

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2195

By: Randleman

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8                                   COMMITTEE SUBSTITUTE

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

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:

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

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

20 2. Qualified members of other professions, including, but not  
21 limited to, physicians, licensed social workers, licensed  
22 professional counselors, licensed marital and family therapists, or  
23 pastoral counselors, doing work of a psychological nature consistent  
24 with their training and consistent with the code of ethics of their

1 respective professions provided they do not hold themselves out to  
2 the public by any title or description incorporating the word  
3 psychological, psychologist, or psychology, or derivatives thereof,  
4 excluding psychotherapy;

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

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

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

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

24

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

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

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

1 and services are a part of the official duties of such person with  
2 the private for-profit contracting agency.

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

6 (1) psychologist, psychology or psychological,

7 (2) licensed social worker,

8 (3) clinical social worker,

9 (4) certified rehabilitation specialist,

10 (5) licensed professional counselor,

11 (6) psychoanalyst, or

12 (7) marital and family therapist.

13 b. Such exemption to the provisions of this act shall  
14 apply only while the unlicensed individual is  
15 operating under the auspices of a contract with the  
16 state and within the employ of the for-profit agency  
17 contracting with the state. Such exemption shall only  
18 be available for ongoing contracts and contract  
19 renewals with the same state agency and will not be  
20 applicable to any other setting.

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

1 equal to the service that would be delivered if that  
2 agency were able to provide the service directly. The  
3 persons exempt under the provisions of this act shall  
4 provide services that are consistent with their  
5 training and experience. Agencies will also ensure  
6 that the entity with which they are contracting has  
7 qualified professionals in its employ and that  
8 sufficient liability insurance is in place to allow  
9 for 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 or her  
8 examination may be reexamined at a subsequent examination upon  
9 payment of ~~another licensing fee~~ 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 and secretary of the Board under the seal of  
17 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 of the date of expiration and the amount of the renewal fee. ~~This~~  
23 ~~notice shall be mailed~~ Notice shall be provided at least one (1)  
24 month before the expiration of the license. Renewal may be made at

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

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

15 Such notification shall include:

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

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

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

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

8 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1370, as  
9 last amended by Section 7, Chapter 169, O.S.L. 2016 (59 O.S. Supp.  
10 2018, Section 1370), is amended to read as follows:

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

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

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

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

1 certified by the clerk of the court entering the plea or conviction,  
2 shall be conclusive evidence of the plea or conviction;

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

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

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

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

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

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

21 C. No license shall be suspended or revoked nor the licensee  
22 placed on probation or reprimanded until the licensee has been given  
23 an opportunity for a hearing before the Board pursuant to the  
24 provisions of subsection D of this section. Whenever the Board

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

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

1 appealed to the district court as provided for in the Administrative  
2 Procedures Act.

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

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

19 G. If the psychologist fails or refuses to appear, the Board  
20 may proceed to hearing and determine the charges in his or her  
21 absence. If the psychologist pleads guilty, or if upon hearing the  
22 charges, a majority of the Board finds them to be true, the Board  
23 may enter an order suspending or revoking the license of the  
24 psychologist, reprimanding the psychologist, or placing the

1 psychologist on probation or any combination of penalties authorized  
2 by the provisions of this section.

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

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

10 J. As used in this section:

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/27/2019 -  
DO PASS, As Amended.

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