



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 557*

132nd General Assembly
(As Reported by H. Health)

Reps. Anielski, Schuring, Reineke, Brenner, Antonio, Barnes, Kelly, Lepore-Hagan, Patmon, Sweeney

BILL SUMMARY

- Prohibits, beginning one year after the bill's effective date, any person from recklessly engaging in the practice of art therapy or using the title "art therapist" or a similar title unless the person is licensed to practice art therapy under the bill.
- Establishes criminal penalties for violating that prohibition.
- Specifies activities that are included in the scope of practice of a licensee.
- Requires the Counselor, Social Worker, and Marriage and Family Therapist Board (CSW Board) to implement and administer the bill's provisions related to licensure to practice art therapy.
- Requires the Buckeye Art Therapist Association or its successor organization to provide the Board with expertise and assistance in carrying out the CSW Board's duties relating to licensure to practice art therapy.
- Establishes an application procedure and eligibility requirements for applicants seeking to be licensed.
- Establishes license renewal requirements and procedures.
- Allows the CSW Board to discipline applicants and licensees for specified reasons.

* This analysis was prepared before the report of the House Health Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Permits persons licensed to practice art therapy to provide services through certain business entities formed in combination with other health care professionals.
- Establishes procedures for the CSW Board to follow when taking disciplinary action against an applicant or licensee.
- Permits the Board to establish civil penalties applicable to licensees who violate the bill or any rule adopted under it.

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CONTENT AND OPERATION

Licensure of art therapists

Licensure requirement

The bill prohibits, beginning one year after the bill's effective date, any person from recklessly engaging in the practice of art therapy or using the title "art therapist" or a similar title unless the person is licensed under the bill.¹ Currently a person does not need to be licensed to practice art therapy in Ohio. Whoever violates these prohibitions is guilty of a fifth degree felony on the first offense and a fourth degree felony for each subsequent offense.²

¹ R.C. 4785.02(A) and Section 3.

² R.C. 4785.99.



The bill defines "practice of art therapy" as the rendering or offering to render art therapy in the prevention or treatment of cognitive, developmental, emotional, or behavioral disabilities or conditions. "Art therapy" is the integrated use of psychotherapeutic principles and methods with art media and the creative process to assist individuals, families, or groups in doing any of the following:

- Improving cognitive and sensory-motor functions;
- Increasing self-awareness and self-esteem;
- Coping with grief and traumatic experiences;
- Enhancing cognitive abilities;
- Resolving conflicts and distress;
- Enhancing social functioning;
- Identifying and assessing clients' needs to implement therapeutic intervention to meet developmental, behavioral, mental, and emotional needs.

"Art therapy" includes therapeutic intervention to facilitate alternative modes of receptive and expressive communication and evaluation and assessment to define and implement art-based treatment plans to address cognitive, behavioral, developmental, and emotional needs.³

Exceptions

The bill does not apply to the following persons:

- A student who engages in the supervised practice of art therapy as part of an art therapy program at an accredited educational institution, if the person does not represent the person's self as an art therapist;
- A person who holds a professional license in Ohio, or an employee who is supervised by a person who holds a professional license in Ohio, who engages in the practice of art therapy in a manner that is incidental to the practice of the person's or employee's profession, if the person does not represent the person's or employee's self as an art therapist;

³ R.C. 4785.01.

- A person who engages in the practice of art therapy as part of the postgraduate supervised clinical experience that is required under the bill to be eligible for a license to practice art therapy.⁴

Scope of practice of art therapy

The bill permits a licensee to treat affective, behavioral, and cognitive disorders or problems specified in the edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association designated by the Counselor, Social Worker, and Marriage and Family Therapist Board (CSW Board) in rules. The bill specifies that a license to practice art therapy does not authorize the licensee to do either of the following:

- Administer or prescribe drugs;
- Perform psychological testing intended to measure or diagnose serious mental illness.⁵

CSW Board

The bill requires the CSW Board to adopt rules in accordance with the Administrative Procedure Act⁶ to implement and administer the bill, including a rule that concerns the intervention for and treatment of any impaired licensee.⁷

The bill requires the Board to keep a register of applicants for licenses issued under the bill. The register must show the name of the applicant and whether the applicant was granted or refused a license. Additionally, the Board is required to develop and publish on its website an Internet directory containing the names and contact information of individuals who hold licenses issued under the bill.⁸

⁴ R.C. 4785.02(B).

⁵ R.C. 4785.09.

⁶ R.C. Chapter 119., not in the bill.

⁷ R.C. 4785.03.

⁸ R.C. 4785.04.

Expertise and assistance to the Board

The bill requires the Buckeye Art Therapist Association or its successor organization to provide the Board with expertise and assistance in carrying out the Board's duties relating to licensure to practice art therapy.⁹

Required recommendations

The Buckeye Art Therapist Association or its successor organization is required to review and submit to the Board recommendations on all of the following:

- Requirements and procedures for issuing licenses to practice art therapy;
- Rules pertaining to the practice of art therapy and the administration and enforcement of the bill;
- Standards for the ethical practice of art therapy that include, as the Association or its successor organization finds appropriate, the code of ethics, conduct, and disciplinary procedures adopted by the Art Therapy Credentials Board, its successor organization, or an equivalent organization recognized by the CSW Board;
- Standards and procedures for compliance with continuing education requirements and approval of continuing education providers;
- Fees required for issuance and renewal of licenses to practice art therapy;
- Any other issue the CSW Board considers necessary for the administration and enforcement of the bill.

The CSW Board must take the submitted recommendations into consideration before adopting any rule regarding licensure to practice art therapy. Not later than 90 days after receiving a recommendation, the Board must approve or disapprove the recommendation and notify the Association or its successor organization of its decision. If a recommendation is disapproved, the Board is required to inform the Association or its successor organization of its reasons for making that decision. The Association or its successor organization may resubmit the recommendation after addressing the concerns expressed by the Board and modifying the disapproved recommendation accordingly. Not later than 90 days after receiving a resubmitted recommendation, the Board must approve or disapprove the recommendation. There is no limitation on the

⁹ R.C. 4785.04(A) and (F).



number of times the Association or its successor organization may resubmit a recommendation for consideration by the Board.¹⁰

Application process

The bill requires a person seeking a license to practice art therapy to submit to the CSW Board a completed application on a form prescribed by the Board and an application fee in an amount to be determined by the Board in rules. The Board may prorate the application fee for an initial license. The application must include information the Board considers necessary to process the application, including evidence satisfactory to the Board that the applicant meets the eligibility requirements listed below. No part of the application fee may be returned to the applicant or applied to another application.¹¹

Eligibility requirements

To be eligible for a license to practice art therapy, an applicant must demonstrate to the CSW Board that the applicant meets all of the following requirements:

- The applicant is at least 18;
- The applicant is of good moral character;
- The applicant has attained a master's degree or higher degree from a graduate program in art therapy that one of the following applies to at the time the degree was conferred:
 - The program is approved by the American Art Therapy Association or its successor organization.
 - The program is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization.
 - The Board considers the program to be substantially equivalent to a program approved or accredited as described above.
- The applicant has completed at least two years of postgraduate supervised clinical experience in the practice of art therapy that meets the posteducation supervised art therapy experience requirements that the Art Therapy Credentials Board, its successor organization, or an

¹⁰ R.C. 4785.05.

¹¹ R.C. 4785.06(A).



equivalent organization recognized by the CSW Board required for an individual to become a registered art therapist at the time the experience was completed;

- The applicant has a board certification in good standing with the Art Therapy Credential Board, its successor organization, or an equivalent organization recognized by the CSW Board;
- The applicant requests and pays for a criminal records check conducted by the Bureau of Criminal Identification and Investigation (BCII);
- The applicant satisfies any other requirements established by the Board.¹²

License issuance

Not later than 60 days after receiving a complete application, the CSW Board must issue a license to practice art therapy to an applicant if the Board determines that the applicant satisfies the eligibility requirements. An affirmative vote of a majority of the members of the Board is required to determine that an applicant meets the requirements.¹³ The Board may waive the eligibility requirements and issue a license to practice art therapy to an applicant if, not later than one year following the adoption of the initial rules adopted by the Board, the applicant files an application with the Board that includes evidence satisfactory to the Board that the applicant meets all of the following requirements:

- The applicant holds a credential in good standing with the Art Therapy Credentials Board, its successor organization, or an equivalent organization recognized by the CSW Board.
- The applicant has practiced art therapy for at least five years.
- The applicant requests and pays for a criminal records check conducted by BCII.
- The applicant satisfies any additional requirements established by the CSW Board.¹⁴

¹² R.C. 4785.06(B), by reference to R.C. 4776.01 to 4776.04, with conforming changes in R.C. 109.572 and 4776.01.

¹³ R.C. 4785.06(D).

¹⁴ R.C. 4785.06(E).



The Board cannot grant a person a license to practice art therapy unless the Board decides that the results of a criminal records check do not make the person ineligible for a license.¹⁵

License renewal

A license to practice art therapy expires biennially and may be renewed. The bill requires a licensee seeking to renew a license to practice art therapy to apply for renewal of the license on or before January 31 of each even-numbered year. The CSW Board may establish a different expiration date for an initial license. The Board is required to provide renewal notices at least one month before the expiration date. A licensee is required to submit a renewal application to the Board in a manner prescribed by the Board and a renewal fee in an amount to be determined by the Board in rules.

To be eligible for renewal, a licensee must certify to the Board that the licensee has done all of the following:

- Maintained board certification with the Art Therapy Credentials Board, its successor organization, or an equivalent organization recognized by the CSW Board;
- Completed at least 40 hours of the continuing education that is required to maintain board certification with the Art Therapy Credentials Board, its successor organization, or an equivalent organization recognized by the CSW Board;
- Report any criminal offense to which the licensee has pleaded guilty, been found guilty, or been found eligible for intervention in lieu of conviction, since last signing a license application.

The CSW Board is required to issue to the licensee a renewed license to practice art therapy if a licensee submits a renewal application that the Board considers to be complete and meets the eligibility requirements for renewal listed above.

The bill allows the Board to require a random sample of licensees to submit materials documenting that the licensee has complied with the required continuing education hours and has maintained board certification with the Art Therapy Credentials Board or other organization. If the CSW Board finds through the random sample or any other means that a licensee has not complied with those renewal

¹⁵ R.C. 4785.06(C).

requirements, the Board may refuse to renew the licensee's license or may take any other action permitted under the bill.¹⁶

Failure to renew

A license to practice art therapy that is not renewed on or before its expiration date is automatically suspended on that date. The bill specifies that continued practice of art therapy after a license's suspension is considered a violation of the prohibition against engaging in the practice of art therapy without a license. If a license is suspended due to a failure to renew, the CSW Board must reinstate the license if the person qualifies for renewal and pays a monetary penalty to be established by the Board. If a license is suspended due to a failure to renew for more than two years, the bill allows the Board to impose terms and conditions for reinstatement in addition to the monetary penalty, including the following:

- Requiring the applicant to pass an oral or written examination, or both, to determine the applicant's fitness to resume the practice of art therapy;
- Requiring the applicant to obtain additional training and to pass an examination on completion of the training;
- Restricting or limiting the extent, scope, or type of practice in which an applicant may engage.¹⁷

Combined businesses

The bill permits a person licensed to practice art therapy under the bill to provide services through a corporation, limited liability company, partnership, or professional association that is formed for the purpose of providing services in combination with any of the following licensed professionals:

- Optometrists;
- Chiropractors;
- Psychologists;
- Registered or licensed practical nurses;
- Pharmacists;

¹⁶ R.C. 4785.07.

¹⁷ R.C. 4785.08.



- Physical therapists;
- Occupational therapists;
- Mechanotherapists;
- Doctors of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
- Licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, or marriage and family therapists.¹⁸

Disciplinary actions

The bill allows the CSW Board, by an affirmative vote of a majority of the members, to limit, revoke, suspend, or refuse to grant a license to practice art therapy to a person found by the Board to have committed fraud, misrepresentation, or deception in applying for or securing a license.¹⁹

The bill requires the Board, by an affirmative vote of a majority of the members, to limit, revoke, suspend, or refuse to issue, renew, or reinstate a license, or reprimand or place on probation a licensee for any of the following reasons:

- Failure to comply with the bill's requirements or any rules adopted by the Board;
- Permitting the licensee's name or license to be used by another person;
- Failure to employ acceptable scientific methods in the selection of modalities for treatment provided under a license to practice art therapy;
- A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a violation of any federal or state law regulating the possession, distribution, or use of any drug;
- Willfully betraying a professional confidence;

¹⁸ R.C. 4785.14, 1701.03, 1705.03, 1705.04, 1705.53, 1785.01, 1785.02, 1785.03, 1785.08, 4723.16, 4725.33, 4729.161, 4731.226, 4731.65, 4732.28, 4734.17, 4755.111, 4755.471, and 4757.37.

¹⁹ R.C. 4785.10(B).



- Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for clients; in relation to the practice of art therapy; or in securing or attempting to secure any license or certificate to practice issued by the Board;
- A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a client is established;
- Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;
- The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of the practice of art therapy;
- A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;
- Commission of an act that constitutes a felony in Ohio, regardless of the jurisdiction in which the act was committed;
- A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of the practice of art therapy;
- Commission of an act in the course of the practice of art therapy that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which the act was committed;
- A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;
- Commission of an act involving moral turpitude that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which the act was committed;
- Violation of the conditions of limitation placed by the Board on a license to practice art therapy;
- Failure to pay required license renewal fees;



- Inability to practice art therapy according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;
- Impairment of ability to practice art therapy according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to practice;
- Failure to maintain the confidentiality of privileged communications without the written consent of a client or a client's parent or guardian, as applicable, unless otherwise required by law, court order, or necessity to protect public health and safety;
- Failure to comply with the continuing education requirements necessary to renew a license;
- Failure to comply with any standards for the ethical practice of art therapy that the Board adopts;
- Failure to cooperate in a disciplinary investigation conducted by the Board, including failure to comply with a subpoena or order issued by the Board or failure to answer truthfully a question presented by the Board in an investigative interview.²⁰

Disciplinary actions taken by the Board under the bill are required to be taken pursuant to an adjudication under the Administrative Procedure Act, except that in lieu of an adjudication, the Board may enter into a consent agreement with a person to resolve an allegation of a violation. A consent agreement, when ratified by an affirmative vote of a majority of the members of the Board, constitutes the Board's findings and order with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement are of no force or effect.²¹

The Board is required to investigate evidence that appears to show that a person has violated the bill or any rule adopted under it. Any person may report to the Board in a signed writing any information that the person may have that appears to show a violation of the bill or any rule adopted under it. Investigations of alleged violations are required to be conducted by the Board in the same manner that the Board conducts

²⁰ R.C. 4785.10(C).

²¹ R.C. 4785.10(D).

investigations for alleged violations under the law applicable to licenses issued by the Board under current law.²²

The surrender of a license to practice art therapy is not effective until accepted by the Board. The Board may use a telephone conference call for acceptance of the surrender. The bill specifies that such a telephone conference call is a special meeting under the Open Meetings Act (instead of a regularly scheduled meeting; different notice requirements apply).²³ Reinstatement of a license to practice art therapy surrendered to the Board requires an affirmative vote of a majority of the members of the Board.

The bill prohibits an application for a license to practice art therapy from being withdrawn without Board approval.

Failure of a person to renew a license to practice art therapy in accordance with the bill's renewal requirements does not remove or limit the Board's jurisdiction to take disciplinary action against the person.²⁴

Civil penalties

If a licensee violates any provision of the bill or any rule adopted under it, the CSW Board may, pursuant to an adjudication under the Administrative Procedure Act and an affirmative vote of a majority of its members, impose a civil penalty. The Board is required to adopt, and may amend, guidelines regarding the amounts of the civil penalties. Adoption or amendment of the guidelines requires the approval of a majority of the Board members.

Amounts received from payment of civil penalties are required to be deposited by the Board in the Occupational Licensing and Regulatory Fund.²⁵ The bill specifies that amounts received from payment of civil penalties imposed due to the licensee's impairment of ability to practice art therapy according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to practice are required to be used by the Board solely for investigations, enforcement, and compliance monitoring.²⁶

²² R.C. 4785.10(E), by reference to R.C. 4757.38, not in the bill.

²³ R.C. 121.22, not in the bill.

²⁴ R.C. 4785.10(F).

²⁵ R.C. 4743.05 and 4785.11.

²⁶ R.C. 4785.11.



Child support orders

On receipt of notice that a licensee is in default under a child support order under the procedures established under existing law, the bill requires the Board to comply with the requirements of that law or rules adopted pursuant to it with respect to a license issued under the bill.²⁷

Human trafficking

On receipt of a notice that a licensee has been convicted of, pleaded guilty to, or a judicial finding of guilt of or judicial finding of guilt resulting from a plea of no contest was made to the offense of trafficking in persons, the bill requires the Board to immediately suspend the licensee's license in accordance with continuing law requirements.²⁸

HISTORY

ACTION	DATE
Introduced	03-15-18
Reported, H. Health	---

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²⁷ R.C. 4785.12.

²⁸ R.C. 4785.13 and 4776.20.

