

An Act

ENROLLED HOUSE
BILL NO. 2195

By: Randleman of the House

and

Floyd of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 1353, as amended by Section 2, Chapter 169, O.S.L. 2016, 1365, 1368 and 1370, as last amended by Section 7, Chapter 169, O.S.L. 2016 (59 O.S. Supp. 2018, Sections 1353 and 1370), which relate to the Psychologists Licensing Act; prohibiting certain persons from holding themselves out to the public as psychologists; providing for a reexamination fee; prohibiting the renewal and requiring the suspension of a license if a psychologist is not compliant with Oklahoma income tax law; authorizing Board to maintain jurisdiction over licensee in certain circumstances; and providing an effective date.

SUBJECT: Psychologists Licensing Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1353, as amended by Section 2, Chapter 169, O.S.L. 2016 (59 O.S. Supp. 2018, Section 1353), is amended to read as follows:

Section 1353. No person shall represent himself or herself as a psychologist or engage in the practice of psychology unless the person is licensed pursuant to the provisions of the Psychologists Licensing Act. The provisions of the Psychologists Licensing Act shall not apply to:

1. The teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions; provided, that such teaching,

research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of the services, without regard to the source or extent of payment for services rendered. Nothing in the Psychologists Licensing Act shall prevent the provision of expert testimony by psychologists who are otherwise exempt from the provisions of Section 1351 et seq. of this title. Persons holding an earned doctoral degree in psychology from an institution of higher education may use the title "psychologist" in conjunction with the activities permitted by this subsection;

2. Qualified members of other professions, including, but not limited to, physicians, licensed social workers, licensed professional counselors, licensed marital and family therapists, or pastoral counselors, doing work of a psychological nature consistent with their training and consistent with the code of ethics of their respective professions provided they do not hold themselves out to the public by any title or description incorporating the word psychological, psychologist, or psychology, or derivatives thereof, excluding psychotherapy;

3. The activities, services, and use of an official title by a person in the employ of a state agency, if such activities, services, and use are a part of the duties of the office or position of such person within an agency or institution;

4. The activities and services of a person in the employ of a private, nonprofit behavioral services provider contracting with the state to provide behavioral services to the state if such activities and services are a part of the official duties of such person with the private nonprofit agency.

a. Any person who is unlicensed and operating under these exemptions shall not use any of the following official titles or descriptions or derivatives thereof:

(1) psychologist, psychology or psychological,

(2) licensed social worker,

(3) clinical social worker,

(4) certified rehabilitation specialist,

(5) licensed professional counselor,

(6) psychoanalyst, or

(7) marital and family therapist.

b. Such exemption to the provisions of the Psychologists Licensing Act shall apply only while the unlicensed individual is operating under the auspices of a contract with the state and within the employ of the nonprofit agency contracting with the state. Such exemption will not be applicable to any other setting.

c. State agencies contracting to provide behavioral health services will strive to ensure that quality of care is not compromised by contracting with external providers and that the quality of service is at least equal to the service that would be delivered if that agency were able to provide the service directly. The persons exempt under the provisions of this act shall provide services that are consistent with their training and experience. Agencies will also ensure that the entity with which they are contracting has qualified professionals in its employ and that sufficient liability insurance is in place to allow for reasonable recourse by the public;

5. The activities and services of a person in the employ of a private, for-profit behavioral services provider contracting with the state to provide behavioral services to youth and families in the care and custody of the Office of Juvenile Affairs or the Department of Human Services on March 14, 1997, if such activities and services are a part of the official duties of such person with the private for-profit contracting agency.

a. Any person who is unlicensed and operating under these exemptions shall not use any of the following official titles or descriptions or derivatives thereof:

(1) psychologist, psychology or psychological,

(2) licensed social worker,

(3) clinical social worker,

- (4) certified rehabilitation specialist,
- (5) licensed professional counselor,
- (6) psychoanalyst, or
- (7) marital and family therapist.

- b. Such exemption to the provisions of this act shall apply only while the unlicensed individual is operating under the auspices of a contract with the state and within the employ of the for-profit agency contracting with the state. Such exemption shall only be available for ongoing contracts and contract renewals with the same state agency and will not be applicable to any other setting.
- c. State agencies contracting to provide behavioral health services will strive to ensure that quality of care is not compromised by contracting with external providers and that the quality of service is at least equal to the service that would be delivered if that agency were able to provide the service directly. The persons exempt under the provisions of this act shall provide services that are consistent with their training and experience. Agencies will also ensure that the entity with which they are contracting has qualified professionals in its employ and that sufficient liability insurance is in place to allow for reasonable recourse by the public;

6. The activities and services of a student, intern, or resident in psychology, pursuing a course of study at a university or college that is regionally accredited by an organization recognized by the United States Department of Education, or working in a training center recognized by that university or college, if the activities and services constitute a part of the supervised course of study for the student, intern, or resident;

7. Individuals who have been certified as school psychologists by the State Department of Education. They shall be permitted to use the term "certified school psychologist". Such persons shall be restricted in their practice to employment within those settings under the purview of the State Board of Education;

8. The activities and services of a person who performs psychological services pursuant to the direct supervision of a licensed psychologist or psychiatrist or an applicant for licensure who is engaged in the applicant's postdoctoral year of supervision. Such person shall be subject to approval by the Board and to such rules as the Board may prescribe pursuant to the provisions of the Psychologists Licensing Act;

9. The activities and services of a nonresident of this state who renders consulting or other psychological services if such activities and services are rendered for a period which does not exceed in the aggregate more than five (5) days during any year and if the nonresident is authorized pursuant to the laws of the state or country of the person's residence to perform these activities and services. Such person shall inform the Board prior to initiation of services;

10. The activities and services of a nonresident of this state who renders consulting or other psychological services if such activities and services are rendered in cooperation with the American Red Cross or as a member of the Disaster Response Network of the American Psychological Association. The Board shall be informed prior to initiation of services; or

11. For one (1) year, the activities and services of a person who has recently become a resident of this state and has had his or her application for licensing accepted by the Board, and if the person was authorized by the laws of the state or country of his or her former residence to perform such activities and services.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1365, is amended to read as follows:

Section 1365. The Board shall administer examinations to qualified applicants at least once a year. The Board shall determine the subject and scope of the examinations. Written examinations may be supplemented by such oral examinations as the Board shall determine. An applicant who fails his or her examination may be reexamined at a subsequent examination upon payment of ~~another licensing~~ a reexamination fee.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1368, is amended to read as follows:

Section 1368. A. The State Board of Examiners of Psychologists shall issue a license to each person that it registers as a psychologist. The license shall show the full name of the psychologist and shall bear a serial number. The license shall be signed by the chairman and secretary of the Board under the seal of the Board.

B. Licenses expire on the thirty-first day of December following their issuance or renewal and are invalid thereafter unless renewed.

C. The Board shall notify every person licensed under this act of the date of expiration and the amount of the renewal fee. ~~This notice~~ Notice shall be ~~mailed~~ provided at least one (1) month before the expiration of the license. Renewal may be made at any time during the months of November or December upon application therefor by payment of the renewal fee. Failure on the part of any person licensed to pay his or her renewal fee before the first day of January does not deprive such person of the right to renew his or her license, but the fee to be paid for renewal after December shall be increased ten percent (10%) for each month or fraction thereof that the payment of the renewal fee is delayed. However, the maximum fee for delayed renewal shall not exceed twice the normal renewal fee. A psychologist who wishes to place his or her license on inactive status may do so upon application by payment of a fee as fixed by the Board; such a psychologist shall not accrue any penalty for late payment of the renewal fee.

D. The Oklahoma Tax Commission shall notify any psychologist who is not in compliance with the income tax laws of this state. Such notification shall include:

1. A statement that the Tax Commission shall proceed by garnishment to collect any delinquent tax and to collect any penalty or interest due and owing as a result of a tax delinquency until the psychologist is deemed by the Commission to be in compliance with the income tax laws of this state;

2. The reasons that the psychologist is considered to be out of compliance with the income tax laws of this state, including a statement of the amount of any tax, penalties and interest due or a list of the tax years for which income tax returns have not been filed as required by law;

3. An explanation of the rights of the psychologist and the procedures which must be followed by the psychologist in order to come into compliance with the income tax laws of this state; and

4. Such other information as may be deemed necessary by the Tax Commission.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 1370, as last amended by Section 7, Chapter 169, O.S.L. 2016 (59 O.S. Supp. 2018, Section 1370), is amended to read as follows:

Section 1370. A. A psychologist and any other persons under the supervision of the psychologist shall conduct their professional activities in conformity with ethical and professional standards promulgated by the State Board of Examiners of Psychologists by rule.

B. The Board shall have the power and duty to suspend, place on probation, require remediation, revoke any license to practice psychology, impose an administrative fine not to exceed Five Thousand Dollars (\$5,000.00) per incident, or assess reasonable costs or to take any other action specified in the rules whenever the Board shall find by clear and convincing evidence that the psychologist has engaged in any of the following acts or offenses:

1. Fraud in applying for or procuring a license to practice psychology;

2. Immoral, unprofessional, or dishonorable conduct as defined in the rules promulgated by the Board;

3. Practicing psychology in a manner as to endanger the welfare of clients or patients;

4. Conviction of a felony crime that substantially relates to the business practices of psychology or poses a reasonable threat to public safety;

5. Harassment, intimidation, or abuse, sexual or otherwise, of a client or patient;

6. Engaging in sexual intercourse or other sexual contact with a client or patient;

7. Use of repeated untruthful, deceptive or improbable statements concerning the licensee's qualifications or the effects or results of proposed treatment, including practicing outside of the psychologist's professional competence established by education, training, and experience;

8. Gross malpractice or repeated malpractice or gross negligence in the practice of psychology;

9. Aiding or abetting the practice of psychology by any person not approved by the Board or not otherwise exempt from the provisions of Section 1351 et seq. of this title;

10. Conviction of or pleading guilty or nolo contendere to fraud in filing Medicare or Medicaid claims or in filing claims with any third-party payor. A copy of the record of plea or conviction, certified by the clerk of the court entering the plea or conviction, shall be conclusive evidence of the plea or conviction;

11. Exercising undue influence in a manner to exploit the client, patient, student, or supervisee for financial advantage beyond the payment of professional fees or for other personal advantage to the practitioner or a third party;

12. The suspension or revocation by another state of a license to practice psychology. A certified copy of the record of suspension or revocation of the state making such a suspension or revocation shall be conclusive evidence thereof;

13. Refusal to appear before the Board after having been ordered to do so in writing by the executive officer or chair of the Board;

14. Making any fraudulent or untrue statement to the Board;

15. Violation of the code of ethics adopted in the rules and regulations of the Board; and

16. Inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

C. No license shall be suspended or revoked nor the licensee placed on probation or reprimanded until the licensee has been given

an opportunity for a hearing before the Board pursuant to the provisions of subsection D of this section. Whenever the Board determines that there has been a violation of any of the provisions of the Psychologists Licensing Act or of any order of the Board, it shall give written notice to the alleged violator specifying the cause of complaint. The notice shall require that the alleged violator appear before the Board at a time and place specified in the notice and answer the charges specified in the notice. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection E of this section not less than ten (10) days before the time set for the hearing.

D. On the basis of the evidence produced at the hearing, the Board shall make findings of fact and conclusions of law and enter an order thereon in writing or stated in the record. A final order adverse to the alleged violator shall be in writing. An order stated in the record shall become effective immediately, provided the Board gives written notice of the order to the alleged violator and to the other persons who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Board itself, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Board, which shall thereupon enter its order. The Board may enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Board shall become final and binding on all parties unless appealed to the district court as provided for in the Administrative Procedures Act.

E. Except as otherwise expressly provided for by law, any notice, order, or other instrument issued by or pursuant to the authority of the Board may be served on any person affected, by publication or by mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at the last-known post office address of such person as shown by the files or records of the Board. Proof of the service shall be made as in case of service of a summons or by publication in a civil action. Proof of mailing may be made by the affidavit of the person who mailed the notice. Proof of service shall be filed in the office of the Board.

F. Every certificate or affidavit of service made and filed as provided for in this section shall be prima facie evidence of the facts stated therein, and a certified copy thereof shall have same

force and effect as the original certificate or affidavit of service.

G. If the psychologist fails or refuses to appear, the Board may proceed to hearing and determine the charges in his or her absence. If the psychologist pleads guilty, or if upon hearing the charges, a majority of the Board finds them to be true, the Board may enter an order suspending or revoking the license of the psychologist, reprimanding the psychologist, or placing the psychologist on probation or any combination of penalties authorized by the provisions of this section.

H. The secretary of the Board shall preserve a record of all proceedings of the hearings and shall furnish a transcript of the hearings to the defendant upon request. The defendant shall prepay the actual cost of preparing the transcript.

I. Upon a vote of four of its members, the Board may restore a license which has been revoked, reduce the period of suspension or probation, or withdraw a reprimand.

J. As used in this section:

1. "Substantially relates" means the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation; and

2. "Poses a reasonable threat" means the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.

K. The Board may keep confidential its investigative files.

L. The forfeiture, nonrenewal, surrender or voluntary relinquishment of a license by a licensee shall not bar jurisdiction by the Board to proceed with any investigation, action or proceeding to revoke, suspend, condition or limit the licensee's license or fine the licensee.

SECTION 5. This act shall become effective November 1, 2019.

Passed the House of Representatives the 11th day of March, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____