

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

House and Capitol Park Commission and the Supreme Judicial Court Plan and Design Commission in the development of its plans for the Augusta Mental Health Institute and the Bangor Mental Health Institute.

(2) The commission shall issue a preliminary report to the Joint Standing Committee on Human Resources no later than January 15, 1990. Copies of this report shall be sent to the Maine Commission on Mental Health, legislative leadership, the Joint Standing Committee on Appropriations and Financial Affairs and to the Governor. The plan shall include a preliminary assessment of the issue. The commission shall include any necessary adjustments to its budget which reflect anticipated costs for contracts and other services necessary for the development of the long-range plan. A final report shall be issued to the ~~144th~~ 115th Legislature no later than ~~April 4~~ December 15, 1990. This report shall include a complete plan for the Augusta Mental Health Institute and the Bangor Mental Health Institute, including a full assessment of an alternative facility or facilities, community resources which are needed, costs, time frames and necessary implementing legislation.

Sec. 2. PL 1989, c. 501, Pt. A, §1, under that part designated "MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF" in that part relating to "Systems Assessment Commission," by inserting at the end the following:

These funds may not lapse but must be carried forward to June 30, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 24, 1990.

CHAPTER 895

S.P. 730 - L.D. 1929

An Act to Amend the Counseling Licensing Laws

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

Sec. 1. 32 MRSA c. 119, as amended, is repealed.

Sec. 2. 32 MRSA §13851, sub-§4, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

4. Conditional license. "Conditional license" means a license granted to an ~~individual who has met all~~

~~the requirements applicant for licensure as who has met all the requirements defined in section 13858 and is in the process of obtaining 2 years of, except for supervised experience beyond the master degree.~~

Sec. 3. 32 MRSA §13851, sub-§§4-A and 7-A are enacted to read:

4-A. Counselor. "Counselor" means an individual who for a fee, monetary or otherwise, engages in any of the procedures of counseling defined in subsection 8.

7-A. Pastoral counselor. "Pastoral counselor" means an individual who is trained and certified to provide for a fee, monetary or otherwise, pastoral counseling, which is ministry to individuals, families, couples, groups, organizations and the general public involving the application of principles and procedures of counseling to assess and treat intrapersonal and interpersonal problems and other dysfunctional behavior of a social and spiritual nature, and to assist in the overall development and healing process of those served.

Sec. 4. 32 MRSA §13852, sub-§§2, 5 and 7, as enacted by PL 1989, c. 465, §§3 and 5, are amended to read:

2. Members. The board ~~shall consist~~ consists of 8 ~~13~~ members, 12 of them appointed by the Governor. Each member ~~shall~~ must be a citizen of the United States and a resident of this State. ~~Six~~ Eight members shall be licensed counseling professionals under this chapter, 2 of whom ~~shall~~ must be professional counselors, 2 ~~shall~~ must be clinical professional counselors and, 2 ~~shall~~ must be marriage and family therapists and 2 must be pastoral counselors. Each member ~~shall~~ must have been, for at least 5 years immediately preceding appointment, actively engaged as a practitioner, educator or researcher. ~~Two~~ Three members ~~shall~~ must be representatives of the general public and may not be currently practicing counseling or receiving compensation for counseling services. One of the 3 public members must be a consumer of counseling services. One member, appointed by the Chancellor of the University of Maine System, must be a member of the university faculty involved in the training of counselors. A counselor currently not qualified for licensure shall serve as an ex officio nonvoting member of the board.

5. Removal. The Governor may remove any member of the board for cause and the reason for the termination of each appointment must be communicated to each member so terminated. The appointment of any member of the board must be terminated if a member is absent for 6 consecutive board meetings without good and just cause that is communicated to the chair.

7. Meetings; quorum. The board shall hold at least 2 regular meetings each year. Additional meetings may be held upon the call of the chair or the secretary or upon the written request of any 2 board members. ~~Five~~ Seven members of the board constitute a quorum.

Sec. 5. 32 MRSA §13853, sub-§§10 and 13, as enacted by PL 1989, c. 465, §§3 and 5, are amended to read:

10. Officers and secretary duties. The board shall elect from among its members ~~a secretary and other officers as it deems~~ determines necessary. The secretary shall keep records and minutes of all activities and meetings.

13. Disclosure statements. Under this chapter all licensees ~~shall be~~ and registrants are required to provide disclosure statements prior to treatments. The board may adopt, by rule, a standard disclosure statement. This disclosure statement ~~shall~~ must include, but not be limited to, the name and address of the licensee or registrant, the original date and the expiration date of the license, the proposed course of treatment and financial arrangements for clients.

The board ~~shall~~ may not refuse to renew a license for any reason other than failure to pay a required fee, unless it has afforded the licensee an opportunity for an adjudicatory hearing. The board shall hold an adjudicatory hearing at the written request of any person who is denied a license without a hearing for any reason other than failure to pay a required fee, provided that the request for a hearing is received by the board within 30 days of the applicant's receipt of a written notice of the denial of the application, the reasons ~~therefor~~ for and the right to request a hearing. Hearings ~~shall~~ must be conducted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable.

Sec. 6. 32 MRSA §13853, sub-§§14 and 15 are enacted to read:

14. Issue licenses. The board shall issue licenses as necessary to implement this chapter.

15. Client bill of rights. The board shall specify the information that counselors are to include in a client bill of rights that is to be provided to all clients by all counselors.

Sec. 7. 32 MRSA §13854, sub-§1, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

1. Licensing. Effective October 1, ~~1990~~ 1992, no person may, unless specifically exempted by this chapter, ~~may practice counseling or~~ profess to be a clinical professional counselor, professional counselor, marriage and family therapist, licensed pastoral counselor or conditional license holder unless licensed in accordance with this chapter.

Sec. 8. 32 MRSA §13855, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

§13855. Psychological testing; assessment services

Nothing in this chapter may be construed as permitting clinical professional counselors, professional counselors, marriage and family therapists, pastoral counselors or conditional license holders to hold themselves out to the public as psychologists or psychological examiners as defined in section 3811, subsection 1, or to offer primarily or solely the services of psychological testing. The board shall adopt ethical standards relating to the utilization of assessment techniques.

Sec. 9. 32 MRSA §13856, sub-§§1 to 3, as enacted by PL 1989, c. 465, §§3 and 5, are amended to read:

1. Other professionals. Nothing in this chapter may be construed to apply to the activities and services of members of other professions licensed, certified or registered by the State such as, but not limited to, psychiatrists, physicians, psychologists, registered nurses, social workers and substance abuse counselors performing counseling consistent with the laws of the State governing their practices.

2. Government and school employees. Nothing in this chapter may be construed to apply to the activities and services of an employee or other agent of a recognized academic institution; employee assistance program; a federal, state, county or local government institution, program, agency or facility; or a school committee, school district, school approved for attendance purposes pursuant to Title 20-A, section 2901, school board or board of trustees, provided that the individual is performing those activities solely within the agency or under the jurisdiction of that agency and provided further that a license granted under this chapter is not a requirement for employment.

3. Clergy. Nothing in this chapter may be construed to apply to the activities and services of any priest, rabbi, clergyman, including a Christian Science healer, or minister of the gospel of any religious denomination when performing counseling services as part of religious duties and in connection with a specific synagogue or church of any religious denomination.

Sec. 10. 32 MRSA §13856, sub-§§7 to 10 are enacted to read:

7. Management consultants. Nothing in this chapter applies to the activities and services of any management consultant when performing services, counseling or otherwise, with clients other than private individuals. Such clients include, but are not limited to, for-profit and nonprofit corporations, partnerships, sole proprietorships, academic institutions and governmental entities.

8. Educational and career consultants. Nothing in this chapter applies to the counseling activities of educational, vocational or career consultants when performed as an adjunct to their prime function of educational, vocational or career consultation.

9. Human resource and organizational developers. Nothing in this chapter applies to the counseling activities of human resource developers and organizational developers when this counseling is an adjunct to their prime function.

10. Other exemptions. Nothing in this chapter applies to the activities and services of individuals who practice as expressive art therapists, energy field workers, astrologers, tarot card readers, psychic diviners, aromatherapists, crystal workers, palm readers or practitioners of similar disciplines as determined by the board.

Sec. 11. 32 MRSA §13857, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

§13857. Comity

The board may waive examination for an applicant licensed or certified as a professional in counseling, clinical counseling or, marriage and family therapy, pastoral counseling or a comparable field by another state whose requirements are determined by the board to be at least equivalent to those requirements in this chapter.

Sec. 12. 32 MRSA §13858, sub-§3-A is enacted to read:

3-A. Licensed pastoral counselor. To be qualified as a licensed pastoral counselor, an applicant must have:

A. Demonstrated to the satisfaction of the board adherence to the standard ethics of the pastoral counseling profession;

B. Received a Master of Divinity degree from an accredited institution or program approved by the board. Academic preparation includes a minimum graduate core curriculum to include 20 credit hours of counseling and human relations and 400 hours of clinical pastoral education;

C. Two years of experience after attainment of the degree, comprised of at least 1,000 hours of direct clinical contact with individuals, couples and families;

D. Two hundred hours of supervision, including at least 1/3 of those hours with a certified pastoral counseling supervisor, at least 30 hours of which must be interdisciplinary, 30 hours of which must be individual supervision by one supervisor of no more than 3 cases from intake to termination, and 70 hours of which must be individual supervision of multiple case material;

E. A call, appointment or charge by a church, synagogue, religious order or other clearly defined legal religious organization to perform these services as a function of ministry; and

F. Completed successfully the examination prescribed by the board pursuant to subsection 5.

Sec. 13. 32 MRSA §13858, sub-§5, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

5. Examination. All applicants ~~shall be~~ are required to pass a written examination in subjects the board deems necessary to determine the fitness of the applicant to practice. The board shall establish the passing score for all examinations. Examinations ~~will~~ must be held at ~~such times as the board deems necessary~~ least twice a year. The examination must be graded using established written base line scores for failure or passage, be based on accepted counseling criteria and include measurable and clearly defined procedures for grading the results and issuing a pass or fail decision. Decisions on all examinations must be in writing and include a grade and, whenever possible, a summary of the criteria for the grade and an explanation of the procedure for reexamination or appeal.

Sec. 14. 32 MRSA §13858, sub-§§6 and 7 are enacted to read:

6. Existing counselors. Those individuals who hold at least a master's degree or its equivalent in counseling, an allied mental health field, or in a behavioral or social science, and were actively engaged as a counselor for at least 2 of the preceding 5 years prior to January 1, 1990, are deemed to have met all the requirements for licensure and may sit for the examination.

7. License not allowed. Notwithstanding subsections 1 to 6, an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field, may not be licensed under this section, unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that rehabilitation has taken place.

Sec. 15. 32 MRSA §13859, sub-§1, ¶A, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

A. Original and renewal fees for clinical professional counselor, professional counselor or, marriage and family counselor or pastoral counselor - \$300 biennially.

Sec. 16. 32 MRSA §13860, sub-§2, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

2. Continuing education and supervision. The board, by rule, may establish continuing education and supervision requirements. Applicants for renewal of license must show proof of satisfying the continuing education requirements set forth by the board.

Sec. 17. 32 MRSA §13861, sub-§§1 to 3, as enacted by PL 1989, c. 465, §§3 and 5, are amended to read:

1. Grounds. The board may suspend, revoke or refuse to renew a license or registration pursuant to Title 5, section 10004. In addition, the board may take any

other action pursuant to Title 10, section 8003, subsection 5. The board's actions may be taken based on any of the following grounds:

A. The practice of fraud or deceit in obtaining a license or in registering under this chapter or in connection with service rendered within the scope of the license issued;

B. Habitual intemperance in the use of alcohol or the habitual use of narcotic, hypnotic or other drugs listed as controlled substances by the drug enforcement administration, which use has resulted in the licensee being unable to perform duties or perform those duties in a manner which would endanger the health or safety of the patients to be served;

C. A medical finding of mental incompetency;

D. Aiding or abetting a person not duly licensed under this chapter who represents that person as being so;

E. Incompetence in the practice of counseling. A licensee or registrant shall be deemed incompetent in the practice if the licensee or registrant has engaged in conduct ~~which~~ that evidences a lack of ability or fitness to discharge the duty owed by the licensee or registrant to a client, patient or the general public, or has engaged in conduct ~~which~~ that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which that person is licensed or registered;

F. Unprofessional conduct, which is the violation of any client bill of rights, standard of professional behavior or code of ethics adopted by the board;

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice of counseling, or conviction of any crime for which incarceration for one year or more may be imposed;

H. The licensee or registrant has had any professional or occupational license revoked for disciplinary reasons, or any application rejected for reasons relating to untrustworthiness, within 3 years of the date of application; or

I. Violation of any provisions of this chapter or any rule of the board.

2. Procedure. Except as provided in Title 5, section 10004, ~~no~~ a license or registration may not be denied, suspended, or revoked nor renewal or registration refused for the reasons set forth in subsection 1, without prior written notice and opportunity for hearing on that denial, suspension or revocation. The burden of proof ~~shall be~~ is on the board in any proceeding to suspend or revoke a license or registration. ~~No~~ A license or registra-

tion may not be denied, suspended or revoked under this section except by majority vote of the board.

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

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

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

Sec. 18. 32 MRSA §13862, first ¶, as enacted by PL 1989, c. 465, §§3 and 5, is amended to read:

Except at the request or consent of the client, no person licensed under this chapter may be required to testify in any civil or criminal action, suit or proceeding at law or in equity respecting any information that the person licensed or registered may have acquired in providing counseling services or marriage and family therapy services to the client in a professional and contractual capacity if that information was necessary to enable the licensee to furnish professional counseling services to the client. When the physical or mental condition of the client is an issue in that action, suit or proceeding or when a court in the exercise of sound discretion ~~determines~~ determines the disclosure necessary to the proper administration of justice, ~~no~~ information communicated to or otherwise learned by that licensed or registered person in connection with the provision of counseling or marriage and family therapy services may not be privileged and disclosure may be required.

Sec. 19. 32 MRSA §13863 is enacted to read:

§13863. Registration

1. Registration. No individual may engage in procedures of counseling for a fee, monetary or otherwise, unless that individual is licensed pursuant to section 13858 or registers with the department pursuant to this section. Each individual who is not licensed and who engages in procedures of counseling shall register with the department every 2 years. Each individual who registers shall fill out a form designed by the board.

2. Information required. Each individual who registers shall provide the following information on the form designed by the board. The board shall compile this information and make it available to the public upon request and for a fee that covers the cost of making information available. The information that must be provided includes:

A. Name, address and telephone number of individuals registering;

B. Major fields of training and expertise, including degrees and professional certifications held and from where they were conferred;

C. Method of billing and previous experience and policy with regard to 3rd-party payments;

D. The fee schedule and provisions for pro bono work or sliding scale modifications of the fee schedule; and

E. A description of the individual's practice.

3. Client bill of rights; code of ethics. Each individual who registers under this section shall sign, post and make a copy available to each client of:

A. The client bill of rights approved by the board;

B. The code of professional ethics approved by the board; and

C. The name and telephone number of the board's complaint officer and a description of the complaint process.

4. Registration fee. Each individual registering under this section shall pay a registration fee, not to exceed \$50 biennially, established by the board for the purposes of the administration of this section.

5. Registration not allowed. An individual, whose license, certification or registration has been revoked or suspended in this or any other state and in this or any related field, may not register to practice in this State unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that rehabilitation has taken place.

6. Disciplinary action. Any individual who is registered under this section is subject to the provisions of section 13861.

7. Registration not certification. Registration does not imply or certify in any way that the registrant has met any standards or criteria of education or training.

Sec. 20. PL 1989, c. 465, §5 is repealed.

Sec. 21. Transition provisions. Of the 4 additional appointments to be made by the Governor

under the Maine Revised Statutes, Title 32, section 13852, subsection 2, the Governor shall appoint one for a term of one year, one for a term of 2 years and 2 for terms of 3 years. The term of the member appointed by the Chancellor of the University of Maine System is for a term of 2 years. The appointment of the successors to these members is in accordance with Title 32, section 13852, subsection 4.

Sec. 22. Effective date. Section A-1 of this Act takes effect October 1, 2000. The Maine Revised Statutes, Title 32, section 13853, subsection 14, enacted in section A-6 of this Act, takes effect January 1, 1991. Section A-19 of this Act takes effect October 1, 1992.

See title page for effective date, unless otherwise indicated.

CHAPTER 896

H.P. 1379 - L.D. 1910

An Act to Adjust Commercial Motor Vehicle Fees

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

Sec. 1. 29 MRSA §246-A, sub-§3, as amended by PL 1985, c. 812, Pt. A, §3, is further amended to read:

3. Form of application. Application shall be made upon a form and in a manner prescribed by the Secretary of State and shall set forth such information as the Secretary of State may require. The application shall be accompanied by a fee of \$15 ~~§5~~ for each vehicle ~~listed in the application licensed. On and after October 1st, the fee shall be 1/2 rate.~~

Sec. 2. Effective date. This Act takes effect on July 1, 1991.

Effective July 1, 1991.

CHAPTER 897

H.P. 1363 - L.D. 1880

An Act to Increase Death Benefits under the Workers' Compensation Act

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

39 MRSA §59, as amended by PL 1971, c. 544, §135, is further amended to read: