

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1160

Introduced by

Industry, Business and Labor Committee

(At the request of the Board of Counselor Examiners)

1 A BILL for an Act to create and enact three new sections to chapter 43-47 of the North Dakota
2 Century Code, relating to the authority of the board of counselor examiners to appoint or
3 employ persons, payment of delinquent license fees, and unauthorized practice of counseling;
4 to amend and reenact section 43-47-01, subsection 3 of section 43-47-02, sections 43-47-03,
5 43-47-06, and 43-47-08 of the North Dakota Century Code, relating to definitions, duties,
6 responsibilities, license qualifications, and complaints and investigations applicable to the board
7 of counselor examiners; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 43-47-01 of the 1995 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **43-47-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 12 1. "Board" means the board of counselor examiners.
- 13 2. "Counseling" means ~~assisting an individual, group, or family to develop~~
14 ~~understanding of intrapersonal and interpersonal problems; to define and set goals,~~
15 ~~make decisions, and plan a course of action reflecting the needs, interests, and~~
16 ~~abilities of the person or persons; and to use informational and community~~
17 ~~resources as needed for personal, social, educational, and vocational development~~
18 ~~and adjustment~~ the application of human development and mental health principles
19 in a therapeutic process and professional relationship to assist individuals, couples,
20 families, and groups in achieving more effective emotional, mental, marital, family,
21 and social or educational development and adjustment. The goals of professional
22 counseling are to:
- 23 a. Facilitate human development and adjustment throughout the life span;

- b. Prevent, assess, and treat emotional, mental, or behavioral disorder and distress which interferes with mental health;
- c. Conduct assessments for the purpose of establishing treatment goals and objectives; and
- d. Plan, implement, and evaluate treatment plans using professional counseling strategies and interventions.

3. "Counselor" means a person who has been granted either a professional counselor or associate professional counselor license by the board.

4. "Licensed associate professional counselor" means a person who has been granted an associate professional license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.

5. "Licensed professional counselor" means a person who is trained in counseling; ~~guidance, or human services~~ or a related human service field and has been granted a professional counselor license by the board.

SECTION 2. AMENDMENT. Subsection 3 of section 43-47-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The board shall annually select a ~~chairman~~ chairperson from among its members. The board shall meet at least twice a year. Additional meetings may be held at the discretion of the ~~chairman~~ chairperson or upon written request of any three members of the board.

SECTION 3. AMENDMENT. Section 43-47-03 of the North Dakota Century Code is amended and reenacted as follows:

43-47-03. Duties and responsibilities of board. In addition to the duties set forth elsewhere in this chapter, the board shall:

- 1. Publish an annual list of the names and addresses of all persons licensed under this chapter.
- 2. Approve and administer an examination for counselors.
- 3. ~~Set and collect a fee, not to exceed one hundred dollars, for the filing of each application for a license under this chapter and set and collect a fee, not to exceed~~

~~twenty dollars, for the renewal of a license under this chapter~~ Prescribe through administrative rules all license fees, renewal fees, and other fees authorized to be assessed and collected by the board under this chapter.

4. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.
5. Establish continuing education requirements for license renewal.
6. Issue provisional or probationary licenses.
7. Establish a code of ethics for the practice of counseling.

SECTION 4. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Authority to appoint or employ. The board may appoint or employ persons to assist the board in carrying out its duties under this chapter.

SECTION 5. AMENDMENT. Section 43-47-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-47-06. Licenses - Qualifications - Reciprocity.

1. Except as otherwise provided in this chapter, no person may engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
 - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience under a licensed professional counselor, or its equivalent as determined by the board;

- 1 d. Has provided a statement of professional intent to practice in this state
- 2 describing the applicant's proposed use of the license, the intended client
- 3 population, and the counseling procedures, as defined by the board, the
- 4 applicant intends to use in serving the client population; and
- 5 e. Has demonstrated knowledge in the field of counseling by successful
- 6 completion of an examination prescribed by the board.
- 7 3. The board shall issue a license as a licensed associate professional counselor to
- 8 each applicant who files an application upon a form and in a manner the board
- 9 prescribes, accompanied by the required fee, and who furnishes sufficient
- 10 evidence to the board that the applicant:
- 11 a. Has received a master's degree from an accredited school or college in
- 12 counseling or other program that meets the academic and training standards
- 13 adopted by the board;
- 14 b. Has provided personal and professional recommendations that meet the
- 15 requirements adopted by the board and has satisfied the board that the
- 16 applicant will adhere to the standards of the profession of counseling; and
- 17 c. Has provided a written plan for supervised experience which meets the
- 18 requirements adopted by the board.
- 19 4. The board may waive the formal examination requirements for a professional
- 20 counselor license when the applicant has been licensed or certified to practice
- 21 counseling in another state under standards and qualifications similar or greater to
- 22 those set by the board.
- 23 5. A professional counselor shall renew the license every two years. The board shall
- 24 renew a license upon payment of a fee set by the board and upon demonstration
- 25 by the licenseholder of completion of continuing education requirements set by the
- 26 board.
- 27 6. An associate professional counselor initially licensed under this chapter may be
- 28 licensed for no more than two years. The associate professional counselor's
- 29 license may be extended beyond two years only upon recommendation of the
- 30 associate professional counselor's supervisor and three other counselors, at least

one of whom must be a professor from the associate professional counselor's training program.

~~7. For a period of two years beginning on July 6, 1989, the board shall issue upon the application of any person a license as a licensed professional counselor if the applicant:~~

~~a. Has received a master's degree that is primarily counseling in content from a regionally accredited institution of higher education;~~

~~b. Has worked for pay in the counseling field, including counselor education during two of the previous five years;~~

~~c. Shows evidence of supervision or continued professional growth; and~~

~~d. Successfully completes an examination approved by the board.~~

SECTION 6. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Payment of delinquent license fees - Reinstatement. A person who has been licensed under this chapter, and whose license has not been renewed because of the failure to pay the annual license fee, must be reinstated and the license renewed if within one year from the date of nonrenewal the person pays to the secretary of the board the amount of the annual license fee in default and a late fee to be determined by rule of the board.

SECTION 7. AMENDMENT. Section 43-47-08 of the North Dakota Century Code is amended and reenacted as follows:

43-47-08. Complaints - Investigations.

1. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and require a written response from the counselor. Neither the initial complaint nor the counselor's response is public record. The counselor's response must be made available to the complainant.

2. A counselor who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of

1 the investigation, and providing copies of patient records when reasonably
2 requested by the board and accompanied by the appropriate release.

3 3. In order to pursue the investigation, the board may subpoena and examine
4 witnesses and records, including patient records, and copy, photograph, or take
5 samples. It may require the counselor to give statements under oath, submit to a
6 physical or psychological examination, or both, by a physician or physicians or
7 other qualified evaluation professionals selected by the board if it appears to be in
8 the best interest of the public that this evaluation be secured. A written request
9 from the board constitutes authorization to release information. Patient records
10 that are released to the board are not public records.

11 4. After review of the complaint and, the counselor's response, and information
12 obtained in the investigation, the board shall determine if there is a reasonable
13 basis to believe that the allegations are true and that the allegations constitute a
14 violation of this chapter or the rules of the board. If the board determines that there
15 is a reasonable basis to believe that the allegations are true and that the
16 allegations constitute a violation of this chapter or the rules of the board, the board
17 shall take appropriate action. If a reasonable basis is not found by the board, the
18 board shall so notify the complaining party and the counselor in writing.

19 5. Unless there is a patient release on file allowing the release of information at the
20 public hearing, patient records acquired by the board in its investigation are
21 confidential and closed to the public. All board meetings wherein patient testimony
22 or records are taken or reviewed are confidential and closed to the public. If no
23 patient testimony or records are taken or reviewed, the remainder of the meeting is
24 an open meeting unless a specific exemption is otherwise applicable.

25 **SECTION 8.** A new section to chapter 43-47 of the North Dakota Century Code is
26 created and enacted as follows:

27 **Unauthorized practice - Civil penalty.** In addition to any other penalty, the board may
28 levy a civil penalty of not more than one thousand dollars per offense upon any unlicensed
29 person who, after a hearing or informal resolution in accordance with chapter 28-32, is found to
30 have practiced counseling without a license issued by the board. In addition, the board may
31 assess costs and attorneys' fees of the investigation and administrative proceeding against the

- 1 unlicensed person found to have been practicing counseling without a currently valid license.
- 2 An appeal from any fine imposed pursuant to this section may be made pursuant to the
- 3 provisions of chapter 28-32.