SUMMARY

MUSIC THERAPIST PRELIMINARY SUNRISE REVIEW ASSESSMENT

JANUARY 19, 2021

Conclusion: *OPR recommends that the General Assembly establish a creative arts therapy certification that incorporates music therapists, as well as other creative-arts-therapy professionals.*

Law Applied: 3 V.S.A. Chapter 57

Findings:

- The medical and privacy harms alleged in the sunrise preliminary review application do not meet the criteria set forth in 3 V.S.A. § 3105(a) because they are speculative, remote, and can be prevented by other means. This conclusion is supported by complaint data from other states.

- Even if the medical harms alleged were found to meet the statutory criteria, the proposed regulation (licensing music therapists) would not prevent these harms.

- The unregulated practice of music therapy does pose a risk of financial harm to the public that meets the criteria of 26 V.S.A. § 3105(a). Certification is the least restrictive form of regulation to address this financial harm.

- OPR recommends the establishment of a creative arts therapy certification to address the financial harm posed by the unregulated practice of music therapy and potential similar harms in other types of creative art therapies, and to ensure a cost-effective and efficient regulation.

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION

MUSIC THERAPIST PRELIMINARY SUNRISE REVIEW ASSESSMENT

JANUARY 15, 2021

Music therapy is a profession that provides great benefits to many of the most vulnerable in our society. OPR recognizes the tremendous good this profession offers. Based on the evidence provided, OPR finds the unqualified practice of music therapy poses only a speculative risk of mental or physical harm to the public or to the public's privacy. However, OPR finds that there is a non-speculative financial risk to the public. Because of the novelty of the profession and a lack of awareness about qualifications for music therapists, the public is at risk of engaging the services of unqualified individuals claiming to provide music therapy. OPR finds that a state-based certification is the least restrictive regulatory form to address this harm. Costs associated with a music therapist certification would be very high, given the limited number of qualified music therapists in Vermont. However, a creative arts therapy certification would provide the public with the necessary state-based indicators of qualifications for music therapists and other professionals using creative arts therapy modalities. Therefore, OPR recommends that the General Assembly establish a creative arts therapy certification that incorporates music therapists, as well as other creative-arts-therapy professionals.

Music therapists provide a gift to all clients with whom they interact. After an extensive review, it is clear to the Office of Professional Regulation that music therapists are talented individuals using their skills to help others improve their quality of life and achieve therapeutic goals. Scientific study and anecdotal stories support the conclusion that these professionals provide their clients with therapeutic benefits and improve health care experiences.

It is not as clear to OPR, however, that the unqualified practice of music therapy can cause harm. While those who do not hold the qualifications as a board-certified music therapists may not be able to offer clients the same benefits as the trained professionals, OPR has not been able to find any evidence that those subjected to the unqualified practice of music therapy suffer any harm that is not preventable by other means.

That said, the public may be harmed by misrepresentations and deception by individuals claiming to be trained music therapists. If the General Assembly determines that harm of that type warrants a regulatory response, we are mindful that practitioners of similar expressive-arts therapies have sought and will continue to seek state regulation. With that in mind, and because the costs associated with new regulatory programs are not easily borne by very small groups, the Office recommends that a broader

creative arts therapy certification be established that incorporates music therapists, as well as other professionals who use creative arts therapies.

Recommendations

After consideration of comments from the public, review of the application, and study of the available research and other states' sunrise review assessments for music therapist licensure, OPR recommends that the Vermont General Assembly establish a creative arts therapy certification. OPR finds that the unregulated practice of music therapy endangers the health, safety and welfare of the public only in so far as the public lacks access to information necessary to verify that an individual claiming to provide music therapy is, indeed, a music therapist who is qualified to provide this service. This is a harm resulting from a lack of information (at best) and deception (at worst). While there are other means to verify the credentials of an individual claiming to be a music therapist (e.g., searching the national associations' databases), OPR finds based on public comment that the music therapist profession and board certification of these professionals is not well known enough to effectively protect the public from unqualified individuals falsely claiming to provide music therapy.

Per 26 V.S.A. § 3105(b), the form of regulation must be the least restrictive necessary to address the public harm. OPR finds that certification of music therapists will address the harm of public misinformation by providing the public with an additional means of verifying individuals' credentials. At the same time, certification will not prevent musicians from sharing the joy of music with people living in facilities or at schools. If the Legislature opts to establish a certification for music therapists, OPR recommends that the certification include all creative art therapies. This will protect the public by offering a resource to verify the qualifications of other professionals using the creative arts as treatment modalities in therapy.

Background

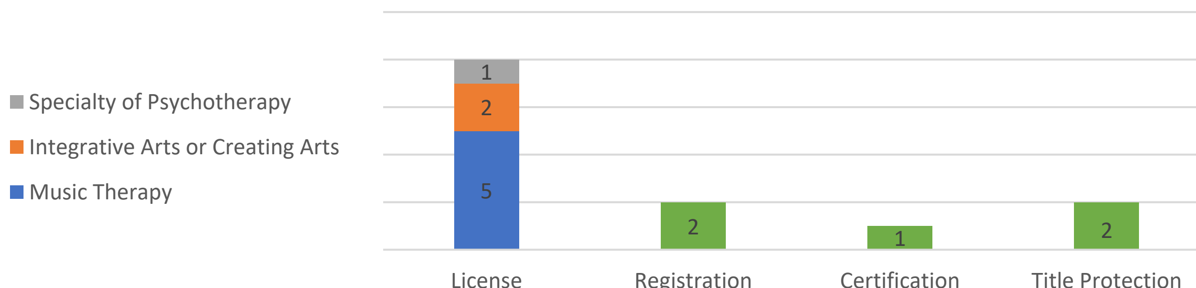
Music therapy is the "clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship." American Music Therapist Association website, https://www.musictherapy.org/about/musictherapy (last visited Jan. 4. 2021). To become a board-certified music therapist, one must complete an American Music Therapy Association ("AMTA") approved educational program. These programs can be bachelors-level, masters-level or doctoral-level. These programs include coursework in musical foundations, clinical foundations and music therapy foundations. Additionally, "the entry-level curriculum includes clinical coursework and extended internship requirements in an approved mental health, special education, or health care facility." *Id*. Board-certified music therapists must also pass a national examination administered by the independent Certification Board for Music Therapists ("CBMT").

Board-Certified Music Therapists claim to be distinct from other professionals using music in the health care setting, including therapeutic musicians, music thanatologists, clinical musicians and musical

practitioners, because music therapists intentionally use "music as the therapeutic mechanism" to "attain and/or maintain a maximum level of functioning using interactive music therapy strategies."

Thirteen other states regulate music therapists.[1] (Table 1) Seven of these states offer a license, two offer a registration, one offers a certificate, and two offer title protection (i.e., it is a misdemeanor for an unqualified individual to claim to be a "music therapist"). Of the states that offer a license, two (North Dakota and New Jersey, respectively) offer the license under an integrative health or creative arts therapy credential. Music therapists in New York are eligible for a creative arts therapy license as a specialty addition to an underlying license to practice psychotherapy.

Table 1: Thirteen Other States Regulate Music Therapists



Review Process

Pursuant to 26 V.S.A. § 3107, the Vermont State Music Therapy Task Force ("VMTTF") filed an application with the Office of Professional Regulation ("OPR") for a preliminary sunrise review assessment of regulating and licensing music therapists in Vermont. Their application can be viewed on the OPR website at the following address: https://sos.vermont.gov/opr/regulatory/regulatory-review/music-therapy-sunrise-review. The supporting documentation they provide is also available on the same web page.

The Office of Professional Regulation reviewed this application. OPR also made the VMTTF's application for preliminary sunrise review publicly available on its website, where the dates of the public hearings were also posted. An email address was posted on this website to which the public could send comments and questions. OPR held remote public hearings on October 28, 2020 (at 10:00AM) and on November 10, 2020 (at 6:00PM). Twelve people attended the first meeting and eleven attended the second hearing. Comments offered at both hearings were entirely in support of offering a music therapist credential, except for three comments asking about how current mental health professionals using music treatment modalities would be impacted by the regulation of music therapists. Additionally, OPR independently researched the benefits and harms associated with music therapy and other states' regulation of music therapy. OPR contacted the other states that regulate music therapy regarding complaints against music therapists since the commencement of music therapist regulation in that state.

[1] California, Connecticut, Georgia, New Jersey, New York, Nevada, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Virginia, and Wisconsin currently regulate music therapists in some form.

OPR received and reviewed 14 comments regarding the music therapy sunrise application. These comments were overwhelming in support of a state-based credential for music therapists. The most notable concern for commenter was that the public is unable to determine whether an individual who claims to provide music therapy is qualified to do so. Notably, the American Speech-Language Pathology Association (ASHA) wrote in opposition to the application for music therapist licensure. ASHA expressed concerns about the music therapists' scope of practice asserted in the VMTF application. Specifically, ASHA asks that any statutes regarding regulation of music therapists include a "prohibition on the diagnosis and treatment of communication disorders."

Legal Standards for Regulatory Review

Vermont law sets clear policies and objective standards for legislative review of proposed professional regulation. 26 V.S.A. Chapter 57 ("Chapter 57"). In sum, the law requires that a profession be regulated only for the purpose of protecting the public and, if a profession must be regulated, the regulations must be the least restrictive form of regulation possible to protect the public from the harm of the unlicensed practice of the profession. 26 V.S.A. § 3101 ("*It is the policy of the state of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The legislature believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the state shall be the least restrictive form of regulation necessary to protect the public interest...*").

Vermont law provides that a profession shall be regulated only when the following three criteria are met:

> *(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;*
>
> *(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and*
>
> *(3) the public cannot be effectively protected by other means.*

26 V.S.A. § 3105(a).

To assist the General Assembly in determining whether regulation of a profession is necessary to protect the public, OPR is charged with conducting a preliminary sunrise review assessment of the above three criteria and providing that assessment to the General Assembly in writing. OPR must base this preliminary assessment report on the "information contained in the request for regulation, oral

comments received at the public meeting, written comments submitted after the public meeting, its own budget analysis, and any other information pertinent to the request." VT ADC 20-4-1:I.

Vermont law further provides that, if, after consideration of the criteria set forth in 26 V.S.A. § 3105(a) and the "governmental and societal costs and benefits," the General Assembly determines that regulation of a profession is necessary, the least restrictive method of regulation must be imposed, consistent with public interest and the following criteria:

> *(1) If existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions;*
>
> *(2) If a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners;*
>
> *(3) If the threat to the public health, safety, or welfare, including economic welfare, is relatively small, regulation should be through a system of registration;*
>
> *(4) If the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification; or*
>
> *(5) If it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.*

26 V.S.A. §3105(b).

Pursuant to the above, OPR has reviewed the application submitted by the Vermont Music Therapy Task Force and now submits the following preliminary assessment of the application for regulation and licensure of music therapists. This report also provides recommendations about the least restrictive form of regulation that should be imposed upon music therapists.

Application of 26 V.S.A. § 3105 Criteria

To demonstrate that the unregulated practice of music therapy can "clearly harm or endanger the health, safety, or welfare of the public," the applicants, the Vermont Music Therapy Task Force (VMTTF), provided the examples of both medical and non-medical (privacy and financial) harms that may result from the unregulated practice of music therapy. OPR finds that the medical harms proposed are speculative, and, thus, do not support the regulation of the profession under 26 V.S.A. § 3105(a). Regarding the non-medical harms posited by the applicants, OPR finds that the privacy harm is remote and speculative (and, thus, not sufficient to support regulation), but that the public may be financially

harmed by the unregulated practice of music therapy. The public may suffer a financial harm because of a lack of sufficient information to ensure that the service being paid for is from a qualified music therapist.

Analysis of Medical Harms

(a) *<u>OPR Finding</u>: The medical harms alleged in the application are speculative, remote, and can be prevented by other means.*

VTTF and the AMTA provided the following examples of medical harms to support the need for the regulation of music therapists:

- "A nursing home patient with Lewy body dementia, was engaged in a group music sing-along that utilized songs from the big band era. [Lewy Body dementia is a rare form of dementia, one of the prominent symptoms of which is aggressive outbursts.] At some point the man became progressively upset, and started yelling and threatening other patients and staff. The musician facilitating the sing-along decided to try a different song to engage this man and calm him down. Unfortunately, the song choice only exacerbated the mood and situation. The patient, very distraught and confused, struck another patient and staff member, and in the process stood up and fell. This elderly gentleman was not able to heal, spent his last week in pain, and died in a nursing home in Roanoke, Virginia a few weeks after this incident….The group was facilitated by an entertainer that contracted with small nursing homes and group homes. Part of his brochure included the term music therapy, and although he was not a music therapist, he used many examples of the benefits of music with the elderly. This entertainer did not have the training and a clinical understanding in working with a patient with Lewy body dementia, and to this, did not have the necessary clinical skill set to support the needs of this patient, who became rapidly confused and decompensated into violence…"[2]

- "There was a young teenager who ran his snowmobile into a tree and had a traumatic brain injury. He was in a stage of coma where he was extremely agitated. His parents consulted with someone who claimed to be a music therapist but was not. The person programmed music for them to play at their child's bedside to help him relax. The result of that music was increased agitation, increased heart rate (to dangerous levels), and decreased oxygen saturation rates. This necessitated increased sedation medication, which itself can have negative side effects. The family was playing some beautiful Mozart concerto when the music therapist arrived. The child was in restraints and writhing on his bed. When the music therapist asked the mother if her son liked classical music and would have selected it to relax prior to the accident, she replied, 'oh no. He hates classical music!' The music therapist asked them to turn off the music, but his agitation continued. After explaining the connection between musical preference and relaxation, the family

[2] Example submitted by the American Music Therapy Association.

disclosed their son would relax to gangster rap. After conducting further assessment, the music therapist developed a music listening program specifically for the patient. As soon as she started playing music that would help him relax, he let out a sigh and appeared to visibly relax. His heart rate lowered to normal in less than three minutes and his oxygen saturation rate went from 82% to 96% and remained stable. He was able to relax enough he fell asleep without further sedation medication, allowing his body and brain to focus on healing."[3]

- At least one Vermont hospital has been approached by an individual who wanted to provide "music therapy" services in the neonatal intensive care unit (NICU) and did not have any education or clinical training in music therapy. This is concerning because infants in the NICU have fragile neurological systems that can become overstimulated and cause stress. Stress in NICU patients can be detrimental to their progress and can worsen medical conditions (e.g. increased heart rate in an infant with a congenital heart defect). Stress in an infant can lower oxygen saturation and can have an effect on neural structure, function, and development. Board-certified music therapists have specific training in implementing evidence-based NICU intervention, recognizing infant distress signals, and knowledge of infant neurological development to inform what levels and type of music is most appropriate. Through their specialized training, board certified music therapists know that infant distress signals can be extremely subtle and, therefore, remain acutely aware when providing any type of stimuli in this setting.

- Music therapists often work with individuals with seizure disorders. There is evidence-based research documenting the potential for music and auditory stimulation trigger seizure activity. For individuals where music is not a trigger for seizure activity, there is still a risk if their seizure threshold is low. Thresholds can change based on a multitude of factors. Music therapists have the clinical training to determine when or when not to use music with these individuals.

- Noncompliance with safety protocols and guidelines in the clinical environment, including those related to appropriate sound environments, can result in hearing loss, injury, infection, regression, or even death.

- There are observed instances of music causing increased agitation and emotional distress for veterans with PTSD. For veterans, hearing patriotic music can activate a trauma-based response. MT-BCs are equipped to anticipate potential triggers and thereby avoid causing harm by avoiding certain music. When activating music is not pre-identified, music therapists are highly trained in order to manage and support individuals going through a trauma response.

[3] Example provided by the American Music Therapy Association.

- An intern (who went on to become a board-certified music therapist) worked briefly with an untrained, uncertified individual, who purported to be a music therapist in central Vermont. The individual was observed dispensing psychological advice to an adult male with developmental delays and a background of uncontrolled behavior patterns, including outbursts of uncontrolled anger. This individual directed the client out of the therapy space and into his private bedroom, in order to demonstrate an anger-management technique. Although the client seemed uncertain, he dutifully complied. Once upstairs, the individual picked up a pillow from the client's bed, and proceeded to hurl it upon the mattress, while releasing a loud shout. The client appeared alarmed and ill-at-ease, expressing concern for his pet cat, who had dashed off in obvious distress.

OPR finds that these medical harms asserted by the applicants are remote and speculative and, thus, do not fulfill the first criteria set forth in 26 V.S.A. § 3105(a)(1). With regard to the example of the man with Lewy Body dementia, OPR finds that this harm is remote and speculative because there is no showing that the harm was not due to poor oversight by the nursing home staff or to the man's disease, rather than the unqualified practice of music therapy. In the example given, the applicant states that an investigation into the incident found "there to be a progression of bad decision-making and choices within the environment of the activity setting, [and] placement of the patient" in addition to the "clear and observed effect of music and music activity increasing agitation, confusion, and distress." Nor was there any showing that the man's reaction was due directly to the music or that it would not have occurred otherwise due to a different environmental or internal stimulus. No clinical or scientific studies or empirical data was provided associating music and the instigation of Lewy Body dementia symptoms. OPR has not had the opportunity to speak with any parties involved in the incident to determine whether music instigated the outburst or if there had been any antecedent events that resulted in or led to the accident. Given the limited amount of information provided, OPR finds that it is speculative to conclude that the unqualified practice of music therapy led to this man's outburst, let alone his eventual death. OPR must also conclude, based on conclusions from the summary of the investigation into this incident, that there were environmental and medical ways to prevent this harm from occurring other than requiring the licensure of music therapists.

Similarly, the example about the young boy in the coma is an anecdote of harm that OPR finds to be speculative. The example appears to have originated in 2012 and has been used, with varying elements, in licensing advocacy efforts since then. OPR cannot identify the patient, the parents, or the caregivers to determine whether music was the cause of the agitation or some other stressor. Again, no clinical or scientific studies or empirical data were presented showing an association or causative relationship between the unqualified practice of music therapy, here, and the perceived harm in the patient (agitation). OPR is unable to conclude from just the example provided that the unqualified practice of music therapy caused the harm in this instance.

Further, the harm to this patient is preventable by means other than requiring music therapists to hold a license. Staff is present to monitor the patient's vital signs and observe significant agitation. In such instances, staff may consider stopping all external stimuli, including music, to assess what is causing

the agitation, even if it is found to be caused by the unqualified practice of music therapy. Regarding the more general medical harms proposed (i.e., to NICU patients, to those who suffer from PTSD, and to people with epilepsy), OPR must again conclude that the harms are remote and speculative. In the above examples, the applicants provided no clinical or scientific studies or empirical data showing an association or causative relationship between the unqualified practice of music therapy in these environments and the harms that were presented. No Vermonters claimed that these harms have occurred, nor did the applicants provide examples of these harms actually occurring in Vermont or elsewhere.[4]

The applicant alleges that the unqualified practice of music therapy in the NICU will harm infant patients. However, the applicant did not provide any clinical or scientific data supporting the conclusion that music is the cause of vital sign fluctuations in NICU patients. Nor was OPR able to find any studies or data supporting this conclusion in its independent research. There are many stressors in the NICU environment, and the patients are particularly vulnerable. Even exhaustive studies of stress factors in the NICU have been unable to pinpoint a single cause of stress or attribute health outcomes to certain stressors. See https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4627473/ (last viewed Jan. 4, 2021). OPR, thus, finds it speculative to associate the unqualified practice of music therapy with harm to infant patients in the NICU.

The alleged harm to veterans suffering from PTSD is unique from the other medical harms that the applicants associate with the unqualified practice of music therapy because the patients, here, have the capacity to communicate preferences. In turn, patients can communicate to any musician playing music in a clinical setting that they have PTSD reactions to certain songs and types of songs. In doing so, the risk of harm from the unqualified practice of music therapy seems greatly mitigated and, thus, remote. Similarly, patients suffering from the very rare condition of musicological epilepsy (i.e., epileptic seizures triggered by certain music) can seek out the services of a board-certified music therapist or avoid musical therapy all together. OPR finds that both these purported harms are speculative and remote.

The applicant's last medical claim of harm is that, as therapeutic providers, board-certified music therapists are better trained in COVID-19 prevention measures than the general public, and that board-certified music therapists are trained to comply with the infection-prevention requirements of clinical settings, unlike unqualified music practitioners. This is a speculative harm. No support for the claim that music therapists are more aware of or more qualified to prevent COVID-19 infection than the general public was offered. Nor was there any support offered for the claim that music therapists are better able to prevent infections in clinical settings than unqualified music practitioners. Based on the above, OPR must conclude that the medical harms presented by the applicants are only speculatively associated with

[4] The applicants mention that there are studies supporting these claims. However, only a study summary is provided, and it speaks only about the benefits of music therapy. We have no doubt that such therapy can be helpful. *See* Detmer, Michael R., MME, MT-BC (NICU-MT), Music in the NICU: An Evidence-Based Healthcare Practice with Proven Benefits. The question OPR must answer, though, is whether the unqualified playing of music in these environments is detrimental. Nothing in the one study summary provided indicated any harms from the unqualified practice of music therapy.

the unqualified practice of music therapy, and do not fulfill the first criteria set forth in 26 V.S.A. §3105(a)(1).

Not only are these more general medical harms proposed remote and speculative, but they are also "effectively" preventable "by other means." 26 V.S.A. § 3105(a)(2). Regarding the infection risk, staff in medical facilities are well-trained in and capable of guiding visitors, whether clinical, family, or untrained music practitioners, in standard infection-prevention protocols. In the NICU, nursing staff is present and can attend to a patient whose vital signs fluctuate. As noted above, regarding the inducement of epileptic seizures and PTSD, those suffering from musicological epilepsy and PTSD can choose not to partake in any therapy that involves music, regardless of whether such therapy is provided by a board-certified music therapist or an untrained music practitioner. Alternatively, individuals with these conditions can request that certain types of music be avoided. In turn, the harms presented can be effectively prevented by other means and, thus, further fail to fulfill the criteria set forth in 26 V.S.A. § 3105(a).

(b) <u>OPR Finding</u>: The proposed regulation will not prevent all the medical harms alleged.

Though not a statutory element, it is helpful to note that the regulation sought (i.e., the licensure of qualified music therapists) would not prevent some the purported harms, even if OPR accepted the assertion that the harms are not remote or speculative or effectively prevented by other means. The applicant's proposed definition of music therapy (and the practice thereof), focuses on the therapeutic use of music to achieve goals. ("The clinical and evidence-based use of music interventions to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program."[5]) Licensing requirements, if implemented, would require individuals to obtain a license only if they were intending to use music for these therapeutic purposes. Musicians would still be permitted to offer music for relaxation, enjoyment, comfort and other purposes. Members of these musicians' audiences who are susceptible to music-induced "harms" (e.g., the individual with Lewy Body dementia, if the applicants assertions are accepted; audience members with PTSD or musicological epilepsy) would not be protected by laws requiring music therapists to obtain a license.

Additionally, if the alleged harm is that people may react negatively (sometimes severely so) to music, licensing music therapists will not address the harm. Music is an almost ubiquitous element in life. To use an example from the applicant, an individual with musicological epilepsy will not be protected from a law that requires music therapists to hold a license, when that individual hears a song in the grocery store that induces a seizure. Similarly, veterans who experience PTSD when hearing certain music will not be protected by a law that requires music therapist licensure when that veteran attends a wedding or turns the radio on in the car.

[5] AMTA website, https://www.musictherapy.org/about/musictherapy (last viewed Jan 4, 2021).

Thus, even if OPR found that alleged harms are not remote or speculative, licensing music therapists would not prevent several of the potential harms except in a very limited clinical or therapeutic setting.

(c) *<u>OPR Finding</u>: Complaint data from other states supports the conclusion that the alleged medical harms are speculative.*

The lack of complaints about music therapists in other states that regulate music therapists further supports the conclusion that the harms alleged are remote and speculative. Thirteen states currently regulate the practice of music therapy. See Table 2. Wisconsin was the first state to offer a music therapist license in 1998. OPR contacted ten of the thirteen states to inquire about complaints received about the practice of music therapy and any resulting disciplinary action.[6] OPR received responses from eight states, the results of which are shown in Table 3. The data from these states show that very few complaints have been filed and little to no discipline has been imposed for violation of the music therapy laws or for the unlicensed practice of music therapy in any of these states. This data further supports the conclusion that neither the unlicensed practice of music therapy nor board-certified music therapists endangers the health, safety and welfare of the public.

Table 2
States with Music Therapist Regulation

State	Year of Initial Regulation	Type of Regulation	Number Holding Credential**
California	2019	Title Protection	N/A
Connecticut	2016	Title Protection	N/A
Georgia	2012	License	227
New Jersey	2020	License (Creative Arts Therapy)	N/A
New York	1990	License (Creative Arts Therapist; addition to underlying psychotherapy license)	1,576
Nevada	2011	License	
North Dakota	2011	License (Integrative Health Care)	21
Oklahoma	2016	License	36
Oregon	2015	License	118
Rhode Island	2014	Registration	14
Utah	2014	Certification	89
Virginia	2020	License	N/A
Wisconsin	1998	Registration*	70***

[6] OPR did not contact New York, Virginia or New Jersey. Virginia and New Jersey passed laws regulating music therapists in 2020 and not enough time has passed for those states to establish regulations or receive any complaints. New York regulates music therapists in conjunction with an underlying license permitting psychotherapy. In turn, OPR did not think complaint and disciplinary data from the state would be relevant to the regulation of music therapy as an independent, rehabilitative and mental health therapy profession, not to data specific to music therapists

* Wisconsin law offers an option to obtain a license in music therapy for individuals who wish to provide psychotherapy in conjunction with music therapy.
** Based on data from the states' websites, checked on 1/4/2021.
*** Based on data from the West Virginia Music Therapy State Task Force Sunrise Report (2017).

Table 3
Complaints Against Music Therapists by State

State	Complaint	Reason for Complaints	Discipline
California	N/A*	N/A	N/A
Connecticut	N/A*	N/A	N/A
Georgia	10	Not available	No discipline
New Jersey	Not yet available	N/A	N/A
New York	N/A**	N/A	N/A
Nevada	0	N/A	N/A
North Dakota	3	Unlicensed practice	Letters of Warning
Oklahoma	0	N/A	No Discipline
Oregon	3	1 continuing education; 1 inactive license; 1 billing	Inactive license and billing violation pending; continuing education: no discipline
Rhode Island	No response	N/A	N/A
Utah	1	Practicing beyond scope of license	No discipline
Virginia	Not yet available	N/A	N/A
Wisconsin	1	Complaint was in 1999 and no records remain	No discipline

*In states with title protection as regulation, use of the "music therapist" title without the appropriate qualifications is a criminal offense. There is no qualifications-based regulation and, thus, no system for complaints or regulation based on the practice of music therapy.
**Because New York offers a creative arts therapy licenses as an addition to an underlying mental health psychotherapy license and to therapists who use various forms of creative arts as therapy modalities (e.g., dance/movement, drama, music, poetry, art), OPR was unable to discern whether complaints related to the practice of music therapy.

Analysis of Privacy Harm

The applicants allege that the unlicensed practice of music therapy poses a threat to the privacy of clients seeking music therapy. The alleged privacy harm would arise if a consumer engaged the services of someone who purports to be a music therapist believing that that the individual is a health care provider obligated to keep patient information confidential. The consumer may then make disclosures to the music practitioner that they would not normally share with a non-health care provider, and the musical practitioner, perhaps unaware of a health care provider's obligation under patient confidentiality laws, may improperly disclose the consumer's information.

As with the medical harms discussed above, OPR finds the alleged privacy harm to be speculative. Neither the applicants nor any commenters reported any case of a Vermonter experiencing disclosure of personal health information after falsely believing a music practitioner to be a health care provider. OPR did not find such an instance in its research and other states that regulate music therapists did not share any such instances with OPR when OPR inquired. The applicants provided no evidence of such harms occurring. While it is always possible that such a breach of privacy could occur, there is no evidence that it ever has. Thus, OPR finds this privacy harm to be speculative.

Analysis of Financial Harm

a. *OPR Finding: The unregulated practice of music therapy does pose a risk of financial harm to the public that meets the criteria of 26 V.S.A. § 3105(a).*

OPR does find that the unregulated practice of music therapy endangers the welfare of the public in that such unregulated practice makes the public susceptible to false claims from untrained individuals claiming to provide music therapy. The applicants state that members of the public have been harmed when they have engaged unqualified music practitioners to provide music therapy without knowing that the music practitioners were not qualified to provide music therapy. The harm in this instance is one of deception and misinformation: the consumer has paid for a service that the provider is not qualified to render and that is not, in turn, received.

Commenters supported the applicants' claim about a lack of knowledge about music therapists and board certification. Representative Carol Ode shared that her mother had benefited from board-certified music therapist services engaged by her mother's hospice providers. Prior to her experience with her mother, Rep. Ode was not well informed about music therapy or its use in health treatment, or that there was a way to verify the distinction between a music practitioner and a board-certified music therapist. She stated that, without regulation, the layperson would have no way of knowing the distinctions between a music practitioner and a board-certified music therapist, or the services they provide.

Similarly, Cara Feldman-Hunt, the director of UVM Integrative Health Program, noted that a state music therapist license would help her verify the qualifications and credentials of individuals seeking to provide music therapy. She reported concern that members of the public would not know about the distinction between qualified music therapists and those without training who claim to provide music therapy. Other commenters noted confusion among those in the community (e.g., preschool directors, nursing home administrators), who are hiring unqualified individuals claiming to be providing music therapy and receiving musical entertainment, instead.

Finally, other states reported several complaints of individuals claiming to provide music therapy when not holding a board certification. While no harm to the public appears to have arisen from these false claims, these complaints are evidence that the harm of deception is not speculative. Thus, due to a lack of information about music therapy qualifications, there is a financial risk that the public will unintentionally engage the services of someone who purports to be providing music therapy but is unqualified to do so.

OPR further finds that existing means to address this harm posed by confusion and a lack of information are not well known enough to effectively protect the public from misrepresentations by untrained individuals claiming to provide music therapy. The AMTA and the CBMT offer a database through which members of the public can find board-certified music therapists in each state. However, board certification of music therapists and the profession, itself, are novel and, based on comments received by OPR, few know to search this database prior to engaging the services of an individual claiming to provide music therapy. Thus, the databases are insufficient to effectively protect the public from the financial harm of unqualified individuals falsely claiming to provide music therapy.

Regarding this harm, the public would benefit from OPR offering a license, registration or certification indicating that an individual claiming to provide music therapy has the requisite qualifications. Regulatory oversight by OPR would be familiar to most who are used to engaging professionals for therapeutic services. Additionally, OPR would provide a location where the public could search to see if an individual claiming to provide music therapy has the requisite qualifications, and to seek out providers with such qualifications. Therefore, with regard to the alleged financial harm, all the criteria of 26 V.S.A. § 3105(a) are met and OPR recommends regulation of the music therapy profession to address this financial harm.[7]

(b) *OPR Conclusion: Certification is the least restrictive form of regulation to address this financial harm.*

If the General Assembly agrees with OPR that regulation of music therapists is necessary to protect the public from the harm of untrained individuals claiming to be music therapists, the law directs the General Assembly to select the least restrictive form of regulation possible. 26 V.S.A. §§ 3101(b) and 3105(b). Per 26 V.S.A. § 3105(b), when neither existing laws nor the regulation of business entities is sufficient to protect the public from the harm caused by the unregulated profession, one of three forms of regulation shall be imposed: licensing, certification, or registration. Licensing is the most restrictive form of regulation. Individuals seeking to practice a licensed profession must be licensed and they must demonstrate achievement of certain qualifications to obtain the license. Certification is less restrictive in that it is voluntary. To obtain a certification, members of the profession must demonstrate that they have achieved certain qualifications. However, individuals may practice the profession without obtaining a certification. Often accompanying the certification form of regulation is a legal protection of the title of the profession or the adjective "certified" modifying the profession (e.g., "certified music therapist"). The third form of regulation is a registration. This form of regulation is mandatory – all who wish to practice the profession must obtain a registration. However, there are minimal, if any, qualifications required to obtain a registration.

[7] It is important to reiterate that OPR has not found that any threat of physical or mental harm to the public from the untrained practice of music therapy. The harm resulting here is one of consumers potentially being deceived into engaging the services of an individual claiming to provide music therapy when the individual is not able or is unqualified to do so. It is a financial harm based on fraud and misinformation.

In the case of music therapists, OPR believes certification is the least restrictive form of regulation possible to address the potential harm to the public of untrained individuals claiming to be music therapists. Requiring a full license is too broad and restrictive given that OPR has found that there is no evidence that the practice of music therapy by untrained individuals causes harm. Licensure would require all musicians in Vermont who wish to provide any form of therapeutic music to meet certain qualifications and obtain a license. This risks preventing musicians who play music in health care settings from sharing music with people in facilities or students in schools. There are several types of Vermont musicians who practice in health care environments (e.g., music thanatologists, certified music practitioners, therapeutic harp musicians, healing harm musicians). These practitioners do claim to offer therapeutic benefits from their music. A law requiring these individuals to become licensed and obtain the same credentials as music therapists, or alternatively to no longer use the word "therapeutic" in association with their music offerings would negatively impact their ability to continue to practice. It is possible that, if music therapy regulations pass, facilities, from nursing homes to schools to hospitals and hospices, will be deterred from seeking the services of non-licensed musical practitioners who use music for therapeutic purposes for fear of liability or the lack of a therapeutic title, as well as, potentially, non-therapeutic musicians who seek only to entertain or provide relaxation.

Additionally, many licensed Vermont professionals (e.g., licensed clinical mental health counselors, licensed marriage and family therapists, licensed alcohol and drug counselors, rostered psychotherapists, psychoanalysts, occupational therapists, speech-language pathologists, social workers, psychologists, massage therapists) use music as a treatment modality in their practice. A licensing law could exempt these professionals from obtaining a music therapy license prior to using music as a treatment modality. However, the proposed licensing legislation would also prohibit these professionals from calling the use of music as a treatment modality, "music therapy". Practically, this requirement may not have much of an impact but it does pose the question of why the government should be prohibiting individuals with extensive training, qualifications and expertise in their field of therapeutic care from calling a therapeutic treatment technique "music therapy."

Finally, a licensing law may prevent many of Vermont's vulnerable populations from accessing music as entertainment or in any therapeutic form. As noted earlier, facilities may be deterred from engaging unlicensed musicians using music therapeutically. Given that there are only 15 board-certified musical therapists in Vermont, however, many facilities and organizations would not be able to find or engage a licensed music therapist. As a result, licensing music therapy to the exclusion of other musical practitioners using music in a health care setting may result in a lack of access for many of Vermont's most vulnerable populations.

Alternatively, a registration form of regulation would not address the issue of having untrained individuals claiming to provide a service they are not qualified to provide. Any person could obtain a registration without any qualifications. Thus, the member of the public seeking a qualified music therapist would not be served by a regulation that indicates only that a person claiming to provide music therapy has registered with the state.

A certification form of regulation is narrowly tailored to address the harm that OPR found (i.e., the risk of the public being deceived or misinformed by untrained individuals claiming to be qualified music therapists) without being so broad as to exclude other music practitioners from providing music in health care settings. Under such a certification law, professionals who wish to claim to be a "certified music therapist" to the public would need to demonstrate to OPR that they had met certain qualifications. The public could then be reassured by the term "certified" preceding "music therapist" that the "certified music therapist" has the qualifications being sought, and could readily determine (either by use of the term or looking at the OPR professional lists) whether an individual who claims to be a qualified music therapist holds the certification. At the same time, music practitioners who offer clinical music or music in a health care setting could continue to offer their services without regulatory impediment or public confusion.

Therefore, based on the finding that there is a financial harm posed to the public from the unregulated practice of music therapists that cannot be effectively prevented by other means, OPR recommends that the state establish a certification program to address this harm.

Creative Arts Therapy Certification

OPR Finding: *OPR recommends the establishment of a creative arts therapy certification.*

OPR is concerned about the costs associated with issuing a separate music therapy certificate. It is the policy of the State of Vermont that "the cost of regulating a profession attached to OPR should be borne by the profession" and that "one profession should not subsidize the cost of regulating another profession." 3 V.S.A. §124(a). The applicants estimate that there are currently 15 board-certified music therapists in Vermont. Even if music therapists are regulated as an advisor profession, which is less expensive to administer than a board profession, there will be significant costs to regulate the profession, including staff, technology and administrative resources. While OPR would be able to implement and manage a separate music therapy credential, it would be an expensive credential and may not be an economically sound decision.

Based on the costs noted above and on knowledge of other creative art therapy professionals interested in state regulation (in Vermont and elsewhere), OPR recommends that, rather than creating a certification specifically for music therapists, the General Assembly establish a more holistic certification, such as creative arts therapy certification. OPR anticipates that, if a music therapist certification is offered, there will be an increasing number of professionals requesting similar certifications for other therapeutic approaches involving the creative arts (e.g., art, writing, drama, dance, etc.).[8] Establishing one

[8] The U.S. Bureau of Labor Statistics recognizes musical therapists as part of the group of Recreational Therapists, defined as those who use recreation-based treatment for people with disabilities, injuries and illnesses. Other forms of recreational therapy may use drama, dance, sports, games, aquatics, and arts and crafts. New Jersey has recently

certification that encompasses the practices of all these professionals will prevent inconsistencies and redundancies and increase efficiency in the laws governing these professions. It will also reduce costs for certification applicants, as there will be more professionals to bear the costs of regulating the professions. Qualifications for each type of therapy could still be specified in the regulations, ensuring that the public can verify that a professional claiming to hold a creative arts therapy certification has the requisite training in that type of therapy.[9] This approach could avoid multiple and duplicative regulatory reviews, statutes, and regulations while ensuring that the public has the information necessary to determine that a professional claiming to provide a form of creative arts therapy has the requisite training. Thus, OPR recommends the establishment of a broad creative arts therapy certification.

Conclusion

OPR finds that regulation of music therapists is necessary to protect the public from the single harm of deception or misrepresentation by untrained individuals claiming to provide music therapy. The least restrictive form of regulation to address this harm is a certification of the profession. OPR recommends that, to address this harm and potential similar harms in other types of creative art therapies and to ensure cost-effective and efficient regulation, the General Assembly establish a holistic, creative arts therapy certification for professionals that use creative art forms as therapeutic treatment modalities, including music therapists.

established a Board of Creative Arts and Activities Therapies to issue licenses to art therapists, drama therapists, dance/movement therapists, and music therapists. (New Jersey requires music therapists and other creative arts therapists to obtain a license, rather than a certification, to practice one of these professions. New Jersey does not have the same professional regulation statutory policy requirements as Vermont, however, and, thus, may establish licenses without determining that there is a public harm caused by the unregulated practice of a profession.) New York also has a creative arts therapy specialty license for applicants who are already trained in psychotherapy.

[9] If there is concern about confusion between the creative art therapy modalities, the General Assembly could permit OPR to create endorsement specialties within the certification program. For example, OPR could establish a music therapy endorsement specialty so a professional would obtain a creative arts therapy certificate with a music therapy specialty.

Respectfully submitted to the House and Senate Committees on Government Relations.

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION

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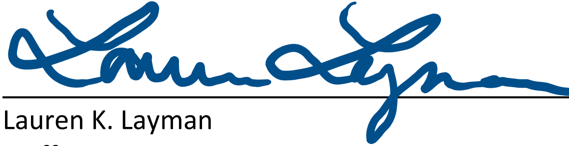
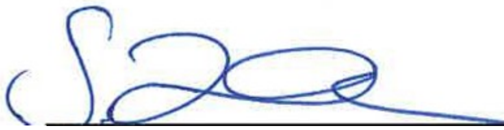


January 15, 2020

Lauren K. Layman — Date
Staff Attorney

APPROVED



January 15, 2020

S. Lauren Hibbert — Date
Director OPR