Kirsten J. Gross *Legislative Service Commission*

Sub. H.B. 374

124th General Assembly
(As Reported by H. Commerce and Labor)

Reps. Schmidt, Fessler, Webster, Setzer, Lendrum, Rhine, Carano, Kearns, Kilbane, Young

BILL SUMMARY

- Prohibits engaging in the practice of marriage and family therapy or claiming to the public to be engaging in the practice of marriage and family therapy without a valid license as a marriage and family therapist or an independent marriage and family therapist.

- Establishes standards for obtaining a marriage and family therapist license or independent marriage and family therapist license.

- Renames the Counselor and Social Worker Board the Counselor, Social Worker, and Marriage and Family Therapist Board and provides for the re-formulated Board to now also license marriage and family therapists and independent marriage and family therapists.

- Increases the Board's membership from 11 to 15 and provides that two of the additional members are to be licensed independent marriage and family therapists and the other two additional members are to be licensed marriage and family therapists.

- Permits the Board to issue a nonrenewable temporary license authorizing the practice of marriage and family therapy to a person who meets the standards for the license but is awaiting the next opportunity to take a licensing examination administered by the Board.

- Requires a licensed marriage and family therapist to work under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist and allows a licensed independent marriage and family therapist to work without supervision.

- Requires the Board to establish a code of ethical practice for licensed independent marriage and family therapists and marriage and family therapists that is based on, but may be more stringent than, the American Association of Marriage and Family Therapy's code of ethics.

- Applies general laws governing professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants to independent marriage and family therapists and marriage and family therapists.

- Provides that a person licensed by the Board is not liable in damages in a civil action, and is not subject to disciplinary action by the Board, for physical harm resulting from failing to predict, warn of, or take precautions to provide protection from the violent behavior of a client, unless (1) the client has communicated to the license holder the client's threat of imminent and serious physical harm or violence against a readily identifiable person and a reasonable counselor, social worker, or marriage and family therapist would believe that the client intends to carry out the threat and (2) the license holder fails to make a reasonable effort to communicate the client's threat to the person against whom the threat is made or fails to make a reasonable effort to give notice of the client's threat to a law enforcement agency of the political subdivision in which the person against whom the threat is made resides.

- Provides that a person licensed by the Board is not liable in damages in a civil action, and is not subject to disciplinary action by the Board, for disclosing any confidential information about a client that is disclosed to protect a threatened person.

- Creates the Marriage and Family Therapist Professional Standards Committee to consist of the Board's marriage and family therapists and a member representing the public.

TABLE OF CONTENTS

Regulating the practice of marriage and family therapy 3
Prohibition against engaging in unlicensed practice or advertising 4
License standards 5
Persons practicing marriage and family therapy before the bill's effective date 6
Persons licensed in other states 6
Obtaining a license 7

Temporary license 7
Need for supervision 8
Engaging in private practice 8
No authority to hospitalize patients 8
Code of ethical practice 8
Provisions applicable to other licensees apply to marriage and family therapists 9
Civil immunity 10
Board membership and meetings 11
Marriage and Family Therapist Professional Standards Committee 12
Rules 13
Accredited educational institution 13

CONTENT AND OPERATION

Regulating the practice of marriage and family therapy

(secs. 4757.01 and 4757.03)

The Counselor and Social Worker Board licenses professional clinical counselors, professional counselors, independent social workers, and social workers and registers social work assistants. The bill renames the Board the Counselor, Social Worker, and Marriage and Family Therapist Board and provides for the Board to license marriage and family therapists and independent marriage and family therapists.

Marriage and family therapists and independent marriage and family therapists engage in the practice of marriage and family therapy. The bill defines the "practice of marriage and family therapy" as the evaluation, assessment, counseling, management and treatment of emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems, through the professional application of marriage and family therapies and techniques. "Marriage and family therapy" is defined as the treatment, evaluation, assessment counseling, and management, of emotional disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems, to individuals, couples, and families, singly or in groups, whether those services are offered directly to the general public or through public or private organizations, for a fee, salary or other consideration through the professional application of marriage and family theories, therapies, and techniques, including, but not limited to psychotherapeutic theories, therapies and techniques that marriage and family therapists are educated and trained to perform. The practice of marriage and family therapy does not mean any of the following:

(1) The treatment of biologically based psychiatric conditions without consultation with an appropriate medical doctor or psychiatrist;

(2) The use of psychotherapeutic techniques that are exclusive to the scope of practice of a licensed psychologist or psychiatrist;

(3) Any act that marriage and family therapists are not educated to perform.

Prohibition against engaging in unlicensed practice or advertising

(sec. 4757.02)

Effective one year after the bill's effective date and except for persons not subject to licensure or registration by the Board, no person is permitted to engage in the practice of marriage and family therapy or claim to the public to be engaging in the practice of marriage and family therapy without holding a valid license or temporary license as a marriage and family therapist.[1]

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[1] *The following are not subject to licensure or registration by the Board: (1) a person certified by the State Board of Education while performing any services within the person's scope of employment by a board of education or private school meeting standards prescribed by the State Board of Education or in a program for training individuals with mental retardation or other developmental disabilities, (2) psychologists or school psychologists, (3) members of other professions licensed, certified, or registered by this state while performing services within the recognized scope, standards, and ethics of their respective professions, (4) rabbis, priests, Christian Science practitioners, clergy, or members of religious orders and other individuals participating with them in pastoral counseling when the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices or sponsorship of an established and legally cognizable church, denomination, or sect, or an integrated auxiliary of a church, and when the individual rendering the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary, (5) any person employed in the civil service while engaging in social work or professional counseling as a civil service employee, (6) a student in an accredited educational institution while carrying out activities that are part of the student's prescribed course of study if the activities are supervised as required by the educational institution and if the student does not hold herself or himself out as a person licensed or registered by the Board, (7) individuals with certification or credentials accepted by the Department of Alcohol and Drug Addiction Services who are acting within the scope of their certification or credentials as members of the profession of alcoholism counseling, drug abuse counseling, or chemical dependency counseling, or as alcoholism or drug abuse prevention consultants or specialists, (8) any person employed by the American Red Cross while engaging in activities relating to services for military families and veterans and disaster relief, (9) members of labor organizations*

A first-time violation is a misdemeanor of the fourth degree. Each subsequent violation is a misdemeanor of the third degree.[2]

License standards

(sec. 4747.30(A) and (B))

With exceptions discussed below regarding persons practicing marriage and family therapy before the bill's effective date and persons licensed in other states, the following are the standards for obtaining a marriage and family therapist license:

(1) A master's degree or a doctorate in marriage and family therapy from an educational institution accredited at the time the degree was granted by a regional accrediting organization recognized by the Board or a graduate degree with a minimum of 90 quarter hours of graduate level course work in marriage and family therapy training acceptable to the Board that must include instruction in research, professional ethics, marriage and family studies, marriage and family therapy, human development, appraisal of individuals and families, and systems theory;[3]

(2) Passing an examination administered by the Board for the purpose of determining the person's ability to be a marriage and family therapist;[4]

(3) Completion of a practicum that includes at least 300 hours of client contact.

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who hold union counselor certificates while performing services in their official capacity as union counselors, and (10) any person employed in a hospital or in a nursing home while providing as a hospital employee or nursing home employee social services other than counseling and the use of psychosocial interventions and social psychotherapy.

[2] *The penalties are in Revised Code section 4757.99 which is not in the bill.*

[3] *A person who received a post-secondary degree from an educational institution outside the United States is considered to have received the education from an accredited institution if the person's experience, command of the English language, and completed academic program meet the standards of an academic program of an institution accredited by a national or regional accrediting agency accepted by the Board of Regents. (Sec. 4757.17.)*

[4] *The Board is permitted to develop the examination or use examinations prepared by state or national organizations that represent the interests of those involved in marriage and family therapy. (Sec. 4757.15.)*

The standards for an independent marriage and family therapist license are identical to the standards for a marriage and family therapist license, except that a person seeking an independent marriage and family therapist license also must, after earning the required degree, complete at least two calendar years of work experience in marriage and family therapy, including 1,000 hours of documented client contact in marriage and family therapy. Two hundred hours of the 1,000 hours must be supervised by a supervisor approved by the American Association for Marriage and Family Therapy and 100 of the 200 hours of supervision must be individual supervision.

Persons practicing marriage and family therapy before the bill's effective date

(sec. 4757.30(C))

A person seeking an independent marriage and family therapist license or marriage and family therapist license during the first two years after the bill's effective date is not required to pass an examination administered by the Board or complete the equivalent of three semester or four quarter credits in research and professional ethics and nine semester or 12 quarter credits each in marriage and family studies, marriage and family therapy, and human development if the person presents satisfactory evidence of both of the following:

(1) The person has engaged in the practice of marriage and family therapy for a total of not less than five years prior to the bill's effective date;

(2) The person is an associate or clinical member of the American Association of Marriage and Family Therapists at the time of application.

Persons licensed in other states

(sec. 4757.18)

The Board is to issue an independent marriage and family therapist license or marriage and family therapist license to a resident of another state whose practice is currently authorized by that state if the Board has entered into a reciprocal agreement with that state.[5] A person residing in a state with which the Board does not have a reciprocal agreement may obtain a license to practice

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[5] *The Board is permitted to enter into a reciprocal agreement with another state if the Board finds that the state has requirements substantially equivalent to Ohio's licensing requirements for the practice of marriage and family therapy. Under the reciprocal agreement, the Board licenses that state's authorized practitioners of marriage and family therapy and that state authorizes persons licensed in Ohio to practice marriage and family therapy to practice in that state.*

marriage and family therapy if the person provides satisfactory proof of currently being licensed, certified, registered, or otherwise authorized to practice by that state.

Obtaining a license

(secs. 4747.16, 4757.30(A), and 4757.32)

A person seeking to be licensed as an independent marriage and family therapist or a marriage and family therapist must file with the Marriage and Family Therapist Professional Standards Committee of the Board a written application on a form prescribed by the Board.[6] The Committee is required to review the application and determine whether the person meets the standards for the license. The Board, after reviewing the report submitted to it by the Committee, must issue the license if the person meets the standards, properly completes the application, and pays the required fee.[7] The license is valid for two years.

Temporary license

(sec. 4757.301)

A person seeking an independent marriage and family license or marriage and family license who is awaiting the next opportunity to take an examination administered by the Board for the purpose of determining the person's ability to practice marriage and family therapy may apply for a temporary license. The Board is permitted to issue the temporary license if the person meets all the other requirements for the regular two-year license. A temporary license authorizes the practice of marriage and family therapy and is valid from the date of issuance until the earlier of one year from that date, the date the person withdraws from taking the examination, the date the person is notified that he or she has failed the examination, or the date the person's regular two-year license is issued. A temporary license may not be renewed.

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[6] *See "**Marriage and Family Therapist Professional Standards Committee**" below.*

[7] *The Board is required to establish, and is permitted from time to time to adjust, the fee for initial licenses. The fee must be an amount sufficient to cover the necessary expenses in issuing the licenses, but may not exceed $75 unless the Board determines a higher fee is necessary to cover its expenses and the Controlling Board approves the higher fee.*

Need for supervision

(sec. 4757.30(E))

A marriage and family therapist is permitted to diagnose and treat mental and emotional disorders only under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist. An independent marriage and family therapist does not need supervision.

Engaging in private practice

(sec. 4757.30(D))

The bill provides that an independent marriage and family therapist or a marriage and family therapist is permitted to engage in the private practice of marriage and family therapy as an individual practitioner or as a member of a partnership or group practice.

No authority to hospitalize patients

(secs. 4757.30(F) and 4757.43)

The bill provides that neither it nor rules adopted under it authorize an independent marriage and family therapist or a marriage and family therapist to admit a patient to a hospital or require a hospital to allow a marriage and family therapist to admit a patient.

Code of ethical practice

(sec. 4757.11)

The Board is required to establish a code of ethical practice for licensed professional clinical counselors, professional counselors, independent social workers, and social workers and registered social work assistants. The code may be based on any codes of ethical practice developed by national organizations representing the interests of those involved in professional counseling or social work.

The bill requires the Board to establish a code of ethical practice for licensed independent marriage and family therapists and marriage and family therapists. The code must be based on, but may be more stringent than, the American Association of Marriage and Family Therapy's code of ethics.

Provisions applicable to other licensees apply to marriage and family therapists

(secs. 2151.421, 2317.02, 3729.40, 4757.12, 4757.19, 4757.31, 4757.32, 4757.33, 4757.34, 4757.36, and 4757.38)

Current law governing professional clinical counselors, professional counselors, independent social workers, social workers, and social work assistants has general provisions applicable to all these professionals. The bill applies these general provisions to independent marriage and family therapists and marriage and family therapists as well. Among these provisions are the following:

(1) Only one fee may be charged to a person who fulfills all requirements for more than one of the three different categories of licenses the Board issues.

(2) Licenses and certificates of registration that are not renewed prior to their expiration lapse. A lapsed license or registration may be restored if application for restoration is made not later than two years after its expiration.

(3) With certain exceptions, license and registration renewal is conditioned on completion of not less than 30 clock hours of continuing professional education during the period the license or registration is in effect and a lapsed license or registration may be restored on completion of the number of hours of continuing education specified in rules adopted by the Board. The exceptions apply to persons who are unable to fulfill continuing education requirements because of military service, illness, residence abroad, or any other reason a professional standards committee of the Board considers acceptable.

(4) The Board must approve one or more nonmandatory continuing education courses of study to assist persons licensed by or registered with the Board in recognizing signs of domestic violence and its relationship to child abuse.

(5) The professional standards committees of the Board may refuse to issue or renew, or may suspend, revoke, or otherwise restrict, a license or registration or may reprimand a person holding a license or registration for certain reasons. The reasons include violating the law governing the license or registration, accepting a commission or rebate for referring persons to licensed professionals, conviction of a felony, conviction of a misdemeanor committed in the course of practice, impairment due to use of alcohol or other drugs or any other physical or mental condition, and practicing outside the scope of practice.

(6) The Board must refuse to issue or renew a license, or suspend a license, on receipt of a notice from a child support enforcement agency that the person seeking the license or renewal, or holding the license, is in default under a child

support order or is an obligor who has failed to comply with a subpoena or warrant issued by a court or agency with respect to a proceeding to enforce a child support order.

(7) The licensees and registrants, and persons and agencies that employ a licensee or registrant, may charge a client or receive remuneration only if the client is furnished a copy of a professional disclosure statement prior to service or the statement is displayed in a conspicuous location at the place where the service is performed and a copy of the statement is provided to the client upon request.

(8) The licensees and registrants must report to a public children services agency or a municipal or county peace officer knowledge or suspicion obtained while acting in an official or professional capacity that a child under age 18 or a mentally retarded, developmentally disabled, or physically impaired person under age 21 has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect.

(9) The licensees and registrants are not to testify in court about a confidential communication received from a client in that relation or the person's advice to the client unless certain factors apply. The factors are that the communication or advice indicates clear and present danger to the client or other persons, the client (or the client's surviving spouse or executor or administrator of the client's estate) consents to the testimony, the client voluntarily testifies, or the court in camera determines that the information is not germane to the professional relationship.

(10) The Ohio Health Care Data Center must conduct an annual survey of the educational background, demographic characteristics, and professional practices of persons licensed by or registered with the Board.

Civil immunity

(sec. 4757.44)

The bill provides that a person licensed by the Board is not liable in damages in a civil action, and is not subject to disciplinary action by the Board, for physical harm resulting from failing to predict, warn of, or take precautions to provide protection from the violent behavior of a client, unless both of the following are the case:

(1) The client has communicated to the license holder the client's threat of imminent and serious physical harm or violence against a readily identifiable

person and a reasonable counselor, social worker, or marriage and family therapist would believe that the client intends to carry out the threat;

(2) The license holder fails to make a reasonable effort to communicate the client's threat to the person against whom the threat is made or fails to make a reasonable effort to give notice of the client's threat to a law enforcement agency of the political subdivision in which the person against whom the threat is made resides.

The bill also provides that a license holder is not liable in damages in a civil action, and is not subject to disciplinary action by the Board, for disclosing any confidential information about a client that is disclosed to protect a threatened person as discussed in the preceding paragraph.

Board membership and meetings

(secs. 4757.03 and 4757.05; Section 3)

The Board currently consists of 11 members. Four of the members are licensed professional clinical counselors or professional counselors.[8] Two are licensed independent social workers. Two are licensed social workers. Three represent the general public.

The bill increases the Board's membership to 15. Two of the four additional members are to be licensed independent marriage and family therapists and the other two are to be licensed marriage and family therapists. Persons appointed to fill these positions before the Board licenses these professionals must be eligible for licensure. The four members must have, during the five years preceding appointment, actively engaged in the practice of marriage and family therapy, educating and training master's, doctoral, or postdoctoral students of marriage and family therapy, or marriage and family research and, during the two years immediately preceding appointment, have devoted the majority of their professional time to the activity while residing in this state.

The Governor is required to appoint the initial four new members within 90 days after the bill's effective date. These initial members may remain Board members only if they obtain an independent marriage and family therapist license or marriage and family therapist license, as appropriate, within one year of the bill's effective date.

One of the initial independent marriage and family therapists appointed to the Board and one of the initial marriage and family therapists are to serve two-

[8] *At least two of these four must be licensed professional clinical counselors.*

year terms. The other two initial appointees, and all subsequent appointees, are to serve three-year terms.

Current law provides that not more than six of the Board members may be members of the same political party or sex. The bill increases this to eight.

Continuing law requires the Board to hold at least one regular meeting every three months. Currently, three or more members may submit a written request to the Board's executive director for additional meetings. The bill increases this to four or more additional members. Also under current law, six members constitute a quorum to conduct business. The bill increases this to eight.

Marriage and Family Therapist Professional Standards Committee

(secs. 4757.04, 4757.05, and 4757.361)

The Board has two professional standards committees: one with authority to act on behalf of the Board on all matters concerning professional clinical counselors and professional counselors and one with authority to act on behalf of the Board on all matters concerning independent social workers, social workers, and social work assistants.

The bill creates the Marriage and Family Therapist Professional Standards Committee. It is to consist of the Board's marriage and family therapists and the member representing the public who does not serve on either of the two other professional standards committees. The bill does not state that the Committee has authority to act on behalf of the Board on all matters concerning independent marriage and family therapists and marriage and family therapists.

As with the other professional standards committees, the Marriage and Family Therapist Professional Standards Committee must meet as necessary to fulfill its duties. Three members constitute a quorum to conduct business and no action may be taken without the concurrence of at least a quorum.

Under the bill, the Professional Standards Committee must impose a summary suspension against a licensee without a hearing when there is clear and convincing evidence that continued practice by the individual licensed by the Board presents a danger of immediate and serious harm to the public, as determined on consideration of the evidence by the Professional Standards Committee. Immediately following the decision to impose a summary suspension, the appropriate committee of the Board is required to issue a written order of suspension and cause it to be delivered to the suspended licensee by certified mail or in person. The order is not subject to suspension by a court during a pending appeal in accordance with the Administrative Procedure Act. If the individual

subject to suspension requests an adjudication, the date set for the adjudication must be within 15 days, but not earlier than seven days after the request is made, unless another date is agreed to by both the individual and the committee imposing the suspension. The summary suspension remains in effect, unless reversed by the committee, until a final adjudication order issued by the committee in accordance with the Administrative Procedure Act becomes effective. The committee imposing the suspension is required to issue its final adjudication order within 90 days after the completion of the adjudication. If the committee fails to do so, the summary suspension is void, but any final adjudication order issued subsequent to the 90-day period is not affected.

Furthermore, under the bill, the license of any person licensed by the Counselor, Social Worker, and Marriage and Family Therapy Board is automatically suspended on that licensee's conviction of, plea of guilty to, or judicial finding with regard to any of the following: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. The suspension remains in effect from the date of the conviction, plea, or finding until an adjudication is held under the Administrative Procedure Act. If the appropriate committee of the Board has knowledge that an automatic suspension has occurred, the committee is required to notify the individual subject to the suspension. If the individual is notified and either fails to request an adjudication within the time period allowed under the Administrative Procedure Act (30 days from the date that the notice is mailed to the individual) or fails to participate in the adjudication, the committee is required to enter a final order permanently revoking the person's license or certificate.

Rules

(sec. 4757.10)

Current law permits the Board, when it adopts rules, to consider the standards established by any national association or other organization representing the interests of those involved in professional counseling or social work. The bill provides that the Board also may consider the standards established by such an association or organization representing the interests of those involved in therapy.

Accredited educational institution

(sec. 4757.01)

Continuing law requires that persons seeking a license from or registration with the Board have a particular degree from an accredited educational institution.

A foreign educational institution is considered acceptable for the purpose of a person obtaining a license from or registration with the Board if the foreign educational institution has an academic program that meets the standards of an academic program of an accredited educational institution. Under specified circumstances, a student in an accredited educational institution is not required to have a license or registration while carrying out activities that are part of the student's prescribed course of study. In addition, certain members of the Board must have a particular degree from an accredited educational institution.

Current law defines "accredited educational institution" as an institution accredited by an accrediting agency acceptable by the Board of Regents. The bill provides that the accrediting agency must be national or regional.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-19-01	p. 853
Reported, H. Labor & Commerce	03-13-02	p. 1545

h0374-rh.124/kl