

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1956

H. P. 1899

Office of the Clerk of the House

EDWIN H. PERT, Clerk

Filed by the Joint Standing Committee on Business Legislation, under Joint Rule 17, pursuant to House Paper 1825.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Establish the Certification of Marriage and Family Counselors.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 151, first sentence, as amended by PL 1975, c. 705, § 1, is further amended to read:

All money received by the Treasurer of State from the Board of Registration in Medicine, the Board of Examiners in Physical Therapy, the Board of Examiners of Psychologists, the State Board of Nursing, the Board of Examiners of Applicants for Admission to the Bar, the Board of Accountancy, the Board of Veterinary Examiners, the Board of Osteopathic Examination and Registration, the State Board of Funeral Service, the State Board of Registration and Examination in Optometry, the Board of Dental Examiners, the State Board of Registration for Professional Engineers, the State Board of Certification for Geologists and Soil Scientists, the State Board of Licensure of Administrators of Medical Care Facilities other than Hospitals, the State Board of Architects, the Electricians' Examining Board, the Oil Burner Men's Licensing Board, the Penobscot Bay and River Pilotage Commission, the State Board of Barbers, State Board of Cosmetology, State Board of Registration for Land Surveyors, State Board of Social Worker Registration, the Examiners of Podiatrists, the Board of Chiropractic Examination and Registration the Board of Examiners on Speech Pathology and Audiology, **the Board of Marriage and Family Counselors** and the Board of Commissioners of the Profession of Pharmacy shall constitute a fund, which shall be a continuous carrying account for the payment of the compensation and expenses of the members, the expenses of the board and for executing the law relating to each board respectively and so much thereof as may be required is appropriated for said purposes.

Sec. 2. 5 MRSA § 2301, sub-§ 1, as last amended by PL 1977, c. 564, § 34, is further amended by adding after the 11th paragraph the following:

Board of Marriage and Family Counselors;

Sec. 3. 32 MRSA c. 28-A is enacted to read:

**CHAPTER 28-A
MARRIAGE AND FAMILY COUNSELORS
SUBCHAPTER I
GENERAL PROVISIONS**

§ 1871. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

1. **Advertise.** "Advertise" means, but is not limited to, 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 or structure, or in any newspaper or magazine or in any directory, or on the radio or television or by advertising by any other means.

2. **Board.** "Board" means the Board of Marriage and Family Counselors created by this chapter.

3. **Marriage and family counseling.** "Marriage and family counseling" means the rendering of counseling services or therapy to individuals, either singly or in groups, for the purpose of resolving emotional conflicts within marriage and family relationships, and modifying behavior in the area of marriage and family life, including premarital counseling and post-divorce counseling.

§ 1872. Certification required.

After January 1, 1978, no person shall engage in marriage and family counseling or advertise the performance of that service without having a certification as provided in this chapter.

§ 1873. Titles; use without certification prohibited; exceptions

Except as otherwise specifically provided in this chapter, only persons certified under this chapter shall advertise the following titles: Marriage counselor, advisor or consultant; family counselor, advisor or consultant; family guidance counselor, advisor or consultant; marriage guidance counselor, advisor or consultant; family relations' counselor; marriage relations' counselor, advisor or consultant; or any other name, style or description denoting that the person so advertising engages in marriage counseling. Except as otherwise specifically provided in this chapter, only a person certified under this chapter shall advertise himself, hold himself out or describe himself as offering marriage or family counseling services or advice; marriage or family guidance service or advice; marriage or family relations' services or advice; marriage or family problems' service or advice; marriage or family relations' advice or assistance; services in the alleviation of any marital or family problem or services of like import or effect.

§ 1874. Persons exempt

This chapter shall not apply to:

1. Employees. A person who practices marriage and family counseling solely as part of his duties as an employee of:

A. An accredited academic institution, or a federal, state, county or local governmental institution or agency, or a bona fide research facility while performing those duties for which he is employed by such an institution, agency or facility;

B. An organization which is a nonprofit community service agency, while performing those duties for which he was employed by that agency; or

C. A proprietary organization while performing those duties for which he was employed by such an organization, provided his marriage and family counseling duties are under the direct supervision of a certified marriage and family counselor under arrangements approved by the board;

2. Students and interns. A student of counseling, a marriage and family counseling intern or person preparing for the practice or marriage and family counseling under qualified supervision in a training institution or facility or supervisory arrangement approved by the board, provided he is designated by such titles as "marriage counseling intern," "family counseling intern," or other title clearly indicating such training status; and

3. Other professions. A practicing member of another profession, such as law, medicine, religious ministry, psychology, social work or school counseling and guidance, when his practice is consistent with the accepted standards of his profession, provided he does not purport to the public by any title or description stating or implying that he is a marriage and family counselor or is certified to practice marriage and family counseling.

SUBCHAPTER II**BOARD****§ 1875. Board of Marriage and Family Counselors; membership; appointment; qualification; vacancies; meetings**

There is created within the Department of Business Regulation the Board of Marriage and Family Counselors which shall consist of 7 members who are residents of this State. At least 4 members shall be certified practicing marriage and family counselors as provided in this section. For at least 3 years immediately preceding appointment, each member shall have been actively engaged as a marriage and family counselor, in rendering professional services in marriage and family counseling, or in marriage and family counseling research, or in other counseling deemed substantially equivalent thereto, and shall have spent the majority of the time devoted to such activity in this State during the 2 years preceding his appointment. Each member shall be a practicing professional, as described in section 1874, subsection 3, who has been engaged in providing professional services in marriage or family counseling and who is a member or has professional standing in his profession equivalent to that required for clinical membership in the American Association of Marriage and Family Counselors. At least one member shall be a representative of the general public who has no direct affiliation with the practice of marriage and family counseling.

All members shall be appointed by the Governor to serve for a term of 2 years. Vacancies shall be filled for the unexpired portion of the term in the same manner as the original appointment.

§ 1876. Meetings; organization; powers and duties; expenses

The board shall hold at least one meeting each year for the purpose of reviewing applications of candidates who desire to be certified by the board and such other meetings as the board shall deem necessary. They shall elect one of their members as chairman for a term of one year and one of their members as secretary and treasurer, to hold such office at the pleasure of the board. The treasurer shall receive all fees charged and assessments payable to the board, and account for and pay over the same according to the law. The board shall cause a seal of suitable inscription to be procured and to be affixed to those papers as may require that seal, shall keep a correct record of all its proceedings and shall have power to make those rules and regulations, not inconsistent with law, as it may deem necessary for the examination of candidates and certification of marriage and family counselors in the performance of its duties. The chairman and secretary shall be empowered to administer oaths in matters connected with the duties of the board. The records of the board shall include, among other things, a record of all moneys advanced and disbursed by the board, also a list of all applicants for certificates and the fact shall be recorded whether or not the applicant was granted a certificate. The records, or duplicates thereof, shall always be open to inspection in the office of the Secretary of State during regular office hours and shall be prima facie evidence of all matters recorded therein.

Board members shall receive their necessary traveling expenses while on the business of the board.

§ 1877. Disposal of fees

All fees charged and collected by the board shall be deposited with the Treasurer of State and used as provided in Title 5, section 151.

§ 1878. Annual reports.

The board shall annually, on or before the first day of July in each year, make a report to the Commissioner of Business Regulation, containing a full and complete account of all its official records during the preceding year and a statement of its receipts and disbursements and such comments or suggestions as it may deem essential.

SUBCHAPTER III

REGISTRATION

§ 1879. Qualifications for certification; proof required

Any person wishing to apply for certification as a marriage and family counselor shall meet the following qualifications and submit proof satisfactory to the board that:

1. Character. He is of good moral character;
2. Resident. He is a resident of the State. Temporary licenses may be issued to visiting practitioners and to qualified applicants contemplating practice in marriage and family counseling in the State at the discretion of the board; and

3. Education and experience qualifications. He has the following education and experience qualifications:

A. At least a master's degree from an accredited institution so recognized at the time of granting of that degree in marriage and family counseling, family life education, psychology, social work, sociology of the family, or a clearly comparable field emphasizing marriage and family counseling, or shall be a practicing attorney, clergyman, physician, or other professional whose transcripts establish that he has completed an appropriate course of study in a closely allied field; and

B. At least one full year of full-time counseling experience or its equivalent of a character approved by the board, subsequent to the granting of a degree described in paragraph A, which experience shall have been in marriage and family counseling; or

C. Clinical membership in the American Association of Marriage and Family Counselors.

§ 1880. Examination

1. Board to conduct examination. The board may conduct an examination at least once a year at a time and place designated by the board, if, at the board's discretion, that examination is deemed necessary in order to determine any applicant's qualifications for the practice of marriage and family counseling.

2. Written or oral examinations. Examinations may be written and, if the board deems advisable, oral. In any written examination, each applicant shall be designated so that his name shall not be disclosed to the board until examinations have been graded.

3. Examination; contents. Examinations shall include questions in such theoretical and applied fields as the board deems most suitable to test an applicant's knowledge and competence to engage in the practice of marriage and family counseling.

4. Results of examination. An applicant shall be held to have passed an examination upon affirmative vote of at least 4 members of the board.

§ 1881. Reciprocal certificates

The board may issue a certificate by examination of credentials to any person certified as a marriage and family counselor in another state whose requirements for the certificate are equivalent to or exceed the requirements of this State, provided the applicant submits an application on forms prescribed by the board and pays the original certification fee prescribed by this chapter.

§ 1882. Issuing certificates; renewals; fees

The board shall issue original certifications to qualified marriage and family counselors. The fee for original certification shall be \$25. Certificates of Registration shall expire biennially on December 31st or at such other times as the Commissioner of Business Regulation may designate. Biennial fees for renewal of registration shall be set by the board in an amount not to exceed \$20 and shall be due and payable biennially on or before the first day of January.

The failure of any registrant to renew his certificate upon expiration shall not deprive that person of the right of renewal, but the fee to be paid for renewal after expiration shall be increased 10% for each month or fraction thereof that payment for renewal is delayed. The maximum fee for delayed renewal shall not exceed twice the normal biennial renewal fee.

Any person who fails to renew his registration for a period of 3 years shall make application for certification according to the requirements of this chapter.

A person registered under this chapter may, upon request, be placed in an inactive status category without fees, and may be reinstated to active status by paying the fee for the current biennium.

The board shall notify everyone registered under this chapter of the date of expiration of his license and the fee required for its renewal for a 2-year period. This notice shall be mailed to the person's last known address at least 30 days in advance of the expiration date of that registration.

§ 1883. Certification within one year of effective date

The board may certify any person who applies for certification within one year of the effective date of this chapter, if it determines that the applicant meets standards of qualification substantially equivalent to those in section 1879, except that in lieu of an advanced degree the applicant may, at the discretion of the board, substitute 5 years of experience, satisfactorily substantiated, as a marriage and family counselor as provided in this chapter.

§ 1884. Waiver or suspension of certificates

The Administrative Court Judge, as designated in Title 4, chapter 25, shall revoke or suspend any certificate according to the Maine Administrative Procedure Act, Title 5, chapter 375, for the following reasons:

1. Felony conviction. Conviction of a violation of a law by any court of competent jurisdiction which, if committed within this State, would constitute a felony under the laws of this State;

2. Fraud or deceit. The practice of fraud or deceit in obtaining a certificate of registration under this chapter or in connection with service rendered as a certified marriage and family counselor;

3. Addiction. A medical finding of addiction to the use of alcohol, morphine, opium, cocaine or other drugs having similar effect;

4. Mental incompetency. A medical finding of mental incompetency;

5. Aiding and abetting misrepresentation. Aiding or abetting a person not duly certified as a certified marriage and family counselor, or certified marriage or family counselor; or

6. Unprofessional conduct or negligence. Any gross negligence, incompetency or misconduct in the practice of marriage and family counseling.

Upon application, after one year from date of revocation, the board may grant reinstatement, where the revocation is for misconduct in his profession.

§ 1885. Privileged communications; court referral; report

Any communication between the marriage and family counselor and the person or persons counseled is confidential. This privilege is not subject to waiver, except by the person counseled who has filed a complaint and where the counselor is a party defendant to a civil, criminal or disciplinary action arising from that counseling, in which case the waiver is limited to that action. Notwithstanding any other law to the contrary, if cases are counseled upon court referral, the marriage and family counselor may submit to the appropriate court a written evaluation of the prospects or prognosis of a particular marriage without divulging facts or revealing confidential disclosures. Attorneys representing spouses who are the subject of such an evaluation shall have the right to receive a copy of the report.

§ 1886. Violations; injunction

In addition to other proceedings provided in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of this chapter, the Superior Court in the county where the acts or practices have taken place, or are about to take place, may issue an injunction or other appropriate order restraining such conduct on application of the Attorney General or the district attorney, upon complaint of the board.

§ 1887. Penalty

Any person who engages in marriage and family counseling or advertises as such in violation of this chapter is guilty of a Class E crime.

FISCAL NOTE

The Board of Marriage and Family Counselors and all its functions are to be fully funded by the fees required and thus no cost to the State will be created by this bill.

STATEMENT OF FACT

The purpose of this bill is to establish a Board of Marriage and Family Counselors and require the registration and certification of all persons who practice or advertise as practicing marriage and family counseling, except for certain professions.