

HOUSE No. 236**The Commonwealth of Massachusetts**

PRESENTED BY:

Jay R. Kaufman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act for consumer protection and regulation in psychotherapy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/18/2013</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>	<i>2/1/2013</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/31/2013</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/30/2013</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>1/31/2013</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>1/31/2013</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>	<i>1/31/2013</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	
<i>Carol Nemet Curran</i>	<i>8 Highland Road, Kingston, MA</i>	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	

HOUSE No. 236

By Mr. Kaufman of Lexington, a petition (accompanied by bill, House, No. 236) of Jay R. Kaufman and others relative to consumer protection and regulation in psychotherapy. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4123 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act for consumer protection and regulation in psychotherapy.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 88 of chapter 13 of the General Laws, as appearing in the 2008
2 Official edition, is hereby amended by striking the entire section and inserting in place thereof
3 the following:

4 Section 88. There shall be within the division of professional licensure a board of
5 registration of allied mental health and human services professions, in this section and sections
6 eighty-nine and ninety, which shall consist of thirteen members, one of whom shall be elected as
7 chairperson, to be appointed in the manner provided by section eighty-nine. Members shall be
8 appointed for a term of three years. No member shall be appointed to more than two consecutive
9 full terms; provided, however, that a member appointed for less than a full term may serve two
10 full terms in addition to such part of a full term, and a former member shall again be eligible for
11 appointment after a lapse of one or more years.

12 Any member of the board may be removed by the governor for neglect of duty,
13 misconduct or malfeasance, or misfeasance in office after being given a written statement of the
14 charges against him and sufficient opportunity to be heard thereon. No member may be removed
15 without a public hearing with at least thirty days prior written notice of the charges and the date
16 fixed for such hearing. All board members shall be subject to chapter 268A. No board member

shall participate in any matter before the board in which a pecuniary interest, personal bias, or other similar conflict of interest is established.

Members shall receive no compensation but shall be entitled to reasonable travel expenses. The members of the board shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.

SECTION 2. Section 89 of said chapter 13 of the General Laws, as appearing in the 2008 Official edition, is hereby amended by striking the entire section and inserting in place thereof the following:

Section 89. The governor shall appoint members of the board only from among the candidates who meet the following qualifications:

(A) Ten members shall be licensed practicing mental health and human services professionals, two of whom shall be marriage and family therapists, two of whom shall be rehabilitation counselors, two of whom shall be clinical mental health counselors, two of whom shall be educational psychologists, two of whom shall be independent psychoanalytic psychotherapists or independent psychoanalysts; and each shall have been, for at least five years immediately preceding appointment, actively engaged as a practitioner rendering professional services in that field, or in the education and training of graduate students or interns in the field, or in appropriate human developmental research, or in other areas substantially equivalent thereto, and shall have spent the majority of the professional time in such activity during the two years preceding the appointment in the commonwealth, and

(B) Three members shall be representatives of the general public who have no direct affiliation with the practice of any allied mental health or human services profession.

The appointment of any member of the board shall automatically terminate within thirty days after the date such member is no longer a resident of the commonwealth.

Each appointee shall, upon accepting appointment to the board, take and subscribe to the oath or affirmation prescribed by law, and file the same in the office of secretary of state.

SECTION 3. Section 90 of said chapter 13 of the General Laws, as appearing in the 2008 Official edition, is hereby amended by striking the entire section and inserting in place thereof the following:

Section 90. The board shall hold at least two regular meetings each year, but additional meetings may be held upon the call of the chairperson, or the secretary, or upon the written request of any two board members. A majority of the members of the board then appointed shall constitute a quorum; provided, however, that at least one of those present shall be a member who was selected from and who represents the general public.

51 The board shall administer and enforce the provisions of sections one hundred and sixty-
52 three to one hundred and seventy-two, inclusive, of chapter one hundred and twelve. Said board
53 shall promulgate regulations which set forth education requirements necessary for a person to be
54 licensed under the provisions of sections one hundred sixty-five, one hundred sixty-five A, and
55 one hundred sixty-five B of said chapter one hundred and twelve; and the board may, from time
56 to time, adopt such rules and regulations as it deems necessary to carry out the performance of its
57 duties.

58 The director of the division of professional licensure shall have authority to review and
59 approve rules and regulations proposed by the board. Such regulations will be deemed approved
60 unless disapproved within fifteen days of submission to said director; provided, however, that
61 any such disapproval shall be in writing setting forth the reasons for such disapproval.

62 Said board, or its agent, shall examine and pass on the qualifications of all applicants for
63 licenses under sections one hundred and sixty-three to one hundred and seventy-two, inclusive,
64 of chapter one hundred and twelve, and shall issue a license to each successful applicant therefor,
65 attesting to their professional qualifications to be a licensed allied mental health and human
66 services professional. After a person has applied for licensure, no member of the board may
67 supervise such applicant for a fee nor shall any member vote on any applicant previously
68 supervised by such member.

69 Said board may recommend to the governor and the general court, after a public hearing
70 which shall be advertised by publication of notices to the appropriate mental health and human
71 service professional organizations and in major media outlets throughout the commonwealth,
72 modifications and amendments to sections eighty-eight, eighty-nine and this section and sections
73 one hundred and sixty-three to one hundred and seventy-two, inclusive, of chapter one hundred
74 and twelve.

75 Said board shall cause examinations to be held not less than twice annually and shall
76 evaluate examinations to keep them free from cultural bias.

77 Said board shall annually publish a list of names and addresses of persons who are
78 licensed under sections one hundred and sixty-three to one hundred and seventy-two inclusive, of
79 chapter one hundred and twelve.

80 Fees for initial and renewal applications shall be determined annually by the secretary of
81 administration and finance under the provisions of section three B of chapter seven.

82 Said board shall establish regulations for continuing educational requirements for
83 licensees. Said regulations shall not require more than thirty contact hours per year, on average
84 through the term of the license, of approved continuing education programs as a condition for
85 continuing registration.

Said board shall cause public hearings to be held prior to setting specifications for any continuing educational requirements.

The board shall establish procedures to permit consumers to file written complaints against licensed individuals and investigate and take appropriate action on such complaints.

SECTION 4. Section 65A of chapter 112 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:—

Notwithstanding any general or special law to the contrary, (i) each board of registration under the supervision of the division of professional licensure, (ii) each board of registration under the supervision of the department of public health and (iii), in the case of violations of section 65F, the division of professional licensure may, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding held pursuant to chapter 30A, assess and collect a civil administrative penalty not to exceed \$1,000 for the first violation and a civil administrative penalty not to exceed \$2,500 for a second or subsequent violation upon a person who, without holding the required license, certificate, registration or authority, engages in the practice of a trade or profession for which a license, certificate, registration or authority is required.

SECTION 5. Said chapter 112 as appearing in the 2008 Official Edition is hereby amended by inserting after section 65E the following section:—

Section 65F. Persons shall not hold themselves out to the public as psychotherapists or represent that the service they are offering is psychotherapy, unless (a) they are currently licensed by the board of registration in medicine and practicing within the scope of such license and have completed training in psychiatry, or (b) they are currently licensed by the board of registration in nursing and are practicing within the scope of such license and have completed training in psychiatric nursing, or (c) they are currently licensed by the board of registration of psychologists, the board of registration of social workers, or the board of registration of allied mental health and human services professionals and they are practicing within the scope of practice of such license, or (d) they are a student, intern, or person fulfilling supervised experience for licensure in the above professions under the qualified supervision of a licensee, or (e) they are independent psychotherapists as defined under Section 164.

Any person who violates this section shall be punished by a fine of not more than \$1,000 for the first offense and by a fine of not more than \$2,500 for a second or subsequent offense.

SECTION 6. Said chapter 112 as appearing in the 2008 Official Edition is hereby amended by replacing Sections 163 and 164 with the following:

Section 163. As used in sections one hundred and sixty-three to one hundred and seventy-two, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Advertise”, includes, but is not limited to, distributing or causing to be distributed any card, sign or device to any person; or the causing, permitting or allowing of any sign or marking on or in any building or structure, or in any newspaper or magazine or in any directory, or on radio, television or other electronic medium, or by the use of any other means designed to secure public attention.

“Allied mental health and human services professional”, an educational psychologist, a marriage and family therapist, a mental health counselor, an independent psychoanalytic psychotherapist, an independent psychoanalyst, or a rehabilitation counselor.

“Approved Continuing Education”, continuing education such as research and training programs, college and university courses, in-service training programs, seminars and conferences designed to maintain and enhance the skills of allied mental health and human services professionals and which are recognized by the board.

“Board”, the Massachusetts board of registration of allied mental health and human services professions.

“Educational psychologist”, a person so licensed under section one hundred and sixty-five.

“Independent psychoanalyst”, a person so licensed under section one hundred and sixty-five B.

“Independent psychoanalytic psychotherapist”, a person so licensed under section one hundred and sixty-five A.

“Marriage and family therapist”, a person so licensed under section one hundred and sixty-five.

“Mental health counselor”, a person so licensed under section one hundred and sixty-five.

“Practice of educational psychology”, the rendering of professional services to individuals, groups, organizations, or the public for compensation, monetary or otherwise. Such professional services shall include, but not be limited to: applying psychological principles, methods and procedures in the delivery of services to individuals, groups, families, educational institutions and staff and community agencies for the purpose of promoting mental health and facilitating learning. Such services may be preventative, developmental or remedial and include psychological and psychoeducational assessment, therapeutic intervention, program planning and

evaluation, research, teaching in the field of educational psychology, consultation and referral to other psychiatric, psychological, medical and educational resources when necessary.

“Practice of marriage and family therapy”, the rendering of professional services to individuals, family groups, couples, or organizations, either public or private for compensation, monetary or otherwise. Said professional services shall include, but not be limited to, applying principles, methods and therapeutic techniques for the purpose of resolving emotional conflicts, modifying perceptions and behavior, enhancing communications and understanding among all family members and the prevention of family and individual crisis. Individual marriage and family therapists may also engage in psychotherapy of a nonmedical nature with appropriate referrals to psychiatric resources and research and teaching in the overall field of human development and interpersonal relationships.

“Practice of mental health counseling”, the rendering of professional services to individuals, families, or groups for compensation, monetary or otherwise. These professional services include: applying the principles, methods and theories of counseling, human development, learning theory, group and family dynamics, the etiology of mental illness and dysfunctional behavior and psychotherapeutic techniques to define goals and develop treatment plans aimed toward the prevention, treatment and resolution of mental and emotional dysfunction and intra or interpersonal disorders in all persons irrespective of diagnosis. The practice of mental health counseling shall include, but not be limited to, diagnosis and treatment, counseling and psychotherapy, of a nonmedical nature of mental and emotional disorders and the psychoeducational techniques aimed at prevention of such disorders and consultations to individuals, couples, families, groups, organizations and communities. Practice of mental health counseling in independent practice with individuals diagnosed with psychosis may be undertaken by a licensed mental health counselor: (a) who is licensed under section 165 on or after March 1, 1992; or (b) who was licensed prior to March 1, 1992 and who meets the certification criteria for independent practice with individuals diagnosed with psychosis as established by the board of registration of allied mental health and human services professions.

“Practice of psychoanalysis”, the rendering of professional services to individuals, families, groups of individuals, organizations or members of the public, for compensation, monetary or otherwise. These professional services shall include, but not be limited to, applying the principles, methods, and theories of psychoanalysis to the prevention, observation, identification, evaluation, interpretation, or resolution of mental, emotional, family, or social dysfunction in all persons, irrespective of diagnosis. Psychoanalytic principles and methods address dynamic conscious and unconscious mental processes to facilitate modifications in character, behavior, and affect that lead to more constructive or satisfactory functioning through the use of verbal and non-verbal, cognitive and emotional communication, including an in depth exploration of the unconscious aspects of the client's relationship with the analyst, the unconscious meaning of communications, and the way current problems relate to early conflicts

and feelings. The practice of psychoanalysis shall include, but not be limited to, the use of psychotherapy and counseling to diagnose and treat dysfunctions and disorders.

“Practice of psychoanalytic psychotherapy”, the rendering of professional services to individuals, families, groups of individuals, organizations or members of the public, for compensation, monetary or otherwise. These professional services shall include, but not be limited to, applying psychoanalytic principles and theories and psychotherapeutic techniques to the prevention, observation, identification, evaluation, interpretation, or resolution of mental, emotional, family, or social dysfunction in all persons, irrespective of diagnosis. Psychoanalytic psychotherapy addresses conscious and unconscious mental processes to facilitate modifications in behavior, work and life adaptation, and mental health through the use of verbal and non-verbal communication, including an emphasis on the way current problems relate to early experience. The practice of psychoanalytic psychotherapy shall include, but not be limited to, the use of psychotherapy and counseling to diagnose and treat dysfunctions and disorders.

“Practice of rehabilitation counseling”, the rendering of professional services for compensation, monetary or otherwise. These professional services include the application of principles, methods and techniques of the rehabilitation counseling profession such as client assessment, job analysis, vocational assessment, counseling and job development for the purpose of maximizing or restoring the capacities of physically or mentally handicapped individuals for self-sufficiency and independent living including vocational and social functioning and creating those conditions favorable to this goal. The practice of rehabilitation counseling shall include, but not be limited to: assisting individuals in the coordination of appropriate services; counseling with individuals, families or groups; serving an advocacy role with communities or groups toward the provision or implementation of rehabilitation services; research and teaching in the field of rehabilitation counselor education.

“Psychoanalyst”, an individual who is licensed as an independent psychoanalyst or is a recognized mental health professional who has received a post-master’s certificate or doctoral degree in psychoanalysis from a recognized psychoanalytic training institution.

“Psychoanalytic Psychotherapist”, an individual who is licensed as an independent psychoanalytic psychotherapist or is a recognized mental health professional engaged in the practice of psychoanalytic psychotherapy.

“Recognized educational institution”, any degree-granting educational institution which is recognized by the board and by a nationally or regionally recognized educational or professional accrediting organization; provided, however, that such organization is also approved by the United States Department of Education. In its discretion, the board may recognize additional educational institutions.

“Recognized psychoanalytic training institution”, any psychoanalytic training institution which grants a post-master’s certificate or doctoral degree in psychoanalysis and is accredited by a nationally recognized psychoanalytic accrediting organization.

“Recognized mental health professional”, a licensed alcohol and drug counselor, a licensed allied mental health and human services professional, a licensed physician who has completed training in psychiatry, a licensed psychiatric nurse mental health clinical specialist, a licensed psychologist, or a licensed social worker.

“Rehabilitation counselor”, a person so licensed under section one hundred and sixty-five.

“Use a title or description of”, means to hold oneself out to the public as having a particular status by means of statements on signs, mailboxes, address plates, stationery, announcement, calling cards, web pages, or other instruments of professional identification.

Section 164. Except as otherwise provided in sections one hundred and sixty-three to one hundred and seventy-two, inclusive, no individual who is not licensed or exempted from licensure under said sections shall practice, advertise the performance of, or use a title or description of:

- (1) psychoanalytic psychotherapist, psychoanalytic therapist;
- (2) educational psychologist, specialist, advisor or consultant;
- (3) mental health counselor, advisor or consultant;
- (4) marital or marriage and family therapist, advisor or consultant;
- (5) psychoanalyst, analyst (when used in conjunction with mental health services); or
- (6) rehabilitation counselor, specialist, advisor or consultant.
- (7) Independent psychotherapists as defined below.

Except as otherwise provided in section 65F, the following shall be exempt from this section:

- (1) recognized mental health professionals;
- (2) students in the discipline of a recognized mental health professional so long as they are following the statutes and regulations of that profession.
- (3) students, interns, or other trainees in an allied mental health and human services profession receiving qualified supervision approved by the board, and whose training status is

designated by titles such as “mental health counseling student” or “marriage and family therapy intern”.

Except as otherwise provided in section 65F, nothing in this section shall be construed to prevent qualified members of other professions including Christian Science practitioners, registered nurses, physicians, attorneys, or members of the clergy from doing the work consistent with the accepted standards of their respective professions; provided, however, that no such person shall use a title stating or implying that they are an allied mental health and human services professional.

Nothing in this section shall be construed to prevent members of peer groups or self-help groups from performing peer counseling or self-help activities which may be, wholly or in part, included as a defined professional service in section one hundred and sixty-three; provided, however, that no members of peer groups or self-help groups shall use a title stating or implying that they are an allied mental health or human services professional.

Independent psychotherapists are exempt under this act if they are members in good standing of the Massachusetts Association of Independent Psychotherapists provided that they are of good moral character and have not engaged in any practice or conduct which would be grounds for refusing to issue a license under section one hundred and sixty-nine; provided, further, that the board shall not apply said provisions or additional requirements in an unfair and arbitrary manner in order to deny an exemption or rescind a granted exemption. Within thirty days from the effective date of this act the Massachusetts Association of Independent Psychotherapists shall furnish to the board a list of members that qualify for this exemption. No non licensed independent psychotherapists shall be exempted subsequent to the filing of this list to the board. The commissioner of administration pursuant to section three B of chapter seven may establish a biennial fee for the registration of individuals exempted under this provision, provided that said fee shall be consistent with the fee charged other mental health providers.

SECTION 7. Said chapter 112 as appearing in the 2008 Official Edition is hereby amended by adding Sections 165A and 165B following Sections 165, as follows:

Section 165A. The board may issue a license to an applicant as an independent psychoanalytic psychotherapist provided that each such applicant shall provide satisfactory evidence to the board that such applicant: (1) is of good moral character; (2) has not engaged or is not engaging in any practice or conduct which would be grounds for refusing to issue a license under section one hundred and sixty-nine; (3) has successfully completed a master’s degree or higher, from a recognized educational institution; (4) has successfully completed a program in psychoanalytic psychotherapy which includes a minimum of 60 credit hours of training including a master’s degree or higher of a minimum of 60 credit hours in psychoanalysis or a relevant field from a recognized psychoanalytic training institution authorized by the state in which it is located to grant a master’s degree or higher in psychoanalysis or a relevant field. Such degree

may also fulfill requirements for (3) of this Section. Within the 60 credit hours, the applicant shall have completed at least 48 credits of academic work, in such courses as the board shall specify, and shall have completed at least 600 clock hours (12 credits) in an internship with such direct client contact and supervision as the board shall specify, so long as 50% of such supervision is with a psychoanalyst; (5) has completed an additional 1500 hours of supervised clinical experience. Such supervised clinical experience shall be composed of direct client contact, supervision, and personal analysis as specified by the board, so long as 50% of such supervision is with a psychoanalyst, and so long as the applicant completes a minimum of 150 hours of personal analysis with a psychoanalyst. Clinical work shall be conducted in a clinic or hospital licensed or authorized by the state in which it is located or accredited by the Joint Commission or an equivalent center or institute or under the direction of an approved supervisor. Private practice settings are not considered acceptable settings for this post-masters supervised clinical experience. These supervised clinical experience hours may be obtained before or after completing the program in psychoanalytic psychotherapy; and (6) the applicant shall successfully pass a written or oral examination approved by the board to determine the applicant's qualifications for licensure pursuant to this section.

Individuals formerly practicing legally as psychoanalytic psychotherapists in other jurisdictions may be licensed in the Commonwealth if, in the opinion of the board, their academic and experiential training is substantially equivalent to that required by this section and the regulations of the board.

For a period of one year following the enactment of regulations in support of this act, individuals engaged in the practice of psychoanalytic psychotherapy shall be grandfathered and exempted from the foregoing items (3) through (6) provided that they are of good moral character and have not been engaging in practice or conduct that would otherwise disqualify them from licensure.

Section 165B. The board may issue a license to an applicant as an independent psychoanalyst provided that each such applicant shall provide satisfactory evidence to the board that such applicant: (1) is of good moral character; (2) has not engaged or is not engaging in any practice or conduct which would be grounds for refusing to issue a license under section one hundred and sixty-nine; (3) has successfully completed a master's degree or higher, from a recognized educational institution; (4) has successfully completed a program in psychoanalysis from a recognized psychoanalytic training institution that is authorized by the state in which it is located to grant a master's degree or higher in psychoanalysis or a relevant field. Such program in psychoanalysis shall consist of a minimum of 2250 clock hours of training, including such master's degree or higher of a minimum of 60 credits in psychoanalysis or a relevant field. Such hours may also fulfill requirements for (3) of this Section. Within the 2250 clock hours, the applicant shall have completed at least 1100 clock hours of academic work in such courses as the board shall specify, shall have completed at least 600 clock hours in an internship with such direct client contact and supervision as the board shall specify, so long as 50% of such

332 supervision is with a psychoanalyst, and shall have completed supervised psychoanalytic practice
333 totaling not less than 550 hours of direct client contact and supervision as the board shall specify,
334 so long as such supervision is with a psychoanalyst. Private practice settings are not considered
335 acceptable settings for supervised psychoanalytic practice unless the applicant has obtained a
336 license as a recognized mental health professional; (5) has completed an additional 1700 hours of
337 supervised clinical experience. Such supervised clinical experience shall be composed of direct
338 client contact, supervision, and personal analysis as specified by the board, so long as 50% of
339 such supervision is with a psychoanalyst, and so long as the applicant completes a minimum of
340 350 hours of personal analysis with a psychoanalyst. Clinical work shall be conducted in a clinic
341 or hospital licensed or authorized by the state in which it is located or accredited by the Joint
342 Commission or an equivalent center or institute or under the direction of an approved supervisor.
343 Private practice settings are not considered acceptable settings for supervised clinical experience
344 unless the applicant has obtained a license as a recognized mental health professional. These
345 supervised clinical experience hours may be obtained before or after completing the program in
346 psychoanalysis; and (6) the applicant shall successfully pass a written or oral examination
347 approved by the board to determine the applicant's qualifications for licensure pursuant to this
348 section.

349 Individuals formerly practicing legally as psychoanalysts in other jurisdictions may be
350 licensed in the Commonwealth if, in the opinion of the board, their academic and experiential
351 training is substantially equivalent to that required by this section and the regulations of the
352 board.

353 For a period of one year following the enactment of regulations in support of this act,
354 individuals engaged in the practice of psychoanalysis shall be grandfathered and exempted from
355 the foregoing items (3) through (6) provided that they are of good moral character and have not
356 been engaging in practice or conduct that would otherwise disqualify them from licensure.