



Ohio Legislative Service Commission

Bill Analysis

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H.B. 208

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(As Introduced)

Reps. Skindell, Ujvagi, Letson, Hagan, Harris, Foley, Domenick, Yuko, Okey, Oelslager, Murray, Winburn, Boyd

BILL SUMMARY

- Requires the Counselor, Social Worker, and Marriage and Family Therapist Board to regulate art therapy.
- Changes the name of the Board to the Counselor, Social Worker, Marriage and Family Therapist, and Art Therapist Board.
- Requires the Governor to appoint three additional Board members—two art therapists and one additional public member.
- Establishes the Art Therapist Professional Standards Committee within the Board and gives the Committee authority to act on behalf of the Board on all matters concerning art therapy.
- Establishes an application procedure and eligibility requirements for applicants seeking to be licensed as art therapists.
- Establishes continuing education requirements and license renewal procedures for art therapists.
- Establishes procedures for the Board and Committee to follow when imposing disciplinary actions against an applicant for an art therapy license or a license holder.
- Specifies activities and services that are included in the scope of practice of art therapists.
- Makes conforming changes.

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CONTENT AND OPERATION

Regulation of art therapy

(R.C. 4757.01(I))

Generally, the bill requires the Counselor, Social Worker, and Marriage and Family Therapist Board to regulate the practice of art therapy.¹ The bill defines "art therapy" as the use of art media, images, and the creative art processes, and an individual's responses to the media, images, and processes, to help evaluate the individual's development, abilities, personality, interests, concerns, and conflicts for the purpose of reconciling emotional conflicts, fostering self-awareness, developing social skills, managing behavior, solving problems, reducing anxiety, aiding in reality orientation, or increasing self-esteem.

Counselor, Social Worker, Marriage and Family Therapist, and Art Therapist Board

As the bill requires the Board to regulate the practice of art therapy, the bill changes the name of the Board to the "Counselor, Social Worker, Marriage and Family

¹ The Board currently licenses professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists, and registers social work assistants (R.C. Chapter 4757.).

Therapist, and Art Therapist Board." All statutory references to the Board are correspondingly changed.

Board membership

(R.C. 4757.03 and 4757.05; Section 3)

Currently, the Board consists of 15 members appointed by the Governor, with the advice and consent of the Senate. Each member may serve up to two consecutive three-year terms. Four members must be professional clinical counselors or professional counselors, two members must be independent marriage and family therapists, two members must be marriage and family therapists, two members must be independent social workers, and two members must be licensed social workers. The remaining three members must be representatives of the general public who have not practiced professional counseling, marriage and family therapy, or social work and have not been involved in the delivery of professional counseling, marriage and family therapy, or social work services. During their tenure on the Board, the public members are prohibited from practicing professional counseling, marriage and family therapy, or social work and from being involved in the delivery of those services.

Within 90 days after the bill's effective date, the bill requires the Governor to appoint three additional Board members: two art therapists and one public member. The art therapist appointees are not required, at the time of appointment, to be licensed as art therapists. However, the appointees may remain as Board members only if the appointees become licensed as art therapists within one year after the bill's effective date. To incorporate the initial art therapist and public members into the Board's existing scheme for staggered expiration of the members' terms, one initial art therapist member is to be appointed for a one-year term, and the second art therapist and the public member are to be appointed for three-year terms.

Like the current Board members, the three new members appointed under the bill will (1) serve for three-year terms after their initial appointments, (2) receive a fixed amount for each day employed in the discharge of their official duties as Board or committee members (see "**Professional standards committees**" below) and be reimbursed for their necessary and actual expenses incurred in the performance of their official duties, and (3) otherwise be subject to the existing law regarding the administration of the Board.

Under current law, no more than eight members of the Board may be members of the same political party or sex. The bill increases the number of members to which this restriction applies from eight to ten.

The bill also adds art therapy, psychology, and psychiatry to the list of practices the public members are prohibited from having engaged in or from engaging in during their tenure on the Board.

Professional standards committees

(R.C. 4757.04)

Current law establishes professional standards committees within the Board for purposes of its regulation of counselors, social workers, and marriage and family therapists. Each committee consists of the Board's members in each respective profession (e.g. the Counselor Professional Standards Committee consists of the four counselor Board members). The committees must also include one public Board member who does not serve on another committee. Each committee has the authority to act on behalf of the Board on all matters concerning each respective profession.

The bill establishes the Art Therapist Professional Standards Committee consisting of the Board's two art therapy members and gives the Committee the authority to act on behalf of the Board on all matters concerning art therapy. The Committee must also include a public Board member who does not serve on another committee. Like the existing committees, the bill requires the Art Therapist Professional Standards Committee to meet as necessary to fulfill its duties and is otherwise subject to the existing law regarding the administration of the committees. Two members of the Committee constitute a quorum to conduct business.

Rulemaking

(R.C. 4757.10 and 4757.49)

The bill includes art therapy within the Board's existing authority to adopt any rules necessary to carry out its duties. The bill also grants express authority to the Board to adopt rules necessary to implement the bill's provisions regarding art therapy. In both cases, the rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Application process for licensure

(R.C. 4757.16 and 4757.45(A))

The bill requires an individual seeking a license to practice as an art therapist to submit a written application to the Art Therapist Professional Standards Committee on a form prescribed by the Board. An applicant who falsifies a statement on the application is guilty of falsification, a first-degree misdemeanor. When submitting the application, the individual must pay a fee established by the Board in rule.

Eligibility requirements for licensure

(R.C. 4757.101, 4757.15, and 4757.46)

In addition to submitting an application and fee to the Board, the bill requires an individual to meet all of the following requirements to be eligible to receive a license to practice as an art therapist:

- (1) Be of good moral character;
- (2) Be at least 21 years old;
- (3) Hold current certification from the Art Therapy Credentials Board, Inc.,² and submit evidence of that certification with the application for licensure;
- (4) Obtain three letters of recommendation from professional sources, one of which must be from an art therapist, and submit the letters in accordance with rules adopted by the Board;
- (5) Request and pay for a criminal records check conducted by the Bureau of Criminal Identification and Investigation and report the results to the Board.

The bill also specifies that the Board's existing requirement to prepare or procure and grade examinations to determine competence for licensure continues to apply only to counseling, social work, and marriage and family therapist applicants.

License issuance and renewal

(R.C. 4757.101 and 4757.45(B) and (C))

Under the bill, the Art Therapist Professional Standards Committee must review all applications and, if an applicant submits a properly completed application and meets the eligibility requirements, including successfully passing the criminal records check, the Committee must issue to the applicant a license to practice as an art therapist. A license is to be valid for a period determined by the Board in rule and may be renewed in accordance with procedures also to be specified in the rules.

² The Art Therapy Credentials Board, Inc., confers and administers professional credentials to art therapy practitioners (www.atcb.org/what_is_art_therapy/, web site visited November 24, 2009).

Scope of practice of art therapists

(R.C. 4757.48)

Upon licensure, an art therapist is permitted by the bill to practice art therapy through the integrated use of psychotherapeutic principles and visual art media in the assessment, evaluation, treatment, amelioration, and remediation of emotional, cognitive, neurological, psychosocial, physical, and developmental discords. A licensed art therapist may provide training and supervision to art therapy students or prospective applicants for licensure.

Professional disclosure statement to clients

(R.C. 4757.12)

Like the other professionals governed by the Board, the bill requires a licensed art therapist to do either of the following in order to receive remuneration for services:

(1) Prior to the performance of services, furnish a copy of a professional disclosure statement containing certain information to the client;³

(2) Display the professional disclosure statement in a conspicuous location at the place where the services are performed and provide a copy of the statement to the client upon request.

Temporary licensure

(R.C. 4757.47)

The bill permits the Art Therapist Professional Standards Committee to issue a temporary license to an applicant who meets any of the following requirements:

(1) Provides evidence to the Committee that (a) the applicant is currently board-certified by the Art Therapy Credentials Board, Inc. (ATCB), and (b) further action by the Committee regarding licensure is pending;⁴

³ The professional disclosure statement must contain the following information: (1) the name, title, business address, and business phone number of the person performing the services, (2) the formal professional education of the person performing the services, including the institutions the person attended, the dates attended, and the degrees received from them, (3) the areas of competence in the field in which the person is licensed or registered and the services the person provides, (4) in the case of a person who is engaged in a private individual practice, partnership, or group practice, the person's fee schedule, listed by type of service or hourly rate, and (5) a statement that the Board requires this information, with the Board's name, address, and phone number (R.C. 4757.12(B)).

(2) Provides evidence to the Committee that the applicant is a registered art therapist with the ATCB;

(3) Provides evidence to the Committee that the applicant holds a degree from an art therapy program approved by the American Art Therapy Association or the equivalent of such a degree as determined by the Committee.

An applicant holding a temporary art therapist license must practice under the supervision of a licensed art therapist and in accordance with ATCB guidelines. A temporary license is valid for two years and may be renewed up to three times.

Persons practicing art therapy prior to the bill's effective date

(Section 4)

The bill permits the Board to issue an art therapist license to an applicant up to one year after the bill's effective date if the applicant has previously practiced art therapy. The applicant must meet the following requirements on the bill's effective date:

(1) Be a licensed professional clinical counselor, licensed independent marriage and family therapist, licensed independent social worker, licensed psychologist, or licensed physician who is a board-certified⁵ psychiatrist;

(2) Hold a degree in art therapy or the equivalent of such a degree as determined by the Board;

(3) Provide evidence to the Board's Art Therapist Professional Standards Committee that the applicant has practiced art therapy for at least five years within the ten years immediately preceding the bill's effective date.

In addition to the requirements specified above, the applicant must be of good moral character, submit a properly completed application, and pay the fee for art therapist licensure established under the bill.

⁴ The mission of the ATCB is "to protect the public by promoting the competent and ethical practice of art therapy." The ATCB accomplishes this "by offering credentialing programs that result in registration (ATR), board certification (ATR-BC), and the certified supervisor (ATCS)." (<http://www.atcb.org/>, web site visited November 30, 2009.)

⁵ "Board-certified" is not defined by the bill but refers to the credentials attained by a physician through the medical specialty certifying boards recognized by the American Board of Medical Specialties or the American Osteopathic Association.

Prohibitions on licensee

(R.C. 4757.02 and 4757.43)

Beginning one year after the bill's effective date, and unless the person holds a current license to practice as an art therapist, the bill prohibits a person from doing all of the following:

- (1) Engaging in, or claiming to the public to be engaging in, art therapy for a fee, salary, or other consideration;
- (2) Using the title "art therapist" or any other title or description that incorporates the phrase "art therapist";
- (3) Holding the person out to be an art therapist;
- (4) Using any initials commonly used to identify art therapists.⁶

The bill specifies that the prohibition against engaging in, or claiming to the public to be engaging in, art therapy (see (1), above) does not apply to licensed professional clinical counselors, independent social workers, independent marriage and family therapists, psychologists, or psychiatrists.⁷

Like the other professionals governed by the Board, the bill also provides that neither it nor the rules adopted under it authorize an art therapist to admit a patient to a hospital or require a hospital to allow an art therapist to admit a patient.

⁶ Generally, the delayed effective date of these prohibitions allows the Board to have one year to implement the bill's provisions.

⁷ Current law further exempts all of the following professionals from the law regulating counselors, social workers, and marriage and family therapists: (1) a person certified by the State Board of Education for training individuals with mental retardation or other developmental disabilities, (2) psychologists or school psychologists, (3) members of other professions licensed, certified, or registered in Ohio while performing services within the recognized scope, standards, and ethics of their respective professions, (4) rabbis, priests, Christian Science practitioners, clergy, or members of religious orders and other individuals participating with them in pastoral counseling under certain circumstances, (5) any person engaging in social work or professional counseling as a civil service employee, (6) a student in an accredited educational institution carrying out activities as part of the prescribed course of study and if the student does not hold herself or himself out as being licensed by the Counselor, Social Worker, and Marriage and Family Therapist Board, (7) chemical dependency counselors or alcohol and other drug prevention specialists, (8) any person employed by the American Red Cross while engaging in certain activities, (9) members of labor organizations who hold union counselor certificates, (10) any person employed in a hospital or in a nursing home while providing social services other than counseling and the use of psychosocial interventions and social psychotherapy. The bill would likewise exempt all of these professionals from the law regulating art therapists. (R.C. 4751.41 (not in the bill).)

Continuing education

(R.C. 4757.33 and 4757.34)

Generally, in order to renew a license existing law requires all professionals governed by the Board to complete 30 hours of continuing education during each licensure period. The bill extends this requirement to art therapists. The bill also specifies that art therapists are also not required to take the existing continuing education course approved by the Board to recognize domestic violence and its relationship to child abuse.

License renewal procedures

(R.C. 4757.32)

All licenses issued by the Board expire every two years and all licensees are subject to a standardized license renewal procedure used by certain licensing agencies, including the Board. In addition to completing the standardized renewal procedure, a licensee must submit a fee and evidence of completing the required continuing education. Under the bill, art therapists are subject to these renewal requirements,⁸ as well as maintaining the appropriate certification or registration from the ATCB. A license that is not renewed lapses on its expiration date but may be restored if the individual, not later than two years after the license expired, applies for restoration of the license.

Disciplinary actions

(R.C. 4757.36, 4757.361, 4757.38, and 4757.40)

Currently, the professional standards committees of the Board may refuse to issue or renew, or suspend, revoke, or otherwise restrict, a license or certificate of registration, or may reprimand a licensee or registrant for certain reasons including violating the law governing the license or registration, accepting a commission or rebate for referring persons to licensed professionals, conviction of a felony, conviction of a misdemeanor committed during the course of practice, impairment due to alcohol or drug abuse or any other physical or mental condition, or practicing outside the scope of practice. The bill gives the Art Therapist Professional Standards Committee the authority to take such action against an art therapist for any of the reasons established under existing law. The bill also extends to art therapy services the Board's existing

⁸ An amendment is necessary to coordinate this provision with the bill's provisions in R.C. 4757.45(C), which specify that art therapy licenses are to be valid for a period specified in the Board's rules.

authority to investigate any violation of its laws or rules and alleged irregularities in the delivery of services.

In certain cases involving art therapists the bill permits the Board to use its current authority to impose a summary suspension without hearing. This authority applies when there is clear and convincing evidence that continued practice by the art therapist presents a danger of immediate and serious harm to the public, as determined on consideration of the evidence by the Art Therapist Professional Standards Committee.

Under the bill, an art therapist license may be automatically suspended if the art therapist is convicted of, pleads guilty to, or is judicially found to have committed aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. An art therapist may request an adjudication regarding the suspension in accordance with current Board procedures.

In addition to the sanctions described above, and any other remedies under current law, the bill permits the Board to apply to an appropriate court for an order enjoining the activities of any person violating the bill's provisions regarding art therapy. On showing that a violation has occurred, the court must grant the order.

Additional powers and duties of the Board in regulating art therapy

In addition to the provisions discussed above, the bill applies other general provisions to art therapists that currently apply to the professionals currently regulated by the Board. These provisions pertain to the following:

--The performance of routine support for the Board by the Department of Administrative Services (R.C. 125.22);

--The mandatory reporting of child abuse by an art therapist (R.C. 2151.421);

--Testimonial privilege of art therapists concerning confidential client-therapist communication (R.C. 2317.02);

--The establishment of a code of ethical practice by the Board for art therapists (R.C. 4757.11);

--Reciprocity for art therapists practicing in another state (R.C. 4757.18);

--The Board's compliance with the law governing defaults under a child support order (R.C. 4757.19);

--The Board establishing, charging, and adjusting fees for initial licensure and renewal of an art therapist license (R.C. 4757.31);

--Exemption from liability for damages in a civil action for disclosing confidential information regarding a matter wherein a patient has made an explicit threat to inflict serious physical harm or death (R.C. 4757.44).

Conforming changes

The bill makes conforming changes in the following sections of existing law for the purpose of updating the name of the Counselor, Social Worker, and Marriage and Family Therapist Board to reflect the inclusion of art therapists: R.C. 4757.17, 4757.22, 4757.23, 4757.27, 4757.28, 4757.29, 4757.30, and 4757.301.

HISTORY

ACTION	DATE
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