

HOUSE No. 2076**The Commonwealth of Massachusetts**

PRESENTED BY:

Josh S. Cutler*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 establishing a board of registration of licensed mental health counselors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/16/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/26/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/26/2021</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>3/5/2021</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>3/8/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>3/9/2021</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>6/30/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>6/30/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>7/28/2021</i>
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>9/8/2021</i>

HOUSE No. 2076

By Mr. Cutler of Pembroke, a petition (accompanied by bill, House, No. 2076) of Josh S. Cutler and others relative to establishing a board of registration of licensed mental health counselors. Mental Health, Substance Use and Recovery.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1706 OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act establishing a board of registration of licensed mental health counselors.

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 163 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by striking, in lines 7 through 8, the words “licensed mental health
3 counselor”.

4 SECTION 2. Section 163 of the General Laws, as appearing in the 2016 Official Edition,
5 is further amended by striking lines 40 through 64 in their entirety.

6 SECTION 3. Section 164 of the General Laws, as appearing in the 2016 Official Edition,
7 is hereby amended by striking line 7 in its entirety.

8 SECTION 4. Section 165 of the General Laws, as appearing in the 2016 Official Edition,
9 is hereby amended by striking, in line 2 through 3, the words “mental health counselor”.

SECTION 5. Section 171 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking, in line 6 through 7, the words “mental health counselor”.

SECTION 6. Section 172A of the General Laws, as appearing in the 2016 Official Edition, is hereby repealed.

SECTION 7. Chapter 13 of the General Laws, as appearing in the 2016 Official Edition is hereby amended by adding the following new sections:

Section 110. Board of registration of licensed mental health counselors; membership; appointment; removal

There shall be within the division of professional licensure a board of registration of mental health counselors, in this section and sections eighty-nine and ninety, which shall consist of 9 members, one of whom shall be designated as chairperson, to be appointed in the manner provided by section eighty-nine. Of the first board members appointed four shall continue in office for one year, three for two years and two, including the chairperson, shall continue in office for three years. Their successors shall be appointed for terms of three years each except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the board member to be succeeded. Upon the expiration of the term of office, a board member shall continue to serve until a successor shall have been appointed and shall have qualified. No person shall be appointed more than once to fill an unexpired term for more than two consecutive terms. One board member shall be elected by the board of registration of mental health counselors to serve as chairperson during the term of such person's appointment to the board; provided, however, that no person shall serve as chairperson for more than three years.

31 The governor may remove any member of the board or the chairperson from such
32 position as chairperson after a recommendation of the majority of the board, and only for neglect
33 of duty or malfeasance or conviction of a felony or crime of moral turpitude while in office. No
34 member may be removed without a public hearing with at least thirty days prior written notice of
35 the charges and the date fixed for such hearing. No board member shall participate in any matter
36 before the board in which a pecuniary interest, personal bias or other similar conflict of interest
37 is established.

38 Board members shall serve without compensation but shall be reimbursed for their actual
39 and necessary expenses incurred in the performance of official board business.

40 Section 111. Board of registration of licensed mental health counselors; qualifications of
41 members

42 The governor shall appoint members of the board only from among the candidates who
43 meet the following qualifications:

44 (A) 7 members shall be licensed, practicing mental health counselors and each shall have
45 been, for at least five years immediately preceding appointment, actively engaged as a licensed
46 practitioner rendering professional services in that field, or in the education and training of
47 graduate students or interns in the field, or in appropriate mental health counseling research, or in
48 other areas substantially equivalent thereto, and shall have spent the majority of the professional
49 time in such activity during the two years preceding the appointment in the commonwealth.

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

52 Immediately upon enactment, the current sitting LMHC members of the Board of Allied
53 Mental and Human Services Professions, shall immediately become appointed members of the
54 Board of Registration of mental health counselors and seek nominees for the remaining 5 LMHC
55 seats. The governor shall nominate a new member to fill a vacancy on the board within thirty
56 days of the occurrence of any vacancy.

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

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

61 Section 112. Board of registration of licensed mental health counselors; meetings; duties

62 The board shall hold at least two regular meetings each year, but additional meetings may
63 be held upon the call of the chairperson, or the secretary, or upon the written request of any two
64 board members. A majority of the appointed members of the board shall constitute a quorum;
65 provided, however, that at least one of those members shall be a member who was selected from
66 and who represents the general public. The principal office of the board shall be in the city of
67 Boston but the board may act and exercise all of its powers in such other jurisdictions as it deems
68 necessary.

69 The board shall administer and enforce the provisions of section one hundred and sixty-
70 three to one hundred and seventy-two, inclusive, of chapter one hundred and twelve. Said board
71 shall promulgate regulations which set forth education and training requirements necessary for a
72 person to be licensed under the provisions of section one hundred and sixty-five of said chapter

one hundred and twelve; and the board may, from time to time, adopt such rules and regulations as it deems necessary to carry out the performance of its duties.

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

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

The board shall act as the standards committees for the licensed mental health counselors profession. The Board, by a majority vote, shall recommend approval or disapproval of the granting of all licenses for that profession, approve the examination required of applicants for licensure in that profession, provide for the grading of that examination and provide for other matters relating to the standards for licensure in the mental health counseling profession.

Said board may recommend to the governor and the general court, after a public hearing which shall be advertised by publication of notices to the appropriate mental health and human service professional organizations and in major media outlets throughout the commonwealth, modifications and amendments to sections eighty-eight, eighty-nine and this section and sections

one hundred and sixty-three to one hundred and seventy-two, inclusive, of chapter one hundred and twelve.

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

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

Fees for examinations and for initial and renewal applications shall be determined annually by the commissioner of administration under the provisions of section three B of chapter seven.

Said board shall establish regulations for continuing educational requirements for licensees. Said regulations shall not require more than thirty contact hours per year, on average through the term of the license, of approved continuing education programs as a condition for continuing registration, nor more than fifteen contact hours per year on average for any licensed individual during the term of their employment by the commonwealth or any political subdivisions thereof.

The Board may designate an entity (Massachusetts Mental Health Counselors Association) to set specifications for Continuing Education.

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

SECTION 8. Chapter 112 of the General Laws, as appearing in the 2016 Official Edition is hereby amended by adding the following new sections:

Section 275. Definitions applicable to Secs. 275 to 284

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:

"Licensed mental health counselor", a person licensed or eligible for licensure under section one hundred and sixty-five.

"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

138 who meets the certification criteria for independent practice with individuals diagnosed with
139 psychosis as established by the board of registration of allied mental health and human services
140 professions.

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

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

148 "Board", the Massachusetts board of registration of Mental Health Counselors.

149 Section 276. Advertisement or engagement in practice of licensed profession; license
150 requirement; exemptions

151 No individual who is not licensed or exempted from licensure shall advertise the
152 performance of or use a title or description of:

153 licensed mental health counselor, advisor or consultant; or licensed supervised mental
154 health counselor

155 No individual who is not licensed or exempted from licensure shall engage in the practice
156 as a licensed mental health counselor. This does not prevent individuals not eligible to apply for
157 licensure from advertising and practicing as counselors or therapists, provided that such

158 individuals do not advertise or otherwise hold themselves out to the public to be licensed mental
159 health counselors.

160 The following individuals shall be exempt from the requirements of this section:

161 (1) a licensed psychologist, a licensed social worker, a licensed occupational therapist, or
162 a licensed physician or registered nurse.

163 (2) an employee or other agent of a recognized academic institution or alcohol or drug
164 education or awareness program, employee assistance program, or of a federal, state, county or
165 local government institution, program agency, or facility, or a school committee, school district,
166 school board or board of regents while performing those duties constituting employment by such
167 an institution, program, agency or facility; provided, however, that such individuals are
168 performing those activities solely within the agency or under the jurisdiction of such agency;
169 and, provided further, that a license granted under section one hundred and sixty-five need not be
170 a requirement for qualification for civil service examinations nor shall it be a requirement for
171 employment in any state, county or municipal agency.

172 (3) a student in the discipline of mental health counseling or an intern or trainee in
173 mental health counseling receiving qualified supervision approved by the board, and whose
174 training status is designated by such titles as "mental counseling health intern", or a person who
175 is issued a temporary permit by the board to engage in the activities for which licensure is
176 required.

177 Section 277. Mental health counselors; licenses; qualifications

The board may issue a license to an applicant as a mental health counselor; provided, however, 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) Educational Requirements - demonstrates to the board, the successful completion of a masters degree in a relevant field from an educational institution licensed by the state in which it is located and meets national standards for granting of a 60 credit masters degree with a subspecialization in mental health counseling, or a relevant subspecialization approved by the board, according to the educational requirements set forth in CMR 262 Section 2 – Requirements for Licensed Mental Health Counselor .

(4) Licensed Supervised Mental Health Counselor - The board may issue a license to an applicant as a licensed supervised mental health counselor (LSMHC); provided, however, that each such applicant shall meet all the Educational and Degree Requirements above in paragraph (3).

(5) LSMHCs will show a passing grade on an examination of the Board's choosing (see section g below)

(6) Field Training Requirements -To be eligible for licensure, an applicant must have two additional years, Post Master's Degree and the receipt of the LSMHC license paragraph (4) above, of supervised clinical experience in mental health counseling in either a clinic or hospital licensed by the department of mental health or the department of public health, or accredited by the Joint Commission on Accreditation of Hospitals or in an equivalent center or institute or

200 under the direction of a supervisor approved by the board. Mental Health Counseling Field
201 Training Sites are defined in CMR-262 2.02 Definitions

202 Licensed Supervised Mental Health Counselors (LSMHC) can only practice mental
203 health counseling in a qualified Post Master's Field Placement site as defined above in paragraph
204 (5)

205 (7) Supervision - For purposes of paragraphs (3) and (4) above, "Supervision" shall be
206 defined as no less than two hundred hours of supervised clinical experience, at least one hundred
207 hours of which shall consist of individual supervision with an Approved Supervisor as defined in
208 CMR-262. Section 2.02 Definitions a-g.

209 Section 278. Examinations; issuance of licenses without examinations

210 The board shall conduct examinations at least twice a year for both licensure as an
211 LSMHC and LMHC, at a time and place designated by the board, in order to determine any
212 applicant's qualifications for the practice of mental health counseling.

213 Examinations may be written or oral as determined by the board. In any written
214 examination each applicant shall be designated so that the name shall not be disclosed to the
215 board until examinations have been graded.

216 Examinations shall include questions in such theoretical and applied fields as the board
217 deems most suitable to test an applicant's knowledge and competence to engage in the practice of
218 mental health counseling.

219 An applicant shall be held to have passed an examination upon affirmative vote of at least
220 five members of the board.

221 Any individual who fails an examination conducted by the board shall not be admitted to
222 a subsequent examination for a period of at least six months.

223 Section 279. Temporary permits

224 The board, at its discretion, may issue a temporary permit, effective for up to one year, to
225 an individual whose application for licensure under this chapter is being processed by the board,
226 or to a person awaiting the opportunity to take the first written examination offered by the board
227 after filing such application.

228 Section 280. License fees; renewals

229 A fee, as determined by the commissioner of administration pursuant to section three B
230 of chapter seven shall be paid to the board for the original license. Licenses shall be valid for two
231 years and must be renewed biennially. Any application for renewal of a license which has
232 expired shall require the payment of a re-registration fee.

233 On or before September thirtieth of the year preceding the expiration of a license, the
234 secretary of the board shall forward to the holder of the license a form of application for renewal
235 thereof. Upon the receipt of the completed form and the renewal fee on or before November
236 thirtieth, the secretary shall issue a new license for the year commencing January first.

237 Section 281. Denial, revocation or suspension of licenses

238 The board, subject to a majority vote of its members, is authorized to deny, revoke or
239 suspend a license granted pursuant to this chapter on the following grounds:

(1) conviction by a court of competent jurisdiction of a crime which the board determines to be of such a nature as to render such person unfit to practice as a mental health professional.

Said board shall maintain and publish a list of such crimes;

(2) violation of ethical standards of the American Mental Health Counselors Association and American Counseling Association of such a nature as to render such individual unfit to practice as a mental health professional. Said board shall publish and maintain such ethical standards;

(3) fraud or misrepresentation in obtaining a license; or

(4) other just and sufficient cause which renders a person unfit to practice as a mental health professional.

No license may be suspended or revoked for the reasons set forth in the preceding paragraph without prior notice and opportunity for hearing on such suspension or revocation, except that the board may, in its discretion, without prior notice or hearing, suspend for up to one year the license of any individual convicted of a crime as set forth therein. The burden of proof shall be on the board in any proceeding to suspend or revoke a license. No license may be suspended or revoked under this section except by majority vote of the full board, notwithstanding any other provisions.

Any individual may file a complaint with the board seeking denial, suspension or revocation of a license issued or to be issued by the board. Such complaints shall be in a form prescribed by the board and shall be verified under oath by the complainant or his duly authorized agent. If the board determines that a complaint alleges facts which, if true, would require denial, revocation or suspension of a license, it shall promptly conduct a hearing.

262 Whenever said board establishes that a complaint does not state facts which warrant a hearing,
263 such complaint may be dismissed.

264 Said board shall not hear complaints against any licensed individuals for actions which
265 have occurred in the course of employment by any agency of the commonwealth or its political
266 subdivisions unless such complaint is received by the board subsequent to the dismissal of a
267 licensee by such agency for reasons of moral turpitude or gross negligence; provided, however,
268 that said licensee shall have exhausted all administrative appeals of such dismissal.

269 Any individual whose license has been suspended or revoked may apply to the board for
270 vacation of the suspension or reinstatement of the license.

271 Section 282. Board hearings; subpoena powers

272 The board shall conduct its proceedings in accordance with the provisions of this chapter
273 and chapter thirty A. Any individual may be heard by the board in person or by an attorney.
274 Every vote and official act of the board shall be entered on the record. All hearings and rule
275 making proceedings shall be open to the public. A stenographic record shall be made of every
276 hearing before the board.

277 The board shall have subpoena power to require the attendance and testimony of
278 witnesses and the production of all books, papers and documents relating to any matter under
279 investigation. Subpoenas shall be issued by the board upon application by any party to a
280 proceeding before the board and a showing of general relevance and reasonable scope. Witnesses
281 summoned before the board shall be paid the same fees and mileage paid witnesses in courts of
282 the commonwealth. In case of disobedience of a subpoena, the board may apply to the superior

283 court for an order requiring the person subpoenaed to appear before the board and testify and
284 produce books, papers, or documents called for by such subpoena.

285 One or more board members or a hearing examiner or other officer appointed by the
286 board shall preside at hearings.

287 Section 283. Penalties

288 Any individual not licensed under sections one hundred and sixty-three to one hundred
289 and seventy-two who on March first, nineteen hundred and eighty-nine holds himself out to be or
290 advertises himself as a mental health counselor in violation of this chapter shall be punished by a
291 fine not exceeding five hundred dollars for the first offense and five hundred dollars for each
292 subsequent offense; provided, however, that the board may also proceed in the superior court to
293 enjoin and restrain any unlicensed individual violating any section of this chapter. The board
294 shall not be required to post bond at any such proceeding.

295 Section 284. Privilege against disclosures in court, legislative or administrative
296 proceedings; exercise or waiver of privilege by guardian; scope of privilege

297 (a) Except as hereinafter provided, in a court proceeding, in a proceeding preliminary
298 thereto or in a legislative or administrative proceeding, a client of a mental health counselor who
299 is licensed pursuant to the provisions of section 165 or employed in a state, county or municipal
300 government agency shall have the privilege of refusing to disclose and of preventing a witness
301 from disclosing any communication relative to the diagnosis or treatment of the client's mental or
302 emotional condition, wherever made, between the client and the mental health counselor.

(b) If a client is incompetent to exercise or waive the privilege, a guardian shall be appointed to act on the client's behalf under this section. A previously appointed guardian shall be authorized to so act. Upon the exercise of the privilege granted by this section, the judge or presiding officer shall instruct the jury that no adverse inference may be drawn therefrom.

(c) The privilege granted by this section shall not apply to the following communications:

(1) if a mental health counselor, in the course of his diagnosis or treatment of the client, determines that the client is in need of treatment in a hospital for mental or emotional illness or that there is a threat of imminently dangerous activity by the patient against himself or another person and, on the basis of that determination, discloses the communication either for the purpose of placing or retaining the client in the hospital; but, this section shall continue in effect after the patient is in the hospital or placed under arrest or under the supervision of law enforcement authorities;

(2) if a judge finds that the client, after having been informed that a communication would not be privileged, has made a communication to a mental health counselor in the course of a psychiatric examination ordered by the court; but, the communication shall be admissible only on issues involving the patient's mental or emotional condition but not as a confession or admission of guilt;

(3) in a proceeding, except one involving child custody, in which the client introduces his mental or emotional condition as an element of his claim or defense and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between client and mental health counselor be protected;

(4) in a proceeding after the death of a client in which his mental or emotional condition is introduced by any party claiming or defending through or as beneficiary of the patient as an element of the claim or the defense and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between client and mental health counselor be protected;

(5) in the initiation of proceedings under paragraph C of section 23 of chapter 119 or under section 24 of said chapter 119 or section 3 of chapter 210 or to give testimony in connection therewith;

(6) in a proceeding whereby the mental health counselor has acquired the information while conducting an investigation pursuant to section 51B of chapter 119;

(7) in a case involving child custody, adoption or the dispensing with the need for consent to adoption where, upon hearing in chambers, the judge exercises his discretion to determine that the mental health counselor has evidence bearing significantly on the client's ability to provide suitable care or custody and it is more important to the welfare of the child that the communication be disclosed than that the relationship between the client and the mental health counselor be protected; but, in the case of adoption or the dispensing with the need for consent to adoption, a judge shall determine that the client has been informed that the communication should not be privileged; or

(8) if in a proceeding brought by the client against the mental health counselor, and in any malpractice, criminal or license revocation proceeding, in which disclosure is necessary or relevant to the claim or defense of the mental health counselor.

345 The provisions of this section shall not be construed to prevent third party payer from
346 inspecting and copying, in the ordinary course of determining eligibility for or entitlement to
347 benefits, any and all records relating to diagnosis, treatment or other services provided to any
348 person, including a minor or incompetent, for which coverage, benefit or reimbursement is
349 claimed, so long as the policy or certificate under which the claim is made provides that such
350 access to such records is permitted. The provisions of this section shall not be construed to
351 prevent access to any such records pursuant to any peer review or utilization review procedures
352 applied and implemented in good faith.