

ACT 159

H.B. NO. 2486

A Bill for an Act Relating to Marriage and Family Therapists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The potential for harm to public health, safety, and welfare is great when an unregulated mental health professional can engage in the private practice of psychotherapy, or when agencies and state departments do not have government imposed minimum standards of education, experience, and ethics to rely on in the hiring of mental health professionals. Private citizens seeking mental health services are in great emotional pain, are extremely vulnerable, and cannot readily discern the unskilled, untrained, and ill-prepared mental health professional. Without state regulation of the profession, citizens are at a distinct disadvantage in knowing who is qualified to treat mental and emotional disorders.

The profession of marriage and family therapy is recognized by the National Institute of Mental Health as one of the five core mental health professions along with psychiatry, psychology, clinical social work, and registered nurses. At present, marriage and family therapy is the only mental health profession which is unregulated in the State of Hawaii. Any individual may call oneself a marriage and family therapist regardless of training or experience. There are no special safeguards in place to assure consumers of the quality of services they are receiving. This has led to documented cases in Hawaii of unethical individuals representing themselves as marriage and family therapists and preying on vulnerable individuals seeking mental health services. Marriage and family therapists are presently licensed and regulated in forty other states to ensure quality of care. Lack of licensure in Hawaii creates a loophole through which those disbarred from other mental health professions can come to Hawaii and continue to practice.

The Felix v. Cayetano consent decree demands substantial improvement in the children's mental health delivery system in Hawaii. A key component of the decree is the inclusion of family therapy, a service for which marriage and family therapists are uniquely trained and qualified. Presently, a lack of qualified mental health professionals, especially on islands other than Oahu, has cost Hawaii thousands of dollars in airfare to transport mental health practitioners to the more rural areas of Hawaii when qualified marriage and family therapists on those islands could provide services. Lack of regulation of marriage and family therapists prevents the citizens of Hawaii from utilizing their medical insurance plans to cover the cost of medically necessary psychotherapy and prevents the State, nonprofit agencies, and providers from seeking third party reimbursement from insurance plans when a marriage and family therapist provides mental health services.

Issues related to family violence and child abuse are becoming an increasing strain on state resources. Marriage and family therapists are uniquely trained and qualified in the treatment of violent and abusive family systems. The associated cost of foster care in Hawaii also could be significantly reduced through the use of marriage and family therapists in the treatment and reunification of these families.

There is approximately a thirty per cent savings in reimbursement rates to marriage and family therapists compared to reimbursement rates to licensed psychologists for comparable psychotherapy services. Most insurance companies and employee assistance programs utilize marriage and family therapists as providers in states where regulation exists.

Both public and private universities in Hawaii seek to establish graduate marriage and family therapy training programs. However, they hesitate to establish these programs until the profession is regulated to ensure the employment of their graduates in Hawaii once trained.

It makes good economic sense, practical organizational development sense for social service agencies, and demonstrates compassionate concern for the mental health needs of Hawaii's citizens to enact regulation of marriage and family therapists.

The purpose of this Act is to set standards of qualifications, education, and experience for those persons who seek to represent themselves to the public as marriage and family therapists.

SECTION 2. The Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER MARRIAGE AND FAMILY THERAPISTS

§ -1 Definitions. As used in this chapter, unless the context clearly requires a different meaning:

“Accredited educational institution” means any educational institution which grants a master's or doctoral degree and is accredited by a regional accrediting body or a post graduate training institute accredited by the Commission on Accreditation for Marriage and Family Education.

“Advertise” means the issuing of or causing to be distributed any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on or in any building, on radio or television, or by advertising by any other means designed to secure public attention.

“Association” means the American Association for Marriage and Family Therapy.

“Clinical supervision” means the supervision of no more than six persons at the same time who are acquiring and completing clinical experience in accordance

with section -7(2) and (3), by a licensed marriage and family therapist whose license has been in good standing in any state for two years preceding commencement and during the term of supervision, or any licensed mental health professional whose license has been in good standing in any state and who has been a clinical member in good standing of the association for the two years preceding commencement and during the term of supervision. Clinical supervision includes but is not limited to case consultation of the assessment and diagnosis of presenting problems, development and implementation of treatment plans, and the evaluation of the course of treatment. Clinical supervision may include direct observation by the qualified supervisor of the provision of marriage and family therapy services.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Family systems theories” means a body of research which focuses on understanding the family system and other social systems of the individual as integral to evaluating the etiology and providing treatment of mental and nervous disorders.

“Marriage and family therapist” means a person who uses the title of marriage and family therapist, who has been issued a license under this chapter, and whose license is in effect and not revoked or suspended at the time in question.

“Marriage and family therapy intern” means a person who has completed all educational requirements stipulated in section -7(1)(A) and who is currently earning supervised clinical experience in marriage and family therapy under clinical supervision.

“Marriage and family therapy practice” means the application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, or families in order to diagnose and treat mental, emotional, and nervous disorders, whether these are behavioral, cognitive, or affective, within the context of the individual’s relationships. Marriage and family therapy is offered directly to the general public or through organizations, either public or private, for a fee or through pro bono work. Marriage and family therapists assist individuals, couples, and families to achieve more adequate, satisfying, and productive social relationships, enable individuals to improve behavioral or psychological functioning, and help individuals reduce distress or disability. Marriage and family therapy includes but is not limited to:

- (1) Assessment and diagnosis of presenting problems through inquiry, observation, evaluation, integration of diagnostic information from adjunctive resources, description, and interpretation of verbal and non-verbal communication, thought processes, beliefs, affect, boundaries, roles, life cycle stages, family interaction patterns, economic, social, emotional, and mental functioning, in order to identify specific dysfunctions and to identify the presence of disorders as identified in the Diagnostic and Statistical Manual of Mental Disorders;
- (2) Designing and developing treatment plans by incorporating and integrating recognized family system theories, communication principles, crisis counseling principles, cognitive and behavioral counseling principles, or psychotherapeutic techniques in establishing short- and long-term goals and interventions collaboratively with the client; and
- (3) Implementing and evaluating the course of treatment by incorporating family systems theories to assist individuals, couples, and families to achieve more adequate, satisfying, and productive social relationships, to enable individuals to improve behavioral or psychological functioning, and to help individuals reduce distress or disability by improving problem solving skills, decision making skills, communication and other relationship interaction patterns, identification of strengths and

weaknesses, understanding or resolution of interpersonal or intrapersonal issues, recognition, development, and expression of appropriate affect, and referral to adjunctive medical, psychological, psychiatric, educational, legal, or social resources.

“Use of a title” means to hold oneself out to the public as having a particular status by stating the status on signs, mailboxes, address plates, stationery, announcements, telephone directory advertising, business cards, or other instruments of professional identification.

§ -2 **Marriage and family therapist licensing program.** There is established a marriage and family therapist licensing program within the department. The program shall be administered by the director.

§ -3 **Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director may:

- (1) Examine and approve the qualifications of all applicants under this chapter, and issue a license to each successful applicant granting permission to use the title of marriage and family therapist in this State pursuant to this chapter and the rules adopted under this chapter;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91;
- (3) Administer, coordinate, and enforce this chapter and rules;
- (4) Discipline a person licensed as a marriage and family therapist for any cause described by this chapter, or for any violation of rules, or refuse to license a person for failure to meet licensing requirements or for any cause that would be grounds for disciplining a licensed marriage and family therapist; and
- (5) Appoint an advisory committee of marriage and family therapists and members of the public to assist with the implementation of this chapter and the rules; except that the initial members of the committee who are marriage and family therapists shall not be required to be licensed pursuant to this chapter.

§ -4 **Fees; disposition.** (a) Application, examination, reexamination, license, renewal, penalty fees, and any other fees relating to the administration of this chapter, none of which are refundable, shall be as provided in rules adopted by the director pursuant to chapter 91.

(b) Fees assessed shall defray costs incurred by the director to support the operation of the marriage and family therapist licensing program. Fees collected shall be managed in accordance with section 26-9(1).

§ -5 **Prohibited acts.** Except as specifically provided elsewhere in this chapter, no person shall use the title marriage and family therapist without first having secured a license under this chapter. The department shall investigate and prosecute any individual using the title of marriage and family therapist without being properly licensed as a marriage and family therapist. Any person who violates this section shall be subject to a fine of not more than \$1,000 per violation. Each day's violation shall be deemed a separate offense. Any action taken to impose or collect the fine imposed under this section shall be a civil action.

§ -6 **Exemptions.** (a) Licensure shall not be required of:

- (1) A person doing work within the scope of practice or duties of the person's profession that overlaps with the practice of marriage and family therapy; provided the person does not purport to be a marriage and family therapist;

- (2) Any student enrolled in an accredited educational institution in a recognized program of study leading toward attainment of a graduate degree in marriage and family therapy or other professional field; provided that the student's activities and services are part of a prescribed course of study supervised by the educational institution and the student is identified by an appropriate title including but not limited to "marriage and family therapy student or trainee", "clinical psychology student or trainee", "clinical social work student or trainee", or any title which clearly indicates training status; or
- (3) Any individual who uses the title marriage and family therapy intern for the purpose of obtaining clinical experience in accordance with section -7(3).

(b) Nothing in this chapter shall be construed to prevent qualified members of other licensed professions as defined by any law, rule, or the department, including but not limited to social workers, psychologists, registered nurses, or physicians, from doing or advertising that they assist or treat individuals, couples, or families consistent with the accepted standards of their respective licensed professions; provided that no person, unless the person is licensed as a marriage and family therapist, shall use the title of marriage and family therapist.

§ -7 Application for licensure. Any person who files an application with the department after December 31, 1998, shall be issued a license by the department if the applicant provides satisfactory evidence to the department that the applicant is qualified for licensure pursuant to the requirements of this chapter and meets the following qualifications:

- (1) Has completed a master's degree or doctoral degree from an accredited educational institution in marriage and family therapy or in an allied field related to the practice of mental health counseling which includes or is supplemented by graduate level course work comprising a minimum of thirty-three semester, or forty-four quarter hours in the following course areas:
 - (A) Marriage and family studies - nine semester or twelve quarter hours;
 - (B) Marriage and family therapy studies - nine semester or twelve quarter hours;
 - (C) Human development - nine semester or twelve quarter hours;
 - (D) Ethical and professional studies - three semester or four quarter hours; or
 - (E) Research - three semester or four quarter hours;
- (2) Has one year practicum with three hundred hours supervised client contact;
- (3) Completes one thousand hours of direct marriage and family therapy, and two hundred hours clinical supervision in not less than twenty-four months; and
- (4) Has passed the National Marriage and Family Therapy Exam in accordance with section -8.

An individual who is a clinical member of the association shall be deemed to have met the educational and clinical experience requirements of this section.

§ -8 Examination. (a) The department shall conduct an examination of licensing applicants at least once a year at a time and place designated by the department.

(b) The department shall administer the National Marriage and Family Therapy Exam in compliance with the Association of Marital and Family Therapy Regulatory Board standards.

(c) An applicant shall be held to have passed an examination by obtaining a passing score as determined by the director.

§ **-9 Licensure fees.** Licenses shall be valid for three years and shall be renewed triennially. Any applicant for renewal of a license that has expired within one year of the renewal deadline shall be required to pay a restoration fee in addition to all renewal fees.

§ **-10 Renewal of license.** Licenses shall be renewed triennially on or before December 31, with the first renewal deadline occurring on December 31, 2001. Failure to renew a license shall result in a forfeiture of the license. Licenses which have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license. Persons with terminated licenses shall be required to reapply for licensure as a new applicant.

§ **-11 Denial, revocation, or suspension of license.** (a) The department shall deny, revoke, condition, or suspend a license granted pursuant to this chapter on the following grounds:

- (1) Conviction by a court of competent jurisdiction of a crime which the department has determined, by rules adopted pursuant to chapter 91, to be of a nature that renders the person convicted unfit to practice marriage and family therapy;
- (2) Failing to report in writing to the director any disciplinary decision related to the provision of mental health services issued against the licensee or the applicant in any jurisdiction within thirty days of the disciplinary decision, or within thirty days of licensure;
- (3) Violation of recognized ethical standards for marriage and family therapists as set by the association;
- (4) Fraud or misrepresentation in obtaining a license;
- (5) Revocation, suspension, or other disciplinary action by any state or federal agency against a licensee or applicant for any reason provided under this section; or
- (6) Other just and sufficient cause which renders a person unfit to practice marriage and family therapy.

(b) Any licensee who violates this section may also be fined not more than \$1,000 per violation.

§ **-12 Confidentiality and privileged communications.** No person licensed as a marriage and family therapist, nor any of the person's employees or associates, shall be required to disclose any information that the person may have acquired in rendering marriage and family therapy services except in the following circumstances:

- (1) As required by law;
- (2) To prevent a clear and immediate danger to a person or persons;
- (3) In the course of a civil, criminal, or disciplinary action arising from the therapy where the therapist is a defendant;
- (4) In a criminal proceeding where the client is a defendant and the use of the privilege would violate the defendant's right to a compulsory

- process of the right to present testimony and witnesses in the defendant's own behalf;
- (5) In accordance with the terms of a client's previously written waiver of the privilege; or
 - (6) Where more than one person in a family jointly receives therapy and each family member who is legally competent executes a written waiver; in that instance, a therapist may disclose information received from any family member in accordance with the terms of the person's waiver.

§ -13 Therapist prohibited from testifying in alimony and divorce actions. If both parties to a marriage have obtained marriage and family therapy by a licensed marriage and family therapist, the therapist shall be prohibited from testifying in an alimony or divorce action concerning information acquired in the course of therapy. This section shall not apply to custody actions whether or not part of a divorce proceeding."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Chapter 467E [(Social Workers)] (social workers) shall be repealed on December 31, 2000.

Chapter (marriage and family therapists) shall be repealed on December 31, 2002."

SECTION 4. The director of commerce and consumer affairs may appoint an administrative assistant and secretary, without regard to chapters 76 and 77, Hawaii Revised Statutes, to assist with the activities of the marriage and family licensing program.

SECTION 5. This Act shall take effect upon its approval; provided that section -5 on prohibited acts and section -7 on application for licensure of section 2 of this Act shall take effect on December 31, 1998.

(Approved July 14, 1998.)