



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 557

132nd General Assembly
(As Introduced)

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 State Medical Board to implement and administer the bill's provisions related to licensure to practice art therapy.
- Creates the Art Therapist Policy Committee within the Board to provide the Board with expertise and assistance in carrying out the 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 Board to discipline applicants and licensees for specified reasons.
- 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 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

The bill defines "practice of art therapy" as the rendering or offering to render art therapy in the diagnosis, 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:

¹ R.C. 4785.02(A) and Section 3.

² R.C. 4785.99.



- 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;
- A person who on the bill's effective date engaged in the practice of art therapy as an employee of a government agency and continues to do so only during the person's continued employment by the agency, if the person does not represent the person'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 diagnose and 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 State Medical 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

Because the bill does not define "serious mental illness," it is unclear what a licensee may diagnose.

State Medical Board

The bill requires the State Medical Board to adopt rules in accordance with the Administrative Procedure Act⁶ to implement and administer the bill.⁷

The bill extends current law provisions applicable to other health care professionals regulated by the Board to include persons licensed to practice art therapy. Those provisions relate to the following topics:

- Health care professionals regulated by the Board who suffer impairment from the use of drugs or alcohol;⁸
- Board maintenance of a register of applicants for licenses and certificates issued by the Board;⁹

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. 4731.25.

⁹ R.C. 4731.07.



- An Internet directory containing the names and contact information of individuals who hold certain licenses issued by the Board.¹⁰

Art Therapist Policy Committee

The bill creates the Art Therapist Policy Committee within the Board. The Committee is required to provide the Board with expertise and assistance in carrying out the Board's duties relating to licensure to practice art therapy. The Committee must meet at least once a year and at other times as determined by the Board as necessary to carry out its responsibilities.¹¹

Committee recommendations

The Committee 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 Committee 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 State Medical 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 State Medical Board considers necessary for the administration and enforcement of the bill.

The State Medical Board must take the Committee's recommendations into consideration before adopting any rule regarding licensure to practice art therapy. Not later than 90 days after receiving a recommendation from the Committee, the Board must approve or disapprove the recommendation and notify the Committee of its decision. If a recommendation is disapproved, the Board is required to inform the

¹⁰ R.C. 4731.071.

¹¹ R.C. 4785.04(A) and (F).



Committee of its reasons for making that decision. The Committee 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 number of times the Committee may resubmit a recommendation for consideration by the Board.¹²

Membership

The Board President must, not later than 60 days after the bill's effective date, appoint the members of the Committee. The Committee consists of the following members:

- Three members who are licensed to practice art therapy appointed from a list of individuals recommended by the Buckeye Art Therapy Association or its successor organization;
- One member who is a physician or surgeon and who is a member of the Board and who has served at least one year as a member of the Board;
- One member who is a member of the Board appointed to represent the interests of consumers and who has served at least one year as a member of the Board;
- Additional members as the President considers necessary.

The initial appointments to the Committee need not be licensed to practice art therapy under the bill if the appointees hold board certification with the Art Therapy Credential Board, its successor organization, or an equivalent organization recognized by the State Medical Board and meet the bill's eligibility requirements for licensure.¹³

Terms of office for licensed art therapy members are for two years, with initial terms ending two years after the bill's effective date. Those members may be reappointed, but may not be appointed to serve more than three consecutive terms. Terms for State Medical Board members are for one year, with initial terms ending one year after the bill's effective date, and those members may be reappointed at the discretion of the President of the Board. Committee members are required to hold office

¹² R.C. 4785.05.

¹³ R.C. 4785.04(A) and Section 4.

from the date of appointment until the end of the term for which the member was appointed. The bill contains the standard vacancy provisions.¹⁴

Member expenses and Committee staff

Each member of the Committee is required to be reimbursed for the member's necessary and actual expenses incurred in the performance of official duties as a member. The Board may appoint assistants, clerical staff, or other employees as necessary for the Committee to perform its duties adequately.¹⁵

Application process

The bill requires a person seeking a license to practice art therapy to submit to the State Medical 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 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.¹⁶

Eligibility requirements

To be eligible for a license to practice art therapy, an applicant must demonstrate to the 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.

¹⁴ R.C. 4785.04(B) and (C).

¹⁵ R.C. 4785.04(D) and (E).

¹⁶ R.C. 4785.06(A).

- 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 equivalent organization recognized by the State Medical 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 State Medical 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.¹⁷

License issuance

Not later than 60 days after receiving a complete application, the State Medical 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 at least six members of the Board is required to determine that an applicant meets the requirements.¹⁸ The Board consists of 12 members under continuing law.¹⁹

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 State Medical Board.

¹⁷ 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.

¹⁸ R.C. 4785.06(D).

¹⁹ R.C. 4731.01, not in the bill.



- 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 State Medical Board.²⁰

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.²¹

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 State Medical 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 State Medical 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 State Medical 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.

²⁰ R.C. 4785.06(E).

²¹ R.C. 4785.06(C).



The State Medical 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 State Medical Board finds through the random sample or any other means that a licensee has not complied with those renewal requirements, the Board may refuse to renew the licensee's license or may take any other action permitted under the bill.²²

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 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.²³

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:

²² R.C. 4785.07.

²³ R.C. 4785.08.



- Optometrists;
- Chiropractors;
- Psychologists;
- Registered or licensed practical nurses;
- Pharmacists;
- 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.²⁴

Disciplinary actions

The bill allows the State Medical Board, by an affirmative vote of at least six 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.²⁵

The bill requires the Board, by an affirmative vote of at least six 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;

²⁴ 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.

²⁵ R.C. 4785.10(B).

- 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;
- 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.²⁶

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 at least six 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

²⁶ R.C. 4785.10(C).

ratify a consent agreement, the admissions and findings contained in the consent agreement are of no force or effect.²⁷

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 investigations for alleged violations under the law applicable to licensed physicians.²⁸

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).²⁹ Reinstatement of a license to practice art therapy surrendered to the Board requires an affirmative vote of at least six 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.³⁰

Civil penalties

If a licensee violates any provision of the bill or any rule adopted under it, the State Medical Board may, pursuant to an adjudication under the Administrative Procedure Act and an affirmative vote of at least six 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 at least six Board members.

Amounts received from payment of civil penalties are required to be deposited by the Board in the State Medical Board Operating Fund.³¹ The bill specifies that

²⁷ R.C. 4785.10(D).

²⁸ R.C. 4785.10(E), by reference to R.C. 4731.22(F) and (G), not in the bill.

²⁹ R.C. 121.22, not in the bill.

³⁰ R.C. 4785.10(F).

³¹ R.C. 4731.24.



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.³²

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.³³

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.³⁴

HISTORY

ACTION	DATE
Introduced	03-15-18

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³² R.C. 4785.11.

³³ R.C. 4785.12.

³⁴ R.C. 4785.13 and 4776.20.

