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Legislative Document

No. 1296

H.P. 939

House of Representatives, March 19, 2019

An Act To Clarify the Scope of Practice of Certain Licensed Professionals Regarding Conversion Therapy

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative AUSTIN of Gray.
Cosponsored by Senator DOW of Lincoln and
Representatives: ARATA of New Gloucester, BRADSTREET of Vassalboro, DeVEAU of
Caribou, HANLEY of Pittston, HUTCHINS of Penobscot, MORRIS of Turner, STEWART of
Presque Isle, Senator: GUERIN of Penobscot.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 233** is enacted to read:

3 **CHAPTER 233**

4 **PROVIDING CONVERSION THERAPY TO MINORS**

5 **§1500-O. Prohibition; unlawful trade practice**

6 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Aversive practice or treatment" means any practice or treatment that is intended
9 to induce changes in behavior through unpleasant stimuli or punishment, including
10 but not limited to the use of seclusion and isolation, ice baths or physical restraint.
11 "Aversive practice or treatment" also includes the use of pornographic and other
12 obscene materials that are produced for purposes other than providing education on
13 human reproduction and sexuality as well as the use of electroconvulsive therapy for
14 purposes that are not recognized as ethical and appropriate by the American
15 Psychological Association or the American Psychiatric Association or successor
16 organizations.

17 B. "Conversion therapy" means any aversive practice or treatment that seeks to
18 change an individual's sexual orientation or gender identity, including any aversive
19 practice or treatment that seeks to change gender expression or to eliminate or reduce
20 sexual or romantic attractions or feelings toward individuals of the same gender.
21 "Conversion therapy" does not include the following:

22 (1) Talk therapy;

23 (2) Counseling or treatment intended to assist an individual undergoing a gender
24 transition;

25 (3) Counseling intended to provide acceptance, support and understanding to the
26 individual; or

27 (4) Counseling intended to facilitate the individual's coping, social support or
28 identity exploration and development, including any therapeutic intervention that
29 is neutral with regard to sexual orientation and that seeks to prevent or address
30 unlawful conduct or unsafe sexual practices, as long as the counseling does not
31 seek to change the individual's sexual orientation or gender identity.

32 C. "Sexual orientation or gender identity" has the same meaning as "sexual
33 orientation" in Title 5, section 4553, subsection 9-C.

34 **2. Prohibitions.** A person may not advertise, offer or administer conversion therapy
35 to individuals under 18 years of age.

36 **3. Unfair trade practice.** A violation of this chapter is a violation of the Maine
37 Unfair Trade Practices Act.

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Sec. 2. 20-A MRSA §13020, sub-§2-A is enacted to read:

2-A. Grounds for revocation or suspension of school psychologist or guidance counselor certificate. Evidence that a person has administered conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a child is grounds for revocation or suspension of that person's certificate issued under this Title as a school psychologist or guidance counselor.

Sec. 3. 20-A MRSA §13020, sub-§3, as enacted by PL 1983, c. 845, §4, is amended to read:

3. Denial of certificate for prior immoral conduct. Evidence that an applicant for initial certification or renewal has injured the health or welfare of a child through physical or sexual abuse or exploitation is grounds for a denial of a certificate. Evidence that an applicant for initial certification or renewal as a school psychologist or guidance counselor has administered conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a child is grounds for a denial of a certificate. Notwithstanding Title 5, chapter 341, every person, who, within 5 years of the application for initial certification or renewal, has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child, may be presumed by the commissioner to lack good moral character for the purposes of this chapter. This presumption ~~shall be~~ is a rebuttable presumption. Notwithstanding Title 5, chapter 341, the commissioner ~~shall be~~ is entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

Sec. 4. 22 MRSA §3174-BBB is enacted to read:

§3174-BBB. Coverage for conversion therapy

The department may not provide MaineCare reimbursement for conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B administered to a minor.

Sec. 5. 24 MRSA §2502, sub-§6, as enacted by PL 1985, c. 804, §§5 and 22, is amended to read:

6. Action for professional negligence. "Action for professional negligence" means any action for damages for injury or death against any health care provider, its agents or employees, or health care practitioner, ~~his~~ the practitioner's agents or employees, whether based upon tort or breach of contract or otherwise, arising out of the provision or failure to provide health care services, except that "action for professional negligence" does not include an action brought pursuant to the Maine Unfair Trade Practices Act alleging a violation of Title 10, section 1500-O.

Sec. 6. 32 MRSA §2105-A, sub-§2, ¶I, as amended by PL 2015, c. 488, §11, is further amended to read:

- I. Engaging in false, misleading or deceptive advertising; ~~or~~

1 **Sec. 7. 32 MRSA §2105-A, sub-§2, ¶J**, as enacted by PL 2015, c. 488, §12, is
2 amended to read:

3 J. Failure to comply with the requirements of Title 22, section 7253-; or

4 **Sec. 8. 32 MRSA §2105-A, sub-§2, ¶K** is enacted to read:

5 K. A violation of section 2112.

6 **Sec. 9. 32 MRSA §2112** is enacted to read:

7 **§2112. Prohibition on providing conversion therapy to minors**

8 An individual licensed or certified under this chapter may not administer conversion
9 therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

10 **Sec. 10. 32 MRSA §2591-A, sub-§2, ¶N**, as amended by PL 2015, c. 488, §15,
11 is further amended to read:

12 N. Revocation, suspension or restriction of a license to practice medicine or other
13 disciplinary action; denial of an application for a license; or surrender of a license to
14 practice medicine following the institution of disciplinary action by another state or a
15 territory of the United States or a foreign country if the conduct resulting in the
16 disciplinary or other action involving the license would, if committed in this State,
17 constitute grounds for discipline under the laws or rules of this State; ~~or~~

18 **Sec. 11. 32 MRSA §2591-A, sub-§2, ¶O**, as enacted by PL 2015, c. 488, §16, is
19 amended to read:

20 O. Failure to comply with the requirements of Title 22, section 7253-; or

21 **Sec. 12. 32 MRSA §2591-A, sub-§2, ¶P** is enacted to read:

22 P. A violation of section 2600-D.

23 **Sec. 13. 32 MRSA §2600-D** is enacted to read:

24 **§2600-D. Prohibition on providing conversion therapy to minors**

25 An individual licensed under this chapter may not administer conversion therapy as
26 defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

27 **Sec. 14. 32 MRSA §3282-A, sub-§2, ¶R**, as amended by PL 2015, c. 488, §18,
28 is further amended to read:

29 R. Failure to timely respond to a complaint notification sent by the board; ~~or~~

30 **Sec. 15. 32 MRSA §3282-A, sub-§2, ¶S**, as enacted by PL 2015, c. 488, §19, is
31 amended to read:

32 S. Failure to comply with the requirements of Title 22, section 7253-; or

33 **Sec. 16. 32 MRSA §3282-A, sub-§2, ¶T** is enacted to read:

1 T. A violation of section 3300-G.

2 **Sec. 17. 32 MRSA §3300-G** is enacted to read:

3 **§3300-G. Prohibition on providing conversion therapy to minors**

4 An individual licensed, registered or certified under this chapter may not administer
5 conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a
6 minor.

7 **Sec. 18. 32 MRSA §3837-A, sub-§1, ¶¶E and F**, as enacted by PL 2007, c.
8 402, Pt. Q, §14, are amended to read:

9 E. Practice by a licensed psychological examiner at a level requiring a psychologist's
10 license or any representation by a psychological examiner that that psychological
11 examiner is a psychologist; or

12 F. Negligence in the performance of the licensee's duties; or

13 **Sec. 19. 32 MRSA §3837-A, sub-§1, ¶G** is enacted to read:

14 G. A violation of section 3837-B.

15 **Sec. 20. 32 MRSA §3837-B** is enacted to read:

16 **§3837-B. Prohibition on providing conversion therapy to minors**

17 An individual licensed under this chapter may not administer conversion therapy as
18 defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

19 **Sec. 21. 32 MRSA §6217-B, sub-§1**, as amended by PL 2017, c. 407, Pt. A,
20 §138, is further amended to read:

21 **1. Active use.** Active use of alcohol or any other drug that in the judgment of the
22 board is detrimental to the performance or competency of a licensee of the board; or

23 **Sec. 22. 32 MRSA §6217-B, sub-§2**, as enacted by PL 2007, c. 402, Pt. U, §12,
24 is amended to read:

25 **2. Mental incompetency.** A legal finding of mental incompetency; or

26 **Sec. 23. 32 MRSA §6217-B, sub-§3** is enacted to read:

27 **3. Prohibited conduct.** A violation of section 6223.

28 **Sec. 24. 32 MRSA §6223** is enacted to read:

29 **§6223. Prohibition on providing conversion therapy to minors**

30 An individual licensed or certified under this chapter may not administer conversion
31 therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

1 **Sec. 25. 32 MRSA §7006** is enacted to read:

2 **§7006. Prohibition on providing conversion therapy to minors**

3 An individual licensed under this chapter may not administer conversion therapy as
4 defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

5 **Sec. 26. 32 MRSA §7059-A, sub-§§1 and 2**, as enacted by PL 2007, c. 402, Pt.
6 V, §14, are amended to read:

7 **1. Addiction to the use of alcohol or other drugs.** Addiction, as confirmed by
8 medical findings, to the use of alcohol or other drugs, that has resulted in the licensed
9 clinical, licensed master or licensed social worker or certified social worker - independent
10 practice being unable to perform duties or perform those duties in a manner that would
11 not endanger the health or safety of the clients to be served; ~~or~~

12 **2. Mental incompetency.** A medical finding of mental incompetency; ~~or~~

13 **Sec. 27. 32 MRSA §7059-A, sub-§3** is enacted to read:

14 **3. Prohibited conduct.** A violation of section 7006.

15 **Sec. 28. 32 MRSA §13742-A, sub-§1, ¶D**, as amended by PL 2017, c. 434, §2,
16 is further amended to read:

17 D. Engaging in false, misleading or deceptive advertising; ~~or~~

18 **Sec. 29. 32 MRSA §13742-A, sub-§1, ¶E**, as enacted by PL 2017, c. 434, §3, is
19 amended to read:

20 E. Failing to comply with section 13800; ~~or~~

21 **Sec. 30. 32 MRSA §13742-A, sub-§1, ¶F** is enacted to read:

22 F. A violation of section 13800-B.

23 **Sec. 31. 32 MRSA §13800-B** is enacted to read:

24 **§13800-B. Prohibition on providing conversion therapy to minors**

25 An individual licensed under this chapter may not administer conversion therapy as
26 defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

27 **Sec. 32. 32 MRSA §13861-A, sub-§1, ¶¶B and C**, as enacted by PL 2007, c.
28 402, Pt. EE, §9, are amended to read:

29 B. A medical finding of mental incompetency; ~~and~~

30 C. Having had any professional or occupational license revoked for disciplinary
31 reasons or any application rejected for reasons relating to untrustworthiness, within 3
32 years of the date of application; ~~and~~

1 1. It defines "conversion therapy" as any aversive practice or treatment that seeks to
2 change an individual's sexual orientation or gender identity except for talk therapy;
3 counseling or treatment intended to assist an individual undergoing a gender transition;
4 counseling intended to provide acceptance, support and understanding to the individual;
5 and counseling intended to facilitate the individual's coping, social support or identity
6 exploration and development, including any therapeutic intervention that is neutral with
7 regard to sexual orientation and that seeks to prevent or address unlawful conduct or
8 unsafe sexual practices, as long as the counseling does not seek to change the individual's
9 sexual orientation or gender identity.

10 2. It defines "aversive practice or treatment" as any practice or treatment that is
11 intended to induce changes in behavior through unpleasant stimuli or punishment and
12 provides examples of aversive practices or treatments.

13 3. It provides that advertising, offering or administering conversion therapy to
14 individuals under 18 years of age in the State is an unfair trade practice. Court actions
15 involving conversion therapy brought against health care providers under the Maine
16 Unfair Trade Practices Act are not governed by the specialized procedures set forth in the
17 Maine Health Security Act for actions involving professional negligence.

18 4. It prohibits school psychologists and guidance counselors, nurses, doctors,
19 physician assistants, psychologists, psychological examiners, alcohol and drug counselors
20 and aides, social workers, pharmacists and pharmacy technicians, professional
21 counselors, marriage and family therapists, pastoral counselors, speech-language
22 pathologists and assistants and audiologists from administering conversion therapy to
23 individuals under 18 years of age. Administration of conversion therapy to an individual
24 under 18 years of age in violation of this prohibition is grounds for discipline of the
25 professional by the department or board that issued the professional's license, certification
26 or registration, including but not limited to suspension or revocation of the license,
27 certification or registration.

28 5. It prohibits MaineCare reimbursement for conversion therapy administered to an
29 individual who is under 18 years of age.