

## ACT 209

S.B. NO. 2595

A Bill for an Act Relating to Professional Counselors.

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

SECTION 1. The legislature finds the *Felix v. Cayetano (Felix)* 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 basic mental health and case management services. These are areas that require trained and qualified professional mental health counselors. Presently, a lack of qualified mental health professionals costs Hawaii thousands of dollars in transportation costs to Oahu when qualified professional mental health counselors already residing on the neighbor islands could provide services at a lesser cost and with greater community awareness.

There is approximately a thirty per cent savings in reimbursement rates for professional counselors compared to the reimbursement rates for licensed psychologists for comparable counseling services. Regulating professional mental health counselors makes good economic sense for the State and demonstrates a compassionate concern for the mental health needs of Hawaii's residents.

In 1998, Congress passed legislation to include professional mental health counselors in United States Public Health Service Act programs. The federal government now recognizes professional mental health counseling as one of the core-helping professions along with psychiatry, psychology, psychiatric nursing, social work, and marriage and family therapy.

Both public and private universities in Hawaii have established programs to train professional counselors in the areas of mental health and rehabilitation. Because of the lack of regulation of this profession, these institutions are unable to ensure the employment of Hawaii's graduates of these programs once they are trained in the State.

Forty-seven states and the District of Columbia already have provisions for the regulation of professional mental health counselors to protect their consumers.

Regulation of the rehabilitation counseling specialty is provided for in thirty-seven of the forty-seven states and the District of Columbia. Individuals, insurers, employers, and other consumers of counseling services cannot be assured of the credentials of any person professing to be a counselor. Licensure is sorely needed to ensure quality service.

The State of Hawaii, under laws similar to this Act, already licenses social workers and marriage and family therapists. This has increased the availability of qualified mental health professionals available for *Felix* and other mental health programs. However, there continues to be a shortage of licensed professionals to provide services for these and other programs. Therefore, this Act needs to be implemented to provide more qualified service providers, to avoid discrimination, and to give parity to the remaining masters-level mental health professionals. Passage of this Act is essential to increase the availability of qualified service providers who can contribute to the pool of mental health professionals and increase the choice and availability of providers.

The purpose of this Act is to:

- (1) Establish educational and experiential standards for professional mental health counselors; and
- (2) Require licensure for those persons who practice or represent themselves to the public as licensed mental health counselors.

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

**“CHAPTER  
MENTAL HEALTH COUNSELORS**

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Accredited educational institution” means a university or college accredited by the Western Association of Schools and Colleges or a comparable regional body.

“Clinical supervision” means supervision applied to all individuals who are gaining the experience required for a license as a mental health counselor. “Clinical supervision” includes but is not limited to:

- (1) Case consultation on the assessment and presenting problem;
- (2) Development and implementation of treatment plans;
- (3) Enhancement of the supervisee’s counseling techniques and treatment evaluation skills; and
- (4) Evaluation of the course of treatment.

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

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

“Licensed mental health counselor” means a person:

- (1) Who engages in the practice of mental health counseling and uses the title of licensed mental health counselor;
- (2) Who has been issued a license under this chapter; and
- (3) Whose license is in effect and not revoked or suspended.

“Practice of mental health counseling” means the rendering of professional services to individuals, families, or groups for compensation, monetary or otherwise. These professional services include applying the principles, methods, and theories of counseling, human development, learning theory, group and family dynamics, rehabilitation, and the etiology of mental illness and dysfunctional behavior to define goals and develop a treatment plan of action aimed toward the prevention, treatment, and resolution of mental and emotional dysfunction and intra or interper-

sonal disorders to all persons irrespective of diagnosis. "Practice of mental health counseling" includes but is not limited to:

- (1) The assessment, diagnosis, and treatment of, and counseling for, mental and emotional disorders;
- (2) The assessment, diagnosis, and treatment of, and counseling for, substance abuse and conduct disorders defined in the approved diagnostic and statistical manual for mental disorders;
- (3) The application of educational techniques aimed at the prevention of these disorders; and
- (4) The provision of consultative services to individuals, couples, families, groups, organizations, and communities.

§ **-2 Mental health counselors licensing program.** There is established a mental health counselors licensing program within the department to 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 shall have the powers and duties to:

- (1) Grant permission to a person to use the title of "licensed mental health counselor" or a description indicating one is a licensed mental health counselor in this State pursuant to this chapter and the rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (3) Administer, coordinate, and enforce this chapter;
- (4) Discipline a licensed mental health counselor for any due cause described by this chapter or violation of the rules;
- (5) Refuse to license a person for failure to meet licensing requirements or on grounds sufficient to discipline a licensed mental health counselor; and
- (6) Appoint an advisory committee consisting of licensed mental health counselors and members of the public to assist with the implementation of this chapter and adopted rules; provided that the initial members of the committee who are mental health counselors shall not be required to be licensed pursuant to this chapter.

§ **-4 Fees; disposition.** (a) Application, examination, reexamination, license, renewal, restoration, penalty, and any other fees relating to the administration of this chapter, shall not be refundable and shall be provided in rules adopted by the director pursuant to chapter 91.

(b) Fees assessed shall defray costs incurred by the department to support the operation of the mental health counselor licensing program. Fees collected shall be managed in accordance with section 26-9(1).

§ **-5 Prohibited acts.** Except as specifically provided in this chapter, no person shall engage in the practice of mental health counseling or use the title of "licensed mental health counselor" or "mental health counselor" without a valid license issued under this chapter. Any person who violates this section shall be subject to a fine of not more than \$1,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the fine imposed under this section shall be a civil action.

§ **-6 Exemptions.** (a) This chapter shall not apply to:

- (1) A person doing work within the duties of the person's profession that overlaps with the practice of mental health counseling; provided that no such person shall use a title stating or implying that the person is a "licensed mental health counselor" or "mental health counselor", or describe or refer to the person's services as mental health counseling;
- (2) Any person who is a duly recognized member of the clergy; provided that the person functions only within the person's capacity as a member of the clergy; and provided further that the person does not represent the person to be a "licensed mental health counselor" or "mental health counselor", or describe or refer to the person's services as mental health counseling;
- (3) Any student enrolled in an accredited educational institution in a recognized program of study leading toward attainment of a graduate degree in mental health counseling or other professional field; provided that the student's activities and services are part of a prescribed course of study supervised by the accredited educational institution and the student is identified by an appropriate title, including but not limited to "mental health counseling student" or "trainee", "clinical psychology student" or "trainee", "social work student" or "trainee", "marriage and family counseling student" or "trainee", or any title that clearly indicates training status;
- (4) Any individual who uses the title of "mental health counselor intern" for the purpose of obtaining clinical experience in accordance with section 7(a)(3);
- (5) Any person employed by a federal, state, or county government agency in a counseling position, but only at those times when the employee is carrying out the duties and responsibilities as a counselor in governmental employment; or
- (6) Any person who is obtaining supervised clinical experience for licensure as a psychologist, social worker, marriage and family therapist, or as another licensed professional; provided that the person's title indicates a trainee or intern status; and provided further that the person does not purport to be a "licensed mental health counselor" or "mental health counselor".

(b) Nothing in this chapter shall be construed to prevent qualified members of other licensed professions as defined by any law or rule of the department, including but not limited to social workers, registered nurses, psychologists, marriage and family therapists, or physicians, from providing mental health counseling or advertising that they provide mental health counseling to individuals, couples, or families consistent with the accepted standards of their respective licensed professions; provided that no such persons shall use a title stating or implying that they are licensed mental health counselors unless the persons are licensed pursuant to this chapter.

**§ -7 Application for licensure as a mental health counselor.** (a) Any person who applies to the department after July 1, 2005, 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) A master's degree or doctoral degree from an accredited educational institution in counseling or in an allied field related to the practice of mental health counseling that includes or is supplemented by graduate level course work in counseling comprising a minimum of forty-eight semester hours or seventy-two quarter hours in the following course

areas, with a minimum of three semester hours in each course area as indicated below:

- (A) Human growth and development, including but not limited to the study of life span development, strategies to facilitate that development and transitions, theories of learning and personality development, and human behavior to include crisis, disabilities, addictive behavior, and environmental factors;
  - (B) Social and cultural foundations, including but not limited to the study of issues and trends in a multicultural and diverse society, including characteristics of diverse groups that may include but are not limited to age, race, religious or sexual preference, physical disability, ethnicity and culture, gender, socioeconomic, intellectual ability, and individual, family, and group strategies with diverse populations;
  - (C) Counseling theories and applications, including but not limited to counseling and consultation, including both individual and systems perspectives, interviewing, assessment, and counseling skills, as well as applying principles, methods, and theories of counseling, treatment and counseling of mental and emotional disorders, and educational techniques aimed at preventing such disorders with individuals and families;
  - (D) Group theory and practice, including but not limited to principles of group dynamics, group process, group leadership styles, theories and methods of group counseling, and the application of theory to the group processes;
  - (E) Career and lifestyle development, including but not limited to the study of vocational development theories and decisionmaking models, assessment instruments, and techniques, types, sources, and uses of occupational and educational information systems, career development applications, and career counseling processes, techniques, and resources;
  - (F) Appraisal of human behavior, including but not limited to assessment and diagnosis or disorders with an emphasis on DSM-IV categories, and an understanding of these disorders relative to the counseling context;
  - (G) Tests and measurements, including but not limited to theoretical and historical bases for assessment techniques, assessment methods, including analysis of various types of tests in order to select, administer, interpret, and use assessment and evaluation instruments and techniques in counseling;
  - (H) Research and program evaluation, including but not limited to research design and methods, statistical analysis, principles, practices, and application of needs assessment, and program evaluation; and
  - (I) Professional orientation and ethics, including but not limited to the history of the helping profession, professional roles and functions, ethical standards, confidentiality, professional organizations, and the public policy process, including advocacy on behalf of the profession and its clientele;
- (2) At least two academic terms of supervised practicum intern experience for graduate credit of at least three semester hours or five quarter hours per academic term in a counseling setting with three hundred hours of supervised client contact;

- (3) Completion three thousand hours of post-graduate direct counseling work with one hundred hours of face-to-face clinical supervision within a two-year period; and
- (4) Passed the National Counselor Examination for Licensure and Certification.
- (b) An individual who:
  - (1) Holds current, unencumbered certification as a national certified counselor or a national certified rehabilitation counselor prior to the effective date of this chapter;
  - (2) Has passed the National Counselor Examination for Licensure and Certification, National Clinical Mental Health Counselors Examination of the National Board for Certified Counselors, or Commission on Rehabilitation Counselor Certification examination after January 1, 2000, and before July 1, 2005; and
  - (3) Within one year of the effective date of this chapter, applies for licensure and pays the applicable license fee,

shall be deemed to have met the requirements of this section.

§ **-8 Reciprocity.** (a) The director may enter into a reciprocity agreement with any state that licenses mental health counselors if the director finds that the state has substantially the same or higher requirements as this chapter.

(b) The agreement shall provide that the director shall license any resident of that state who is currently licensed by that state if the individual has met or exceeded the requirements of this chapter.

§ **-9 Examination.** (a) The department shall conduct a licensing examination of applicants at least once a year at a time and place designated by the department.

(b) The department shall administer the National Counselor Examination for Licensure and Certification in compliance with the standards of the National Board for Certified Counselors.

(c) The examining fee shall be paid by the applicant directly to the National Board for Certified Counselors.

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

§ **-10 Licensure; fees.** A license shall be issued to a person deemed to be qualified under section -7 upon the payment of a license fee to be determined by the department and shall be valid for three years.

§ **-11 Renewal of license; fees.** Licenses shall be renewed, upon the payment of a renewal fee, triennially not earlier than ninety days before June 30, with the first renewal deadline occurring on June 30, 2008. Failure to renew a license shall result in a forfeiture of the license. Licenses that 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 and the person may be required to reapply for licensure as a new applicant. All renewal and restoration fees shall be determined by the department.

§ **-12 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of, licenses.** (a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, and may deny, revoke, suspend, or condition in any manner, any license

for any one or more of the following acts or conditions on the part of a licensee or license applicant:

- (1) Failing to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, cocaine, or other drugs or derivatives of a similar nature;
- (4) Practicing the licensed profession while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity, in the practice of the licensed profession;
- (8) Engaging in conduct or practice contrary to recognized standards of ethics for the licensed profession;
- (9) Violating any condition or limitation upon which a condition or temporary license was issued;
- (10) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (11) Failing to comply with, observe, or adhere to any law in a manner such that the director deems the applicant or holder to be an unfit or improper person to hold a license;
- (12) Having had a license revoked or suspended, or having been the subject of other disciplinary action, by another state or a federal agency for any reason provided by the licensing laws or this section;
- (13) Having been convicted of a crime, whether by nolo contendere or otherwise, directly related to the qualifications, functions, or duties of the licensed profession;
- (14) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
- (15) Employing, utilizing, or attempting to employ or utilize, at any time, any person not licensed under the licensing laws where licensure is required; or
- (16) Violating this chapter, chapter 436B, or any rule or order of the director.

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

**§ -13 Confidentiality and privileged communications.** No person licensed as a mental health counselor, nor any of the person's employees or associates, shall be required to disclose any information that the person may have acquired in rendering mental health counseling services, except in the following circumstances:

- (1) As required by law;
- (2) To prevent a clear and imminent danger to a person or persons;
- (3) In accordance with the terms of a previously written waiver of the privilege where the waiver is executed by the client or by the client's legally recognized representative;

- (4) Where more than one person jointly receives counseling and each person who is legally competent executes a written waiver. In that instance, a mental health counselor may disclose information from any person in accordance with that person's waiver; or
- (5) In the course of a disciplinary action or pursuant to a duly authorized subpoena issued by the department.

§ -14 **Mental health counselor prohibited from testifying in alimony and divorce actions.** If both parties to a marriage have obtained mental health counseling from a licensed mental health counselor, the counselor shall be prohibited from testifying in an alimony or divorce action concerning information acquired in the course of mental health counseling. 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 to read as follows:

“**§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs.** (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed on December 31, [2003.] 2008. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter (mental health counselors) shall be repealed on December 31, 2008.”

SECTION 4. The department of commerce and consumer affairs may appoint an administrative assistant and secretary, without regard to chapter 76, Hawaii Revised Statutes, to assist with the activities of the mental health counselors licensing program.

SECTION 5. Upon the issuance of a new license and at each license renewal period, each mental health counselor shall pay an additional fee of \$75, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the general fund until such time that the total transferred amounts equal the amount appropriated in section 6 of this Act. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 6 of this Act shall be deposited in the compliance resolution fund.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$61,000, or so much thereof as may be necessary for fiscal year 2004-2005, to implement the mental health counselor licensure program.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7.<sup>1</sup> This Act shall take effect on July 1, 2005; provided that sections -2 and -3 of section 2 of this Act, and section 4 of this Act, shall take effect upon approval; and provided further that section 6 of this Act shall take effect on July 1, 2004.

(Approved July 12, 2004.)

**Note**

1. No Ramseyer clause.