

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 23, 2011
Date

Committee on Health and Human Services.

After consideration on the merits, the Committee recommends the following:

SB11-187 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

- 1 Amend printed bill, page 12, line 3, after "(6)," insert "(7.5),".
- 2 Page 12, after line 18 insert:
 - 3 "(7.5) "Professional relationship" means an interaction that is
 - 4 deliberately planned or directed, or both, by the ~~psychotherapist~~ LICENSEE,
 - 5 REGISTRANT, OR CERTIFICATE HOLDER toward obtaining specific
 - 6 psychotherapeutic objectives. ~~such as those set forth in subsection (9) of~~
 - 7 ~~this section."~~
- 8 Page 12, strike lines 23 through 27.
- 9 Page 13, strike lines 1 through 9 and substitute:
 - 10 ~~"(9) "Psychotherapy" means the treatment, diagnosis, testing,~~
 - 11 ~~assessment, or counseling in a professional relationship to assist~~
 - 12 ~~individuals or groups to alleviate mental disorders, understand~~
 - 13 ~~unconscious or conscious motivation, resolve emotional, relationship, or~~
 - 14 ~~attitudinal conflicts, or modify behaviors which interfere with effective~~
 - 15 ~~emotional, social, or intellectual functioning. Psychotherapy follows a~~
 - 16 ~~planned procedure of intervention which takes place on a regular basis,~~
 - 17 ~~over a period of time, or in the cases of testing, assessment, and brief~~
 - 18 ~~psychotherapy, it can be a single intervention. It is the intent of the~~
 - 19 ~~general assembly that the definition of psychotherapy as used in this part~~
 - 20 ~~2 be interpreted in its narrowest sense to regulate only those persons who~~

1 ~~clearly fall within the definition set forth in this subsection (9):~~".

2 Page 17, line 18, strike "**Repeal**".

3 Page 17, line 19, strike "repealed as follows:" and substitute "amended to
4 read:".

5 Page 17, strike lines 22 through 27.

6 Page 18, strike lines 1 through 5 and substitute:

7 "(3) (a) "Psychotherapy" means the treatment, diagnosis, testing,
8 assessment, or counseling in a professional relationship to assist
9 individuals or groups to alleviate mental disorders, understand
10 unconscious or conscious motivation, resolve emotional, relationship, or
11 attitudinal conflicts, or modify behaviors ~~which~~ THAT interfere with
12 effective emotional, social, or intellectual functioning. Psychotherapy
13 follows a planned procedure of intervention ~~which~~ THAT takes place on
14 a regular basis, over a period of time, OR IN THE CASES OF TESTING,
15 ASSESSMENT, AND BRIEF PSYCHOTHERAPY, IT CAN BE A SINGLE
16 INTERVENTION.

17 (b) It is the intent of the general assembly that the definition of
18 psychotherapy as used in this part 7 be interpreted in its narrowest sense
19 to regulate only those persons who clearly fall within the definition set
20 forth in this subsection (3):".

21 Page 20, after line 11 insert:

22 "(6) A REGISTERED PSYCHOTHERAPIST SHALL INCLUDE IN ANY
23 ADVERTISING OR WRITTEN MATERIAL GIVEN TO THE PUBLIC AND
24 POTENTIAL CLIENTS, INCLUDING ON THE REGISTERED PSYCHOTHERAPIST'S
25 WEB PAGE, IN A WRITTEN OR ELECTRONIC ADVERTISEMENT CONTAINED IN
26 OR POSTED ON A PHYSICAL OR WEB-BASED DIRECTORY LISTING OF
27 BUSINESSES, ON A BUSINESS CARD, OR ON ANY OTHER ADVERTISEMENT OR
28 WRITTEN MATERIAL THAT LISTS THE REGISTERED PSYCHOTHERAPIST'S
29 NAME AND CONTACT INFORMATION, A STATEMENT THAT THE PERSON IS
30 REGISTERED BY THE STATE TO PRACTICE PSYCHOTHERAPY BUT IS NOT
31 LICENSED BY THE STATE."

32 Page 28, line 2, strike "A" and substitute "THE FOLLOWING" and strike
33 "SECTION" and substitute "SECTIONS".

1 Page 29, after line 24 insert:

2 **"12-43-227.5. Mental health professional peer health**
3 **assistance program - fees - administration - rules.** (1) (a) ON AND
4 AFTER JULY 1, 2011, AS A CONDITION OF LICENSURE, REGISTRATION, OR
5 CERTIFICATION AND RENEWAL IN THIS STATE, EVERY PERSON APPLYING
6 FOR A NEW LICENSE, REGISTRATION, OR CERTIFICATION OR TO RENEW HIS
7 OR HER LICENSE, REGISTRATION, OR CERTIFICATION SHALL PAY TO THE
8 APPROPRIATE BOARD, FOR USE BY THE ADMINISTERING ENTITY SELECTED
9 BY THE BOARD PURSUANT TO THIS SUBSECTION (1), AN AMOUNT NOT TO
10 EXCEED TWENTY-FIVE DOLLARS PER APPLICATION FOR A NEW OR TO
11 RENEW A LICENSE, REGISTRATION, OR CERTIFICATION, WHICH MAXIMUM
12 AMOUNT MAY BE ADJUSTED ON JANUARY 1, 2012, AND ANNUALLY
13 THEREAFTER BY THE APPROPRIATE BOARD TO REFLECT CHANGES IN THE
14 UNITED STATES BUREAU OF STATISTICS CONSUMER PRICE INDEX FOR THE
15 DENVER-BOULDER CONSOLIDATED METROPOLITAN STATISTICAL AREA FOR
16 ALL URBAN CONSUMERS OR GOODS, OR ITS SUCCESSOR INDEX. THE
17 APPROPRIATE BOARD SHALL FORWARD THE FEE TO THE CHOSEN
18 ADMINISTERING ENTITY FOR USE IN SUPPORTING DESIGNATED PROVIDERS
19 SELECTED BY THE BOARD TO PROVIDE ASSISTANCE TO LICENSEES,
20 REGISTRANTS, OR CERTIFICATE HOLDERS NEEDING HELP IN DEALING WITH
21 PHYSICAL, EMOTIONAL, OR PSYCHOLOGICAL CONDITIONS THAT MAY BE
22 DETRIMENTAL TO THEIR ABILITY TO PRACTICE THEIR MENTAL HEALTH
23 PROFESSION.

24 (b) THE APPLICABLE BOARD SHALL SELECT ONE OR MORE PEER
25 HEALTH ASSISTANCE PROGRAMS AS DESIGNATED PROVIDERS. TO BE
26 ELIGIBLE FOR DESIGNATION BY THE BOARD, A PEER HEALTH ASSISTANCE
27 PROGRAM MUST:

28 (I) PROVIDE FOR THE EDUCATION OF MENTAL HEALTH
29 PROFESSIONALS WITH RESPECT TO THE RECOGNITION AND PREVENTION OF
30 PHYSICAL, EMOTIONAL, AND PSYCHOLOGICAL CONDITIONS AND PROVIDE
31 FOR INTERVENTION WHEN NECESSARY OR UNDER CIRCUMSTANCES
32 ESTABLISHED BY THE BOARD BY RULE;

33 (II) OFFER ASSISTANCE TO A MENTAL HEALTH PROFESSIONAL IN
34 IDENTIFYING PHYSICAL, EMOTIONAL, OR PSYCHOLOGICAL CONDITIONS;

35 (III) EVALUATE THE EXTENT OF PHYSICAL, EMOTIONAL, OR
36 PSYCHOLOGICAL CONDITIONS AND REFER THE MENTAL HEALTH
37 PROFESSIONAL FOR APPROPRIATE TREATMENT;

38 (IV) MONITOR THE STATUS OF A MENTAL HEALTH PROFESSIONAL
39 WHO HAS BEEN REFERRED FOR TREATMENT;

40 (V) PROVIDE COUNSELING AND SUPPORT FOR THE MENTAL HEALTH

1 PROFESSIONAL AND FOR THE FAMILY OF ANY MENTAL HEALTH
2 PROFESSIONAL REFERRED FOR TREATMENT;

3 (VI) AGREE TO RECEIVE REFERRALS FROM THE BOARD; AND

4 (VII) AGREE TO MAKE ITS SERVICES AVAILABLE TO ALL LICENSED,
5 REGISTERED, OR CERTIFIED MENTAL HEALTH PROFESSIONALS.

6 (c) THE BOARD MAY SELECT AN ENTITY TO ADMINISTER THE
7 MENTAL HEALTH PROFESSIONAL PEER ASSISTANCE PROGRAM. AN
8 ADMINISTERING ENTITY MUST BE A NONPROFIT PRIVATE FOUNDATION
9 THAT IS QUALIFIED UNDER SECTION 501 (c) (3) OF THE FEDERAL
10 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND THAT IS
11 DEDICATED TO PROVIDING SUPPORT FOR CHARITABLE, BENEVOLENT,
12 EDUCATIONAL, AND SCIENTIFIC PURPOSES THAT ARE RELATED TO MENTAL
13 HEALTH PROFESSIONS, MENTAL HEALTH PROFESSIONAL EDUCATION,
14 MENTAL HEALTH RESEARCH AND SCIENCE, AND OTHER MENTAL HEALTH
15 CHARITABLE PURPOSES.

16 (d) THE ADMINISTERING ENTITY SHALL:

17 (I) DISTRIBUTE THE MONEYS COLLECTED BY THE APPLICABLE
18 BOARD, LESS EXPENSES, TO THE DESIGNATED PROVIDER, AS DIRECTED BY
19 THE BOARD;

20 (II) PROVIDE AN ANNUAL ACCOUNTING TO THE BOARD OF ALL
21 AMOUNTS COLLECTED, EXPENSES INCURRED, AND AMOUNTS DISBURSED;
22 AND

23 (III) POST A SURETY PERFORMANCE BOND IN AN AMOUNT
24 SPECIFIED BY THE BOARD TO SECURE PERFORMANCE UNDER THE
25 REQUIREMENTS OF THIS SECTION. THE ADMINISTERING ENTITY MAY
26 RECOVER THE ACTUAL ADMINISTRATIVE COSTS INCURRED IN PERFORMING
27 ITS DUTIES UNDER THIS SECTION IN AN AMOUNT NOT TO EXCEED TEN
28 PERCENT OF THE TOTAL AMOUNT COLLECTED.

29 (e) THE APPLICABLE BOARD SHALL COLLECT THE REQUIRED
30 ANNUAL PAYMENTS PAYABLE TO THE ADMINISTERING ENTITY FOR THE
31 BENEFIT OF THE ADMINISTERING ENTITY AND SHALL TRANSFER ALL SUCH
32 PAYMENTS TO THE ADMINISTERING ENTITY. ALL REQUIRED ANNUAL
33 PAYMENTS COLLECTED OR DUE TO THE BOARD FOR EACH FISCAL YEAR ARE
34 CUSTODIAL FUNDS THAT ARE NOT SUBJECT TO APPROPRIATION BY THE
35 GENERAL ASSEMBLY, AND THE DISTRIBUTION OF PAYMENTS TO THE
36 ADMINISTERING ENTITY OR EXPENDITURE OF THE PAYMENTS BY THE
37 ADMINISTERING ENTITY DOES NOT CONSTITUTE STATE FISCAL YEAR
38 SPENDING FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE
39 CONSTITUTION.

40 (2) (a) ANY MENTAL HEALTH PROFESSIONAL WHO IS REFERRED BY
41 THE APPLICABLE BOARD TO A PEER HEALTH ASSISTANCE PROGRAM SHALL

1 ENTER INTO A STIPULATION WITH THE BOARD PURSUANT TO SECTION
2 12-43-223 (6) BEFORE PARTICIPATING IN THE PROGRAM. THE AGREEMENT
3 MUST CONTAIN SPECIFIC REQUIREMENTS AND GOALS TO BE MET BY THE
4 PARTICIPANT, INCLUDING THE CONDITIONS UNDER WHICH THE PROGRAM
5 WILL BE SUCCESSFULLY COMPLETED OR TERMINATED, AND A PROVISION
6 THAT A FAILURE TO COMPLY WITH THE REQUIREMENTS AND GOALS ARE TO
7 BE PROMPTLY REPORTED TO THE BOARD AND THAT SUCH FAILURE WILL
8 RESULT IN DISCIPLINARY ACTION BY THE BOARD.

9 (b) NOTWITHSTANDING SECTIONS 12-43-223, 12-43-224, AND
10 24-4-104, C.R.S., THE APPLICABLE BOARD MAY IMMEDIATELY SUSPEND
11 THE LICENSE OF ANY MENTAL HEALTH PROFESSIONAL WHO IS REFERRED TO
12 A PEER HEALTH ASSISTANCE PROGRAM BY THE BOARD AND WHO FAILS TO
13 ATTEND OR TO COMPLETE THE PROGRAM. IF THE MENTAL HEALTH
14 PROFESSIONAL OBJECTS TO THE SUSPENSION, HE OR SHE MAY SUBMIT A
15 WRITTEN REQUEST TO THE BOARD FOR A FORMAL HEARING ON THE
16 SUSPENSION WITHIN TEN DAYS AFTER RECEIVING NOTICE OF THE
17 SUSPENSION, AND THE BOARD SHALL GRANT THE REQUEST. IN THE
18 HEARING, THE MENTAL HEALTH PROFESSIONAL BEARS THE BURDEN OF
19 PROVING THAT HIS OR HER LICENSE, REGISTRATION, OR CERTIFICATION
20 SHOULD NOT BE SUSPENDED.

21 (c) ANY MENTAL HEALTH PROFESSIONAL WHO SELF-REFERS AND
22 IS ACCEPTED INTO A PEER HEALTH ASSISTANCE PROGRAM SHALL AFFIRM
23 THAT, TO THE BEST OF HIS OR HER KNOWLEDGE, INFORMATION, AND
24 BELIEF, HE OR SHE KNOWS OF NO INSTANCE IN WHICH HE OR SHE HAS
25 VIOLATED THIS ARTICLE OR THE RULES OF THE BOARD, EXCEPT IN THOSE
26 INSTANCES AFFECTED BY THE MENTAL HEALTH PROFESSIONAL'S PHYSICAL,
27 EMOTIONAL, OR PSYCHOLOGICAL CONDITIONS.

28 (3) NOTHING IN THIS SECTION CREATES ANY LIABILITY ON THE
29 APPLICABLE BOARD OR THE STATE OF COLORADO FOR THE ACTIONS OF THE
30 BOARD IN MAKING GRANTS TO PEER ASSISTANCE PROGRAMS, AND NO CIVIL
31 ACTION MAY BE BROUGHT OR MAINTAINED AGAINST THE BOARD OR THE
32 STATE FOR AN INJURY ALLEGED TO HAVE BEEN THE RESULT OF THE
33 ACTIVITIES OF ANY STATE-FUNDED PEER ASSISTANCE PROGRAM OR THE
34 RESULT OF AN ACT OR OMISSION OF A MENTAL HEALTH PROFESSIONAL
35 PARTICIPATING IN OR REFERRED BY A STATE-FUNDED PEER ASSISTANCE
36 PROGRAM. HOWEVER, THE STATE REMAINS LIABLE UNDER THE
37 "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24,
38 C.R.S., IF AN INJURY ALLEGED TO HAVE BEEN THE RESULT OF AN ACT OR
39 OMISSION OF A MENTAL HEALTH PROFESSIONAL PARTICIPATING IN OR
40 REFERRED BY A STATE-FUNDED PEER ASSISTANCE PROGRAM OCCURRED
41 WHILE SUCH MENTAL HEALTH PROFESSIONAL WAS PERFORMING DUTIES AS

1 AN EMPLOYEE OF THE STATE.

2 (4) THE BOARDS MAY PROMULGATE RULES NECESSARY TO
3 IMPLEMENT THIS SECTION.

4 (5) AS USED IN THIS SECTION, "MENTAL HEALTH PROFESSIONAL"
5 MEANS A PSYCHOLOGIST, SOCIAL WORKER, CLINICAL SOCIAL WORKER,
6 MARRIAGE AND FAMILY THERAPIST, LICENSED PROFESSIONAL COUNSELOR,
7 OR PSYCHOTHERAPIST REGULATED UNDER THIS ARTICLE."

8 Page 38, line 1, strike "12-43-201 (9)." and substitute "~~12-43-201 (9)~~
9 12-43-701 (3)."

10 Page 45, line 7, after "(1) (a)," insert "(1) (b)," and before "and" insert
11 "(4) (d)."

12 Page 45, line 8, strike "amended" and substitute "amended, and the said
13 12-43-214 (1) is further amended BY THE ADDITION OF A NEW
14 PARAGRAPH,".

15 Page 45, line 12, after "information" insert "VERBALLY AND".

16 Page 45, after line 16 insert:

17 "(b) (I) AN EXPLANATION OF THE LEVELS OF REGULATION
18 APPLICABLE TO MENTAL HEALTH PROFESSIONALS UNDER THIS ARTICLE
19 AND THE DIFFERENCES BETWEEN LICENSURE, REGISTRATION, AND
20 CERTIFICATION, INCLUDING THE EDUCATIONAL, EXPERIENCE, AND
21 TRAINING REQUIREMENTS APPLICABLE TO THE PARTICULAR LEVEL OF
22 REGULATION; AND

23 (II) A listing of any degrees, credentials, certifications,
24 REGISTRATIONS, and licenses HELD OR OBTAINED BY THE LICENSEE,
25 REGISTRANT, OR CERTIFICATE HOLDER, INCLUDING THE EDUCATION,
26 EXPERIENCE, AND TRAINING THE LICENSEE, REGISTRANT, OR CERTIFICATE
27 HOLDER WAS REQUIRED TO SATISFY IN ORDER TO OBTAIN THE DEGREE,
28 CREDENTIALS, CERTIFICATIONS, REGISTRATIONS, OR LICENSES;".

29 Page 45, line 21, after "board" insert "and".

30 Page 45, line 22, strike "and".

31 Page 46, line 9, strike "therapy." and substitute "therapy; AND".

1 Page 46, after line 9 insert:

2 "(e) IF THE MENTAL HEALTH PROFESSIONAL IS A REGISTERED
3 PSYCHOTHERAPIST, A STATEMENT INDICATING THAT A REGISTERED
4 PSYCHOTHERAPIST IS A PSYCHOTHERAPIST LISTED IN THE STATE'S DATA
5 BASE AND IS AUTHORIZED BY LAW TO PRACTICE PSYCHOTHERAPY IN
6 COLORADO BUT IS NOT LICENSED BY THE STATE AND IS NOT REQUIRED TO
7 SATISFY ANY FORMAL EDUCATIONAL OR TESTING REQUIREMENTS TO
8 OBTAIN A REGISTRATION FROM THE STATE."

9 Page 46, after line 12 insert:

10 "(d) The client is in the physical custody of either the department
11 of corrections or the department of human services and such department
12 has developed an alternative program to provide similar information to
13 such client and such program has been established through rule or
14 regulation; ~~pursuant to the "State Administrative Procedure Act", article~~
15 ~~4 of title 24, C.R.S.;~~"

16 Page 46, line 17, strike "(5)," and substitute "(5) and (7)," and strike "is"
17 and substitute "are".

18 Page 46, after line 23 insert:

19 "~~(7) The provisions of this article shall not apply to mental health~~
20 ~~professionals acting within the scope of a court appointment to undertake~~
21 ~~custodial evaluations in domestic relations cases in the courts of this state~~
22 ~~or to mental health professionals acting within the scope of a court~~
23 ~~appointment to undertake domestic and child abuse evaluations for~~
24 ~~purposes of legal proceedings in the courts of this state."~~

25 Page 46, line 27, strike "amended" and substitute "amended, and the said
26 12-43-218 is further amended BY THE ADDITION OF A NEW
27 SUBSECTION,".

28 Page 48, after line 20 insert:

29 "(6) THIS SECTION DOES NOT APPLY TO COVERED ENTITIES, THEIR
30 BUSINESS ASSOCIATES, OR HEALTH OVERSIGHT AGENCIES, AS EACH IS
31 DEFINED IN THE FEDERAL "HEALTH INSURANCE PORTABILITY AND
32 ACCOUNTABILITY ACT OF 1996", AS AMENDED BY THE FEDERAL "HEALTH

- 1 INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH
- 2 ACT", AND THE RESPECTIVE IMPLEMENTING REGULATIONS."

- 3 Page 64, line 12, strike "OPTIONS, INCLUDING" and substitute "OPTIONS".

- 4 Page 64, line 13, strike "MEDICATION,".

- 5 Page 86, strike lines 9 through 27.

- 6 Page 87, strike lines 1 through 3.

- 7 Renumber succeeding sections accordingly.

** *** ** *** **