

OPINION NO. 2004-037**Syllabus:**

A person who is licensed by the Counselor, Social Worker, and Marriage and Family Therapist Board as a marriage and family therapist may diagnose and treat mental and emotional disorders, as defined in R.C. 4757.01(F), so long as he acts within the context of marriage and family systems, and within the limitations of his professional education, training and qualifications, and the statutory restrictions imposed on the scope of practice of marriage and family therapy. A person licensed as an independent marriage and family therapist may diagnose and treat mental and emotional disorders without supervision, but a marriage and family therapist who has not attained licensure as an independent therapist may do so only under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist.

To: Michael Davis, Chairman, Columbus, Ohio
By: Jim Petro, Attorney General, October 19, 2004

You have asked whether a marriage and family therapist who is licensed by the Counselor, Social Worker, and Marriage and Family Therapist Board (Board) may diagnose and treat mental disorders. For the reasons that follow, we conclude that a marriage and family therapist may diagnose and treat mental as well as emotional disorders, so long as he acts within the context of marriage and family systems, and within his education, training and qualifications, and the statutory limitations on the scope of practice of marriage and family therapy.

We begin by examining several sections of R.C. Chapter 4757 that describe the qualifications and scope of practice for marriage and family therapists. In order to secure licensure as a marriage and family therapist from the Board, a person must possess certain qualifications, meet the educational, training and experiential standards required by statute, and pass an examination conducted by the Board. R.C. 4757.15; R.C. 4757.16; 4757.30; 11 Ohio Admin. Code 4757-1-04; Chapter 4757-25. *See also* R.C. 4757.18 (licensure of practitioners licensed in other states); R.C. 4757.301 (temporary license). To be licensed as an *independent* marriage and family therapist, an applicant must meet the requirements for licensure as a marriage and family therapist and, in addition, complete at least two years of work experience in marriage and family therapy. R.C. 4757.30(C). Reference in this opinion to marriage and family therapists will include both independent and non-independent marriage and family therapists unless otherwise noted.

For purposes of R.C. Chapter 4757, the "practice of marriage and family therapy"¹ is defined in R.C. 4757.01(H) to mean:

the treatment, evaluation, assessment counseling, and management, of *emotional disorders*, whether cognitive, affective or behavioral, within the context of marriage and family systems, to individuals, couples, and families, singly or in groups, whether those services are offered directly to the general public or through public or private organizations, for a fee, salary or other consideration through the professional application of marriage and family theories, therapies, and techniques, including, but not limited to psychotherapeutic theories, therapies and techniques that marriage and family therapists are educated and trained to perform. The practice of marriage and family therapy does not mean any of the following:

- (1) The treatment of biologically based psychiatric conditions without consultation with an appropriate medical doctor or psychiatrist;
- (2) The use of psychotherapeutic techniques that are exclusive to the scope of practice of a licensed psychologist or psychiatrist;
- (3) Any act that marriage and family therapists are not educated to perform. (Emphasis added.)

¹"Marriage and family therapy" is defined for purposes of R.C. Chapter 4757 to mean: "the evaluation, assessment, counseling, management and treatment of *emotional disorders*, whether cognitive, affective, or behavioral, within the context of marriage and family systems, through the professional application of marriage and family therapies and techniques" (emphasis added). R.C. 4757.01(G).

See also R.C. 4757.01(E) (defining “scope of practice” to mean “the services, methods, and techniques in which and the areas for which a person licensed or registered under this chapter is trained and qualified”). The definition of the practice of marriage and family therapy thus indicates that a licensee may diagnose and treat “emotional disorders” as further described therein. R.C. 4757.01(H).

The scope of practice of a marriage and family therapist is, however, also delineated in R.C. 4757.30(F), which grants an independent marriage and family therapist the authority to diagnose and treat “mental and emotional disorders” without supervision, and marriage and family therapists, who are not licensed as independent therapists, the authority to diagnose and treat “mental and emotional disorders” under the supervision of a psychologist, psychiatrist, independent marriage and family therapist, or other named professional. Thus, while R.C. 4757.01(H) speaks only of the diagnosis and treatment of emotional disorders, R.C. 4757.30(F) grants marriage and family therapists the authority to diagnose and treat “mental and emotional disorders.” It is this seeming inconsistency between R.C. 4757.01(H) and R.C. 4757.30(F) about which you ask.

First, R.C. 4757.01(H) and R.C. 4757.30(F) can be interpreted as reconcilable. See *Southern Surety Co. v. Standard Slag Co.*, 117 Ohio St. 512, 517, 159 N.E. 559 (1927) (it is a “well-known fact that a considerable portion of the labors of the various courts is devoted to the reconciliation of the seeming inconsistencies, not only of different acts, but of different portions of the same act”).² The phrase, “mental and emotional disorders,” is defined for purposes of R.C. Chapter 4757 as: “those disorders that are classified in accepted nosologies such as the international classification of diseases and the diagnostic and statistical manual of mental disorders and in future editions of those nosologies.”³ R.C. 4757.01(F). “Mental disorders” and “emotional disorders” thus have been assigned the identical definition—if a disorder is found in an accepted nosology, it is considered to be either a mental disorder or emotional disorder (or both), but no further determination as to which is required. Therefore, a practitioner who has the authority to diagnose and treat emotional disorders may diagnose and treat the same disorders as a practitioner who has the authority to diagnose and treat mental and emotional disorders.

This interpretation is supported by the fact that the two nosologies named in R.C. 4757.01(F) do not separately classify mental disorders and emotional disorders. The International Classification of Diseases-Clinical Modification (ICD*9*CM)⁴ includes a section,

²R.C. 4757.01(G) and (H), and R.C. 4757.30, were all enacted by Am. Sub. H.B. 374, 124th Gen. A. (2002) (eff. April 7, 2003).

³The most recent edition of the International Classification of Diseases is the 9th Revision, and reference in this opinion is to the Clinical Modification version, Sixth Edition, Millennium Edition (2004) (ICD*9*CM), published by the Practice Management Information Corporation. The most recent edition of the Diagnostic and Statistical Manual of Mental Disorders is the Fourth Edition (DSM-IV), published by the American Psychiatric Association (1994). See also notes 4 and 5, *infra*.

⁴The ICD*9*CM is “a statistical classification system that arranges diseases and injuries into groups according to established criteria. Most *ICD-9-CM* codes are numeric and consist of three, four or five numbers and a description. The codes are revised approximately every 10 years by the World Health Organization and annual updates are published by Center for Medicare and Medicaid Services. (CMS).” *Id.*, at p. 1. As further described, the ICD*9*CM “is a clinical modification of the *World Health Organization’s International Classification of*

entitled "Mental Disorders" (Chapter 5, Codes 290-319). There is no section for "emotional disorders." Rather, the term, "emotional," is used to describe various types of mental disorders featuring symptoms or disturbances that are emotional in nature. For example, the ICD*9*CM lists as types of adjustment reactions: adjustment reaction "with predominant disturbance of other emotions" [other than depression] (309.2); adjustment reaction "with mixed emotional features" [anxiety and depression] (309.28); and, adjustment reaction "with mixed disturbance of emotions and conduct" (309.4).

The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (DSM-IV)⁵ also speaks in terms of "mental disorders," stating that, "[i]n DSM-IV, each of the mental disorders is conceptualized as a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom." *Id.*, at xxi.⁶ Again, emotional disturbances are not categorized as a separate group of disorders, but are symptoms of various mental disorders. One diagnostic class in the DSM-IV is "Mood Disorders," which "includes disorders that have a disturbance in mood as the predominant feature." *Id.*, at 317. ("Mood" is defined as a "pervasive and sustained emotion that colors the perception of the world. Common examples of mood include depression, elation, anger, and anxiety." *Id.*, Appendix C, p. 768.)⁷ However, emo-

Diseases, 9th Revision (ICD-9). The term 'clinical' is used to emphasize the modifications intent; namely, to serve as a useful tool in the area of classification of morbidity data for indexing of medical records, medical care review, ambulatory and other medical care programs, as well as for basic health statistics." *Id.*, at p. 2

⁵The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, which was developed by the American Psychiatric Association, "is a categorical classification that divides mental disorders into types based on criteria sets with defining features," and "was developed for use in clinical, educational, and research settings." DSM-IV at pp. xxii-xxiii. The DSM-IV groups mental disorders into "16 major diagnostic classes," and "one additional section, 'Other Conditions That May Be a Focus of Clinical Attention.'" DSM-IV at p. 9.

⁶The DSM-IV takes care to explain the difficulties in defining the term "mental disorder": "the term *mental disorder* unfortunately implies a distinction between 'mental' disorders and 'physical' disorders that is a reductionistic anachronism of mind/body dualism." *Id.*, at xxi. The explanation continues: "although this manual provides a classification of mental disorders, it must be admitted that no definition adequately specifies precise boundaries for the concept of 'mental disorder.' The concept of mental disorder, like many other concepts in medicine and science, lacks a consistent operational definition that covers all situations.... Mental disorders have also been defined by a variety of concepts.... Each is a useful indicator for a mental disorder, but none is equivalent to the concept, and different situations call for different definitions." *Id.*

⁷In the DSM-IV, "mood" is distinguished from "affect," which is a "pattern of observable behaviors that is the expression of a *subjectively experienced feeling state (emotion)* [emphasis added]. Common examples of affect are sadness, elation, and anger. In contrast to *mood*, which refers to a more pervasive and sustained emotional 'climate,' *affect* refers to more fluctuating changes in emotional 'weather.'" *Id.*, Appendix C, p. 763.

tional disturbances may be symptoms or features of disorders in other diagnostic classes, such as "Schizophrenia and Other Psychotic Disorders" and "Adjustment Disorders."⁸

Secondly, even if R.C. 4757.01(H) and R.C. 4757.30(F) were interpreted as conflicting, the latter would prevail. While R.C. 4757.01(H) defines the scope of practice for a marriage and family therapist, R.C. 4757.30(F) is the enabling statute. R.C. 4757.30(F) grants marriage and family therapists authority to diagnose and treat mental and emotional disorders, and the definitional section, R.C. 4757.01(H), is insufficient to vitiate this explicit grant of authority. *See Ryan Homes, Inc. v. Ohio Department of Industrial Relations*, 30 Ohio App. 3d 68, 72, 506 N.E.2d 293 (Franklin County 1986) (a statutory definition "is not self-executing but, instead, requires some other statutory provisions, using the term as so defined, to give operative effect to the definition").

The Board, marriage and family therapists, and the public may find it more useful to refer to the statutory limitations imposed on the scope of the therapists' practice, rather than attempt to categorize a disorder as either a mental or emotional disorder. *See note 6, supra*. R.C. Chapter 4757 makes clear that a marriage and family therapist must practice within the limitations of his professional education, training, and qualifications, and within the context of marriage and family systems. R.C. 4757.01(E); R.C. 4757.01(G); R.C. 4757.01(H)(3). *See also* 11 Ohio Admin. Code 4757-5-01(B)(1). Furthermore, a marriage and family therapist is statutorily precluded from treating "biologically based psychiatric conditions without consultation with an appropriate medical doctor or psychiatrist," and from using "psychotherapeutic techniques that are exclusive to the scope of practice of a licensed psychologist or psychiatrist," R.C. 4757.01(H)(1) and (2). And, a marriage and family therapist is not authorized to admit patients to a hospital, R.C. 4757.30(G), R.C. 4757.43. A therapist who practices outside the scope of his practice is subject to discipline by the marriage and family therapist professional standards committee of the Board, including reprimand, nonrenewal of license, and license revocation, suspension, and restriction. R.C. 4757.36(A)(8). *See also* R.C. 4757.361 (summary suspension of license when there is "clear and convincing evidence that continued practice by an individual licensed under this chapter presents a danger of immediate and serious harm to the public"); R.C. 4757.40 (Board may seek injunction against the violation of any provision of R.C. Chapter 4757).

In conclusion, it is my opinion, and you are so advised that, a person who is licensed by the Counselor, Social Worker, and Marriage and Family Therapist Board as a marriage and family therapist may diagnose and treat mental and emotional disorders, as defined in R.C. 4757.01(F), so long as he acts within the context of marriage and family systems, and within the limitations of his professional education, training and qualifications, and the statutory restrictions imposed on the scope of practice of marriage and family therapy. A person licensed as an independent marriage and family therapist may diagnose and treat mental and emotional disorders without supervision, but a marriage and family therapist who has not attained licensure as an independent therapist may do so only under the

⁸For example, the "characteristic symptoms of Schizophrenia involve a range of cognitive and emotional dysfunctions that include perception, inferential thinking, language and communication, behavioral monitoring, affect, fluency and productivity of thought and speech, hedonic capacity, volition and drive, and attention." DSM-IV at 274. And, the "essential feature of an Adjustment Disorder is the development of clinically significant emotional or behavioral symptoms in response to an identifiable psychosocial stressor or stressors." *Id.* at 623.

supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist.