STATE OF NEW YORK

1046

2019-2020 Regular Sessions

IN SENATE

January 10, 2019

Introduced by Sens. HOYLMAN, GIANARIS, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MARTINEZ, MAY, MAYER, METZGER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, STEWART-COUSINS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to prohibiting mental health professionals from engaging in sexual orientation change efforts with a patient under the age of eighteen years and expanding the definition of professional misconduct with respect to mental health professionals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and intent. The Legislature hereby finds and declares all of the following:

a. Being lesbian, gay, bisexual or transgender is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.

b. The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts, and issued a report in 2009. The task force concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, bisexual or transgender people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources.

c. The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: The American Psychological Association advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social supports, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth.

d. The American Psychiatric Association published a position statement in March of 2000 in which it stated: "Psychotherapeutic modalities to convert or 'repair' homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of 'cures' are counterbalanced by anecdotal claims of psychological harm. In the last four decades, 'reparative' therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, the American Psychiatric Association recommends that ethical practitioners refrain from attempts to change individuals' sexual orientation, keeping in mind the medical dictum to first, do no harm. The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed. Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual orientation."

e. The American School Counselor Association's position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: It is not the role of the professional school counselor to attempt to change a student's sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation is not an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ students to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources.

f. The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating: Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.

g. The American Medical Association Council on Scientific Affairs prepared a report in 1994 in which it stated: Aversion therapy (a behav-

ioral or medical intervention which pairs unwanted behavior , in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it.

h. The National Association of Social Workers prepared a 1997 policy statement in which it stated: Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful.

i. The American Counseling Association Governing Council issued a position statement in April of 1999, and in it the council states: We oppose 'the promotion of 'reparative therapy' as a 'cure' for individuals who are homosexual.

j. The American Psychoanalytic Association issued a position statement in June 2012 on attempts to change sexual orientation, gender, identity, or gender expression, and in it the association states: As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice. Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.

k. The American Academy of Child and Adolescent Psychiatry in 2012 published an article in its journal, Journal of the American Academy of Child and Adolescent Psychiatry, stating: Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is not medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effect, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated.

l. The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in May of 2012 and in it the organization states: These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international regional agreements. The organization also noted that reparative therapies lack medical justification and represent a serious threat to the health and well-being of affected people.

m. Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4

times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlin Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346.

n. New York has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.

§ 2. The education law is amended by adding a new section 6509-e to read as follows:

§ 6509-e. Additional definition of professional misconduct; mental health professionals. 1. For the purposes of this section:

a. "Mental health professional" means a person subject to the provisions of article one hundred fifty-three, one hundred fifty-four or one hundred sixty-three of this title; or any other person designated as a mental health professional pursuant to law, rule or regulation.

b. "Sexual orientation change efforts" (i) means any practice by a mental health professional that seeks to change an individual's sexual orientation, including, but not limited to, efforts to change behaviors, gender identity, or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same sex and (ii) shall not include counseling for a person seeking to transition from one gender to another, or psychotherapies that: (A) provide acceptance, support and understanding of patients or the facilitation of patients' coping, social support and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

2. It shall be professional misconduct for a mental health professional to engage in sexual orientation change efforts upon any patient under the age of eighteen years, and any mental health professional found guilty of such misconduct under the procedures prescribed in section sixty-five hundred ten of this subarticle shall be subject to the penalties prescribed in section sixty-five hundred eleven of this subarticle.

§ 3. The education law is amended by adding a new section 6531-a to read as follows:

§ 6531-a. Additional definition of professional misconduct; mental health professionals. 1. Definitions. For the purposes of this section:

a. "Mental health professional" means a person subject to the provisions of article one hundred thirty-one of this title.

b. "Sexual orientation change efforts" (i) means any practice by a mental health professional that seeks to change an individual's sexual orientation, including, but not limited to, efforts to change behaviors, gender identity, or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same sex; and (ii) shall not include counseling for a person seeking to transition from one gender to another, or psychotherapies that: (A) provide acceptance, support and understanding of patients or the facilitation of patients' coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

2. It shall be professional misconduct for a mental health professional to engage in sexual orientation change efforts upon any patient under the age of eighteen years, and any mental health professional found guilty of such misconduct under the procedures prescribed in title two-A of article two of the public health law shall be subject to the penalties prescribed in section two hundred thirty-a of the public health law, as added by chapter six hundred six of the laws of nineteen hundred ninety-one.

§ 4. This act shall take effect immediately.