HOUSE DOCKET, NO. 2889 FILED ON: 1/21/2011

HOUSE . . . . . No. 2004

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 passage of the accompanying:

An Act for consumer protection and regulation in psychotherapy..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jay R. Kaufman	*15th Middlesex*
Bradford Hill	*4th Essex*
Denise Andrews	*2nd Franklin*
Cory Atkins	*14th Middlesex*
Peter V. Kocot	*1st Hampshire*
George T. Ross	*2nd Bristol*
Frank I. Smizik	*15th Norfolk*
Timothy J. Toomey, Jr.	*26th Middlesex*
F. Jay Barrows	*1st Bristol*
Thomas J. Calter	*12th Plymouth*
Thomas P. Conroy	*13th Middlesex*
Richard J. Ross	*Norfolk, Bristol, and Middlesex*
John W. Scibak	*2nd Hampshire*
Carol Nemet Curran	*8 Highland Drive* *Kingston, MA*

HOUSE DOCKET, NO. 2889 FILED ON: 1/21/2011

HOUSE . . . . . No. 2004

By Mr. Kaufman of Lexington, a petition (accompanied by bill, House, No. 2004) of Jay R. Kaufman and others for legislation to further regulate the practice of psychotherapy. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *266* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

SECTION 1. Section 88 of 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 88. There shall be within the division of professional licensure a board of registration of allied mental health and human services professions, in this section and sections eighty-nine and ninety, which shall consist of thirteen members, one of whom shall be elected as chairperson, to be appointed in the manner provided by section eighty-nine. Members shall be appointed for a term of three years. No member shall be appointed to more than two consecutive full terms; provided, however, that a member appointed for less than a full term may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years.

Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance, or misfeasance in office after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. No member may be removed without a public hearing with at least thirty days prior written notice of the charges and the date 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.

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

22 SECTION 2. Section 89 of said chapter 13 of the General Laws, as appearing in the
23 2008 Official edition, is hereby amended by striking the entire section and inserting in place
24 thereof the following:

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

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

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

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

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

43 SECTION 3. Section 90 of said chapter 13 of the General Laws, as appearing in the
44 2008 Official edition, is hereby amended by striking the entire section and inserting in place
45 thereof the following:

46 Section 90. The board shall hold at least two regular meetings each year, but additional
47 meetings may be held upon the call of the chairperson, or the secretary, or upon the written
48 request of any two board members. A majority of the members of the board then appointed shall
49 constitute a quorum; provided, however, that at least one of those present shall be a member who
50 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.

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

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

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

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

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

105 Section 65F. Persons shall not hold themselves out to the public as psychotherapists or
106 represent that the service they are offering is psychotherapy, unless (a) they are currently
107 licensed by the board of registration in medicine and practicing within the scope of such license
108 and have completed training in psychiatry, or (b) they are currently licensed by the board of
109 registration in nursing and are practicing within the scope of such license and have completed
110 training in psychiatric nursing, or (c) they are currently licensed by the board of registration of
111 psychologists, the board of registration of social workers, or the board of registration of allied
112 mental health and human services professionals and they are practicing within the scope of
113 practice of such license, or (d) they are a student, intern, or person fulfilling supervised
114 experience for licensure in the above professions under the qualified supervision of a licensee.
115 Any person who violates this section shall be punished by a fine of not more than $1,000 for the
116 first offense and by a fine of not more than $2,500 for a second or subsequent offense.

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

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

122 "Advertise", includes, but is not limited to, distributing or causing to be distributed any
123 card, sign or device to any person; or the causing, permitting or allowing of any sign or marking

124 on or in any building or structure, or in any newspaper or magazine or in any directory, or on
125 radio, television or other electronic medium, or by the use of any other means designed to secure
126 public attention.

127 "Allied mental health and human services professional", an educational psychologist, a
128 marriage and family therapist, a mental health counselor, an autonomous psychoanalytic
129 psychotherapist, an autonomous psychoanalyst, or a rehabilitation counselor.

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

134 "Autonomous psychoanalyst", a person so licensed under section one hundred and sixty-
135 five B.

136 "Autonomous psychoanalytic psychotherapist", a person so licensed under section one
137 hundred and sixty-five A.

138 "Board", the Massachusetts board of registration of allied mental health and human
139 services professions.

140 "Educational psychologist", a person so licensed under section one hundred and sixty-
141 five.

142 "Marriage and family therapist", a person so licensed under section one hundred and
143 sixty-five.

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

145 "Practice of educational psychology", the rendering of professional services to
146 individuals, groups, organizations, or the public for compensation, monetary or otherwise. Such
147 professional services shall include, but not be limited to: applying psychological principles,
148 methods and procedures in the delivery of services to individuals, groups, families, educational
149 institutions and staff and community agencies for the purpose of promoting mental health and
150 facilitating learning. Such services may be preventative, developmental or remedial and include
151 psychological and psychoeducational assessment, therapeutic intervention, program planning and
152 evaluation, research, teaching in the field of educational psychology, consultation and referral to
153 other psychiatric, psychological, medical and educational resources when necessary.

154 "Practice of marriage and family therapy", the rendering of professional services to
155 individuals, family groups, couples, or organizations, either public or private for compensation,
156 monetary or otherwise. Said professional services shall include, but not be limited to, applying
157 principles, methods and therapeutic techniques for the purpose of resolving emotional conflicts,

158 modifying perceptions and behavior, enhancing communications and understanding among all
159 family members and the prevention of family and individual crisis. Individual marriage and
160 family therapists may also engage in psychotherapy of a nonmedical nature with appropriate
161 referrals to psychiatric resources and research and teaching in the overall field of human
162 development and interpersonal relationships.

163 "Practice of mental health counseling", the rendering of professional services to
164 individuals, families, or groups for compensation, monetary or otherwise. These professional
165 services include: applying the principles, methods and theories of counseling, human
166 development, learning theory, group and family dynamics, the etiology of mental illness and
167 dysfunctional behavior and psychotherapeutic techniques to define goals and develop treatment
168 plans aimed toward the prevention, treatment and resolution of mental and emotional
169 dysfunction and intra or interpersonal disorders in all persons irrespective of diagnosis. The
170 practice of mental health counseling shall include, but not be limited to, diagnosis and treatment,
171 counseling and psychotherapy, of a nonmedical nature of mental and emotional disorders and the
172 psychoeducational techniques aimed at prevention of such disorders and consultations to
173 individuals, couples, families, groups, organizations and communities. Practice of mental health
174 counseling in independent practice with individuals diagnosed with psychosis may be undertaken
175 by a licensed mental health counselor: (a) who is licensed under section 165 on or after March 1,
176 1992; or (b) who was licensed prior to March 1, 1992 and who meets the certification criteria for
177 independent practice with individuals diagnosed with psychosis as established by the board of
178 registration of allied mental health and human services professions.

179 "Practice of psychoanalysis", the rendering of professional services to individuals,
180 families, groups of individuals, organizations or members of the public, for compensation,
181 monetary or otherwise. These professional services shall include, but not be limited to, applying
182 the principles, methods, and theories of psychoanalysis to the prevention, observation,
183 identification, evaluation, interpretation, or resolution of mental, emotional, family, or social
184 dysfunction in all persons, irrespective of diagnosis. Psychoanalytic principles and methods
185 address dynamic conscious and unconscious mental processes to facilitate modifications in
186 character, behavior, and affect that lead to more constructive or satisfactory functioning through
187 the use of verbal and non-verbal, cognitive and emotional communication, including an in depth
188 exploration of the unconscious aspects of the client's relationship with the analyst, the
189 unconscious meaning of communications, and the way current problems relate to early conflicts
190 and feelings. The practice of psychoanalysis shall include, but not be limited to, the use of
191 psychotherapy and counseling to diagnose and treat dysfunctions and disorders.

192 "Practice of psychoanalytic psychotherapy", the rendering of professional services to
193 individuals, families, groups of individuals, organizations or members of the public, for
194 compensation, monetary or otherwise. These professional services shall include, but not be
195 limited to, applying modified psychoanalytic principles and theories and psychotherapeutic
196 techniques to the prevention, observation, identification, evaluation, interpretation, or resolution

197 of mental, emotional, family, or social dysfunction in all persons, irrespective of diagnosis.
198 Psychoanalytic psychotherapy addresses conscious and unconscious mental processes to
199 facilitate modifications in behavior, work and life adaptation, and mental health through the use
200 of verbal and non-verbal communication, including an emphasis on the way current problems
201 relate to early experience. The practice of psychoanalytic psychotherapy shall include, but not be
202 limited to, the use of psychotherapy and counseling to diagnose and treat dysfunctions and
203 disorders.

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

215 "Psychoanalyst", an individual who is licensed as an autonomous psychoanalyst or is a
216 recognized mental health professional who has received a post-master's certificate or doctoral
217 degree in psychoanalysis from a recognized psychoanalytic training institution.

218 "Psychoanalytic Psychotherapist", an individual who is licensed as an autonomous
219 psychoanalytic psychotherapist or is a recognized mental health professional engaged in the
220 practice of psychoanalytic psychotherapy.

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

226 "Recognized psychoanalytic training institution", any psychoanalytic training institution
227 which grants a post-master's certificate or doctoral degree in psychoanalysis and is accredited by
228 an accrediting organization recognized by the board.

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

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

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

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

242 (1) psychoanalytic psychotherapist, psychoanalytic therapist;

243 (2) educational psychologist, specialist, advisor or consultant;

244 (3) mental health counselor, advisor or consultant;

245 (4) marital or marriage and family therapist, advisor or consultant;

246 (5) psychoanalyst, analyst (when used in conjunction with mental health services); or

247 (6) rehabilitation counselor, specialist, advisor or consultant.

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

250 (1) recognized mental health professionals;

251 (2) students in the discipline of a recognized mental health professional so long as they
252 are following the statutes and regulations of that profession.

253 (3) students, interns, or other trainees in an allied mental health and human services
254 profession receiving qualified supervision approved by the board, and whose training status is
255 designated by titles such as “mental health counseling student” or “marriage and family therapy
256 intern”.

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

263 Nothing in this section shall be construed to prevent members of peer groups or self-help
264 groups from performing peer counseling or self-help activities which may be, wholly or in part,

265 included as a defined professional service in section one hundred and sixty-three; provided,
266 however, that no members of peer groups or self-help groups shall use a title stating or implying
267 that they are an allied mental health or human services professional.

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

270 Section 165A. The board may issue a license to an applicant as an autonomous
271 psychoanalytic psychotherapist provided that each such applicant shall provide satisfactory
272 evidence to the board that such applicant: (1) is of good moral character; (2) has not engaged or
273 is not engaging in any practice or conduct which would be grounds for refusing to issue a license
274 under section one hundred and sixty-nine; (3) has successfully completed a master's degree, or
275 higher, from a recognized educational institution; (4) has successfully completed a program in
276 psychoanalytic psychotherapy that includes a minimum of 1200 clock hours of training from a
277 recognized psychoanalytic training institution chartered by the Commonwealth to offer a
278 master's degree or higher. Such hours may also fulfill requirements for (3) of this Section.
279 Within the 1200 clock hours, the applicant shall have completed at least 600 clock hours of
280 academic work, in such courses as the board shall specify, and shall have completed at least 600
281 clock hours in an internship with such direct client contact and supervision as the board shall
282 specify, so long as 50% of such supervision is with a psychoanalyst; (5) additionally, the
283 applicant shall complete supervised clinical experience of not less than 1500 hours, which
284 includes such direct client contact, supervision, and personal analysis as the board shall specify,
285 so long as 50% of such supervision is with a psychoanalyst, and so long as the applicant
286 completes a minimum of 150 hours of personal analysis with a psychoanalyst; and (6) the
287 applicant shall successfully pass a written or oral examination overseen by the board to
288 determine the applicant's qualifications for licensure pursuant to this section.

289 Individuals formerly practicing legally as psychoanalytic psychotherapists in other
290 jurisdictions may be licensed in the Commonwealth without examination if, in the opinion of the
291 board, their academic and experiential training is substantially equivalent to that required by this
292 section and the regulations of the board.

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

298 Section 165B. The board may issue a license to an applicant as an autonomous
299 psychoanalyst provided that each such applicant shall provide satisfactory evidence to the board
300 that such applicant: (1) is of good moral character; (2) has not engaged or is not engaging in any
301 practice or conduct which would be grounds for refusing to issue a license under section one

302 hundred and sixty-nine; (3) has successfully completed a master's degree, or higher, from a
303 recognized educational institution; (4) has successfully completed a program in psychoanalysis
304 which includes a minimum of 2250 clock hours of training from a recognized psychoanalytic
305 training institution chartered by the Commonwealth to offer a master's degree or higher. Such
306 hours may also fulfill requirements for (3) of this Section. Within the 2250 clock hours, the
307 applicant shall have completed at least 1100 clock hours of academic work in such courses as the
308 board shall specify, shall have completed at least 600 clock hours in an internship with such
309 direct client contact and supervision as the board shall specify, so long as 50% of such
310 supervision is with a psychoanalyst, and shall have completed supervised psychoanalytic
311 practice totaling not less than 550 hours, with such direct client contact and supervision as the
312 board shall specify, so long as such supervision is with a psychoanalyst; (5) additionally, the
313 applicant shall complete supervised clinical experience totaling not less than 1700 hours, which
314 includes such direct client contact, supervision, and personal analysis as the board shall specify,
315 so long as 50% of such supervision is with a psychoanalyst, and so long as the applicant
316 completes a minimum of 350 hours of personal analysis with a psychoanalyst; and (6) the
317 applicant shall successfully pass a written or oral examination overseen by the board to
318 determine the applicant's qualifications for licensure pursuant to this section.

319 Individuals formerly practicing legally as psychoanalysts in other jurisdictions may be
320 licensed in the Commonwealth without examination if, in the opinion of the board, their
321 academic and experiential training is substantially equivalent to that required by this section and
322 the regulations of the board.

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