or honorific title such as “LPC”, “LMFT”, “LCSW”, etc. on any written forms provided to the client or on any signs or office markings in the office where counseling occurs, unless the counselor is willing to submit to the jurisdiction of the Mental Health Boards and to comply with all the laws, regulations, and ethical standards applicable to psychotherapist.

Document pulled from:

Legal Guide to the Practice of Psychotherapy in the State of Colorado Denis Lane MA JD.