

1 **SENATE FLOOR VERSION**

2 February 18, 2019

3 SENATE BILL NO. 160

By: Floyd

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5
6 An Act relating to the Psychologists Licensing Act;
7 amending 59 O.S. 2011, Section 1353, as amended by
8 Section 2, Chapter 169, O.S.L. 2016 (59 O.S. Supp.
9 2018, Section 1353), which relates to license;
10 modifying certain exceptions; amending 59 O.S. 2011,
11 Section 1365, which relates to examinations;
12 modifying type of fee; amending 59 O.S. 2011, Section
13 1368, which relates to licenses; making language
14 gender-neutral; modifying notice requirement; setting
15 forth certain penalties for noncompliance with tax
16 law; amending 59 O.S. 2011, Section 1370, as last
17 amended by Section 7, Chapter 169, O.S.L. 2016 (59
18 O.S. Supp. 2018, Section 1370), which relates to
19 suspension, probation, remediation, revocation of
20 license; specifying that disciplinary action may
21 continue after loss of licensure; updating statutory
22 references; and providing an effective date.

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

24 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

1 Licensing Act. The provisions of the Psychologists Licensing Act
2 shall not apply to:

3 1. The teaching of psychology, the conduct of psychological
4 research, or the provision of psychological services or consultation
5 to organizations or institutions; provided, that such teaching,
6 research, or service does not involve the delivery or supervision of
7 direct psychological services to individuals or groups of
8 individuals who are themselves, rather than a third party, the
9 intended beneficiaries of the services, without regard to the source
10 or extent of payment for services rendered. Nothing in the
11 Psychologists Licensing Act shall prevent the provision of expert
12 testimony by psychologists who are otherwise exempt from the
13 provisions of Section 1351 et seq. of this title. Persons holding
14 an earned doctoral degree in psychology from an institution of
15 higher education may use the title "psychologist" in conjunction
16 with the activities permitted by this subsection;

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

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

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

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

- 13 (1) psychologist, psychology or psychological,
- 14 (2) licensed social worker,
- 15 (3) clinical social worker,
- 16 (4) certified rehabilitation specialist,
- 17 (5) licensed professional counselor,
- 18 (6) psychoanalyst, or
- 19 (7) marital and family therapist.

20 b. Such exemption to the provisions of the Psychologists
21 Licensing Act shall apply only while the unlicensed
22 individual is operating under the auspices of a
23 contract with the state and within the employ of the
24

1 nonprofit agency contracting with the state. Such
2 exemption will not be applicable to any other setting.

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

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

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

4 (1) psychologist, psychology or psychological,

5 (2) licensed social worker,

6 (3) clinical social worker,

7 (4) certified rehabilitation specialist,

8 (5) licensed professional counselor,

9 (6) psychoanalyst, or

10 (7) marital and family therapist.

11 b. Such exemption to the provisions of ~~this act~~ the
12 Psychologists Licensing Act shall apply only while the
13 unlicensed individual is operating under the auspices
14 of a contract with the state and within the employ of
15 the for-profit agency contracting with the state.

16 Such exemption shall only be available for ongoing
17 contracts and contract renewals with the same state
18 agency and will not be applicable to any other
19 setting.

20 c. State agencies contracting to provide behavioral
21 health services will strive to ensure that quality of
22 care is not compromised by contracting with external
23 providers and that the quality of service is at least
24 equal to the service that would be delivered if that

1 agency were able to provide the service directly. The
2 persons exempt under the provisions of ~~this act~~ the
3 Psychologists Licensing Act shall provide services
4 that are consistent with their training and
5 experience. Agencies will also ensure that the entity
6 with which they are contracting has qualified
7 professionals in its employ and that sufficient
8 liability insurance is in place to allow for
9 reasonable recourse by the public;

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

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

22 8. The activities and services of a person who performs
23 psychological services pursuant to the direct supervision of a
24 licensed psychologist or psychiatrist or an applicant for licensure

1 who is engaged in the applicant's postdoctoral year of supervision.
2 Such person shall be subject to approval by the Board and to such
3 rules as the Board may prescribe pursuant to the provisions of the
4 Psychologists Licensing Act;

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

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

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

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

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

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

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

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

21 C. The Board shall notify every person licensed under ~~this act~~
22 the Psychologists Licensing Act of the date of expiration and the
23 amount of the renewal fee. ~~This notice shall be mailed~~ Notice shall
24 be provided at least one (1) month before the expiration of the

1 license. Renewal may be made at any time during the months of
2 November or December upon application therefor by payment of the
3 renewal fee. Failure on the part of any person licensed to pay his
4 or her renewal fee before the first day of January does not deprive
5 such person of the right to renew his or her license, but the fee to
6 be paid for renewal after December shall be increased ten percent
7 (10%) for each month or fraction thereof that the payment of the
8 renewal fee is delayed. However, the maximum fee for delayed
9 renewal shall not exceed twice the normal renewal fee. A
10 psychologist who wishes to place his or her license on inactive
11 status may do so upon application by payment of a fee as fixed by
12 the Board; such a psychologist shall not accrue any penalty for late
13 payment of the renewal fee.

14 D. The license of a psychologist who is not compliant with the
15 Oklahoma income tax law pursuant to Section 238.1 of Title 68 of the
16 Oklahoma Statutes shall not be renewed. Such license shall be
17 automatically suspended until the Board receives notice from the
18 Oklahoma Tax Commission that the licensee has come into compliance
19 with Oklahoma income tax law. A psychologist whose license is
20 suspended under this subsection shall pay a reinstatement fee in an
21 amount fixed by the Board not to exceed Four Hundred Dollars
22 (\$400.00).

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1 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1370, as
2 last amended by Section 7, Chapter 169, O.S.L. 2016 (59 O.S. Supp.
3 2018, Section 1370), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 C. No license shall be suspended or revoked nor the licensee
16 placed on probation or reprimanded until the licensee has been given
17 an opportunity for a hearing before the Board pursuant to the
18 provisions of subsection D of this section. Whenever the Board
19 determines that there has been a violation of any of the provisions
20 of the Psychologists Licensing Act or of any order of the Board, it
21 shall give written notice to the alleged violator specifying the
22 cause of complaint. The notice shall require that the alleged
23 violator appear before the Board at a time and place specified in
24 the notice and answer the charges specified in the notice. The

1 notice shall be delivered to the alleged violator in accordance with
2 the provisions of subsection E of this section not less than ten
3 (10) days before the time set for the hearing.

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

21 E. Except as otherwise expressly provided for by law, any
22 notice, order, or other instrument issued by or pursuant to the
23 authority of the Board may be served on any person affected, by
24 publication or by mailing a copy of the notice, order, or other

1 instrument by registered mail directed to the person affected at the
2 last-known post office address of such person as shown by the files
3 or records of the Board. Proof of the service shall be made as in
4 case of service of a summons or by publication in a civil action.
5 Proof of mailing may be made by the affidavit of the person who
6 mailed the notice. Proof of service shall be filed in the office of
7 the Board.

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

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

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

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

4 J. As used in this section:

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

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

13 K. The Board may keep confidential its investigative files.

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
21 February 18, 2019 - DO PASS