

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 936

H.P. 684

House of Representatives, March 28, 1989

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

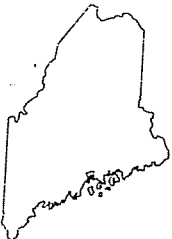
Presented by Representative ALLEN of Washington.

Cosponsored by Speaker MARTIN of Eagle Lake, Senator PERKINS of Hancock and Senator CLARK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Provide for the Licensing of Counseling Professionals and to
Create a Board of Counseling Professionals Licensure.



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

3 **Sec. 1. 5 MRSA §12004-A, sub-§9-A is enacted to read:**

5 9-A. Board of Expenses Only 32 MRSA §13852
6 Counseling Professionals
7 Licensure

9 **Sec. 2. 10 MRSA §8001, as repealed and replaced by PL 1987,**
10 **c. 395, Pt. A, §34 and c. 488, §2, is repealed and the following**
11 **enacted in its place:**

13 **§8001. Department; organization**

15 There is created and established the Department of
16 Professional and Financial Regulation, in this chapter referred
17 to as the "department," to regulate financial institutions,
18 insurance companies, commercial sports, grantors of consumer
19 credit and to license and regulate professions and occupations.
20 The department shall be composed of the following bureaus, boards
21 and commissions:

23 Banking, Bureau of;

25 Consumer Credit Protection, Bureau of;

27 Insurance, Bureau of;

29 Athletic Commission, Maine;

31 Pilotage Commission, Maine State;

33 Real Estate Commission;

35 Arborist Examining Board;

37 Auctioneers, Board of Licensing of;

39 Barbers, State Board of;

41 Commercial Driver Education, Board of;

43 Counseling Professionals Licensure, Board of;

45 Dietetic Practice, Board of Registration of;

47 Electricians' Examining Board;

49 Foresters, State Board of Licensure for Professional;

51 Funeral Service, State Board of;

1 Geologists and Soil Scientists, State Board of Certification
2 for;

3 Hearing Aid Dealers and Fitters, Board of;

4 Manufactured Housing Board;

5 Nursing Home Administrators Licensing Board;

6 Occupational Therapy Practice, Board of;

7 Oil and Solid Fuel Board;

8 Physical Therapy, Board of Examiners in;

9 Plumbers' Examining Board;

10 Psychologists, State Board of Examiners of;

11 Radiologic Technology, Board of Examiners;

12 Respiratory Care Practitioners, Board of;

13 Social Worker Licensure, State Board of;

14 Speech Pathology and Audiology, Board of Examiners on;

15 Substance Abuse Counselors, State Board of; and

16 Veterinary Medicine, State Board of.

17 **Sec. 3. 32 MRSA c. 119 is enacted to read:**

18 **CHAPTER 119**

19 **COUNSELING PROFESSIONALS**

20 **§13851. Definitions**

21 As used in this chapter, unless the context otherwise
22 indicates, the following terms have the following meanings.

23 1. Board. "Board" means the Board of Counseling
24 Professionals Licensure.

25 2. Clinical professional counselor. "Clinical professional
26 counselor" means a professional counselor who renders or offers
27 to render to individuals, families, groups, organizations or the
28 general public, a counseling service involving the application of
29 the principles and procedures of counseling to assess and treat
30 intrapersonal and interpersonal problems and other dysfunctional

1 behaviors and to assist in the overall development and adjustment
2 of those served, for a fee, monetary or otherwise.

3
4 3. Commissioner. "Commissioner" means Commissioner of
5 Professional and Financial Regulation.

6
7 4. Department. "Department" means Department of
8 Professional and Financial Regulation.

9
10 5. Marital and family therapy services "Marital and family
11 therapy services" means the assessment and treatment of
12 intrapersonal and interpersonal problems through the application
13 of principles, methods and therapeutic techniques for the purpose
14 of resolving emotional conflicts, modifying perceptions and
15 behavior, and enhancing communication and understanding among all
16 family members, and preventing family and individual crises.

17
18 6. Marriage and family therapist. "Marriage and family
19 therapist" means a person who renders or offers to render marital
20 and family therapy services for a fee, monetary or otherwise.

21
22 7. Procedures of counseling. "Procedures of counseling"
23 means methods and techniques that include, but are not limited to
24 the following.

25
26 A. "Assessment" means selecting, administering and
27 interpreting instruments designed to assess personal,
28 interpersonal and group characteristics.

29
30 B. "Consulting" means the application of scientific
31 principles and procedures in counseling, to provide
32 assistance in understanding and solving a current or
33 potential problem that the client may have in relation to a
34 3rd party, be it an individual, a family, a group or an
35 organization.

36
37 C. "Counseling" means assisting individuals, families or
38 groups through the counseling relationship, to develop
39 understanding of intrapersonal and interpersonal problems,
40 to define goals, to make decisions, to plan a course of
41 action reflecting their needs, and to use information and
42 community resources, as these procedures are related to
43 personal, social, educational and vocational development.

44
45 D. "Referral" means the evaluation of information to
46 identify needs or problems of the counselee and to determine
47 the advisability of referral to other specialists, informing
48 the counselee of that judgment, and communicating as
49 requested or deemed appropriate with referral sources.

50
51 8. Professional counselor. "Professional counselor" means
a person who, for a fee, monetary or otherwise, renders or offers

1 to render to individuals, families, groups, organizations or the
2 general public a service involving the application of principles
3 and procedures of counseling to assist those served in achieving
4 more effective personal, emotional, social, educational and
5 vocational development and adjustment.

7 §13852. Board of Counseling Professionals Licensure;
8 establishment; compensation

9
10 1. Establishment. The Board of Counseling Professionals
11 Licensure within the Department of Professional and Financial
12 Regulation as established by Title 5, section 12004-A, subsection
13 9-A shall carry out the purposes of this chapter.

14 2. Members. The board shall consist of 12 members
15 appointed by the Governor from among candidates who meet the
16 following qualifications. Nine members shall be counseling
17 professionals eligible for licensure under this chapter, 3 of
18 whom shall be professional counselors, 3 of whom shall be
19 clinical professional counselors and 3 of whom shall be marriage
20 and family therapists. Each member shall have been, for at least
21 5 years immediately preceding appointment, actively engaged as a
22 practitioner, educator or researcher. Three members shall be
23 representatives of the general public. Each public member of the
24 board must be a person who is a consumer of services provided by
25 those regulated by the board and who is not, and never was, a
26 member of the profession or the spouse, parent or child of any
27 such person, and who does not have, and never has had, a material
28 financial interest in either the provision of services or a
29 directly related activity, including the representation of the
30 board or profession for a fee at any time during the 5 years
31 preceding appointment.

32
33 3. Timetable. The Governor shall make initial appointments
34 by January 1, 1990. The initial appointees, with the exception
35 of representatives of the general public, shall become licensed
36 immediately upon their appointment and qualification as members
37 of the board. The board shall elect a chair and secretary at its
38 first meeting of each year, provided that no person may serve as
39 chair for more than 3 years. The commissioner shall call the
40 first meeting of the board which shall take place within 30 days
41 of the completion of the appointments of the initial members.

42
43 4. Terms of office. Of the first board members, the
44 Governor shall appoint 4 for a term of one year; 4 for 2 years;
45 and 4 for 3 years. Their successors shall be appointed for terms
46 of 3 years each except that any person chosen to fill a vacancy
47 shall be appointed only for the unexpired term of the board

1 member to be succeeded. Upon the expiration of the term of
3 office, a board member shall continue to serve until a successor
5 has been appointed and qualified. No person may be appointed for
7 more than 2 consecutive terms.

9 The Governor shall nominate a new member to fill a vacancy on the
11 board within 30 days of the occurrence of the vacancy.

13 The appointment of any member of the board shall automatically
15 terminate within 30 days after the date that the member is no
17 longer a resident of the State.

19 5. Removal. The Governor may remove any member of the
21 board only for neglect of duty, which includes failure to attend
23 at least one regular board meeting within a calendar year, or
25 malfeasance or conviction of a Class A, B or C crime or a crime
27 involving a sex offense while in office. No member may be
29 removed without a public hearing, with at least 30 days prior
31 written notice of the charges and the date fixed for the hearing.

33 6. Conflict of interest. No board member may participate
35 in any matter before the board in which the board member has a
37 pecuniary interest, personal bias or other similar conflict of
39 interest is established.

41 7. Compensation. Board members shall serve without
43 compensation but shall be reimbursed in accordance with Title 5
45 chapter 379.

47 8. Meetings; quorum. The board shall hold at least 2
49 regular meetings each year. Additional meetings may be held upon
51 the call of the chair or the secretary or upon the written
53 request of any 2 board members. Seven members of the board
55 constitute a quorum, provided that at least one of those 7
57 members must be a member who was selected from the general public.

59 **§13853. Board's duties and powers**

61 The following powers and duties apply to the board.

63 1. Duties. The board has the following duties.

65 A. The board shall administer and enforce the provisions of
67 this chapter. The board shall set forth education and
69 examination requirements necessary for a person to be a
71 licensed professional counselor, licensed clinical
73 professional counselor and licensed marriage and family
75 therapist.

77 The board shall hold examinations not less than twice
79 annually and shall evaluate examinations to keep them free
81 of cultural bias.

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The board shall annually publish and make available to the public a list of names and addresses of persons who are licensed as professional counselors, clinical professional counselors and marriage and family therapists.

B. The board shall examine and pass on the qualifications of all applicants for licensed professional counselor, licensed clinical professional counselor and licensed marriage and family therapist and shall issue a license to each eligible applicant, attesting to the applicant's professional qualifications to be a licensed professional counselor, licensed clinical professional counselor or licensed marriage and family therapist. After a person has applied for licensure, no member of the board may supervise that applicant for a fee nor may any member vote on any applicant previously supervised by the member.

C. The board shall investigate or cause to be investigated a complaint made on its own motion or on written complaint filed with the board and all cases of noncompliance with or violation of this chapter or of any rules adopted by the board. The board shall establish procedures to permit and facilitate the filing of written complaints by consumers and shall take action to assure that the public is aware of the right to file complaints.

D. The board shall keep necessary records and minutes.

E. No later than August 1st of each year, the board shall submit to the commissioner a report of its operations and financial position for the preceding fiscal year ending June 30th together with comments and recommendations as the commission deems essential.

F. The board shall adopt rules according to the Maine Administrative Procedure Act, Title 5, chapter 375, as it deems necessary.

2. Powers. The board has the following powers.

A. The board may recommend modifications and amendments to this chapter to the Governor and the Legislature, after a public hearing which shall be advertised by publication of notices to the appropriate professional counseling and marriage and family therapy organizations and in major media outlets throughout the State.

B. The board may authorize expenditures necessary to carry out its duties under this chapter from funds appropriated for that purpose.

1 C. The board may enter into contracts to carry out its
2 responsibilities under this chapter.

3
4 **§13854. Administrative provisions**

5 1. Officers. The board shall elect from among its members
6 a secretary and other officers as it deems necessary. The
7 secretary shall keep records and minutes of all activities and
8 meetings, which shall be made easily accessible to the public and
9 shall be provided expeditiously on request.

10 2. Employees. With the advice of the board, the
11 commissioner shall appoint, subject to the Civil Service Law,
12 employees necessary to carry out this chapter. Any person so
13 employed shall be located in the department and under the
14 administrative and supervisory direction of the commissioner.

15 3. Budget. The board shall submit to the commissioner in
16 the manner provided in Title 5, section 1665, by May 1st of each
17 year, a budget sufficient to carry out the provisions of this
18 chapter. The commissioner may change the budget but not in such
19 a way as to alter the abilities of the board to carry out its
20 duties relative to resolving consumer complaints. The reason for
21 any changes shall be given in writing to the board.

22 4. Standards committees. The board shall establish from
23 among its members 3 standards committees: for professional
24 counselors, for clinical professional counselors and for marriage
25 and family therapists. These standards committees shall
26 generally adhere to the educational, experiential and ethical
27 standards of their national professional organizations. Each
28 standards committee shall have 4 members, 3 shall represent their
29 respective professions and one shall be a board member
30 representing the general public. Each standards committee, by a
31 majority vote, shall recommend approval or disapproval of all
32 licenses for that profession, approve the written and oral
33 examinations required of applicants for licensure in that
34 profession, provide for the grading of the written examination,
35 conduct the oral examination and provide for other matters
36 relating to the ethics and standards for licensure in that
37 profession.

38 No decision of a standards committee may become effective until
39 approved by the board. The board may initiate or otherwise act
40 regarding any matter in which a standards committee is authorized
41 to act. No decision of the board regarding the standards of
42 professional counselors, clinical professional counselors or
43 marriage and family therapists may become effective without the
44 approval of a majority of the standards committee for that
45 profession.

1 5. Code of ethics. The board shall adopt a code of ethics
2 generally in keeping with standards established by the national
3 professional associations concerned with the areas of board
4 responsibility. The code shall govern appropriate practices or
5 behavior as referred to in this chapter. It shall be one
6 requirement of ethical practice that persons licensed as
7 counseling professionals recognize the limits of their competence
8 and perform only those functions for which they have received
9 appropriate training.

11 **§13855. Licensure required**

13 It is specifically prohibited that any individuals or
14 organizations other than those licensed by this chapter present
15 themselves or be presented to the public by any title
16 incorporating the name "professional counselor," "clinical
17 counselor," "marriage counselor," or "family therapist," unless
18 employed by a state or federal agency and acting as employees.

19 **§13856. Exemptions**

21 1. Other professionals. Nothing in this chapter may be
22 construed to apply to the activities and services of qualified
23 members of other professions, such as psychiatrists or other
24 physicians, psychologists, social workers, substance abuse
25 counselors, registered nurses or clergy performing counseling
26 consistent with the laws of the State, their training, and any
27 code of ethics of their professions, provided they do not
28 represent themselves by any title or description protected by
29 this chapter.

31 2. Intern. Nothing in this chapter may be construed to
32 apply to the activities and services of a student, intern or
33 trainee in counseling or marriage and family therapy pursuing a
34 course of study in counseling or marriage and family therapy in a
35 regionally accredited institution of higher education or training
36 institution, if these activities are performed under supervision
37 and constitute a part of the supervised course of study.

39 3. Governmental employee. Nothing in this chapter may be
40 construed to apply to the activities and services of an employee
41 or other agent of a recognized academic institution; employee
42 assistance program; or a federal, state, county or local
43 government institution, program, agency or facility; or a school
44 committee, school district, school board or board of trustees
45 while performing those duties; provided that the individuals are
46 performing those activities solely within the agency or under the
47 jurisdiction of that agency; and provided further, that a license
48 granted under this chapter is not a requirement for employment.

1 4. Practice of medicine. Nothing in this chapter may be
2 construed as permitting the practice of medicine as defined in
3 section 3270.

5 **§13857. Reciprocity**

7 The board shall issue a license without written examination
8 to an applicant licensed or certified as a professional in
9 counseling, clinical counseling or marriage and family therapy or
10 a comparable field in a state whose requirements are determined
11 by the board to be equivalent to or exceed those requirements of
12 the State.

13 **§13858. Requirements for licensure**

15 The board shall issue a license to an applicant as a
16 professional counselor, clinical professional counselor and
17 marriage and family therapist, regardless of the applicant's
18 state of residence, provided that each applicant shall provide
19 satisfactory evidence to the board that the applicant:

21 1. Competence. Demonstrates trustworthiness and competence
22 to engage in the practice of counseling or marriage and family
23 therapy in a manner which will safeguard the interests of the
24 public;

26 2. Inappropriate conduct. Has not engaged in and is not
27 engaging in any practice or conduct which would be grounds for
28 refusing to issue a license;

30 3. Ethics. Has demonstrated ethical practice;

32 4. Education. Demonstrates to the board successful
33 completion of at least one of the following: a master's degree
34 in counseling or an allied mental health field from an accredited
35 institution or a program approved by the Council for the
36 Accreditation of Counseling and Related Education programs or a
37 master's degree in marital and family therapy from a program
38 accredited by the Commission on the Accreditation for Marriage
39 and Family Therapy Education or a graduate degree from a
40 regionally accredited educational institution and an equivalent
41 course of study as defined by the Board of Directors of the
42 American Association for Marriage and Family Therapy. For all
43 other applicants, courses of study are subject to review and
44 approval by the board.

46 5. Supervision. Has 2 years of post master's supervised
47 experience as a practitioner in professional counseling, clinical
48 professional counseling or marriage and family therapy.
49 Supervision may be provided by a qualified and duly certified or
50 licensed counseling professional, clinical social worker,
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1 psychologist or psychiatrist. Any other supervisor must be
2 individually approved by the board.

3 6. Examination. Passes a written and oral examination
4 determined by the board.

5 §13859. Waiver of examination requirement

6 The board shall license without written examination any
7 applicant who applies on or before the first anniversary of the
8 effective date of this chapter if the individual meets all other
9 qualifications set forth in this chapter.

10 An applicant under the provisions of this section shall be
11 required to complete an application and pay the application fee
12 established by the board.

13 §13860. Fees

14 1. Amount. An application fee and examination fee shall be
15 established by the board in amounts which are reasonable and
16 necessary to their respective purposes. Initial and renewal
17 licensure fees shall be established and revised by the board to
18 allow the board to carry out the purposes of this chapter. Total
19 fee receipts may not exceed the projected needs of the board.

20 2. Disposal of fees. All fees received by the board shall
21 be paid to the Treasurer of State to be used for carrying out
22 this chapter. Any balance of fees shall not lapse but shall be
23 carried forward as a continuing account to be expended for the
24 same purposes in the following fiscal years.

25 §13861. Duration of licensure and renewal

26 The following provisions apply to duration and renewal of
27 licensure.

28 1. Procedure. Licensure shall be valid for 2 years and
29 must be renewed biennially. Any application for renewal of a
30 license which has expired shall require reapplication, except
31 that the board may, giving due consideration to the protection of
32 the public, waive examination if the renewal application is
33 within 2 years of the date of expiration.

34 Thirty days preceding the expiration of the license, the
35 secretary of the board shall forward to the holder of the license
36 a form of application for renewal. Upon receipt of the completed
37 form and the renewal fee prior to the expiration of the previous
38 license, the secretary shall issue a new license for the year
39 commencing January 1st. The board may require competency reviews
40 as a condition of renewal.

1 2. Continuing education required. The board shall
2 establish regulations for continuing education requirements and
3 approval of continuing education programs for licensure renewal.
4 These requirements shall be limited to courses which are relevant
5 to professional competency. These regulations shall not require
6 more than 20 contact hours per year, on average, through the term
7 of the license, of approved continuing education programs as a
8 condition for continuing the license. The board shall cause
9 public hearings to be held prior to setting specifications for
10 any continuing education requirement.

11 To renew licenses applicants must satisfy the continuing
12 education requirements set forth by the board or retake the
13 written and oral examinations as determined by the board.

14 §13862. Refusal; revocation; complaints

15 1. Refusal; revocation. The board may deny, revoke,
16 suspend or refuse to renew a license granted pursuant to this
17 chapter on the following grounds:

18 A. Fraud or misrepresentation in obtaining a license;

19 B. Unprofessional conduct, including any gross negligence,
20 incompetency or misconduct in the performance of the work of
21 counseling or therapy, or violation of any standard of
22 professional behavior which has been established by the
23 board;

24 C. Subject to the limitation of Title 5, chapter 341,
25 conviction of a crime which involves dishonesty or false
26 statement or which relates directly to the practice for
27 which the person is licensed or conviction of any crime for
28 which imprisonment for one year or more may be imposed; or

29 D. Any violation of this chapter or any rule adopted by the
30 board.

31 2. Procedure. Except as provided in Title 5, section
32 10004, no license may be denied, suspended, revoked or renewal
33 refused for the reasons set forth in section 13862 without prior
34 written notice and opportunity for hearing on that denial,
35 suspension or revocation. The burden of proof shall be on the
36 board in any proceeding to deny, suspend or revoke a license. No
37 license may be denied, suspended or revoked under this section
38 except by majority vote of the board.

39 3. Complaints. Any person may file a complaint with the
40 board seeking disciplinary action against the holder of a license
41 issued by the board. Complaints shall be in writing in a form
42 prescribed by the board by rule. If the board determines that a
43 complaint alleges facts which, if true, would require denial,
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1 revocation, suspension or nonrenewal or other disciplinary action
2 of a license, the board shall promptly conduct a hearing pursuant
3 to the Maine Administrative Procedure Act, Title 5, chapter 375.
4 Whenever the board establishes that a complaint does not state
5 facts which warrant a hearing, the complaint may be dismissed.
6 Persons making complaints shall be advised in writing of each
7 formal decision made by the board regarding that complaint.

9 Any individual whose license has been denied, suspended or
10 revoked may apply to the board for licensure reinstatement one
11 year after the date of the board's original action. A competency
12 review shall be a condition of reinstatement. The board shall
13 determine the nature of this review.

15 The board shall conduct its proceedings in accordance with the
16 provisions of Title 5, chapter 375, subchapter IV.

17
18 4. Criminal penalty and injunction. Any person who
19 violates a provision of this chapter or any lawful order or rule
20 adopted by the board is guilty of a Class E crime. The board may
21 also proceed in the Superior Court to enjoin and restrain any
22 unlicensed individual violating any section of this chapter,
23 regardless of whether proceedings have been or may be instituted
24 in the Administrative Court or whether criminal proceedings have
25 been or may be initiated. The board shall not be required to
26 post bond at any such proceeding.

27
28 **§13863. Privileged communication**

29
30 Except at the request or consent of the client, no person
31 licensed under this chapter may be required to testify in any
32 civil or criminal action, suit or proceeding at law or in equity
33 respecting any information which the person licensed may have
34 acquired in providing counseling services or marriage and family
35 therapy services to the client in a professional and contractual
36 capacity if that information was necessary to enable the licensee
37 to furnish professional counseling services to the client. When
38 the physical or mental condition of the client is an issue in
39 that action, suit or proceeding or when a court in the exercise
40 of sound discretion deems the disclosure necessary to the proper
41 administration of justice, no information communicated to or
42 otherwise learned by that licensed person in connection with the
43 provision of counseling or marriage and family therapy services,
44 may be privileged and disclosure may be required.

45
46 Nothing in this section may prohibit disclosure by a person
47 licensed under this chapter of information concerning a client
48 when that disclosure is required by law and nothing in this
49 section may modify or affect Title 22, sections 4011 to 4015.

50
51 This section may not be construed to prevent a 3rd-party
reimbursor from inspecting and copying, in the ordinary course of

1 determining eligibility for or entitlement to benefits, any and
3 all records relating to the diagnosis, treatment or other
5 services provided to any person, including a minor or
7 incompetent, for which coverage, benefit or reimbursement is
9 claimed; as long as the policy or certificate under which the
11 claim is made provides that access to those records is
13 permitted. This section may not be construed to prevent access
15 to any records pursuant to any peer review or utilization review
17 procedures applied and implemented in good faith.

11 STATEMENT OF FACT

13
15 This bill creates a Board of Counseling Professionals
17 Licensure within the Department of Professional and Financial
19 Regulation.

21 This board may provide licensure to those professional
23 counselors, clinical professional counselors and marriage and
25 family therapists as have attained the educational and experience
qualifications enumerated in the bill. Persons who are not
licensed may not present themselves to the public by any title
incorporating the name of the professions licensed under this
chapter. The board is also required to hear and act upon
consumer complaints regarding any licensed practitioner.

27 Under the provisions of the Maine Revised Statutes, Title 5,
29 section 12005-A, a joint standing committee of the Legislature,
31 which recommends the regulation of a profession for the first
time, is required to submit to the Legislature a rationale for
this recommendation following the guidelines provided in section
12005-A.