

SHORT TITLE: Psychologists Licensing Act; providing for certain activities and services; requiring certain information; adding exception for licensing without examination; modifying certain standard of evidence.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1359

By: Maddox

AS INTRODUCED

An Act relating to the practice of psychology;

amending 59 O.S. 1991, Sections 1353, as amended by Section 5, Chapter 168, O.S.L. 1993, 1366, and 1370 (59 O.S. Supp. 1997, Section 1353), which relate to the Psychologists Licensing Act; updating archaic language; making language gender neutral; exempting certain activities and services; requiring the Board be informed prior to initiation of certain services; adding exception for licensing without examination; clarifying statutory reference; and modifying certain standard of evidence.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 1353, as amended by Section 5, Chapter 168, O.S.L. 1993 (59 O.S. Supp. 1997, 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 ~~such~~ 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 ~~such~~ 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 ~~by this act~~ 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;

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

4. 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 ~~such~~ the activities and services constitute a part of the supervised course of study ~~of such~~ for the student, intern, or resident;

5. Individuals who have been certified as school psychologists by the ~~Oklahoma~~ 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;

6. 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 ~~and regulations~~ as the Board may prescribe pursuant to the provisions of the Psychologists Licensing Act;

7. 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 his or her residence to perform these activities and services. Such person shall inform the Board prior to initiation of services; ~~or~~

8. 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

9. 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. 1991, Section 1366, is amended to read as follows:

Section 1366. The Oklahoma State Board of Examiners of Psychologists may issue a license pursuant to the provisions of the Psychologists Licensing Act:

1. To a qualified applicant who has successfully passed the examination prescribed by the Board and who has paid the fee required by the rules ~~and regulations~~ promulgated pursuant to the provisions of the Psychologists Licensing Act; or

2. Upon application to the Board and payment of the fees required by the Board by rules ~~and regulations~~ of the Board promulgated pursuant to the provisions of the Psychologists Licensing Act, to any person who is a diplomate of the American Board of Professional Psychology, or who holds a current Certificate of Professional Qualification in Psychology from the Association of State and Provincial Psychology Boards, or who is licensed as a psychologist by a state with which the Board has established a formal written agreement of reciprocity.

SECTION 3. AMENDATORY 59 O.S. 1991, 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 Oklahoma State Board of Examiners of Psychologists ~~under its rules and regulations~~ by rule.

B. The Board shall have the power and duty to suspend, place on probation, require remediation, or revoke any license to practice psychology or to take any other action specified in the rules and regulations whenever the Board shall find by ~~a preponderance of the~~ 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 ~~and regulations~~ promulgated by the Board;

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

4. Conviction of a felony. A copy of the record of conviction, certified by the clerk of the court entering the conviction shall be conclusive evidence of conviction;

5. Conviction of any crime or offense that reflects the inability of the practitioner to practice psychology with due regard for the health and safety of clients or patients;

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

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

8. 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;

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

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

11. Conviction of fraud in filing Medicare or Medicaid claims or in filing claims ~~to~~ with any third party payor. A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of conviction;

12. 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;

13. 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;

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

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

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

17. 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.

~~B.~~ 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 ~~E~~ 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. ~~Said~~ 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 ~~said~~ the notice. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection ~~D~~ E of this section not less than ten (10) days before the time set for the hearing.

~~C.~~ 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 ~~such~~ the order to the alleged violator and to ~~such~~ 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 ~~Sections 301 through 326 of Title 75 of the Oklahoma Statutes~~ the Administrative Procedures Act.

~~D.~~ 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 ~~such~~ 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 ~~said~~ 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.

~~E.~~ 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 ~~such~~ penalties ~~pursuant to~~ authorized by the provisions of this section.

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

G. 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.

46-2-2378

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