

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2195

6 By: Randleman

7 COMMITTEE SUBSTITUTE

8 An Act relating to professions and occupations;
9 amending 59 O.S. 2011, Sections 1353, as amended by
10 Section 2, Chapter 169, O.S.L. 2016, 1365, 1368 and
11 1370, as last amended by Section 7, Chapter 169,
12 O.S.L. 2016 (59 O.S. Supp. 2018, Sections 1353 and
13 1370), which relate to the Psychologists Licensing
14 Act; prohibiting certain persons from holding
15 themselves out to the public as psychologists;
16 providing for a reexamination fee; prohibiting the
17 renewal and requiring the suspension of a license if
18 a psychologist is not compliant with Oklahoma income
19 tax law; requiring licensee to pay reinstatement fee;
20 permitting the State Board of Examiners of
21 Psychologists to impose reinstatement fee;
22 authorizing Board to maintain jurisdiction over
23 licensee in certain circumstances; and providing an
24 effective date.

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

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

23 Section 1353. No person shall represent himself or herself as a
24 psychologist or engage in the practice of psychology unless the

1 person is licensed pursuant to the provisions of the Psychologists
2 Licensing Act. The provisions of the Psychologists Licensing Act
3 shall not apply to:

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

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

1 psychological, psychologist, or psychology, or derivatives thereof,
2 excluding psychotherapy;

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

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

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

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

22 b. Such exemption to the provisions of the Psychologists
23 Licensing Act shall apply only while the unlicensed
24 individual is operating under the auspices of a

1 contract with the state and within the employ of the
2 nonprofit agency contracting with the state. Such
3 exemption will not be applicable to any other setting.

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

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

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

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

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

20 8. The activities and services of a person who performs
21 psychological services pursuant to the direct supervision of a
22 licensed psychologist or psychiatrist or an applicant for licensure
23 who is engaged in the applicant's postdoctoral year of supervision.
24 Such person shall be subject to approval by the Board and to such

1 rules as the Board may prescribe pursuant to the provisions of the
2 Psychologists Licensing Act;

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

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

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

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

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

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

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

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

19 C. The Board shall notify every person licensed under this act
20 of the date of expiration and the amount of the renewal fee. ~~This~~
21 ~~notice shall be mailed~~ Notice shall be provided at least one (1)
22 month before the expiration of the license. Renewal may be made at
23 any time during the months of November or December upon application
24 therefor by payment of the renewal fee. Failure on the part of any

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

11 D. The Oklahoma Tax Commission shall notify any psychologist
12 who is not in compliance with the income tax laws of this state.

13 Such notification shall include:

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

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

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

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

6 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1370, as
7 last amended by Section 7, Chapter 169, O.S.L. 2016 (59 O.S. Supp.
8 2018, Section 1370), is amended to read as follows:

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

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

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

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

- 1 3. Practicing psychology in a manner as to endanger the welfare
2 of clients or patients;
- 3 4. Conviction of a felony crime that substantially relates to
4 the business practices of psychology or poses a reasonable threat to
5 public safety;
- 6 5. Harassment, intimidation, or abuse, sexual or otherwise, of
7 a client or patient;
- 8 6. Engaging in sexual intercourse or other sexual contact with
9 a client or patient;
- 10 7. Use of repeated untruthful, deceptive or improbable
11 statements concerning the licensee's qualifications or the effects
12 or results of proposed treatment, including practicing outside of
13 the psychologist's professional competence established by education,
14 training, and experience;
- 15 8. Gross malpractice or repeated malpractice or gross
16 negligence in the practice of psychology;
- 17 9. Aiding or abetting the practice of psychology by any person
18 not approved by the Board or not otherwise exempt from the
19 provisions of Section 1351 et seq. of this title;
- 20 10. Conviction of or pleading guilty or nolo contendere to
21 fraud in filing Medicare or Medicaid claims or in filing claims with
22 any third-party payor. A copy of the record of plea or conviction,
23 certified by the clerk of the court entering the plea or conviction,
24 shall be conclusive evidence of the plea or conviction;

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

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

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

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

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

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

19 C. No license shall be suspended or revoked nor the licensee
20 placed on probation or reprimanded until the licensee has been given
21 an opportunity for a hearing before the Board pursuant to the
22 provisions of subsection D of this section. Whenever the Board
23 determines that there has been a violation of any of the provisions
24 of the Psychologists Licensing Act or of any order of the Board, it

1 shall give written notice to the alleged violator specifying the
2 cause of complaint. The notice shall require that the alleged
3 violator appear before the Board at a time and place specified in
4 the notice and answer the charges specified in the notice. The
5 notice shall be delivered to the alleged violator in accordance with
6 the provisions of subsection E of this section not less than ten
7 (10) days before the time set for the hearing.

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

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

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

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

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

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

8 J. As used in this section:

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

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

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

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

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

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