



**House
Legislative
Analysis
Section**

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**PSYCHOTHERAPISTS' DUTY TO
WARN**

**Senate Bill 377 as passed by the Senate
First Analysis (5-31-94)**

**Sponsor: Sen. George A. McManus
Senate Committee: Mental Health,
Human Resources, and Senior Citizens
House Committee: Mental Health**

Senate Bill 377 (5-31-94)

THE APPARENT PROBLEM:

Public Act 123 of 1989 amended the Mental Health Code to create a "duty to warn" for mental health practitioners when a patient they were treating threatened physical violence against some third person, and exempted these practitioners from the various confidentiality restrictions that otherwise apply to privileged communications between mental health professionals and their clients. The act includes psychiatrists, psychologists, and psychiatric social workers under its definition of "mental health practitioner," but doesn't include professional counselors or marriage and family therapists. Legislation has been introduced to correct this oversight.

THE CONTENT OF THE BILL:

The bill would amend the Mental Health Code (Public Act 258 of 1974) to add licensed professional counselors and marriage and family therapists to the code's existing list of mental health practitioners required to meet the code's "duty to warn" requirements when a client being treated by the mental health practitioner threatened physical harm to some third person. The bill also would specifically exempt licensed professional counselors and licensed marriage and family therapists who ("in good faith") complied with the code's duty to warn from their respective statutory confidentiality requirements.

MCL 330.1946

BACKGROUND INFORMATION:

Mental health care providers. According to Morton Hunt (The Story of Psychology 1993), each year some fifteen million Americans make 120 million visits to psychotherapists, and in-patients in mental

hospitals and psychiatric wards of general hospitals account for another several million sessions. Cumulatively, nearly one out of three people -- eighty million or so -- have had some experience with psychotherapy. About a third of these treatments are provided by psychologists, another third by psychiatrists, and the rest by clinical social workers, clinical mental health counselors, and pastoral counselors. All of these professionals, despite their varied backgrounds, practice therapies that are psychological, as distinguished from such other approaches to mental illness as the physiological, the social, and the religious. (Psychiatrists, however, often medicate their patients, with or without also treating them by means of psychotherapy.)

By far the largest number of mental health care providers are psychologists, whose numbers increased more than tenfold between 1945 and 1970. According to Hunt, there are an estimated 149,000 psychologists in America, 70,000 at the doctorate level and 79,000 at the master's level. Despite the growing number of clinical psychologists, however, about two-thirds of the demand for psychotherapy is met by other than psychologists: the 21,000 of the nation's 30,000 psychiatrists who spend much of their time in private practice; 81,000 clinical social workers, most of whom practice some psychotherapy in agency and hospital settings but some of whom also or only do so in private practice; 2,000 nationally certified clinical mental health counselors; 2,000 pastoral counselors; and an unknown number of other people who call themselves psychotherapists -- the use of the term isn't controlled by law in most states -- and who have anywhere from a fair amount of training to none at all.

Psychologists. During the last two decades most new Ph.D.'s in psychology have become not researchers but industrial, educational, and -- by far the largest number -- clinical and counseling psychologists. Psychology was not originally an applied science, and its training centers produced not "health care providers" but researchers and theorists. By the 1970s, however, psychology was growing not as a pure science but as several forms of applied science, of which health care was far and away the largest. Although the absolute number of research psychologists has grown since 1970 (when the output of research psychologists fell sharply and the output of health care providers -- clinical, counseling, and school psychologists -- continued to increase), research psychologists now represent only a seventh of all doctoral and master's level psychologists, while clinical and counseling psychologists (most of whom practice psychotherapy, with the rest doing only testing and assessment) now make up about half of all psychologists.

In Michigan, psychologists are licensed under the Public Health Code, and may hold full (Ph.D.) or limited (M.A.) licenses. Fully licensed psychologists must have a doctoral degree in psychology ("or in a closely related field") and at least two years postdoctoral experience in practicing psychology "in an organized health care setting or other arrangement, as established by the board [of psychology]." Limited license psychologists must have masters degrees in psychology and one year of postgraduate experience in an organized health care setting (or other board-approved arrangement) supervised by a fully licensed psychologist. Limited license psychologists have two limitations placed on their licenses: They must be supervised by a fully licensed (Ph.D.) psychologist and they cannot advertise that they practice psychology.

Psychiatrists. Psychiatry is a medical (and osteopathic) specialty; that is, only doctors -- either M.D.s or D.O.s -- can become psychiatrists. Psychiatrists are the only mental health professionals who can prescribe drugs.

In Michigan, psychiatrists are physicians licensed under the Public Health Code (or someone "under the supervision of a psychiatrist, while engaged in the examination, diagnosis, or treatment of a patient for a mental condition").

Social workers. Michigan's Occupational Code recognizes three types of social workers: social work technicians (who can enter the field directly without academic coursework), social workers, and certified social workers. A social work technician must have one year of "social work experience acceptable to the department" or have successfully completed two years of college, and must be employed in the practice of social work. A social worker must have a baccalaureate degree and (1) two or more years of social work experience or be enrolled in a graduate school of social work, or (2) have a master's degree in social work or have "the equivalent of" 4,000 of social work service with a "recognized agency." A certified social worker must have a master's degree in social work ["or its equivalent"] and two or more years of social work experience, in addition to meeting the requirements for social workers.

A psychiatric social worker -- who falls under the Mental Health Code's "duty to warn" requirements - is defined in the code as someone who is registered under the Occupational Code as a certified social worker, social worker, or social work technician and who has successfully completed a psychiatric social service practicum.

Counselors. In the broad spectrum of mental health services available today, professional counselors focus on the problems of the "normal" person facing such life crises as the death of a family member, divorce, spouse abuse, difficulties with a child, or the loss of a job. Through individual and group counseling, educational procedures, and other therapeutic techniques, counselors are able to provide moderately-priced, short-term help to these individuals. Counselors describe themselves as educators who know that people need to keep learning new life skills to cope with society's rapidly changing demands. They know that learning new skills can be the key to a more productive and happier life and can render unnecessary more prolonged psychological treatment.

Counselors were regulated for the first time under the Public Health Code by Public Act 421 of 1988 (enrolled Senate Bill 386). To be licensed as a professional counselor, a person must have a masters or doctoral degree in counseling or student personnel work and at least two years of supervised counseling experience.

Marriage and family therapists. There are a number of therapies that are not specific therapeutic techniques, but a type of therapy classified by the unit of treatment: individual, couple, family, or group. "Couples therapy" was originally known as marriage counseling but today, according to Hunt, "often proceeds at a deeper level than old-time counseling and is offered not only to married couples but to premarital, extramarital, and homosexual couples, all of whom have somewhat similar relationship problems." "Family therapy," which was developed almost simultaneously in several different places in the United States in the 1950s, takes as its basic assumption that psychological symptoms and difficulties of all sorts stem from faulty relationships within the family rather than from psychological conflicts within the individual. The American Association for Marriage and Family Therapy has some 10,000 members, who come from various disciplines and have met the association's requirement of two years of supervised postgraduate experience as marriage and family therapists.

"Marriage and family therapists" and "licensed marriage counselors" are regulated under the Occupational Code in Michigan, which was enacted in 1980 (Public Act 299) to bring together the regulation of non-health care occupations under a single law. The section regulating marriage and family therapists was revised in 1992 (Public Act 173, enrolled House Bill 4534) to require licensure (instead of registration), to set the educational and experiential requirements for licensure, to impose certain confidentiality requirements, and to both allow and proscribe the use of certain titles. To be licensed as a marriage and family therapist under the Occupational Code, a person must have either (1) a master's or higher graduate degree from an accredited training program in marriage and family therapy, or (2) a master's or higher graduate degree from an accredited college or university with certain coursework (in family studies; family therapy methodology; human development, personality theory, or psychopathology; ethics, law, and standards of professional practice; and research). In addition, licensed marriage and family therapists must have a certain number of hours of direct client contact under specified conditions (including at least 2,000 hours of direct client contact over a period of not more than five years in supervised marriage and family therapy experience).

FISCAL IMPLICATIONS:

The Senate Fiscal Agency says the bill would have no fiscal implications for the state. (5-24-94)

ARGUMENTS:

For:

The bill would fill a gap in legislation that was passed in 1989 to provide some legal immunity to mental health professionals faced with the dilemma of whether to violate privileged communications when a client told them of the client's intent to harm some third person. When Public Act 123 of 1989 was enacted, it covered psychiatrists, psychologists, and psychiatric social workers. However, there are two other licensed mental health professionals in the state, licensed professional counselors and licensed marriage and family therapists, who also face this potential conflict between maintaining the confidentiality of their clients' privileged communications and threats to third parties. The bill would close this hole by including these two mental health professionals in the Mental Health Code's "duty to warn" requirements and its exemption of this duty from the confidentiality requirements for privileged communications between practitioner and client.

POSITIONS:

The Department of Mental Health supports the bill. (5-26-94)

The Michigan Counseling Association (a statewide association representing approximately 1,800 of the state's 4,871 licensed professional counselors) supports the bill. (5-26-94)

The Michigan Association of Marriage and Family Therapy supports the bill. (5-27-94)