S.B. 9

124th General Assembly
(As Introduced)

Sens. Spada, Austria

BILL SUMMARY

- Enacts the offense of "sexual exploitation of a mental health client or patient" to generally prohibit mental health professionals from engaging in sexual conduct or having sexual contact with their mental health clients or patients.

- Specifies that, if a mental health professional is indicted or charged and bound over to the court of common pleas for trial for committing the new offense described in the preceding paragraph, the prosecutor must send notice of the indictment or charge to the licensing entity with authority over the mental health professional and that, if the mental health professional is convicted of the violation, the court must send a copy of the judgment entry of conviction to that licensing entity.

- Modifies the State Board of Psychology's membership by increasing the total membership to nine, eliminating the existing requirement that one of the members not be a psychologist or other health professional, and replacing the eliminated requirement with a requirement that three members must be patient advocates who are not mental health professionals and who are either parents or relatives of a former or current patient or client or representatives of organizations that represent patients or clients; provides a procedure for transition to the new membership; expands the Governor's authority to remove a Board member to also require the removal, after a hearing, of any member who has been convicted of any felony; prohibits the appointment to the Board of any person who has been convicted of any felony; and enacts a specific prohibition against a Board member engaging in any conduct involving a conflict of interest with the member's Board duties.

- Commencing in the first even-numbered year after the biennium in which it takes effect, increases to 23 hours the minimum number of continuing

psychology education hours that each licensed psychologist or school psychologist must complete in each two-year reporting period, specifies that the 23 hours must include not less than three hours of continuing psychology education in professional conduct and ethics, and specifies that each licensed psychologist or school psychologist must be given a sufficient choice of programs or courses on professional conduct and ethics, and other required topics, to have a reasonable opportunity to take courses that are relevant to the person's practice.

- Permits the State Board of Psychology, on the receipt of a complaint alleging the existence of any of the existing grounds upon which the Board may refuse to issue a license, issue a reprimand, or suspend or revoke a license, to suspend the license of a licensed psychologist or licensed school psychologist prior to holding a hearing under the Administrative Procedure Act if it determines, based on the complaint, that there is an immediate threat to the public; provides for notification of a psychologist or licensed school psychologist whose license is so suspended*;* and requires the Board to permanently revoke the license if a psychologist or licensed school psychologist whose license is so suspended fails to timely request an adjudication under that Act.

- Specifies that if the State Board of Psychology determines at an Administrative Procedure Act hearing that a licensed psychologist or licensed school psychologist has engaged in "sexual conduct" or had "sexual contact" with the psychologist's or school psychologist's patient or client in violation of the Sex Offenses Law, the Board must either suspend or permanently revoke the psychologist's or school psychologist's license or, if it determines that neither of those sanctions is appropriate, must impose another sanction it considers appropriate and issue a written finding describing its reasons for that action.

- Specifies that any finding made, and the record of any sanction imposed, by the State Board of Psychology under existing law or the bill in relation to the disciplining of a psychologist or school psychologist is a public record under the existing Public Records Law.

- Requires the State Board of Psychology to provide access through the Internet to: the names of all licensed psychologists and licensed school psychologists; the names of all licensed psychologists and licensed school psychologists who have been reprimanded by the Board for misconduct, the names of all psychologists or school psychologists who

have current licenses but whose licenses are under an active suspension imposed for misconduct, the names of all former licensed psychologists and licensed school psychologists whose licenses have been suspended or revoked for misconduct, and the reason for each reprimand, suspension, or revocation; and in relation to misconduct involving illegal "sexual conduct" or "sexual contact" with a patient or client, if the Board imposes a sanction other than a license suspension or permanent revocation, its reasons for the sanction imposed and for deciding that neither suspension nor permanent revocation was appropriate.

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CONTENT AND OPERATION

In general

The bill enacts a new criminal offense that prohibits a mental health professional from engaging in sexual conduct or having sexual contact with a mental health client or patient, enacts notification provisions regarding the filing of charges alleging that a mental health professional committed the new offense or the conviction of a mental health professional of the new offense, and modifies the licensing and other laws governing psychologist and school psychologist misconduct and the law governing the State Board of Psychology.

Criminal provisions

Offense of "sexual exploitation of a mental health client or patient"

The bill enacts new provisions that: (1) prohibit any "mental health professional" from engaging in "sexual conduct" with another who is a "mental health client or patient" of the mental health professional and is not the spouse of the mental health professional, and (2) prohibit any mental health professional from having "sexual contact" with another who is a mental health client or patient of the mental health professional and is not the spouse of the mental health professional (see "***Definitions***," below, for definitions of terms in quotes). A violation of either prohibition is the offense of "sexual exploitation of a mental health client or patient."

A violation of the prohibition described in clause (1) of the preceding paragraph, involving sexual conduct, is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions, a felony of the fourth degree. A violation of the prohibition described in clause (2) of the preceding paragraph, involving sexual contact, is a misdemeanor of the second degree or, if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions, a felony of the fifth degree. (R.C. 2907.13.)

The bill does not change any of the existing sex offenses that prohibit any person from engaging in sexual conduct or having sexual contact with another when other specified circumstances apply (for example, the offenses of rape, sexual battery, corruption of a minor, gross sexual imposition, and sexual imposition). Under existing law and under the bill, each of those offenses applies to a mental health professional who engages in sexual conduct or has sexual contact with his or her mental health client or patient *if the other circumstances specified in the particular offense also are satisfied relative to the activities in question and the persons involved*.

Notification to licensing entity regarding charges or conviction

The bill specifies that, if a "mental health professional" is indicted or charged and bound over to the court of common pleas for trial for an alleged violation of either new prohibition described above, the prosecuting attorney handling the case must send written notice of the indictment or the charge and bind over to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the mental health professional's license, certification, registration, or authorization. The failure of a prosecuting attorney to give this notice does not give rise to a claim for damages against the prosecuting attorney or the county and does not constitute grounds for declaring a

mistrial or new trial, for setting aside a conviction or sentence, or for granting postconviction relief to a defendant.

If a mental health professional is convicted of or pleads guilty to a violation of either new prohibition, the court must transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the mental health professional's license, certification, registration, or authorization. (R.C. 2907.17, 2907.171, and 2907.18.)

Licensing, regulation, and discipline of psychologists and school psychologists

R.C. Chapter 4732. regulates the practices of psychology and school psychology in Ohio. It establishes the State Board of Psychology, provides for the licensing of "psychologists" and "school psychologists" (see "***Definitions***," below), establishes rules and prohibitions related to the practice of their profession, including rules for mandatory continuing education, and provides for the enforcement of those rules and prohibitions. (See **COMMENT**.)

State Board of Psychology membership; removal from office

Existing law. Existing law requires the Governor, with the advice and consent of the Senate, to appoint the State Board of Psychology, to consist of seven persons who are United States citizens and Ohio residents. One member cannot be a psychologist or other health professional. Each of the remaining members must be a licensed psychologist. Terms of office are five years, commencing on October 6 and ending on October 5. No person may be appointed to more than two five-year terms in succession. The psychologist members of the board must be chosen so that they represent the diverse fields of specialization and practice in the profession of psychology. The Governor may make such appointments from lists submitted annually by the Ohio Psychological Association and by the Ohio School Psychologists Association. A vacancy in an unexpired term shall be filled in the same manner as the original appointment. The Governor may remove any member for malfeasance, misfeasance, or nonfeasance after a hearing in accordance with the Administrative Procedure Act. (R.C. 4732.02.)

The Board elects a President and Secretary from its members to serve one-year terms, and a majority of the Board constitutes a quorum. Board members receive a statutorily fixed amount for each day employed in the discharge of their official duties, and their necessary expenses while engaged in those duties. The Board's principal office is in Columbus, but it may meet or conduct business at any place in the state. The Board may empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes. It must meet at least twice annually and at other times as it determines; special

meetings may be called by the President and must be called by the Secretary upon the written request of two members. The Board must make such rules as are necessary to conduct its business and may employ such assistants and clerical help as are necessary to administer and enforce the law governing psychologists and school psychologists. (R.C. 4732.03, 4732.05, and 4732.06--not in the bill.)

Operation of the bill. The bill modifies the membership of the State Board of Psychology by increasing the total membership to nine, and by eliminating the existing requirement that one of the members not be a psychologist or other health professional and replacing that provision with a requirement that three members must be patient advocates who are not "mental health professionals" (see "***Definitions***," below) and who either are parents or other relatives of a person who has received or is receiving "mental health services" (see "***Definitions***," below) or are representatives of organizations that represent persons who have received or are receiving mental health services. At least one patient advocate member must be a parent or other relative of a mental health service recipient and at least one patient advocate member must be a representative of an organization that represents mental health service recipients. The bill also modifies existing law by specifying that each of the six non-patient advocate members of the Board must be a licensed psychologist (existing law) or a licensed school psychologist (under the bill). The terms of the licensed psychologist and licensed school psychologist members that are in effect on the bill's effective date will continue as under existing law.

The bill specifies that, of the three patient advocates to be appointed to the Board under this provision, one is to replace the current Board member who is not a psychologist or other health professional at the end of that member's term, one is to be appointed as a new member for a term that ends on October 5, 2003, and one is to be appointed as a new member for a term that ends on October 5, 2006. Thereafter, as under existing law, all terms are to be for five years commencing on October 6 and ending on October 5. The Governor still makes all appointments under the bill, with the advice and consent of the Senate and all members still must be United States citizens and Ohio residents. To reflect its provision that specifically authorizes the appointment of licensed school psychologists to the Board, the bill revises an existing provision regarding qualifications of licensed psychologist members so that it provides that the licensed psychologist *and licensed school psychologist Board members* must be so chosen that they represent the diverse fields of specialization and practice in the profession of psychology *and the profession of school psychology*. (R.C. 4732.02, first paragraph, and Section 3 of the bill.)

The bill also specifies that, in addition to the current authority of the Governor to remove a Board member for malfeasance, misfeasance, or

nonfeasance after a hearing under the Administrative Procedure Act, the Governor must remove, after a hearing under that Act, any Board member who has been convicted of or pleaded guilty to the commission of a felony under any law of Ohio, another state, or the United States. Further, it specifies that no person may be appointed to the Board who has been convicted of or pleaded guilty to a felony offense under any law of Ohio, another state, or the United States. (R.C. 4732.02, second paragraph.)

The bill prohibits a Board member from engaging in any conduct involving a conflict of interest with the member's Board duties (R.C. 4732.021).

Continuing education for psychologists and school psychologists

Existing law. Existing law provides that, on August 31, 1998, and on or before August 31 of each even-numbered year thereafter, each person licensed as a psychologist or school psychologist by the State Board of Psychology (i.e., a "licensed psychologist" or a "licensed school psychologist" under definitions contained in R.C. 4732.01) must have completed, in the preceding two-year period, not less than 20 hours of continuing education in psychology or the number of hours determined under "hour-reduction rules" adopted by the Board for persons in their first registration period as described below (hereafter, "CPE"). Each such person must certify to the Board, at the time of biennial registration pursuant to law and on the registration form prescribed by the Board, that in the preceding two years the person has completed CPE in compliance with law. The Board must adopt rules establishing the procedure for a person to certify to the Board and for properly recording with the Ohio Psychological Association or the State Board of Education completion of the CPE.

Existing law specifies that CPE may be applied to meet the above-described requirement if: (1) it is obtained through a program or course approved by the State Board of Psychology, the Ohio Psychological Association, the Ohio Association of Black Psychologists, or the American Psychological Association or, in the case of a licensed school psychologist or a licensed psychologist with a school psychology specialty, by the State Board of Education, the Ohio School Psychologists Association, or the National Association of School Psychologists, and (2) completion of the program or course is recorded with the Ohio Psychological Association or the State Board of Education in accordance with rules adopted by the State Board of Psychology as described above. The State Board of Psychology may disapprove any program or course that has been approved by any of the other specified entities; in such a case, the program or course may not be applied to meet the above-described requirement.

Each person licensed as a psychologist or school psychologist must be given a sufficient choice of CPE programs or courses in psychology to ensure that

the person has had a reasonable opportunity to participate in programs or courses that are relevant to the person's practice in terms of subject matter and level. The State Board of Psychology must adopt rules providing for reductions of the hours of CPE required for persons in their first registration period. The Board may excuse persons licensed as a psychologist or school psychologist, as a group or as individuals, from all or any part of the CPE requirements because of an unusual circumstance, emergency, or special hardship. The Board must approve one or more CPE courses of study that assist psychologists and school psychologists in recognizing the signs of domestic violence and its relationship to child abuse, but psychologists and school psychologists are not required to take the courses. (R.C. 4732.141.)

Operation of the bill. The bill *increases to 23 hours* the number of CPE hours that each licensed psychologist or school psychologist must complete in each two-year reporting period. It specifies that, on or before August 31 of each even-numbered year *after the biennium in which the bill takes effect*, each licensed psychologist and each licensed school psychologist must have completed, in the preceding two-year period, not less than 23 hours of CPE, or the number of hours determined under the "hour-reduction rules" adopted by the Board for persons in their first registration period. It also specifies that *the 23 hours must include not less than three hours of CPE in professional conduct and ethics*. Related to this expansion and new topic, the bill modifies existing law to specify that each person licensed as a psychologist or school psychologist must be given a sufficient choice of CPE programs or courses in psychology, *including programs or courses on professional conduct and ethics* when required under the bill, to ensure that the person has had a reasonable opportunity to participate in programs or courses that are relevant to the person's practice in terms of subject matter and level. The bill retains the other provisions of existing law related to CPE that are described above. (R.C. 4732.141.)

License denial, suspension, or revocation, issuance of reprimands, or other sanctions

Existing law. Existing law identifies numerous grounds upon which the State Board of Psychology may refuse to issue a license to an applicant for a psychologist's or school psychologist's license, may issue a reprimand, or may suspend or revoke the license of any licensed psychologist or school psychologist. A few of the grounds are: (1) *conviction of a felony or an offense involving moral turpitude*, (2) using fraud or deceit in the procurement of the person's license or knowingly assisting another in the procurement of such a license through fraud or deceit, (3) willful, unauthorized communication of information received in professional confidence, (4) being negligent in the practice of psychology or school psychology, (5) using any controlled substance or alcoholic beverage to an

extent that the use impairs the person's ability to perform the work of a psychologist or school psychologist with safety to the public, and (6) violating any rule of professional conduct promulgated by the Board, generally.

Before the Board may deny, suspend, or revoke a license as described in the preceding paragraph, or otherwise discipline the holder of a license, the Board's Secretary must file written charges with the Board, and the Board must conduct a hearing under the Administrative Procedure Act (the APA). (R.C. 4732.17.)

Operation of the bill--suspension or revocation prior to a hearing. The bill enacts an exception to the existing provision that prohibits the State Board of Psychology from denying, suspending, or revoking a license, or otherwise disciplining a license holder unless the Board's Secretary files written charges and unless a hearing has been held under the APA. Under the bill's exception, on the receipt of a complaint that alleges the existence of any of the existing grounds upon which the Board may refuse to issue a license, may issue a reprimand, or may suspend or revoke a license, as described above, *the Board may suspend the license* of the licensed psychologist or licensed school psychologist *prior to holding a hearing* under the APA *if it determines, based on the complaint, that there is an immediate threat to the public.* After suspending a license under this provision, the Board must notify the subject psychologist or school psychologist of the suspension in accordance with the APA. If the individual whose license is suspended fails to make a timely request for an adjudication under the APA, the Board must enter a final order permanently revoking the person's license. (R.C. 4732.17(B) and 4732.171.)

Operation of the bill--sanctions and findings regarding sexual misconduct. The bill specifies that, if the State Board of Psychology conducts an APA hearing regarding written charges filed by the Board's Secretary alleging misconduct and potential disciplining of the holder of a license, and if, at the conclusion of the hearing, the Board determines that the licensed psychologist or licensed school psychologist has engaged in "sexual conduct" or had "sexual contact" with the psychologist's or school psychologist's patient or client in violation of the Sex Offenses Law, except as described in the next sentence, the Board must either suspend or permanently revoke the psychologist's or school psychologist's license. If the Board determines at the conclusion of the hearing that neither suspension nor permanent revocation is appropriate, it must impose another sanction it considers appropriate and issue a written finding setting forth the reasons for the sanction imposed and the reason that neither suspension nor permanent revocation is appropriate. (R.C. 4732.172.)

Access to findings and record of sanctions

The bill specifies that any finding made, and the record of any sanction imposed, by the State Board of Psychology under the existing or new provisions described above in "***License denial, suspension, or revocation, issuance of reprimands, or other sanctions***" is a public record under the existing Public Records Law (R.C. 4732.173).

Internet access to certain information

The bill requires the State Board of Psychology to provide access to the following information through the Internet: (1) the names of all licensed psychologists and licensed school psychologists, (2) the names of all licensed psychologists and licensed school psychologists who have been reprimanded by the Board for misconduct, the names of all psychologists or school psychologists who have current licenses but whose licenses are under an active suspension imposed for misconduct, the names of all former licensed psychologists and licensed school psychologists whose licenses have been suspended or revoked for misconduct, and the reason for each reprimand, suspension, or revocation, and (3) in relation to misconduct involving illegal "sexual conduct" or "sexual contact" with a patient or client, if the Board imposes a sanction other than a license suspension or permanent revocation, written findings setting forth the reasons for the sanction imposed and the reason that neither suspension nor revocation was appropriate. The bill's Internet provisions described above in clause (2) do not apply to a suspension of the license of a psychologist or school psychologist that is an "automatic suspension" imposed under existing R.C. 4732.14 (not in the bill) because of nonrenewal of the license. The bill does not define the term "Internet." (R.C. 4732.31.)

Definitions

As used in the bill:

"Mental health client or patient" means an individual who is receiving "mental health services" from a "mental health professional" or organization (R.C. 2907.01(N) and, by reference, R.C. 2305.51--not in the bill).

"Mental health professional" means an individual who is licensed, certified, or registered under the Revised Code, or otherwise authorized in Ohio, to provide "mental health services" for compensation, remuneration, or other personal gain (R.C. 2907.01(N) and 4732.01(I) and, by reference, R.C. 2305.51--not in the bill).

"Mental health service" means a service provided to an individual or group of individuals involving the application of medical, psychiatric, psychological,

counseling, social work, or nursing principles or procedures to either of the following: (1) the assessment, diagnosis, prevention, treatment, or amelioration of mental, emotional, psychiatric, psychological, or psychosocial disorders or diseases, as described in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association, or (2) the assessment or improvement of mental, emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease (R.C. 2907.01(N) and 4732.01(I) and, by reference, R.C. 2305.51--not in the bill).

"Psychologist" means any person who holds self out to the public by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," or any other terms that imply the person is trained, experienced, or an expert in the field of psychology. Related to this, "the practice of psychology" means rendering or offering to render to individuals, groups, organizations, or the public any service involving the application of psychological procedures to assessment, diagnosis, prevention, treatment, or amelioration of psychological problems or emotional or mental disorders of individuals or groups; or to the assessment or improvement of psychological adjustment or functioning of individuals or groups, whether or not there is a diagnosable pre-existing psychological problem. Practice of psychology includes the practice of school psychology. Teaching or research is not regarded as the practice of psychology, even when dealing with psychological subject matter, provided it does not otherwise involve the professional practice of psychology in which patient or client welfare is directly affected. (R.C. 4732.01(A) and (B)--unchanged by the bill.)

"School psychologist" means any person who holds self out to the public by any title or description of services incorporating the words "school psychologist" or "school psychology," or who holds self out to be trained, experienced, or an expert in the practice of school psychology. Related to this, "practice of school psychology" means rendering or offering to render to individuals, groups, organizations, or the public any of the following services: (1) evaluation, diagnosis, or test interpretation limited to assessment of intellectual ability, learning patterns, achievement, motivation, or personality factors directly related to learning problems in an educational setting, (2) counseling services for children or adults for amelioration or prevention of educationally related learning problems, or (3) educational or vocational consultation or direct educational services (this does not include industrial consultation or counseling services to clients undergoing vocational rehabilitation). (R.C. 4732.01(D) and (E)--unchanged by the bill.)

"Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. (R.C. 2907.01(A)--unchanged by the bill.)

"Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person (R.C. 2907.01(B)--unchanged by the bill).

COMMENT

The bill changes portions of the existing law regarding the State Board of Psychology, the licensing of psychologists and school psychologists, the rules and prohibitions related to the practice of their profession, and the enforcement of those rules and prohibitions, but, except as described above in "***Criminal provisions***," it does not modify the law related to the regulatory board with authority over psychiatrists (the State Medical Board under R.C. Chapter 4731.), the licensing of psychiatrists, the rules and prohibitions related to the practice of psychiatry, or the enforcement of those rules and prohibitions. A few provisions of existing law related to the practice of psychiatry, not in the bill, address issues similar to those addressed in the bill related to the practice of psychology and school psychology. For example: (a) R.C. 4731.22(G) permits the State Medical Board to suspend without a prior hearing the license issued to a person under R.C. Chapter 4731. if it determines that any ground for suspension specified in existing R.C. 4731.22(B) is present and that the person's continued practice presents a danger of immediate and serious harm to the public, (b) R.C. 4731.22(I) provides that the certificate to practice issued to a person under R.C. Chapter 4731., and the person's practice in Ohio, are automatically suspended as of the date the person is convicted of or pleads guilty to, in Ohio or another jurisdiction, certain specified offenses, including various homicide offenses, rape, sexual battery, and gross sexual imposition, etc., with the suspension becoming a permanent revocation if the person does not timely request an adjudication under the Administrative Procedure Act, and (c) R.C. 4731.281 requires continuing medical education for persons who hold a certificate to practice medicine under R.C. Chapter 4731.

HISTORY

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