

SENATE BILL NO. 2226

Introduced by

Senator Thane

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to licensing of marriage and family therapists; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.** In this chapter, unless the context otherwise requires:

- 7 1. "Advertise" includes issuing or causing to be distributed any card, sign, or device to
8 any person; causing, permitting, or allowing any sign or marking on or in any
9 building; or using radio, television, or any other means designed to secure public
10 attention.
- 11 2. "Board" means the marriage and family therapist licensure board.
- 12 3. "Licensed marriage and family therapist" means a person licensed under this
13 chapter.
- 14 4. "Marriage and family therapy" means the diagnosis and treatment of mental and
15 emotional disorders, whether cognitive, affective, or behavioral, within the context
16 of marriage and family systems. The term involves the professional application of
17 psychotherapeutic and family systems theories and techniques in the delivery of
18 services to individuals, couples, and families for the purpose of treating diagnosed
19 nervous and mental disorders.
- 20 5. "Practice of marriage and family therapy" means rendering professional marriage
21 and family therapy services to individuals, couples, and families, singly or in
22 groups, whether offered directly to the general public or through organizations for a
23 fee, monetary or otherwise.

6. "Qualified supervision" means the supervision of clinical services in accordance with standards established by the board and under the supervision of an individual who has been recognized by the board as an approved supervisor.
7. "Recognized educational institution" means any educational institution that grants a bachelor's, master's, or doctoral degree and is recognized by the board and by a regionally recognized educational body; or a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.
8. "Use a title or description" means to hold oneself out to the public as having a particular status by means of stating this on signs, mailboxes, address plates, stationery, announcements, calling cards, or other instruments of professional identification.

SECTION 2. Prohibited acts. Except as specifically provided in this chapter, unless licensed under this chapter, a person may not:

1. Advertise the performance by oneself of marriage and family therapy or counseling;
2. Use a title or description such as marital or marriage therapist, counselor, advisor, or consultant; marital or marriage and family therapist, counselor, advisor, or consultant; or any other name, style, or description denoting the person as a marriage and family therapist; or
3. Practice marriage and family therapy.

SECTION 3. Exemptions.

1. A person is exempt from the requirements of this chapter:
 - a. If practicing marriage and family therapy is part of the person's duties as an employee of:
 - (1) A recognized academic institution;
 - (2) A governmental institution or agency while performing those duties for which the person was employed by that institution or agency;
 - (3) An organization that is nonprofit and is determined by the board to meet community needs while performing those duties for which the person was employed by such agency;

b. If the person is a marriage and family therapy intern or person preparing for the practice of marriage and family therapy and is under qualified supervision in a training institution, facility, or supervisory arrangement recognized and approved by the board, provided the person is designated by a title clearly indicating training status; or

c. If the person has been issued a temporary permit by the board to engage in the activities for which licensure is required.

2. This chapter does not prevent qualified clinical social workers, psychiatric nurses, psychologists, physicians, members of the clergy, or members of other professional groups as defined by the board from performing or advertising that they perform work of a marriage and family therapy nature consistent with the accepted standards of their respective professions. However, subsection 2 of section 2 of this Act applies to this situation.

SECTION 4. Marriage and family therapist licensure board. The governor shall appoint the seven members of the board. The governor shall designate the chairman, who may not serve more than four years as chairman. At least four members must be licensed practicing marriage and family therapists who for at least five years immediately before appointment have been actively engaged as marriage and family therapists in rendering professional services in marriage and family therapy, or in the education and training process of earning a master's, doctoral, or postdoctoral degree in marriage and family therapy or in marriage and family therapy research, and have spent the majority of the time devoted to this activity in this state during the two years before appointment. At least two members must be representatives of the general public who have no direct affiliation with the practice of marriage and family therapy or other mental health professions.

SECTION 5. Board - Term - Vacancies. Of the first board members appointed, three must continue in office for two years, two must continue in office for three years, and two members, including the chairman, must continue in office for four years. An initial member's successor must be appointed to a term of four years, unless the appointment is to fill a vacancy of an unexpired term. The initial members, with the exception of the representatives of the general public, are deemed to be and become licensed practicing marriage and family therapists immediately upon their appointment and qualification as members of the board. The

1 governor shall nominate a new member to fill a vacancy on the board within thirty days of the
2 vacancy. If any board member dies, resigns, becomes disqualified, or otherwise ceases to be a
3 board member, the vacancy must be filled by the governor by appointment for the unexpired
4 term. The appointment of any member of the board automatically terminates thirty days after
5 the member is no longer a resident of the state. Upon the expiration of a term of office, a board
6 member must continue to serve until a successor has been appointed and qualified. A person
7 may not be appointed more than once to fill an unexpired term, or more than two consecutive
8 full terms. The governor may remove any member of the board, or the chairman from the
9 position of chairman, for neglect of duty, malfeasance, conviction of a felony or crime of moral
10 turpitude while in office, but for no other reason. No board member may be removed until a
11 public hearing of the charges against the board member has been held, and there has been at
12 least thirty days between written notice to the board member of the charges and the date fixed
13 for the hearing.

14 **SECTION 6. Board - Compensation.** No board member may participate in any matter
15 before the board in which the board member has a pecuniary interest, personal bias, or other
16 similar conflict of interest. Members shall serve without compensation, but are entitled to be
17 reimbursed for actual and necessary expenses incurred in the performance of official board
18 business as are other state officers.

19 **SECTION 7. Board - Office.** The principal office of the board must be located in
20 Bismarck, but the board may act and exercise all of its powers at any other place.

21 **SECTION 8. Board powers and duties - Meetings.**

- 22 1. The board shall administer and enforce this chapter.
- 23 2. The board shall examine and pass on the qualifications of all applicants under this
24 chapter, and shall issue a license to each successful applicant, attesting to the
25 applicant's professional qualifications to be a marriage and family therapist.
- 26 3. The board shall adopt a seal which must be affixed to all licenses issued by the
27 board.
- 28 4. The board is authorized to employ any employee it may find necessary for the
29 proper performance of the board's duties.

- 1 5. The board may authorize expenditures necessary to carry out this chapter from the
2 fees it collects and other available funds, but expenditures may not exceed the
3 revenues of the board during any fiscal year.

4 **SECTION 9. License application.** Any person desiring to obtain a license as a
5 practicing marriage and family therapist must apply to the board on a form and in a manner the
6 board prescribes.

7 **SECTION 10. Licensure qualifications.** An applicant is entitled to a license if the
8 applicant provides satisfactory evidence to the board that the applicant:

- 9 1. Has a master's degree or a doctoral degree in marriage and family therapy from a
10 recognized educational institution, or a graduate degree in an allied field from a
11 recognized institution and has graduate level coursework that is equivalent to a
12 master's degree in marriage and family therapy as determined by the board;
13 2. Has successfully completed two calendar years of work experience in marriage
14 and family therapy under qualified supervision following receipt of a qualifying
15 degree; and
16 3. Passes an examination administered by the board.

17 **SECTION 11. Examination.** The board shall conduct an examination at least once a
18 year at a time and place designated by the board. Examinations may be written or oral, as
19 determined by the board. In a written examination, each applicant must be designated so that
20 the applicant's name is not disclosed to the board until the examinations have been graded. An
21 examination must include questions in theoretical and applied fields to test an applicant's
22 knowledge and competence to engage in the practice of marriage and family therapy. An
23 applicant is deemed to have passed an examination upon affirmative vote of at least four
24 members of the board. Any person who fails an examination conducted by the board may not
25 take the examination again for a period of at least six months.

26 **SECTION 12. Temporary permits.** The board may issue a temporary permit for up to
27 one year to a person upon filing of an application for licensure under this chapter while the
28 application is being processed by the board, or while the applicant is awaiting the opportunity to
29 take the first written examination offered by the board after filing of application.

30 **SECTION 13. Reciprocal licenses.** The board shall issue a license by examination of
31 credentials to any person licensed or certified as a marriage and family therapist in another

1 state with requirements for the license or certification of marriage and family therapists which
2 are equivalent to or exceed the requirements of this state, provided the applicant submits an
3 application on forms prescribed by the board and pays the appropriate licensure fee.

4 **SECTION 14. Fees.** The board shall establish, annually, the fee for original licensure.
5 Licenses are valid for two years and must be renewed biennially, with a renewal fee in an
6 amount determined by the board. An applicant for renewal of an expired license must pay a
7 reregistration fee in an amount determined by the board.

8 **SECTION 15. Renewal of license.** Ninety days before the expiration of a license the
9 secretary of the board shall forward to a licenseholder an application for renewal. The
10 secretary shall issue a new license upon receipt of the completed application form and the
11 renewal fee on or before the expiration of the license.

12 **SECTION 16. Denial, revocation, or suspension of license.**

13 1. The board may deny, revoke, or suspend a license on the following grounds:

- 14 a. Conviction of an offense determined by the board to have a direct bearing on
15 the person's ability to serve the public in the practice of marriage and family
16 therapy, or, following conviction of any offense, failure to be sufficiently
17 rehabilitated under section 12.1-33-02.1. The board shall compile, maintain,
18 and publish a list of offenses described in this subdivision.
- 19 b. Violation of ethical standards of a nature rendering the person found by the
20 board to have engaged in such a violation unfit to practice marriage and
21 family therapy. The board shall identify and publish these ethical standards.
- 22 c. Fraud or misrepresentation in obtaining a license.
- 23 d. Any just and sufficient cause that renders a person unfit to practice marriage
24 and family therapy.

25 2. No license may be denied, suspended, or revoked for the reasons set forth in
26 subsection 1 without prior notice and opportunity for a hearing.

27 3. Any person may file a complaint with the board seeking denial, suspension, or
28 revocation of a license issued or to be issued by the board. A complaint must be in
29 a form prescribed by the board and must be verified under oath by the complainant
30 or authorized agent of a complainant. If the board determines a complaint alleges
31 facts that if true would require denial, revocation, or suspension of a license, the

board promptly shall conduct a hearing. Whenever the board is of the opinion a complaint does not state facts that warrant a hearing, the complaint may be dismissed. The board may conduct a hearing for denial, suspension, or revocation of a license on its own motion.

4. Any interested person is permitted to intervene and participate in board hearings on denial, suspension, or revocation of licenses.

5. Any person whose license has been suspended or revoked may apply to the board for vacation of the suspension or reinstatement of the license.

SECTION 17. Board procedures. Any person may be heard by the board in person or by attorney. Every vote on an official act of the board must be entered of record. A record must be made of every hearing before the board. One or more board members, a hearing officer, or other officer appointed by the board must preside at a hearing.

SECTION 18. Expert witnesses. In any proceeding before the board involving the granting, suspension, or revocation of a license, or in other proceedings in which expert testimony relating to the practice of marriage and family therapy is necessary, the board shall hear evidence from a qualified expert witness or witnesses selected by the parties. Any expert witness who testifies in a board proceeding must be compensated by the respective parties. An expert witness selected to testify on behalf of the board, when it is a party to the proceeding, who is an employee of an agency of the state of North Dakota, must be permitted to testify without loss of income or other benefits.

SECTION 19. Confidentiality and privileged communications. A person licensed under this chapter, or any of the licensee's employees or associates, may not be required to disclose any information acquired in rendering marriage and family therapy services, except:

1. As mandated by law;
2. To prevent a clear and immediate danger to a person;
3. When the therapist is a defendant in a proceeding arising from the therapy, in which case client confidences may be disclosed only in the course of that proceeding;
4. When the client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in the client's behalf;

5. If there is a waiver previously obtained in writing, information may be revealed only in accordance with the terms of the waiver. If more than one person in a family receives therapy conjointly, each family member who is legally competent to execute a waiver must agree to the waiver referred to in this subsection. Without such a waiver from each family member legally competent to execute a waiver, a therapist cannot disclose information received from any family member; or

6. When there is a duty to warn under the limited circumstances in section 21.

SECTION 20. Privilege - Alimony and divorce actions. If both parties to a marriage have obtained marriage and family therapy by a licensed marriage and family therapist, the therapist is not competent to testify in an alimony or divorce action concerning information acquired in the course of the therapeutic relationship. This section does not apply to child custody proceedings.

SECTION 21. Duty to warn - Immunity from liability.

1. There is no monetary liability on the part of, and no claim for relief may arise against, any licensed marriage and family therapist for failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior, except where the patient has communicated to the marriage and family therapist a serious threat of physical violence against a reasonably identifiable victim.

2. The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified in subsection 1. The duty is discharged if reasonable efforts are made to communicate the threat to the victim and to a law enforcement agency.

3. No monetary liability and no claim for relief may arise under this chapter against any person who is a licensed marriage and family therapist for confidences disclosed to third parties in an effort to discharge a duty arising under subsection 1 according to subsection 2.

SECTION 22. Annual report. The board shall publish and submit to the governor an annual report of the board's work and any additional information collected by the board as it may wish to include.

1 **SECTION 23. Penalty.** Any person who willfully violates this chapter is guilty of a
2 class B misdemeanor.