

1 SB446  
2 113903-3  
3 By Senator Dixon  
4 RFD: Governmental Affairs  
5 First Read: 18-FEB-10

1 SB446

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4 ENROLLED, An Act,

5 To amend Section 34-8A-16, Code of Alabama 1975, as  
6 amended by Act 2009-587, 2009 Regular Session, relating to the  
7 Board of Examiners in Counseling, to correct an inconsistency  
8 in the law regarding the confidentiality of records of  
9 complaint and investigation files.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 34-8A-16, Code of Alabama 1975,  
12 as amended by Act 2009-587, 2009 Regular Session, is amended  
13 to read as follows:

14 "§34-8A-16.

15 "(a) The board by a majority of the board members  
16 present and voting is authorized to withhold, deny, revoke, or  
17 suspend, any license or certificate issued or applied for in  
18 accordance with this chapter or otherwise discipline a  
19 licensed professional counselor or associate licensed  
20 counselor upon proof by proper hearing that the applicant,  
21 licensed professional counselor, or associate licensed  
22 counselor:

23 "(1) Has been convicted, within or without the  
24 jurisdiction of this state, of a felony, or any offense

1 involving moral turpitude, the record of conviction being  
2 conclusive evidence thereof.

3 "(2) Has violated the current code of ethics adopted  
4 by the board.

5 "(3) Is using any narcotic or any alcoholic beverage  
6 to an extent or in a manner dangerous to any other person or  
7 the public, or to an extent that it impairs his or her ability  
8 to perform the work of a licensed professional counselor or  
9 associate licensed counselor with safety to the public.

10 "(4) Has impersonated another person holding a  
11 professional counselor license or associate licensed counselor  
12 license or allowed another person to use his or her license or  
13 certificate.

14 "(5) Has used fraud or deception in applying for a  
15 license or certificate or in taking an examination provided  
16 for in this chapter.

17 "(6) Has allowed his or her name or license or  
18 certificate issued under this chapter to be used in connection  
19 with any person or persons who perform counseling services in  
20 private practice outside the area of their training,  
21 experience, or competence.

22 "(7) Is legally adjudicated mentally incompetent,  
23 the record of the adjudication being conclusive evidence  
24 thereof.

1           "(8) Has willfully or negligently violated any of  
2 the provisions of this chapter or any of the rules and  
3 regulations adopted thereunder.

4           "(9) Has been practicing as a counselor without a  
5 license.

6           "(b) (1) Notice of denial, revocation, suspension, or  
7 disciplinary action is required to be sent by registered mail  
8 or personal service setting forth the particular reasons for  
9 the proposed action and fixing a date not less than 30 days  
10 nor more than 60 days from the date of the mailing or service,  
11 at which time the applicant, licentiate, or associate shall be  
12 given an opportunity for a prompt and fair hearing. The  
13 written notice shall be sent to the last known address of the  
14 person, but the nonappearance of the person shall not prevent  
15 the hearing. The hearing shall be conducted by the board by  
16 means of sworn, recorded testimony. Parties have the right to  
17 be represented by counsel and to conduct cross-examination of  
18 witnesses.

19           "(2) On the basis of any hearing or upon default of  
20 applicant, licentiate, or associate, the board shall make a  
21 determination specifying its findings of fact and conclusions  
22 of law. A copy of the determination shall be sent by  
23 registered mail or served personally upon the applicant,  
24 licentiate, or associate. The decision of the board denying,  
25 revoking, or suspending the license or certificate shall

1       become final 30 days after so mailed or served unless within  
2       that period the applicant, licentiate, or associate appeals  
3       the decision to the courts of this state in the same manner  
4       and subject to the same powers and conditions as now provided  
5       by law in regard to rulings, orders, and findings of other  
6       quasi-judicial bodies in Alabama, where not otherwise  
7       specifically provided. No appeal, while pending appropriate  
8       court action, shall supersede the denial, revocation, or  
9       suspension. All proceedings and evidence, together with  
10      exhibits presented at the hearings before the board in the  
11      event of appeal, are admissible in evidence in the court.

12               "(3) Every order and judgment of the board shall  
13      take effect immediately on its promulgation unless the board  
14      in the order or judgment fixes a probationary period for  
15      applicant, licentiate, or associate. The order and judgment  
16      shall continue in effect unless upon appeal the courts by  
17      proper order or decree terminate it earlier. The board may  
18      make public its order and judgments in the manner and form as  
19      it deems proper.

20               "(4) The board may suspend the license of a licensed  
21      professional counselor or of an associate licensed counselor  
22      for a period of one year. At the end of this period, the board  
23      shall reevaluate the suspension and may recommend to the chair  
24      the extension of the suspension not to exceed one additional  
25      year, the reinstatement, or revocation of the license. A

1 person whose license has been revoked under this section may  
2 apply for reinstatement after a period of not less than three  
3 years from the date the denial or revocation is legally  
4 effective. The board may, upon favorable action by a majority  
5 of the board members present and voting, recommend  
6 reinstatement.

7 "(c) In addition to any other disciplinary action,  
8 the board may levy and collect administrative fines for  
9 violations of this chapter or the rules or regulations of the  
10 board in an amount not to exceed one thousand dollars (\$1,000)  
11 for each violation. In addition to fines, the board may assess  
12 all legal costs for the preparation and execution of a  
13 disciplinary action against a licensee.

14 "(d) The board may issue written reprimands to  
15 licensees as an alternative to a formal hearing before the  
16 board. The board shall determine the procedures for a written  
17 reprimand that shall authorize the investigative committee and  
18 members of the board to deliberate and issue written  
19 reprimands. No less than two members of the board, along with  
20 the investigative committee, shall participate in  
21 deliberations leading to a written reprimand. All other  
22 members of the board shall remain available for possible  
23 appeal. The written reprimand shall not be published by the  
24 board, unless required by law, though a copy of the reprimand  
25 will be entered into the permanent file of the licensee for a

1 period of time determined by the investigative committee and  
2 the members of the board issuing the reprimand. Licensees  
3 wishing to appeal the written reprimand may demand a formal  
4 hearing before the board members who were not involved in the  
5 original reprimand decision. The result of such an appeal may  
6 lead to withdrawal of the reprimand, retention of the  
7 reprimand, or imposition of additional penalties on the  
8 licensee by the board.

9 "(e) (1) Except as provided in subdivisions (2), (3),  
10 and (4), all records, reports, documents, photographs, and  
11 information contained in complaint and investigation files  
12 shall be confidential, shall not be a public record, and shall  
13 not be available for court subpoena or for discovery in civil  
14 proceedings.

15 "(2) The board shall release all of the following  
16 information to the public regarding complaint files and  
17 disciplinary action proceedings:

18 "a. A settlement agreement adopted and ratified by  
19 the board that closes a complaint file and represents the  
20 board's final decision in the disciplinary action proceedings.

21 "b. The formal charges or orders to show cause  
22 against an associate licensed counselor or a licensed  
23 professional counselor filed by the board's executive director  
24 and any amendments thereto.

1            "c. The board's final decision in disciplinary  
2            action proceedings entered after a formal disciplinary action  
3            hearing.

4            "(3) Notwithstanding any other provisions of this  
5            subsection, all complaint and investigation files shall be  
6            available to the Department of Examiners of Public Accounts  
7            for the purposes of any audit, examination, or review  
8            authorized by law.

9            "(4) A party to any civil or administrative  
10           proceeding may discover documents, reports, or other tangible  
11           items under Act 2009-587 upon a showing that the party seeking  
12           discovery has need of the materials in the preparation of the  
13           party's case and that party is unable without undue hardship  
14           and expense to obtain the substantial equivalent of the  
15           documents, reports, or other tangible items by other means."

16           Section 2. This act shall become effective  
17           immediately following its passage and approval by the  
18           Governor, or its otherwise becoming law.



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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB446

Senate 08-APR-10

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 14-APR-10

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By: Senator Dixon