

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1812:

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AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 199.11, 475.18, 532, 858-723, 887.13, 1619, 1912, 1925.15 and 1941, which relate to cosmetologists, professional engineers and land surveyors, athletic trainers and apprentices, real estate appraisers, physical therapists, speech-language pathologists and audiologists, professional counselors, marital and family therapists, and licensed behavioral practitioners; authorizing regulating boards to issue and renew licenses for felony convictions upon certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 199.11, is amended to read as follows:

Section 199.11 The State Board of Cosmetology is hereby authorized to deny, revoke, suspend, or refuse to renew any license, certificate, or registration that it is authorized to issue under the Oklahoma Cosmetology Act for any of the following causes:

1. Conviction of a felony as shown by a certified copy of the record of the court unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;
2. Gross malpractice or gross incompetence;
3. Fraud practiced in obtaining a license or registration;

4. A license or certificate holder's continuing to practice while afflicted with an infectious, contagious, or communicable disease;

5. Habitual drunkenness or addiction to use of habit forming drugs;

6. Advertising by means of statements known to be false or deceptive;

7. Continued or flagrant violation of any rules of the Board, or continued practice by an operator in a cosmetology salon wherein violations of the rules of the Board are being committed within the knowledge of the operator;

8. Failure to display license or certificate as required by the Oklahoma Cosmetology Act;

9. Continued practice of cosmetology after expiration of a license therefor; or

10. Employment by a salon owner or manager of any person to perform any of the practices of cosmetology who is not duly licensed to perform the services.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 475.18, is amended to read as follows:

Section 475.18 A. The State Board of Registration for Professional Engineers and Land Surveyors shall have the power to suspend, revoke or refuse to issue, restore or renew a certificate of registration of, or place on probation, fine or reprimand any professional engineer, professional land surveyor or engineer intern or land surveyor intern who is found guilty of:

1. The practice of any fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration, or a certificate of authorization;

2. Any gross negligence, incompetence or misconduct, in the practice of engineering or land surveying;

3. Conviction of or entry of a plea of nolo contendere to any crime under the laws of the United States, or any state or territory thereof, which is a felony, whether related to practice or not; and conviction of or entry of a plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

4. Failure to comply with any of the provisions of Section 475.1 et seq. of this title or any of the rules or regulations pertaining thereto;

5. Discipline by another state, territory, the District of Columbia, a foreign country, the United States government, or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this section;

6. Failure, within thirty (30) days, to provide information requested by the Board as a result of a formal or informal complaint to the Board which would indicate a violation of Section 475.1 et seq. of this title;

7. Knowingly making false statements or signing false statements, certificates or affidavits to induce payment;

8. Aiding or assisting another person in violating any provision of Section 475.1 et seq. of this title or the rules or regulations pertaining thereto;

9. Violation of any terms of probation imposed by the Board, or using a seal or practicing engineering or land surveying while the

professional engineer's license or land surveyor's license is suspended, revoked, nonrenewed or inactive;

10. Signing, affixing the professional engineer's or land surveyor's seal, or permitting the professional engineer's or land surveyor's seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents or calculations, or revisions thereof, which have not been prepared or completely checked by the professional engineer or land surveyor in responsible charge;

11. Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

12. Providing false testimony or information to the Board; and

13. Habitual intoxication or addiction to the use of alcohol or to the illegal use of a controlled dangerous substance.

B. The Board shall have prepared and shall adopt Rules of Professional Conduct for Professional Engineers and Land Surveyors as provided for in Section 475.8 of this title, which shall be made known in writing to every registrant and applicant for registration under Section 475.1 et seq. of this title, and which shall be published in the roster provided for in Section 475.11 of this title. Such publication shall constitute due notice to all registrants. The Board may revise and amend these Rules of Professional Conduct for Professional Engineers and Land Surveyors from time to time and shall forthwith notify each registrant, in writing, of such revisions or amendments.

C. The Board shall have the power to:

1. Revoke a certificate of authorization;

2. Suspend a certificate of authorization for a period of time, not exceeding two (2) years, of any firm of which one or more of its officers or directors have been guilty of any conduct which would

authorize a revocation or suspension of their certificates of registration under the provisions of this section;

3. Place a registrant on probation for a period of time and subject to such conditions as the Board may specify; or

4. Levy a fine in an amount not to exceed Two Hundred Fifty Dollars (\$250.00) for each count or separate offense.

D. Principles of a firm who do not obtain a certificate or authorization as required by Section 475.1 et seq. of this title may be subject to revocation of individual registration.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 532, is amended to read as follows:

Section 532. A. The State Board of Medical Licensure and Supervision may refuse to issue a license to an applicant or may suspend or revoke the license of any ~~licensee~~ athletic trainer or apprentice athletic trainer if ~~he~~ such person has:

1. Been convicted of a felony or a misdemeanor involving moral turpitude unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

2. Secured the license by fraud or deceit; or

3. Violated or conspired to violate the provisions of ~~this act~~ the Oklahoma Athletic Trainers Act or rules and regulations issued pursuant to this act.

B. Procedures for denial, suspension or revocation of a license shall be governed by the Administrative Procedures Act.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-723, is amended to read as follows:

Section 858-723. A. The rights of any holder under a certificate as a trainee, state licensed, state certified residential or state certified general real estate appraiser may be revoked or suspended, or the holder of the certificate may be otherwise disciplined pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act, upon any of the grounds set forth in this section.

B. The Real Estate Appraisal Board may investigate the actions of a trainee, state licensed, state certified residential or state certified general real estate appraiser, and may revoke or suspend the rights of a certificate holder or otherwise discipline a trainee, state licensed, state certified residential or state certified general real estate appraiser for any of the following acts or omissions:

1. Procuring or attempting to procure a certificate pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act by knowingly making a false statement, knowingly submitting false information, refusing to provide complete information in response to a question in an application for certification or through any form of fraud or misrepresentation;

2. Failing to meet the minimum qualifications established pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act;

3. Paying money other than provided for by the Oklahoma Certified Real Estate Appraisers Act to any member or employee of the Board to procure a certificate pursuant to the Oklahoma Certified Real Estate Appraisers Act;

4. A conviction, including a conviction based upon a plea of guilty or nolo contendere, of a felony which is substantially related to the qualifications, functions, and duties of a person developing real estate appraisals and communicating real estate appraisals to others unless five (5) years have elapsed since the

date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

5. An act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person;

6. Violation of any of the standards for the development or communication of real estate appraisals as provided in the Oklahoma Certified Real Estate Appraisers Act;

7. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

8. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

9. Willfully disregarding or violating any of the provisions of the Oklahoma Certified Real Estate Appraisers Act or the regulations of the Board for the administration and enforcement of the provisions of the Oklahoma Certified Real Estate Appraisers Act;

10. Accepting an appraisal assignment when the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion, or where the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment;

11. Violating the confidential nature of governmental records to which the appraiser gained access through employment or engagement as an appraiser by a governmental agency;

12. Entry of a final civil judgment against the person on grounds of deceit, fraud, or willful or knowing misrepresentation in the making of any appraisal of real property;

13. Violating any of the provisions in the code of ethics set forth in ~~this act~~ the Oklahoma Certified Real Estate Appraisers Act;

or

14. Failing to at any time properly identify themselves according to the specific type of certification held.

~~B.~~ C. In a disciplinary proceeding based upon a civil judgment, the trainee, state licensed, state certified residential or state certified general real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.

~~C.~~ D. 1. A complaint may be filed with the Board against a trainee or state licensed or state certified appraiser for any violations relating to a specific transaction of the Oklahoma Certified Real Estate Appraisers Act by any person who is the recipient of, relies upon or uses an appraisal prepared for a federally related transaction or real-estate-related financial transaction as described in Section 858-701 of this title.

2. Any person with knowledge of any circumstances surrounding an act or omission by a trainee or state licensed or state certified appraiser involving fraud, dishonesty or misrepresentation in any real property valuation-related activity, not limited to federally related transactions, may file a complaint with the Board setting forth all facts surrounding the act or omission.

3. A complaint may be filed against a trainee or state licensed or state certified appraiser directly by the Board, if reasonable cause exists for violations of the code of ethics set forth in ~~this act~~ the Oklahoma Certified Real Estate Appraisers Act.

4. Any complaint filed pursuant to this subsection shall be in writing and signed by the person filing same and shall be on a form

approved by the Board. The trainee or state licensed or state certified appraiser shall be entitled to any hearings or subject to any disciplinary proceedings provided for in the Oklahoma Certified Real Estate Appraisers Act based upon any complaint filed pursuant to this subsection.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 887.13, is amended to read as follows:

Section 887.13 The State Board of Licensure and Supervision may refuse to issue or renew, or may suspend or revoke a license to any person, after notice and hearing in accordance with rules ~~and regulations~~ promulgated pursuant to the Physical Therapy Practice Act and the provisions of the Administrative Procedures Act of the Oklahoma Statutes who has:

1. Practiced physical therapy other than under the referral of a physician, surgeon, dentist, chiropractor or podiatrist duly licensed to practice medicine or surgery or in the case of practice as a physical therapist assistant, has practiced other than under the direction of a licensed physical therapist;

2. Treated or attempted to treat ailments or other health conditions of human beings other than by physical therapy as authorized by the Physical Therapy Practice Act;

3. Failed to refer patients to other health care providers if symptoms are known to be present for which physical therapy treatment is inadvisable or if symptoms indicate conditions for which treatment is outside the standards of practice as specified in the rules and regulations promulgated by the Board pursuant to the provisions of the Physical Therapy Practice Act;

4. Used drugs, narcotics, medication, or intoxicating liquors to an extent which affects the professional competency of the applicant or licensee;

5. Been convicted of a felony or of a crime involving moral turpitude unless five (5) years have elapsed since the date of the

criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

6. Obtained or attempted to obtain a license as a physical therapist or physical therapist assistant by fraud or deception;

7. Been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;

8. Been adjudged mentally incompetent by a court of competent jurisdiction and has not subsequently been lawfully declared sane;

9. Been guilty of conduct unbecoming a person licensed as a physical therapist or physical therapist assistant or guilty of conduct detrimental to the best interests of the public or his profession;

10. Been guilty of any act in conflict with the ethics of the profession of physical therapy; or

11. Had his license suspended or revoked in another state.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 1619, is amended to read as follows:

Section 1619. A. The Board of Examiners for Speech-Language Pathology and Audiology may impose separately, or in combination, any of the following disciplinary actions on a licensee after formal disciplinary action as provided in the Speech-Language Pathology and Audiology Licensing Act: suspend or revoke a license, issue a letter of reprimand, impose probationary conditions, impose an administrative fine not to exceed Ten Thousand Dollars (\$10,000.00), and assess reasonable costs. Disciplinary actions may be taken by the Board upon proof that the licensee:

1. Has been guilty of fraud or deceit in connection with the person's services rendered as a speech-language pathologist and/or audiologist;

2. Has aided or abetted a person who is not a licensed speech-language pathologist and/or audiologist and who is not an employee of and under the supervision of a licensed speech-language pathologist or audiologist and subject to the rules of the Board, in illegally engaging in the practice of speech-language pathology or audiology within this state;

3. Has been guilty of unprofessional conduct as defined by the rules established by the Board or has violated the code of ethics made and published by the Board;

4. Has used fraud or deception in applying for a license or in passing an examination provided for in the Speech-Language Pathology and Audiology Licensing Act;

5. Has been grossly negligent in the practice of the person's profession;

6. Has willfully violated any of the provisions of the Speech-Language Pathology and Audiology Licensing Act or any rules promulgated pursuant thereto;

7. Has violated federal, state or local laws relating to the profession. A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of conviction; or

8. Has been convicted or has pled guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime

has not rendered the applicant or licensee unfit to practice pursuant to this act. A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of conviction.

B. 1. No disciplinary action shall be imposed until after a hearing before the Board. A notice of at least thirty (30) days shall be served, either personally or by certified mail, to the licensee charged, stating the time and place of the hearing, and setting forth the ground or grounds constituting the charges against the licensee. The licensee shall be entitled to be heard in such person's defense either in person or by counsel, and may produce testimony and may testify in the person's own behalf.

2. A record of such hearing shall be taken and preserved.

3. The hearing may be adjourned from time to time. If, after due receipt of notice of a hearing, the licensee shall be unable to appear for good cause shown, then a continuance shall be granted by the Board. The time allowed shall be at the discretion of the Board, but in no instance shall it be less than two (2) weeks from the originally scheduled date of the hearing.

4. If a licensee pleads guilty, or if upon hearing the charges, a majority of the Board finds them to be true, the Board shall impose its disciplinary action against the licensee. The Board shall record its findings and order in writing.

C. 1. The Board, through its ~~chairman~~ chair or ~~vice-chairman~~ vice-chair, may administer oaths and may compel the attendance of witnesses and the production of physical evidence before it from witnesses upon whom process is served anywhere within the state, as in civil cases in the district court, by subpoena issued over the signature of the ~~chairman~~ chair or ~~vice-chairman~~ vice-chair and the seal of the Board.

2. Upon request by an accused speech-language pathologist and/or audiologist, and statement under oath that the testimony or

evidence is reasonably necessary to the person's defense, the Board shall use this subpoena power in behalf of the accused speech-language pathologist and/or audiologist.

3. The subpoenas shall be served, and a return of service thereof made, in the same manner as a subpoena is served out of the district courts in this state, and as a return in such case is made.

4. If a person fails and refuses to attend in obedience to such subpoena, or refuses to be sworn or examined or answer any legally proper question propounded by any member of said Board or any attorney or licensee upon permission from said Board, such person shall be guilty of a misdemeanor, and, upon conviction, may be punished by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or by confinement in the county jail not to exceed ninety (90) days, or both.

D. 1. Any person who feels aggrieved by reason of the imposition of disciplinary action may appeal to the Board for a review of the case or may seek judicial review pursuant to the Administrative Procedures Act.

2. The suit shall be filed against the Board as defendant, and service of process shall be upon either the ~~chairman~~ chair or executive secretary of the Board.

3. The judgment of the district court may be appealed to the Supreme Court of Oklahoma in the same manner as other civil cases.

E. Upon a vote of three of its members, the Board may restore a license which has been revoked or reduce the period of suspension.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 1912, is amended to read as follows:

Section 1912. A. The State Department of Health may deny, revoke, suspend or place on probation any license or specialty designation issued pursuant to the provisions of the Licensed Professional Counselors Act to a licensed professional counselor, if the person has:

1. Been convicted of a felony unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

2. Been convicted of a misdemeanor determined to be of such a nature as to render the person convicted unfit to practice counseling;

3. Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of this act;

4. Knowingly aided or abetted a person not licensed pursuant to these provisions in representing himself as a licensed professional counselor in this state;

5. Engaged in unprofessional conduct as defined by the rules established by the Board;

6. Engaged in negligence or wrongful actions in the performance of his duties; or

7. Misrepresented any information required in obtaining a license.

B. No license or specialty designation shall be suspended or revoked, nor a licensed professional counselor placed on probation until notice is served upon the licensed professional counselor and a hearing is held in conformity with Article II of the Administrative Procedures Act.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 1925.15, is amended to read as follows:

Section 1925.15 A. The State Department of Health may deny, revoke, suspend or place on probation any license issued subject to

the provisions of the Marital and Family Therapist Licensure Act, if the person has:

1. Been convicted of a felony unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

2. Been convicted of a crime the Commissioner determines after a hearing to be of such a nature as to render the person convicted unfit to practice marital and family therapy;

3. Violated ethical standards of such a nature as to render the person found by the Commissioner to have engaged in such violation unfit to practice marital and family therapy;

4. Misrepresented any information required in obtaining a license;

5. Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of the Marital and Family Therapist Licensure Act;

6. Knowingly aided or abetted a person not licensed pursuant to these provisions in representing himself or herself as a licensed marital and family therapist in this state;

7. Engaged in unprofessional conduct as defined by the rules promulgated by the State Board of Health; or

8. Engaged in negligence or wrongful actions in the performance of the duties of such person.

B. No license shall be suspended, revoked or placed on probation until notice is served upon the licensed marital and family therapist and a hearing is held in such manner as is required by the Marital and Family Therapist Licensure Act.

C. Any person who is determined by the Department to have violated any of the provisions of the Marital and Family Therapist Licensure Act or any rule promulgated or order issued pursuant thereto may be subject to an administrative penalty. The maximum fine shall not exceed Ten Thousand Dollars (\$10,000.00). All administrative penalties collected pursuant to the Marital and Family Therapist Licensure Act shall be deposited into the Licensed Marital and Family Therapist Revolving Fund. Administrative penalties imposed pursuant to this subsection shall be enforceable in the district courts of this state.

SECTION 9. AMENDATORY 59 O.S. 2001, Section 1941, is amended to read as follows:

Section 1941. A. The State Department of Health may deny, revoke, suspend, or place on probation any license or specialty designation issued pursuant to the provisions of the Licensed Behavioral Practitioner Act to a licensed behavioral practitioner, if the person has:

1. Been convicted of a felony unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant or licensee by the sentencing court, whichever last occurred, or a presidential or gubernatorial pardon for the criminal offense has been received, and if the crime has not rendered the applicant or licensee unfit to practice pursuant to this act;

2. Been convicted of a misdemeanor determined to be of such a nature as to render the person convicted unfit to practice behavioral health;

3. Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of this act;

4. Knowingly aided or abetted a person not licensed pursuant to these provisions in representing himself or herself as a licensed behavioral practitioner in this state;

5. Engaged in unprofessional conduct as defined by the rules established by the State Board of Health;

6. Engaged in negligence or wrongful actions in the performance of the licensee's duties; or

7. Misrepresented any information required in obtaining a license.

B. No license or specialty designation shall be suspended or revoked, nor a licensed behavioral practitioner placed on probation, until notice is served upon the licensed behavioral practitioner and a hearing is held in conformity with Article II of the Administrative Procedures Act.

SECTION 10. This act shall become effective November 1, 2003.

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