

COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IDA KATZ, :
 :
 Plaintiff-Appellant, : Case No. 800265
 :
 vs. :
 :
 OHIO STATE BOARD OF PSYCHOLOGY, et al. :
 :
 Defendants-Appellees. :

Brief of the National Association
of Social Workers, Inc., amicus curiae

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NATURE AND INTEREST OF THE
NATIONAL ASSOCIATION OF SOCIAL
WORKERS INC., (NASW) AS
AMICUS CURIAE

The National Association of Social Workers Inc.,
(hereinafter "NASW") is a non-profit membership corporation with
more than 84,000 members. It is the largest professional asso-
ciation of social workers in the world, Voigt v. Commissioner,
74 T.C. No. 9 (1980), with chapters in each of the 50 states,
the District of Columbia, and overseas.

Among its purposes as stated in its By-Laws are:

To improve and extend social work practice through:

- a. Setting standards and establishing criteria for sound practice.
- b. Conducting appropriate study and research.
- c. Improving the nature, content, and extent of professional education.
- d. Publishing experience in new and established areas of professional practice.

To establish principles and procedures for determining and certifying competence to practice through:

- a. Setting standards for professional organization membership.
- b. Participating in the definition of the nature of professional education and other qualifications for practice.
- c. Establishing standards for the total field and participating in programs for licensing, registration, certification, and appointment through civil service, as appropriate.
- d. Devising ways and means by which tangible evidence, such as certificates or titles, including the use of the "ACSW" certification, may be given social work practitioners who have achieved various levels of competence in social work practice.

To improve the administration of social work services.

To develop, promulgate, and enforce a Code of Ethics for social workers.

To define the role, contribution, and place of each specialty's area of concern within the practice of social work, and to promote the sound development and integration of the several specialties.

To delineate the nature of new, evolving areas of social work practice, and to provide or seek opportunity for their development.

To collaborate with other professional groups to insure cooperative effort between the social work profession and other professions and groups with which social work is or may become associated.

To interpret to the community the contribution of the professional social worker, including basic and specialized qualifications.

To make studies and to take action in relation to social conditions.

To assume responsibility for man and womanpower planning and development for the range of personnel-professional, technical, and supporting-needed in the provision of social services.

Today, qualified social workers are a recognized part of the mental health treatment team. National Institute of Mental Health, Improving Mental Health Insurance Coverage (1965).
Vis a vis the various professional disciplines, i.e., physicians,

psychologists and social workers, the social work profession now provides the largest number of trained mental health professionals. Eg. National Institute of Mental Health Report Community Mental Health Centers, The Federal Investment (1978); National Center For Health Statistics, Health Resource Statistics (1975), Chapter 33; National Institute of Mental Health, Staffing of Mental Health Facilities (1974). Approximately 20% of the members of NASW are engaged in providing mental health care services in public, and non-profit, and private institutional and out-patient settings throughout the United States. NASW is frequently requested by Congress, federal governmental agencies, state governmental agencies and other official bodies to testify, participate in conferences, and draft regulations dealing with mental health services.

Presently, 24 states and territories license or otherwise regulate social work practice through legislation. NASW supports the state regulation of social work practice and has developed a Model Licensing Act for submission by its Chapters to state legislatures.

To promote the quality of service by social workers who provide mental health treatment, and to help fill the gap in state licensing and regulation, NASW publishes professional journals, provides continuing education by means of symposia, seminars etc., promulgates a Code of Ethics enforced by a Grievance and Adjudication mechanism, develops peer review mechanisms, certifies social workers for self regulated practice by examination through the Academy of Certified Social Workers and publishes a Register of Clinical Social Workers the criteria of which include a masters degree or doctorate degree in social work and

substantial post graduate supervised clinical experience.

NASW is vitally concerned with this litigation inasmuch as the provision of mental health treatment through psychotherapy by qualified social workers is presently an accepted part of social work practice: "... (T)he definitions of social work practice are universally so broad that psychotherapy must be considered within the range of practice of the social worker.

* * * Today, three major groups provide therapy explicitly and directly: psychiatrists, clinical psychologists, and psychiatric social workers. Each of these groups has its own professional training program, standards and accrediting bodies." Hogan, The Regulation of Psychotherapists (1979) Vol. II p. 9, Vol. I p. 11. The federal government (Eg. Federal Employees Health Benefits Act 5 U.S. Code §8901 et seq; Community Mental Health Centers Act 42 U.S. Code § 2661 et seq) and various state insurance codes (Eg. California, Louisiana, Maryland, New York, Virginia) and various insurance carriers provide payment to qualified social workers for psychotherapy. NASW is concerned that the public be given access to needed quality mental health services from qualified social workers. Because some language in the Memorandum of Decision of the Court below might suggest that it is illegal for social workers in Ohio functioning in their capacity as social workers to use the technique of psychotherapy* and inasmuch as other language in the Memorandum of

* Opinion A-21: "The facts of this case eliminate the issue concerning what practices are or are not "psychotherapy", because plaintiff acknowledges she was not a licensed psychologist. ...Therefore, she clearly violated Sections 4731.34 and 4731.41. Opinion A-22: "... Plaintiff's claim is not directed to a boycott or limits on the number of practicing physicians or psychologists. Instead her complaint is that psychotherapy is restricted solely to these two professions. ...However, the legislature and not the Boards imposed the limitation."

Decision of the lower Court seems to hold that a qualified social worker who practices psychotherapy cannot state publicly what it is that he/she does* the National Association of Social Workers requests leave of the Court to file this Brief Amicus Curiae**.

DISCUSSION

POINT I - THE STATUTES OF OHIO OUGHT NOT BE CONSTRUED TO DENY THE PUBLIC PSYCHOTHERAPY FROM QUALIFIED SOCIAL WORKERS

Psychotherapy is generally defined as: the treatment of nervous and mental disorders, especially by psychological methods, as hypnosis, re-education, psychoanalysis etc., Funk & Wagnalls New Comprehensive International Dictionary of the English Language Encyclopedic Edition New York 1977, 1019; the science or method of curing psychological abnormalities and disorders by psychological techniques, The Random House Dictionary of The English Language New York 1973; and the treatment of mental disorders by psychological methods, The New Columbia Encyclopedia

* Opinion A-19-20: "Under Section 4731.41 one cannot advertise he practices a limited branch of medicine unless he has a license, and if he uses the title of a limited branch in connection with his name he is unlawfully practicing medicine under Section 4731.34."

Opinion A-20: "By associating with physicians and advertising as a psychotherapist Plaintiff did without any license only what the legislature allows a licensed psychologist to do. Nowhere did the legislature provide a social workers can advertise as a psychotherapist."

Opinion A-23: "Defendant, Young, correctly argues Plaintiff was unlawfully practicing medicine without a license by advertising she was a 'psychotherapist'."

Opinion A-24: "Admitting she lacks the statutory qualifications for a license, prevents her from holding herself out or advertising as a psychotherapist."

** This Brief Amicus Curiae has been designed to supplement rather than duplicate the Brief of the Ohio Chapter, National Association of Social Workers.

New York 1975, 2237. It is the general term for all those procedures designed to improve the adjustment of persons to their environments through the use of the interpersonal relationship developed in the therapy situation, The Cadillac Modern Encyclopedia New York 1973, 1209, and the techniques (verbal, social, interpersonal and expressive) used to modify behavior or psychological disturbance. The Random House Encyclopedia New York 1977, 2510. It is in its broadest sense the systematic effort of a person or group to relieve distress or disability by influencing the sufferer's mental state, attitudes, and behavior. The New Encyclopedia Britannica, Micropaedia VIII, 275.

Psychotherapy is the general term for those forms of treatment in which conversation between the therapist and patient is the primary technique. The object of psychotherapy is not just the removal of symptoms, as with physical treatment of a physical disorder, but an exploration of the patient's personality. Indeed, in many cases the removal of symptoms cease to be as important as the gaining of understanding and insight. To speak of "cure," therefore, as if psychotherapy were a surgical operation, is inappropriate. Most patients go to therapists because their lives are generally unhappy, rather than because they are grossly disturbed. The Random House Encyclopedia New York 1977, 774. Most psychotherapists agree that mental disorders are largely a result of anxiety and are an expression of unresolved inner conflicts. Treatment involves an interpersonal relationship between therapist and patient and relief of the patient's symptoms in order to initiate therapy, and requires some committment on the part of the patient. The New Columbia Encyclopedia New York 1975, 2237. All or any of

the disciplines of psychological thought may be involved in treatment, from different viewpoints, and many of the therapists may not be doctors, but highly skilled experts in their particular fields. Hutchinson's New 20th Century Encyclopedia, First American Edition, New York 1965, 876.

There has been an enormous proliferation of psychotherapeutic systems and techniques, particularly in the United States. They are practiced by individuals whose background training is in such fields as psychiatry, clinical psychology, psychiatric social work and pastoral counseling. The Encyclopedia Americana, International Edition Volume 22, 1978, 738. Psychotherapists have quite varied training. They may be psychiatrists, psychologists, social workers, or nurses. Colliers Encyclopedia Volume 19, 1979, 478. Blakeston's Gould Medical Dictionary (4th Edition) 1979, which has no social worker or psychologist on its editorial board, defines psychotherapist as "A person professionally trained and engaged in psychotherapy, usually a psychiatrist, clinical psychologist, or psychiatric social worker." In Voigt v. Commissioner of Internal Revenue, 74 T.C. No. 9 (1980) the United States Tax Court noted: "Psychiatrists, psychoanalysts, and clinical social workers are all qualified to practice psychotherapy."

On the basis of the foregoing, it may no longer be denied that qualified social workers are as capable of practicing psychotherapy as are other mental health professionals. Nor does the record in this case support any inference that the public in Ohio has suffered in any way from the provision of psychotherapy by qualified social workers. The exclusion of

a qualified person from the practice of psychotherapy because that person is a social worker would be irrational and not reasonably necessary to accomplish Ohio's interest in protecting the public. See Schwartz v. Board of Bar Examiners of New Mexico, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) and Exxon Corporation v. Governor of Maryland 437 U.S. 117, 98 S.Ct. 2207, 2213, 57 L.Ed.2d 91 (1978).

The statutes of the State of Ohio compel no such irrational result. Although the dictionary definition of "psychotherapy" utilized by the Court below (A-21) is consistent with the general use of the word as described above, an examination of the Ohio Statutes and the implementing regulations of the Ohio Medical Board shows that only a limited type of psychotherapy is within the practice of medicine or surgery. While § 4731.15 of the Revised Code identifies "psychotherapy" as a "limited branch of medicine or surgery" under the jurisdiction of the State Medical Board, § 4732.01(C) and § 4732.20 permit licensed psychologists to engage in "psychological psychotherapy". The difference between "psychotherapy" which is part of the practice of medicine or surgery referred to in § 4731.15 and "psychological psychotherapy" referred to § 4732.01(C) and § 4732.20 may be gleaned from the description of the practice of medicine in § 4731.34 as "the cure or relief of a wound, fracture or bodily injury infirmity or disease". (Emphasis added) Thus, the psychotherapy which the Ohio statutes make part of the practice of medicine or surgery is the treatment of "physical" or "psychosomatic" ("bodily") disorders rather than the treatment of purely "mental" disorders. This is further

shown by the Ohio State Medical Board's definition of Psychotherapy as "the treatment of disorders of the human body by mental impression or suggestions only" rather than "the treatment of disorders of human beings or of the human mind and body by mental impressions or suggestions only." (MB-1-09, adopted October 9, 1975)*. So long as they treat purely mental and not psychosomatic or bodily ills and disorders, § 4732.22(G) and § 4732.23(C) of the Revised Code permit "qualified social workers while functioning in their capacity as social workers" to engage in "psychological psychotherapy" and to offer "services of a psychological nature provided they [do not] hold themselves out to the public by the title of psychologist... ." A "qualified social worker" is not otherwise prohibited from the practice of "psychological psychotherapy" by the state of Ohio, and the Court below erred in concluding otherwise.**

POINT II - A QUALIFIED PSYCHOTHERAPIST
CANNOT BE PROHIBITED FROM TRUTHFULLY
STATING THAT HE OR SHE IS A PSYCHOTHERAPIST
MERELY BECAUSE HE/SHE IS A SOCIAL WORKER

Ohio Revised Statute § 4731.41 provides in part that
"... no person shall advertise or announce himself as a practi-

* It is significant that the Medical Board chose to adopt this narrower construction of "psychotherapy" not a definition such as the broader dictionary definition utilized by the Court below. (A-21).

** Whether or not the Plaintiff is a "qualified social worker" is a question for the Court below to determine on remand.

tioner of medicine or surgery or any of its branches without a certificate from the [state medical] board; no person not being a licensee shall open or conduct an office or other place for such practice without a certificate from the board; ..." The Court of Common Pleas, as shown above at pages 8-9 incorrectly added the word "mental" to the definition of medicine and surgery in § 4731.34 as treatment of "bodily injury, infirmity or disease". It then concluded:

Opinion A-19-20: "Under Section 4731.41 one cannot advertise he practices a limited branch of medicine unless he has a license, and if he uses the title of a limited branch in connection with his name he is unlawfully practicing medicine under Section 4731.34."

Opinion A-20: "By associating with physicians and advertising as a psychotherapist, Plaintiff did without any license only what the legislature allows a licensed psychologist to do. Nowhere did the legislature provide a social worker can advertise as a psychotherapist."

Opinion A-23: "Defendant, Young, correctly argues Plaintiff was unlawfully practicing medicine without a license by advertising she was a psychotherapist."

Opinion A-24: "Admitting she lacks the statutory qualifications for a license, prevents her from holding herself out or advertising as a psychotherapist." (Emphasis added)

As has been shown above in Point I, qualified practitioners of psychotherapy are not limited to physicians and psychologists. A prohibition against truthful advertising by a qualified psychotherapist would not be justified as a restriction upon false deceptive or misleading commercial speech. See Friedman v. Rogers 440 U.S. 1 at 13-16, 99 S.Ct. 887 at 896-897, 59 L.Ed. 2d 100 at 112-114 (1979). reh den'd 441 U.S. 917, 99 S.Ct. 2018, 60 L.Ed.2d 389 (1979). A state cannot prohibit truthful advertising relating to the provision of health care. Bolton v. Kansas State Board of Healing Arts 473 F.Supp 728 at 736 (D. Kan.

1979) (professional ability); Wall & Ochs Inc., v. Hicks 469 F. Supp 873 at 876, 880 (E.D.N.C. 1979) (sale of health aid). While an Ohio psychotherapist who has not received a certificate from the state medical board could be prohibited from using words such as "licensed" "authorized" "certified" or "registered" in connection with advertising that he or she is a psychotherapist, the state cannot give a monopoly on the use of the word "psychotherapist" to those who are physicians and psychologists. See Comprehensive Accounting Service Company v. The Maryland State Board of Public Accountancy 284 Md.474, 397 A.2d.1019 (1979) (dealing with the word accountant).

CONCLUSION

Consistent with the acknowledged interest of the State of Ohio in protecting the quality of mental health care of its residents, Friedman v. Rogers, 440 U.S. 1 at 6-7, 99 S.Ct. 887 at 892-893, 59 L.Ed.2d 100 at 108 (1979) reh den'd 441 U.S. 917, 99 S.Ct. 2018, 60 L.Ed.2d 389 (1979), there is no need for the statutes of Ohio to be read to either preclude qualified social workers from providing psychotherapy or from truthfully telling the public that they do so.

Respectfully submitted,

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