

By Ms. Gardner of Holliston, petition of Barbara Gardner and other members of the House relative to the issuance of injunctions against unlicensed or unregistered health and mental health professionals. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT RELATIVE TO THE ISSUANCE OF INJUNCTIONS AGAINST UNLICENSED OR UNREGISTERED HEALTH AND MENTAL HEALTH PROFESSIONALS.

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

1 Chapter 12 of the General Laws, as appearing in the 1990
2 Official Edition, is hereby amended by adding section 11K as
3 follows:

4 As used in this section, the following words shall unless the
5 context clearly requires otherwise, have the following meanings:

6 "Mental health professional", includes any unlicensed or
7 unregistered person rendering or offering to render professional
8 services for the purpose of treating, diagnosing or assessing mental
9 or emotional disorders or distress, modifying behaviors, or
10 alleviating problems pertaining to interpersonal relationships,
11 work and life adjustment, and personal effectiveness which are
12 caused by mental or emotional disorders or distress.

13 "Health Professional", includes any unlicensed or unregistered
14 person rendering or offering to render professional services for
15 the purpose of treating or diagnosing physical disorders or
16 distress.

17 "Patient" includes any person who obtains a professional
18 consultation, diagnostic, or therapeutic service from a mental
19 health professional or health professional.

20 "Former patient" includes any person who obtained a
21 professional consultation, diagnostic or therapeutic service from
22 a mental health professional within one year prior to sexual
23 contact with the mental health professional.

24 “Sexual contact” means the following, whether or not occurring
25 with the consent of a patient or former patient:

26 (1) sexual intercourse, cunnilingus, fellatio, anal intercourse or
27 any intrusion, however slight, into the genital or anal openings
28 of the patient’s or former patient’s body by any object used by
29 the mental health professional or health professional for that
30 purpose, or any intrusion, however slight, into the genital or anal
31 openings of the mental health professional’s body by any part of
32 the patient’s or former patient’s body or by any object used by
33 the patient or former patient for that purpose, if consented to by
34 the mental health professional or health professional;

35 (2) sustained kissing of the mouth or kissing or intentional
36 touching by the mental health professional or health professional
37 of the patient’s or former patient’s genital area, groin, inner thigh,
38 buttocks, or breast or the clothing covering any of these body
39 parts; or sustained kissing of the mouth or kissing or intentional
40 touching by the patient or former patient of the mental health
41 professional’s or health professional’s genital area, groin, inner
42 thigh, buttocks, or breast or the clothing covering any of these
43 body parts if the mental health professional or health professional
44 consents to the kissing or intentional touching.

45 “Sexual contact” does not include conduct described in the
46 definition of sexual contact that is in accordance with practices
47 generally recognized as legitimate by the health professions, casual
48 social contact not intended to be sexual in character, or
49 inadvertent touching.

50 Whenever the attorney general has reason to believe that a
51 health or mental health professional, as defined herein, who is not
52 licensed or registered by a statutory professional board of
53 registration or whose license has been returned to or revoked by
54 a statutory or professional board of registration, is having or has
55 had sexual contact, as defined herein, with one or more patients
56 or clients, or former patients or clients, and that said health or
57 mental health professional poses a threat to the health, safety, or
58 welfare of members of the public who are or may be patients or
59 clients of the health or mental health professional, the attorney
60 general may bring an action in the name of the commonwealth
61 against said health or mental health professional to restrain by
62 temporary restraining order or preliminary or permanent

63 injunction said health or mental health professional from
64 providing, offering to provide, or representing himself or herself
65 as being able to provide health or mental health services as
66 hereinbefore set forth.

67 Venue: The action may be brought either in the superior court
68 for the county in which the conduct complained of occurred to
69 in the superior court for the county in which the health or mental
70 health professional resides or has his/her principal place of
71 business.

72 Notice: At least 5 days prior to the commencement of any action
73 brought under this section, except when temporary restraining
74 order is sought, the attorney general shall notify the health or
75 mental health professional of his or her intended action, and give
76 the mental health professional an opportunity to confer with the
77 attorney general or his/her representatives in person or by counsel
78 or other representative as to the proposed action.

79 Service of Notice: Such notice shall be given by mail, postage
80 prepaid, to his usual place of business, or if he has no usual place
81 of business, to his last known address.

82 Relief: Said court may issue temporary restraining orders or
83 preliminary or permanent injunctions and make such other orders
84 or judgments as it may deem appropriate.

85 No injunction shall issue pursuant to this section unless the
86 court finds that the defendant has had an opportunity for an
87 evidentiary hearing as to all contested material issues of fact.
88 Issues decided in a prior evidentiary hearing in a court or in an
89 administrative proceeding may be applied to a proceeding
90 pursuant to this section.

91 The court issuing an injunction against a health or mental health
92 professional pursuant to this section shall retain jurisdiction, and
93 the cause shall be continued. Any health or mental health
94 professional who is restrained as a result of an action brought
95 pursuant to this section may petition the court for a modification
96 or termination of the injunction, upon fourteen days notice to the
97 attorney general.

98 Reporting of Violations: Any district attorney or other law
99 enforcement office receiving notice of any alleged violation of this
100 section or violation of an injunction or order issued in an action
101 brought under this section shall immediately forward written

102 notice of the same together with any information that he or she
103 may have to the office of the attorney general.

104 Criminal Penalties: In an action brought pursuant to this
105 section, whenever the court issues a temporary restraining order
106 or a preliminary or permanent injunction, ordering a defendant
107 to refrain from certain conduct or activities, the order issued shall
108 contain the following statement:

109 **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

110 Order: The clerk shall transmit 2 certified copies of each such
111 order issued under this section to each appropriate law
112 enforcement agency having jurisdiction over locations where such
113 defendant is alleged to have committed the act giving rise to the
114 action, and such law enforcement agency shall serve one copy of
115 the order upon the defendant.

116 Service of Order: Unless otherwise ordered by the court, service
117 shall be by delivering a copy in hand to the defendant.

118 Violation of Injunctive Order: After any such order has been
119 served upon the defendant, any violation of such order shall be
120 punishable by a fine not more than \$25,000 or by imprisonment
121 for not more than two and one-half years in a house of correction,
122 or both such fine and imprisonment.

123 Enforcement/Probable Cause: Law enforcement agencies shall
124 establish procedures adequate to ensure that all officers
125 responsible for the enforcement of the order are informed of the
126 existence and terms of such order. Whenever any law enforcement
127 officer has probable cause to believe that such defendant has
128 violated the provisions of this section, such officer shall have the
129 authority to arrest said defendant.

130 Vacate: Whenever the court vacates a temporary restraining
131 order or a preliminary or permanent injunction issued under this
132 section, the clerk shall promptly notify in writing each appropriate
133 law enforcement agency which has been notified of the issuance
134 of the order and shall direct each such agency to destroy all record
135 of such vacated order, and such agency shall comply with such
136 directive.

137 Alternative Relief: Nothing contained herein shall prohibit the
138 attorney general in his discretion from beginning an action for

139 civil contempt rather than seeking criminal charges for an alleged
140 violation of an order issued under this section. A court making
141 a finding that a mental health or health professional is in civil
142 contempt by reason of an alleged violation of an injunction or
143 the order entered under this section shall assess a civil penalty of
not more than ten thousand dollars for each such violation found.

