

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

663B0780

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED NO. **HB 1250** - 2/12/2019

Introduced by: Representative Rounds and Senator Sohlt

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding marriage and family
2 therapists.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Board," the Board of Examiners for Counselors and Marriage and Family
7 Therapists;

8 (2) "Licensee," a person who holds a license to practice marriage and family therapy; and

9 (3) "Practice of marriage and family therapy," the rendering of professional marriage and
10 family therapy services to individuals, family groups, and marital pairs, one-on-one
11 or in groups, whether the services are offered directly to the general public or through
12 organizations, either public or private, for compensation, including the diagnosis and
13 treatment of nervous and mental disorders through the application of systemic theory
14 and technique, whether cognitive, affective, or behavioral, within the context of
15 marriage and family systems.



1 Section 2. That the code be amended by adding a NEW SECTION to read:

2 Each license issued by the board under this Act, shall be conspicuously displayed by the
3 licensee at the primary place of practice of the licensee. Each licensee shall post and keep
4 conspicuously displayed the annual renewal certificate issued by the board.

5 Section 3. That the code be amended by adding a NEW SECTION to read:

6 It is a Class 2 misdemeanor for any person to engage or attempt to engage in the practice of
7 marriage and family therapy, without a license, unless exempted under this Act.

8 Section 4. That the code be amended by adding a NEW SECTION to read:

9 Unless licensed in accordance with this Act, no person may represent himself or herself as
10 a marriage or family therapist by using the titles "marital therapist," "marriage counselor,"
11 "family therapist," "licensed marital therapist", "licensed marriage counselor," "licensed family
12 therapist," or "licensed marriage and family therapist," or any other similar title.

13 Section 5. That the code be amended by adding a NEW SECTION to read:

14 No advertising regarding the practice of marriage and family therapy may be fraudulent or
15 misleading. A violation of this section is a Class 1 misdemeanor.

16 Section 6. That the code be amended by adding a NEW SECTION to read:

17 No licensee may perform marriage and family therapy services that are outside the scope of
18 the licensee's relevant education, training, and experience.

19 Section 7. That the code be amended by adding a NEW SECTION to read:

20 Nothing in this Act may be construed to prevent any other qualified professional, including
21 a clinical social worker, psychiatric nurse, professional counselor, clinical and counseling
22 psychologist, physician, or member of the clergy, from performing or advertising the
23 performance of marriage and family therapy consistent with the accepted standards of that
24 person's profession, provided the person does not use a title or description stating or implying

1 that the person is licensed to practice marriage and family therapy under this Act.

2 Section 8. That the code be amended by adding a NEW SECTION to read:

3 The board may use its own staff or employ or contract with agents or investigators to assist
4 in the enforcement of this Act, or any rule promulgated by the board. If it appears to the board
5 that a person is violating any provision of this Act or rule promulgated under this Act, the board
6 may, in its own name or in the name of the state, in the circuit court in any county in which
7 jurisdiction is proper, bring an action to enjoin the act, practice, or violation and to enforce
8 compliance with this Act, or any rule promulgated under this Act, as an alternative to criminal
9 proceedings. The proceedings shall be prosecuted by the Office of the Attorney General or by
10 a person designated by the attorney general and retained by the board as provided in this Act.

11 Section 9. That the code be amended by adding a NEW SECTION to read:

12 The board and its members and officers shall assist any person charged with the enforcement
13 of this Act. The board, its members, agents, and officers shall furnish evidence to assist in the
14 prosecution of any violation or enforcement of this Act, and the board may make a reasonable
15 expenditure for that purpose. The board may determine it is best for the enforcement of this Act,
16 or in the conduct of its duties to employ an attorney designated by the attorney general. The
17 board shall fix and determine the compensation and period of service for the attorney to be paid
18 out of the board's funds.

19 Section 10. That the code be amended by adding a NEW SECTION to read:

20 An applicant for a license as a marriage and family therapist shall file an application, in the
21 manner prescribed by the board, together with the application fee prescribed by the board. The
22 board shall issue a license as a marriage and family therapist to an applicant who pays the
23 license fee and demonstrates that:

24 (1) The applicant has received a master's or a doctoral degree, which consists of at least

1 sixty credit hours in marriage and family therapy, from an accredited marriage and
2 family therapy program recognized by the board, or an equivalent course of study
3 approved by the board;

4 (2) The applicant has passed a standardized national examination approved by the board;

5 (3) Within the four year period preceding the application, the applicant completed one
6 thousand seven hundred hours of supervised experience in marriage and family
7 therapy under a plan of supervision approved by the board subsequent to the
8 applicant receiving an acceptable degree;

9 (4) The applicant has no pending disciplinary proceeding or unresolved disciplinary
10 complaint;

11 (5) The applicant is of good moral character; and

12 (6) The applicant is not in violation of this Act or any rules promulgated pursuant to this
13 Act.

14 The board may refuse to issue a license to an applicant who fails to meet the requirements
15 of this section. The board may grant a license, the provisions of subdivision (5) notwithstanding,
16 if the applicant has been convicted of, or pled guilty to a felony, to any crime involving or
17 relating to the practice of counseling, or to any crime involving dishonesty or moral turpitude,
18 if and the board determines that the applicant does not constitute a risk to public safety. An
19 applicant may appeal the denial of a license in accordance with chapter 1-26.

20 Section 11. That the code be amended by adding a NEW SECTION to read:

21 Notwithstanding any other provisions, the board may accept a master's or a doctoral degree,
22 which contains at least forty-eight credit hours in marriage and family therapy, from an
23 accredited marriage and family therapy program recognized by the board, if the applicant
24 received the degree before July 1, 2026.

1 Section 12. That the code be amended by adding a NEW SECTION to read:

2 If the board suspects that the physical or mental health of an applicant may jeopardize or
3 endanger anyone who seeks assistance from the applicant, the board may require that the
4 applicant be examined by a competent examiner selected by the board. The board shall pay all
5 costs of the examination.

6 If the medical examiner confirms that the applicant's physical or mental health may
7 jeopardize or endanger anyone who seeks services from the applicant, the board may deny the
8 license until the applicant furnishes proof that the applicant's physical and mental health is
9 sufficient to practice marriage and family therapy.

10 Section 13. That the code be amended by adding a NEW SECTION to read:

11 Notwithstanding any other provisions, the board may issue a license as a marriage and
12 family therapist to an applicant who is licensed to practice marriage and family therapy in
13 another state or territory of the United States, if the applicant demonstrates that:

- 14 (1) The applicant is currently licensed as a marriage and family therapist and has been
15 under the jurisdiction of the licensing authority in the other jurisdiction for at least
16 three years prior to the time of submitting an application to the board;
- 17 (2) The applicant is in good standing with the licensing authority in the other
18 jurisdiction;
- 19 (3) The applicant has been in an active practice during the three year period prior to the
20 time of submitting an application to the board;
- 21 (4) The applicant passed a standard national examination approved by the board; and
- 22 (5) The applicant has no record of unprofessional conduct or any pending disciplinary
23 complaints in the other jurisdiction.

24 For purposes of this section, the term, active practice, means at least one thousand five

1 hundred hours of clinical experience.

2 Section 14. That the code be amended by adding a NEW SECTION to read:

3 If a marriage and family therapist licensed in another state or territory of the United States
4 has not passed the national examination required by the board for licensure by endorsement, the
5 board may provide the applicant with a temporary license to practice for up to ninety days,
6 provided the applicant demonstrates that:

- 7 (1) The applicant is currently licensed as a marriage and family therapist and has been
8 under the jurisdiction of the licensing authority in the other jurisdiction for at least
9 three years prior to the time of submitting an application to the board;
- 10 (2) The applicant is in good standing with the licensing authority in the other
11 jurisdiction;
- 12 (3) The applicant has been in an active practice during the three year period prior to the
13 time of submitting an application to the board; and
- 14 (4) The applicant has no record of unprofessional conduct or any pending disciplinary
15 complaints in the other jurisdiction.

16 For purposes of this section, the term, active practice, means at least one thousand five hundred
17 hours of clinical experience.

18 An applicant for a temporary license shall submit an application on a form approved by the
19 board, along with the application fee and a temporary license fee prescribed by the board. The
20 board shall issue a temporary license as a marriage and family therapist to an applicant who
21 meets the requirements of this section and pays the required fees. A temporary license expires
22 upon the applicant's passage of the required national examination or at the conclusion of the
23 term for which the license was issued, whichever occurs first. A temporary license may only be
24 renewed once.

1 Section 15. That the code be amended by adding a NEW SECTION to read:

2 Any person practicing under a temporary license is subject to supervision and discipline by
3 the board, in the same manner as any other person licensed under this Act. A person practicing
4 under a temporary license submits to the jurisdiction of the board.

5 Section 16. That the code be amended by adding a NEW SECTION to read:

6 A licensee shall furnish the board with updated information within thirty days, upon a
7 change in the licensee's name, place of employment, or place of business.

8 Section 17. That the code be amended by adding a NEW SECTION to read:

9 Any license issued under this Act, other than a temporary license, is valid until November
10 thirtieth of the next odd numbered year following the date of issuance. A license expires
11 automatically, unless it is renewed.

12 Section 18. That the code be amended by adding a NEW SECTION to read:

13 Any licensee holding a license under this Act, may renew that license by submitting an
14 application for renewal prior to the date of expiration, paying the required renewal fee, and
15 providing proof of compliance with the continuing education requirements prescribed by the
16 board. If a licensee fails to renew a license on or before the thirtieth day of November in an odd
17 numbered year, the license is automatically suspended.

18 The board shall notify the licensee that a renewal application has not been received by the
19 board and that the licensee may not practice counseling. Any person who submits a license
20 renewal application and provides proof of compliance with the continuing education
21 requirements set by the board within thirty days after the expiration date may be granted a
22 license renewal.

23 Section 19. That the code be amended by adding a NEW SECTION to read:

24 Except as otherwise provided in this section, any person licensed under this Act shall

1 complete at least forty hours of continuing education every two years in a manner and with an
2 instructor approved by the board.

3 Any person whose initial license is granted for a period of less than two years shall, during
4 that initial licensure period, complete a prorated number of hours of continuing education, in
5 a manner and with an instructor approved by the board.

6 The required continuing education hours may be obtained through electronic means. The
7 board may extend or waive the continuing education requirements for a licensee upon a showing
8 of good cause, prior to expiration of the license.

9 Section 20. That the code be amended by adding a NEW SECTION to read:

10 The board may place a license on inactive status at the request of a licensee and the payment
11 of a fee prescribed by the board. An inactive license expires four years after the date of issuance.
12 An inactive license may be reactivated by payment of the license renewal fee and proof of
13 having completed at least forty hours of continuing education during the two-year period
14 immediately preceding the reactivation request. If a license is not reactivated prior to its
15 expiration, all provisions applicable to an applicant for licensure apply in order for the license
16 to be restored to active status.

17 Any license that is on an inactive status, as of July 1, 2019, expires on November 30, 2021,
18 unless the licensee meets the requirements for restoration prior to that time.

19 Section 21. That the code be amended by adding a NEW SECTION to read:

20 An expired license may be reactivated within the four year period following its expiration
21 if the applicant:

- 22 (1) Pays all applicable renewal fees required for the period of expiration;
- 23 (2) Provides proof of all continuing education required for the period of expiration; and
- 24 (3) Provides proof of passing a national examination approved by the board after the date

1 the license expired.

2 Section 22. That the code be amended by adding a NEW SECTION to read:

3 This Act does not apply to the activities and services of a person practicing marriage and
4 family therapy as part of the person's duties if the person is:

5 (1) An employee of an accredited educational institution, or a federal, state, county, or
6 local governmental institution or agency;

7 (2) An employee of a not-for-profit entity that meets community needs; or

8 (3) A marriage and family therapy intern or person preparing for the practice of marriage
9 and family therapy under qualified supervision in a training institution or facility or
10 supervisory arrangement recognized and approved by the board.

11 Section 23. That the code be amended by adding a NEW SECTION to read:

12 No cause of action may arise against any licensed marriage and family therapist for failing
13 to warn of and protect others from a client's threatened violent behavior or for failing to predict,
14 warn of and protect others from a client's violent behavior except if the client has communicated
15 to the marriage and family therapist a serious threat of physical violence against an identifiable
16 victim. The duty to warn or to take reasonable precautions to provide protection from violent
17 behavior arises only under the limited circumstances specified in this section.

18 Section 24. That the code be amended by adding a NEW SECTION to read:

19 No licensee, or an employee of a licensee may disclose information acquired from any
20 person consulting the licensee in a professional capacity that was necessary to render services
21 in a professional capacity, except:

22 (1) If mandated by law or authorized to under the Health Insurance Portability and
23 Accountability Act of 1996, as amended through January 1, 2019;

24 (2) If the information is necessary to prevent or mitigate a serious and imminent threat

1 to the health or safety of a person or the public, provided the disclosure is made to
2 a person reasonably able to prevent or mitigate the threat, including the target of the
3 threat;

4 (3) If the licensed marriage and family therapist is a party defendant to a civil, criminal,
5 or disciplinary action arising from such professional capacity, in which case any
6 waiver of the privilege accorded by this section is limited to that action;

7 (4) If the client is a defendant in a criminal proceeding and the use of the privilege would
8 violate the defendant's right to a compulsory process or right to present testimony and
9 evidence;

10 (5) With the written consent of the person or, in the case of the person's death or
11 disability, with the written consent of the person's personal representative, other
12 person authorized to sue, or the beneficiary of an insurance policy on the person's
13 life, health, or physical condition, provided that if more than one person in a family
14 is receiving therapy from the marriage and family therapist, each family member
15 shall agree to the waiver for the marriage and family therapist to disclose information
16 received from any family member;

17 (6) If the person waives the privilege by bringing charges against the licensee; or

18 (7) If there is a duty to warn under other limited circumstances set forth in this Act.

19 Section 25. That the code be amended by adding a NEW SECTION to read:

20 If both parties to a marriage have obtained marriage and family therapy by a licensed
21 marriage and family therapist, the therapist may not testify in an alimony or divorce action
22 concerning information acquired in the course of the therapeutic relationship. This section does
23 not apply to custody actions.

24 Section 26. That the code be amended by adding a NEW SECTION to read:

1 The board shall receive complaints regarding the enforcement of this Act. A record of each
2 complaint shall be maintained by the board. An investigation shall be conducted by a member,
3 agent, or an appointee of the board to determine whether an alleged violation has been
4 committed. The investigator, if a member of the board, may dismiss a complaint if it appears
5 to the member, either with or without consulting of the board, that no violation has been
6 committed. If the investigator is an agent or an appointee of the board, dismissal of the
7 complaint may only be made by the board president. Any agreed disposition made between the
8 investigator and the licensee or permit holder shall be made known to and approved by the
9 board.

10 If the complaint is not dismissed and an agreed disposition is not reached, the investigator
11 may request that the board set a date for a hearing on the complaint. All disciplinary proceedings
12 held under the authority of this Act, shall be conducted in accordance with chapter 1-26. Any
13 decision of the board entered in a contested proceeding may be appealed to the circuit court
14 within thirty days. A license or permit shall remain in effect during the pendency of an appeal
15 unless suspended under section 29 of this Act.

16 Section 27. That the code be amended by adding a NEW SECTION to read:

17 Upon receiving a complaint regarding the health or safety of patients or the public, any
18 authorized board member, officer, agent, or employee may enter and inspect, during business
19 hours, any place where marriage and family therapy is practiced for the purpose of enforcing
20 this Act. Refusal to allow an inspection may constitute unprofessional or dishonorable conduct.

21 Section 28. That the code be amended by adding a NEW SECTION to read:

22 Testimony or documentary evidence of any kind obtained during the investigation of a
23 complaint is not subject to discovery or disclosure under chapter 15-6 or under any other
24 provision of law and is not admissible as evidence in any legal proceeding, until such time as

1 the complaint becomes a contested case, as defined in § 1-26-1. No person who has participated
2 in the investigation of a complaint may testify as an expert witness or be compelled to testify
3 for any party in any civil action, if the subject matter of the complaint investigated is a basis for
4 the civil action.

5 Section 29. That the code be amended by adding a NEW SECTION to read:

6 The license of a marriage and family therapist may be suspended, revoked, or canceled if:

- 7 (1) The licensee is found to be guilty of fraud in the practice of marriage and family
8 therapy or of fraud or deceit in the licensee's admission to the practice of marriage
9 and family therapy;
- 10 (2) The licensee has been convicted during the past five years of a felony, or of any crime
11 which, if committed within this state would constitute a felony;
- 12 (3) The licensee is engaged in the practice of marriage and family therapy under a false
13 or assumed name and has not registered that name under chapter 37-11, or is
14 impersonating another practitioner having a like or different name;
- 15 (4) The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or
16 stimulants, to an extent that incapacitates the licensee from the performance of
17 professional duties;
- 18 (5) The physical or mental condition of the licensee is determined by a competent
19 medical examiner to be at risk of jeopardizing or endangering those who seek
20 services from the licensee, provided that a majority of the board may demand an
21 examination of the licensee at the board's expense, and further provided that if the
22 licensee fails to submit to the examination, this constitutes grounds for the immediate
23 suspension of the license;
- 24 (6) Obtaining or attempting to obtain a license, certificate, or renewal through means of

1 bribery or fraudulent representation;

2 (7) Knowingly making a false statement in connection with any application under this
3 Act;

4 (8) Knowingly making a false statement on any form required by the board in accordance
5 with this Act or any rules promulgated under this Act;

6 (9) The licensee has violated this Act or rules promulgated under this Act; or

7 (10) The licensee has been found to be in violation of ethical standards adopted by the
8 board.

9 Section 30. That the code be amended by adding a NEW SECTION to read:

10 Proceedings for the suspension, revocation, or cancellation of a license may be initiated
11 when the board has information that any licensee may have committed any misconduct as
12 provided in section 29 of this Act or is guilty of gross incompetence or unprofessional or
13 dishonorable conduct.

14 Section 31. That the code be amended by adding a NEW SECTION to read:

15 If the board finds that a person, entity, licensee, or permit holder has violated this Act, the
16 board may:

17 (1) Revoke a license or permit for an indefinite period;

18 (2) Suspend a license or permit for a specific or an indefinite period;

19 (3) Place a limit or condition on a license or permit;

20 (4) Issue a censure or a letter of reprimand;

21 (5) Place a licensee or permit holder on probationary status and require that the licensee
22 or permit holder report regularly to the board on the matters that are the basis for the
23 probation, limit the licensee's or permit holder's practice to areas prescribed by the
24 board, and require professional education until a satisfactory degree of skill has been

1 attained in those areas that are the basis of the probation, provided the board may
2 withdraw the probation if the board finds the deficiencies that required disciplinary
3 action have been remedied;

4 (6) Impose any other sanctions that the board determines is appropriate;

5 (7) Impose a fee to reimburse the board in an amount equal to some or all of the costs
6 incurred for the investigation and proceedings resulting in disciplinary action under
7 this Act, or for the issuance of a cease and desist order; or

8 (8) Deny an application for a license or permit.

9 Section 32. That the code be amended by adding a NEW SECTION to read:

10 The board may suspend a license or permit in advance of a final adjudication or during the
11 appeals process, if the board finds that allowing a licensee or permit holder to continue
12 practicing would represent a clear and immediate or imminent danger to public health and
13 safety. A licensee or permit holder whose license or permit is suspended under this section is
14 entitled to a hearing before the board within twenty days after the effective date of the
15 suspension. The licensee or permit holder may subsequently appeal the suspension to the circuit
16 court in accordance with chapter 1-26.

17 Section 33. That the code be amended by adding a NEW SECTION to read:

18 All proceedings regarding the suspension, revocation, or cancellation of a license shall
19 conform to the procedure set forth in chapter 1-26.

20 Section 34. That the code be amended by adding a NEW SECTION to read:

21 A party may appeal any act, ruling, or decision regarding a license, in accordance with
22 chapter 1-26.

23 Section 35. That the code be amended by adding a NEW SECTION to read:

24 At the board's discretion, the board may reinstate or issue a new license or permit. The board

1 may require the applicant to pay all costs of the proceedings resulting in the suspension,
2 revocation, reinstatement, or issuance of a license or permit.

3 Section 36. That the code be amended by adding a NEW SECTION to read:

4 The board shall investigate and report any alleged violation of this Act. The board may
5 employ special counsel subject to the supervision, control, and direction of the attorney general
6 to assist in the prosecution of alleged criminal violations of this Act, and may expend the
7 necessary funds for this purpose.

8 Section 37. That the code be amended by adding a NEW SECTION to read:

9 Any person violating the provisions of this Act, may be enjoined from further violations at
10 the suit of the state's attorney of the county where the violations occurred. In the alternative,
11 suit may be brought by any resident of this state.

12 Section 38. That the code be amended by adding a NEW SECTION to read:

13 Any person who practices marriage and family therapy through electronic means, and
14 provides marriage and therapy services to a patient located in this state is engaged in the practice
15 of marriage and family therapy in this state regardless of the provider's physical location. Any
16 service provided by a licensee or supervision provided through electronic means shall comply
17 with this Act and rules promulgated under this Act.

18 Section 39. That the code be amended by adding a NEW SECTION to read:

19 The board shall promulgate rules, pursuant to chapter 1-26, to establish:

- 20 (1) An application fee, not exceeding two hundred dollars;
- 21 (2) A biennial renewal fee, not exceeding five hundred dollars;
- 22 (3) A duplicate license fee, not exceeding fifteen dollars;
- 23 (4) An inactive license fee, not exceeding one hundred dollars;
- 24 (5) A temporary license fee, not exceeding two hundred dollars; and

1 (6) A license verification fee, not exceeding twenty-five dollars.

2 Section 40. That the code be amended by adding a NEW SECTION to read:

3 The board may promulgate rules, pursuant to chapter 1-26, to:

4 (1) Set standards for professional practice; and

5 (2) Establish procedures for application, licensure, eligibility, renewals, continuing
6 education, supervision, and the examination of an applicant for and a holder of
7 licensure as a licensed marriage and family therapist.

8 Section 41. That §§ 36-33-1, 36-33-2, 36-33-4 to 36-33-9, inclusive, and 36-33-11 to 36-33-33,
9 inclusive be repealed.