CS for ESB 1725

THE HOUSE OF REPRESENTATIVES
Monday, March 31, 2008

Committee Substitute for

ENGROSSED

Senate Bill No. 1725

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1725 - By: SCHULZ AND JOHNSON (CONSTANCE) of the Senate and TIBBS, KIESEL AND SHERRER of the House.

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 46.14, as amended by Section 12, Chapter 163, O.S.L. 2006, 148, 199.11, as amended by Section 6, Chapter 56, O.S.L. 2003, 328.32, 396.12c, as amended by Section 14, Chapter 57, O.S.L. 2003, 509, as amended by Section 9, Chapter 523, O.S.L. 2004, 532, 567.8, as amended by Section 5, Chapter 190, O.S.L. 2003, 858-312, 858-723, as amended by Section 11, Chapter 165, O.S.L. 2006, 887.13, 888.9, 1310, 1370, as amended by Section 24, Chapter 313, O.S.L. 2004, 1503A, 1619, 1912, 1925.15 and 1941 (59 O.S. Supp. 2007, Sections 46.14, 199.11, 396.12c, 509, 567.8, 858-723 and 1370), which relate to the State Architectural and Interior Designers Act, the Podiatric Medicine Practice Act, the Oklahoma Cosmetology Act, the State Dental Act, the Funeral Services Licensing Act, the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, the Athletic Trainers Act, the Oklahoma Nursing Practice Act, The Oklahoma Real Estate License Code, the Oklahoma Certified Real Estate Appraisers Act, the Physical Therapy Practice Act, the Occupational Therapy Practice Act, bail bondsmen, the Psychologists Licensing Act, the Oklahoma Pawnshop Act, the Speech-Language Pathology and Audiology Licensing Act, the Licensed Professional Counselors Act, the Marital and Family Therapist Licensure Act and the Licensed Behavioral Practitioner Act; providing for appeal of certain licensure decisions by certain Boards and Commissions; providing for successful appeal; prohibiting requiring certain Boards and Commissions to issue or reinstate licenses, certifications, or registrations under certain circumstances; defining term; changing certain crimes to a crime that substantially relates to certain practices; clarifying reference; deleting obsolete language;

authorizing licensing boards to consider certain criminal convictions; requiring boards and agencies to provide written reason for denial of license; requiring certain occurrence be considered prima facie evidence of rehabilitation; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 46.14, as amended by Section 12, Chapter 163, O.S.L. 2006 (59 O.S. Supp. 2007, Section 46.14), is amended to read as follows:

Section 46.14 A. The Board shall have power to suspend, to revoke or refuse to renew a license, registration, certificate of authority or certificate of title issued by it, pursuant to the provisions of the State Architectural and Interior Designers Act, when the holder thereof:

1. Shall have been convicted of a ~~felony~~ crime that substantially relates to the practice of architecture;

2. Shall have been guilty of fraud or misrepresentation in the ~~person's~~ application of the person, whether for an examination or for a license or registration without examination, or of fraud in the examination;

3. Shall have been guilty of gross incompetence or recklessness in the practice of architecture relating to the construction of buildings or structures, or of dishonest practices;

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4. Shall have been guilty of gross incompetence or recklessness in the practice of landscape architecture, or of dishonest practices;

5. Presents the registration of another as his or her own;

6. Gives false or forged evidence to the Board;

7. Conceals information relative to any violation of this act or rules promulgated under this act; <u>and</u>

8. Shall have been found to be guilty of a violation of a provision of the State Architectural and Interior Designers Act or the rules of the Board; provided, that a person or entity complained of:

a. shall first have been served notice in the same manner as provided by law in other civil actions of the charges filed against the person or entity and of the time, place, and nature of the hearing before the Board, and

b. shall have the right to be represented by counsel and an opportunity to respond and present evidence and argument on all issues involved, by the introduction of evidence and by the examination and cross-examination of witnesses, and to compel the attendance of witnesses and the production of books and papers. Pursuant to the foregoing, the Board shall have the power of a court of record, including the power to issue subpoena and to compel the attendance and testimony of witnesses. Each member of the Board shall have the power to administer oaths and to issue subpoena. Whenever any person who

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shall have been subpoenaed to appear to give testimony, or to answer any pertinent or proper question, or to produce books, papers or documents which shall have been designated in a subpoena, either on behalf of the prosecution or on behalf of the accused, shall refuse to appear to testify before the Board, or to answer any pertinent or proper questions, or to produce a book, paper or document which shall have been designated in a subpoena, the person shall be deemed to be in contempt of the Board, and it shall be the duty of the presiding officer of the Board, to report the fact to the district court of the State of Oklahoma in and for the county in which such person may be or may reside whereupon the court shall issue an attachment in the usual form, directed to the sheriff of the county, which shall command the sheriff to attach such person and forthwith bring the person before the court. On the return of the attachment duly served upon the accused, or upon the production of the person attached, the district court shall have jurisdiction of the matter. The person charged may purge himself or herself of the contempt in the same way and the same proceedings shall be had, and the same penalties may be imposed, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a district court of the State of Oklahoma. Depositions may be taken and used in the same manner as in civil cases. The Board shall keep a record of the evidence in, and a record of each

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proceeding for the suspension, revocation of or refusal to renew a license or certificate of authority and shall make findings of fact and render a decision therein. If, after a hearing, the charges shall have been found to have been sustained by the vote of a majority of the members of the Board it shall immediately enter its order of suspension, revocation or refusal to renew, as the case may be.

B. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 148, is amended to read as follows:

Section 148. A. The following acts or occurrences by a podiatric physician shall constitute grounds for which the penalties specified in Section 147 of this title may be imposed by order of the Board of Podiatric Medical Examiners:

1. Willfully making a false and material statement to the Board, either before or after the issuance of a license;

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2. Pleading guilty or nolo contendere to, or being convicted of~~,~~ a ~~felony, a misdemeanor involving moral turpitude, or a violation of federal or state controlled dangerous substances laws~~ crime that substantially relates to the practice of podiatric medicine;

3. Using alcohol, any drug, or any other substance which impairs the licensee to a degree that the licensee is unable to practice podiatric medicine with safety and benefit to the public;

4. Being mentally or physically incapacitated to a degree that the licensee is unable to practice podiatric medicine with safety and benefit to the public;

5. Making any advertisement, statement, or representation which is untrue or improbable and calculated by the licensee to deceive, defraud or mislead the public or patients;

6. Practicing fraud by omission or commission in the examination given by the Board, or in obtaining a license, or in obtaining renewal or reinstatement of a license;

7. Failing to pay or cause to be paid promptly when due any fee required by the Podiatric Medicine Practice Act or the rules of the Board;

8. Practicing podiatric medicine in an unsafe or unsanitary manner or place;

9. Performing, or attempting to perform, any surgery for which the licensee has not had reasonable training;

10. Gross and willful neglect of duty as a member or officer of the Board;

11. Dividing with any person, firm, corporation, or other legal entity any fee or other compensation for services as a podiatric physician, except with:

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a. another podiatric physician,

b. an applicant for a license who is observing or assisting the licensee as an intern, preceptee or resident, as authorized by the rules of the Board, or

c. a practitioner of another branch of the healing arts who is duly licensed under the laws of this state or another state, district or territory of the United States,

who has actually provided services, directly or indirectly, to the patient from or for whom the fee or other compensation is received, or at the time of the services is an active associate of the licensee in the lawful practice of podiatric medicine in this state; and

12. Violating or attempting to violate the provisions of the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board.

B. Commitment of a licensee to an institution for the mentally ill shall constitute prima facie evidence that the licensee is mentally incapacitated to a degree that the licensee is unable to practice podiatric medicine with safety and benefit to the public.

C. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

D. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability

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to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 199.11, as amended by Section 6, Chapter 56, O.S.L. 2003 (59 O.S. Supp. 2007, Section 199.11), is amended to read as follows:

Section 199.11 A. 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~~ crime that substantially relates to the practice of cosmetology;

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;

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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; or

11. Practicing cosmetology in an immoral or unprofessional manner.

B. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 328.32, is amended to read as follows:

Section 328.32 A. The following acts or occurrences by a dentist shall constitute grounds for which the penalties specified in Section 328.44a of this title may be imposed by order of the Board of Dentistry:

1. Pleading guilty or nolo contendere to, or being convicted of~~,~~ a ~~felony, a misdemeanor involving moral turpitude, or a violation of federal or state controlled dangerous substances laws~~ crime that substantially relates to the practice of dentistry;

2. Presenting to the Board a false diploma, license, or certificate, or one obtained by fraud or illegal means;

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3. Being, by reason of persistent inebriety or addiction to drugs, incompetent to continue the practice of dentistry;

4. Publishing a false, fraudulent, or misleading advertisement or statement;

5. Authorizing or aiding an unlicensed person to practice dentistry, to practice dental hygiene, or to perform a function for which a permit from the Board is required;

6. Authorizing or aiding a dental hygienist to perform any procedure prohibited by the State Dental Act or the rules of the Board;

7. Authorizing or aiding a dental assistant to perform any procedure prohibited by the State Dental Act or the rules of the Board;

8. Failing to pay fees as required by the State Dental Act or the rules of the Board;

9. Failing to complete continuing education requirements;

10. Representing himself or herself to the public as a specialist in a dental specialty without holding a dental specialty license therefor;

11. Representing himself or herself to the public as a specialist whose practice is limited to a dental specialty, when such representation is false, fraudulent, or misleading;

12. Endangering the health of patients by reason of having a highly communicable disease and continuing to practice dentistry without taking appropriate safeguards;

13. Being a menace to the public health by reasons of practicing dentistry in an unsafe or unsanitary manner or place;

14. Being shown to be mentally unsound;

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15. Being shown to be grossly immoral and that such condition represents a threat to patient care or treatment;

16. Being incompetent to practice dentistry while delivering care to a patient;

17. Committing gross negligence in the practice of dentistry;

18. Committing repeated acts of negligence in the practice of dentistry;

19. Offering to effect or effecting a division of fees, or agreeing to split or divide a fee for dental services with any person, in exchange for the person bringing or referring a patient;

20. Being involuntarily committed to an institution for treatment for substance abuse, until recovery or remission;

21. Using or attempting to use the services of a dental laboratory or dental laboratory technician without issuing a laboratory prescription, except as provided in subsection C of Section 328.36 of this title;

22. Aiding, abetting, or encouraging a dental hygienist employed by the dentist to make use of an oral prophylaxis list, or the calling by telephone or by use of letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist formerly employing such hygienist;

23. Having more than the equivalent of two full-time dental hygienists for each dentist actively practicing in the same dental office who will supervise the dental hygienists;

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24. Knowingly patronizing or using the services of a dental laboratory or dental laboratory technician who has not complied with the provisions of the State Dental Act and the rules of the Board;

25. Authorizing or aiding a dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory to violate any provision of the State Dental Act or the rules of the Board;

26. Willfully disclosing confidential information;

27. Writing a false, unnecessary, or excessive prescription for any drug or narcotic which is a controlled dangerous substance under either federal or state law;

28. Prescribing or administering any drug or treatment without having established a valid dentist-patient relationship;

29. Engaging in nonconsensual physical contact with a patient which is sexual in nature, or engaging in a verbal communication which is intended to be sexually demeaning to a patient;

30. Practicing dentistry without displaying, at the dentist's primary place of practice, the license issued to the dentist by the Board to practice dentistry and the current renewal certificate;

31. Being dishonest in a material way with a patient;

32. Failing to retain all patient records for at least three (3) years, except that the failure to retain records shall not be a violation of the State Dental Act if the dentist shows that the records were lost, destroyed, or removed by another, without the consent of the dentist;

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33. Failing to retain the dentist's copy of any laboratory prescription for at least three (3) years, except that the failure to retain records shall not be a violation of the State Dental Act if the dentist shows that the records were lost, destroyed, or removed by another, without the consent of the dentist;

34. Allowing any corporation, organization, group, person, or other legal entity, except another dentist or a professional entity that is in compliance with the registration requirements of subsection B of Section 328.31 of this title, to direct, control, or interfere with the dentist's clinical judgment. Clinical judgment shall include, but not be limited to, such matters as selection of a course of treatment, control of patient records, policies and decisions relating to pricing, credit, refunds, warranties and advertising, and decisions relating to office personnel and hours of practice. Nothing in this paragraph shall be construed to:

a. limit a patient's right of informed consent, or

b. to prohibit insurers, preferred provider organizations and managed care plans from operating pursuant to the applicable provisions of the Oklahoma Insurance Code and the Public Health Code;

35. Violating the state dental act of another state resulting in a plea of guilty or nolo contendere, conviction or suspension or revocation of the license of the dentist under the laws of that state;

36. Violating or attempting to violate the provisions of the State Dental Act or the rules of the Board, as a principal, accessory or accomplice; or

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37. Failing to comply with the terms and conditions of an order imposing suspension of a license or placement on probation issued pursuant to Section 328.44a of this title.

B. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

C. The provisions of the State Dental Act shall not be construed to prohibit any dentist from displaying or otherwise advertising that the dentist is also currently licensed, registered, certified, or otherwise credentialed pursuant to the laws of this state or a nationally recognized credentialing board, if authorized by the laws of the state or credentialing board to display or otherwise advertise as a licensed, registered, certified, or credentialed dentist.

D. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 396.12c, as amended by Section 14, Chapter 57, O.S.L. 2003 (59 O.S. Supp. 2007, Section 396.12c), is amended to read as follows:

Section 396.12c A. After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or

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renew, or may revoke or suspend, any license or registration for any one or combination of the following:

1. ~~Conviction of a felony shown by a certified copy of the record of the court of conviction;~~

~~2.~~ Conviction of a ~~misdemeanor involving~~ crime that substantially relates to the occupation of a funeral ~~services~~ director;

~~3.~~ 2. Gross malpractice or gross incompetency, which shall be determined by the Board;

~~4.~~ 3. False or misleading advertising as a funeral director or embalmer;

~~5.~~ 4. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;

~~6.~~ 5. Fraud or misrepresentation in obtaining a license;

~~7.~~ 6. Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the burial or other disposition of dead human remains, unless the disclosure is made to the purchaser;

~~8.~~ 7. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

~~9.~~ 8. Use of intoxicating liquor sufficient to produce drunkenness in public, or habitual addiction to the use of habit-forming drugs or either;

~~10.~~ 9. Solicitation of business, either personally or by an agent, from a dying individual or the relatives of a dead or individual with a terminal condition, as defined by

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the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, other than through general advertising;

~~11.~~ 10. Refusing to properly release a dead human body to the custody of the person entitled to custody;

~~12.~~ 11. Violating applicable state laws relating to the failure to file a death certificate, cremation permit, or prearrangement or prefinancing of a funeral;

~~13.~~ 12. Failing to obtain other necessary permits as required by law in a timely manner;

~~14.~~ 13. Failing to comply with the Funeral Rules of the Federal Trade Commission, 15 U.S.C., Section 57a(a);

~~15.~~ 14. Failing to comply with any applicable provisions of the Funeral Services Licensing Act at the time of issuance or renewal;

~~16.~~ 15. Improper issuance or renewal of a license or registration;

~~17.~~ 16. Violating the provisions of subsection B of Section 396.12 of this title regarding advertisement of services at locations not licensed by the Board;

~~18.~~ 17. The abuse of a corpse whereby a person knowingly and willfully signs a certificate as having embalmed, cremated, or prepared a dead human body for disposition when, in fact, the services were not performed as indicated;

~~19.~~ 18. Simultaneous cremating of more than one human dead body without express written approval of the authorizing agent; or

~~20.~~ 19. Cremating human remains without the permit required by Section 1-329.1 of Title 63 of the Oklahoma Statutes.

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B. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 509, as amended by Section 9, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 509), is amended to read as follows:

Section 509. A. The words "unprofessional conduct" as used in Sections 481 through 514 of this title are hereby declared to include, but shall not be limited to, the following:

1. Procuring, aiding or abetting a criminal operation;

2. The obtaining of any fee or offering to accept any fee, present or other form of remuneration whatsoever, on the assurance or promise that a manifestly incurable disease can or will be cured;

3. Willfully betraying a professional secret to the detriment of the patient;

4. Habitual intemperance or the habitual use of habit-forming drugs;

5. ~~Conviction of a felony or of any offense involving moral turpitude;~~

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~~6.~~ All advertising of medical business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;

~~7.~~ 6. Conviction or confession of a crime involving violation of:

a. the antinarcotic or prohibition laws and regulations of the federal government,

b. the laws of this state, or

c. State Board of Health rules;

~~8.~~ 7. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public;

~~9.~~ 8. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct;

~~10.~~ 9. Failure to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs;

~~11.~~ 10. The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs;

~~12.~~ 11. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship;

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~~13.~~ 12. The violation, or attempted violation, direct or indirect, of any of the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, either as a principal, accessory or accomplice;

~~14.~~ 13. Aiding or abetting, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state;

~~15.~~ 14. The inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the State Board of Medical Licensure and Supervision may, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it. If the physician refuses to submit to the examination, the Board shall issue an order requiring the physician to show cause why the physician will not submit to the examination and shall schedule a hearing on the order within thirty (30) days after notice is served on the physician. The physician shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the physician and the physician's attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. The medical license of a physician ordered to submit for examination may be suspended until the results of the examination are received and reviewed by the Board;

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~~16.~~ 15. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards;

~~17.~~ 16. Engaging in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient;

~~18.~~ 17. Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient; or

~~19.~~ 18. Failure to provide necessary ongoing medical treatment when a doctor-patient relationship has been established, which relationship can be severed by either party providing a reasonable period of time is granted.

B. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 532, is amended to read as follows:

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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~~ crime that substantially relates to the occupation of athletic trainers;

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.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 567.8, as amended by Section 5, Chapter 190, O.S.L. 2003 (59 O.S. Supp. 2007, Section 567.8), is amended to read as follows:

Section 567.8 A. The Oklahoma Board of Nursing shall have the power:

1. To deny, revoke or suspend any:

a. license to practice registered nursing or licensed practical nursing,

b. recognition for practice as an advanced practice nurse, or

c. certification as an advanced unlicensed assistive person;

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2. To assess administrative penalties; or

3. To otherwise discipline a licensee or advanced unlicensed assistive person.

B. The Board shall impose a disciplinary action pursuant to the provisions of subsection A of this section upon proof that the person:

1. Is guilty of fraud or deceit or material deception in procuring or attempting to procure:

a. a license to practice registered nursing, licensed practical nursing, or recognition to practice advanced practice nursing, or

b. certification as an advanced unlicensed assistive person;

2. Is guilty of a ~~felony, or any offense reasonably~~ crime substantially related to the ~~qualifications, functions or duties of any licensee or advanced unlicensed assistant, or any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed, or any conduct resulting in the revocation of a deferred or suspended sentence or probation imposed pursuant to such conviction~~ practice of nursing;

3. Fails to adequately care for patients or to conform to the minimum standards of acceptable nursing or advanced unlicensed assistant practice that, in the opinion of the Board, unnecessarily exposes a patient or other person to risk of harm;

4. Is intemperate in the use of alcohol or drugs, which use the Board determines endangers or could endanger patients;

5. Exhibits through a pattern of practice or other behavior actual or potential inability to practice nursing with sufficient knowledge or reasonable skills and safety due

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to impairment caused by illness, use of alcohol, drugs, chemicals or any other substance, or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills, mental illness, or disability that results in inability to practice with reasonable judgment, skill or safety; provided, however, the provisions of this paragraph shall not be utilized in a manner that conflicts with the provisions of the Americans with Disabilities Act;

6. Has been adjudicated as mentally incompetent, mentally ill, chemically dependent or dangerous to the public or has been committed by a court of competent jurisdiction, within or without this state;

7. Is guilty of unprofessional conduct as defined in the rules of the Board;

8. Is guilty of any act that jeopardizes a patient's life, health or safety as defined in the rules of the Board;

9. Violated a rule promulgated by the Board, an order of the Board, or a state or federal law relating to the practice of registered, practical or advanced practice nursing or advanced unlicensed assisting, or a state or federal narcotics or controlled dangerous substance law; or

10. Has had disciplinary actions taken against the individual's registered or practical nursing license, advanced unlicensed assistive certification, or any health-related license, in this or any state, territory or country.

C. Any person who supplies the Board information in good faith shall not be liable in any way for damages with respect to giving such information.

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D. The Board may cause to be investigated all reported violations of the Oklahoma Nursing Practice Act.

E. The Board may authorize the executive director to issue a confidential letter of concern to a licensee when evidence does not warrant formal proceedings, but the executive director has noted indications of possible errant conduct that could lead to serious consequences and formal action.

F. All individual proceedings before the Board shall be conducted in accordance with the Administrative Procedures Act.

G. At a hearing the accused shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on behalf of the accused, to cross-examine witnesses and to have subpoenas issued by the Board. If the accused is found guilty of the charges the Board may refuse to issue a renewal of license to the applicant, revoke or suspend a license, or otherwise discipline a licensee.

H. A person whose license is revoked may not apply for reinstatement during the time period set by the Board. The Board on its own motion may at any time reconsider its action.

I. Any person whose license is revoked or who applies for renewal of registration and who is rejected by the Board shall have the right to appeal from such action pursuant to the Administrative Procedures Act.

J. 1. Any person who has been determined by the Board to have violated any provisions of the Oklahoma Nursing Practice Act or any rule or order issued pursuant thereto shall be liable for an administrative penalty not to exceed Five Hundred Dollars

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($500.00) for each count for which any holder of a certificate or license has been determined to be in violation of the Oklahoma Nursing Practice Act or any rule promulgated or order issued thereto.

2. The amount of the penalty shall be assessed by the Board pursuant to the provisions of this section, after notice and an opportunity for hearing is given to the accused. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to practice, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act.

K. As used in this section, "substantially related" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 9. AMENDATORY 59 O.S. 2001, Section 858-312, is amended to read as follows:

Section 858-312. A. The Oklahoma Real Estate Commission may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any real estate licensee, and may, upon showing good cause, impose sanctions as provided for in Section 858-208 of this title. Cause shall be established upon

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the showing that any licensee has performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for a license;

2. Making substantial misrepresentations or false promises in the conduct of business, or through real estate licensees, or advertising, which are intended to influence, persuade, or induce others;

3. Failing to comply with the requirements of Sections 858-351 through 858-363 of this title;

4. Accepting a commission or other valuable consideration as a real estate associate for the performance of any acts as an associate, except from the real estate broker with whom the associate is associated;

5. Representing or attempting to represent a real estate broker other than the broker with whom the associate is associated without the express knowledge and consent of the broker with whom the associate is associated;

6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into possession of the licensee which belong to others;

7. Paying a commission or valuable consideration to any person for acts or services performed in violation of the Oklahoma Real Estate License Code;

8. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;

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9. Disregarding or violating any provision of the Oklahoma Real Estate License Code or rules promulgated by the Commission;

10. Guaranteeing or having authorized or permitted any real estate licensee to guarantee future profits which may result from the resale of real estate;

11. Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale, rent or lease without the consent of the owner or the owner's authorized representative;

12. Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;

13. Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing any appraisal report on real estate in which the licensee has an interest unless the licensee's interest is disclosed in the report. All appraisals shall be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report shall disclose to the employer whether the person performing the appraisal or report is licensed or certified by the Oklahoma Real Estate Appraiser Board;

14. Paying a commission or any other valuable consideration to any person for performing the services of a real estate licensee as defined in the Oklahoma Real Estate License Code who has not first secured a real estate license pursuant to the Oklahoma Real Estate License Code;

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15. Unworthiness to act as a real estate licensee, whether of the same or of a different character as specified in this section, or because the real estate licensee has been convicted of a crime ~~involving moral turpitude~~ <u>that substantially relates to the practice of real estate</u>;

16. Commingling with the licensee's own money or property the money or property of others which is received and held by the licensee, unless the money or property of others is received by the licensee and held in an escrow account that contains only money or property of others;

17. Conviction in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C. Section 3601 et seq.;

18. Failure by a real estate broker, after the receipt of a commission, to render an accounting to and pay to a real estate licensee the licensee's earned share of the commission received;

19. Conviction in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

20. Advertising to buy, sell, rent, or exchange any real estate without disclosing that the licensee is a real estate licensee;

21. Paying any part of a fee, commission, or other valuable consideration received by a real estate licensee to any person not licensed;

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22. Offering, loaning, paying, or making to appear to have been paid, a down payment or earnest money deposit for a purchaser or seller in connection with a real estate transaction; and

23. Violation of the Residential Property Condition Disclosure Act.

B. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Commission within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Commission to issue or reinstate any license, certificate or registration when the Commission deems that such action would be harmful to the profession or the public.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 10. AMENDATORY 59 O.S. 2001, Section 858-723, as amended by Section 11, Chapter 165, O.S.L. 2006 (59 O.S. Supp. 2007, Section 858-723), is amended to read as follows:

Section 858-723. A. The Real Estate Appraiser Board, after notice and opportunity for a hearing, pursuant to Article II of the Administrative Procedures Act, may issue an order imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that a certificate holder has violated any provision of the Oklahoma Certified Real Estate Appraisers Act, or rules promulgated pursuant thereto:

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1. Revocation of the certificate with or without the right to reapply;

2. Suspension of the certificate for a period not to exceed five (5) years;

3. Probation, for a period of time and under such terms and conditions as deemed appropriate by the Board;

4. Stipulations, limitations, restrictions, and conditions relating to practice;

5. Censure, including specific redress, if appropriate;

6. Reprimand, either public or private;

7. Satisfactory completion of an educational program or programs;

8. Administrative fines as authorized by the Oklahoma Certified Real Estate Appraisers Act; and

9. Payment of costs expended by the Board for any legal fees and costs and probation and monitoring fees including, but not limited to, administrative costs, witness fees and attorney fees.

B. 1. Any administrative fine imposed as a result of a violation of the Oklahoma Certified Real Estate Appraisers Act or the rules of the Board promulgated pursuant thereto shall not:

a. be less than Fifty Dollars ($50.00) and shall not exceed Two Thousand Dollars ($2,000.00) for each violation of this act or the rules of the Board, or

b. exceed Five Thousand Dollars ($5,000.00) for all violations resulting from a single incident or transaction.

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2. All administrative fines shall be paid within thirty (30) days of notification of the certificate holder by the Board of the order of the Board imposing the administrative fine, unless the certificate holder has entered into an agreement with the Board extending the period for payment.

3. The certificate may be suspended until any fine imposed upon the licensee by the Board is paid.

4. Unless the certificate holder has entered into an agreement with the Board extending the period for payment, if fines are not paid in full by the licensee within thirty (30) days of the notification by the Board of the order, the fines shall double and the certificate holder shall have an additional thirty-day period. If the double fine is not paid within the additional thirty-day period, the certificate shall automatically be revoked.

5. All monies received by the Board as a result of the imposition of the administrative fine provided for in this section shall be deposited in the Oklahoma Certified Real Estate Appraisers Revolving Fund created pursuant to Section 858-730 of this title.

C. 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.

D. The 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

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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~~ <u>crime</u> substantially related to the ~~qualifications, functions, and duties of a person developing~~ <u>practice of</u> real estate appraisals ~~and communicating real estate appraisals to others~~;

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;

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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~~ <u>the Oklahoma Certified Real Estate Appraisers Act</u>; or

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

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~~D.~~ E. 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.

~~E.~~ F. 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.

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G. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

H. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 11. AMENDATORY 59 O.S. 2001, Section 887.13, is amended to read as follows:

Section 887.13 A. The State Board of Medical 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;

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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~~ <u>that substantially relates to the occupation of physical therapy</u>;

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;

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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.

B. If an appeal process for a decision of the Board is not promulgated in the rules authorized by this section, an applicant whose license or certification is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 12. AMENDATORY 59 O.S. 2001, Section 888.9, is amended to read as follows:

Section 888.9 A. The Board may deny or refuse to renew a license, or may suspend or revoke a license, or may censure a licensee, publicly or otherwise, or may impose probationary conditions where the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes:

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1. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

2. Engaging in unprofessional conduct as defined by the rules established by the Board, or violating the Code of Ethics adopted and published by the Board;

3. Being convicted of ~~any federal or state law, excepting any misdemeanor, traffic law or municipal ordinance~~ a crime that substantially relates to the occupation of occupational therapy;

4. Violating any lawful order, rule, or regulation rendered or adopted by the Board; and

5. Violating any provisions of this act.

B. Such denial, refusal to renew, suspension, revocation, censure, or imposition of probationary conditions upon a license may be ordered by the Board in a decision made after a hearing in the manner provided by the rules and regulations adopted by the Board. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public. One (1) year from the date of the revocation, refusal of renewal, suspension, or probation of the license, application may be made to the Board for reinstatement. The Board shall have discretion to accept or reject an application for reinstatement and may, but shall not be required to, hold a hearing to consider such reinstatement.

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C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 13. AMENDATORY 59 O.S. 2001, Section 1310, is amended to read as follows:

Section 1310. A. The Insurance Commissioner may deny, censure, suspend, revoke, or refuse to renew any license issued under Section 1301 et seq. of this title for any of the following causes:

1. For any cause for which issuance of the license could have been refused;

2. Violation of any laws of this state or any lawful rule, regulation, or order of the Commissioner relating to bail;

3. Material misstatement, misrepresentation, or fraud in obtaining the license;

4. Misappropriation, conversion, or unlawful withholding of monies or property belonging to insurers, insureds, or others received in the conduct of business under the license;

5. Conviction of, or having entered a plea of guilty or nolo contendere to~~, any felony or to~~ a ~~misdemeanor involving moral turpitude or dishonesty~~ crime that substantially relates to the business practices of bail bondsmen;

6. Fraudulent or dishonest practices in conducting business under the license;

7. Failure to comply with, or violation of any proper order, rule, or regulation of the Commissioner;

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8. Recommending any particular attorney-at-law to handle a case in which the bail bondsman has caused a bond to be issued under the terms of Section 1301 et seq. of this title;

9. When, in the judgment of the Commissioner, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on the bail bond business or making continuance in the business detrimental to the public interest, or that the licensee is no longer in good faith carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or dividing with someone other than a licensed bail bondsman, or offering to divide commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for this conduct is found by the Commissioner to be a source of detriment, injury, or loss to the public;

10. For any materially untrue statement in the license application;

11. Misrepresentation of the terms of any actual or proposed bond;

12. For forging the name of another to a bond or application for bond;

13. Cheating on an examination for licensure;

14. Soliciting business in or about any place where prisoners are confined, arraigned, or in custody;

15. For paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer, law enforcement officer, or other officer of the law, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the

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amount of any bail bond or estreatment thereof, or to secure delay or other advantage. This shall not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant;

16. For paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of an action on a bond;

17. For paying a fee or rebating or giving or promising anything of value to the principal or anyone in the principal's behalf;

18. Participating in the capacity of an attorney at a trial or hearing for one on whose bond the licensee is surety;

19. Accepting anything of value from a principal, other than the premium; provided, the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned immediately upon final termination of liability on the bond and upon satisfaction of all terms, conditions, and obligations contained within the indemnity agreement. Collateral security or other indemnity required by the bondsman shall be reasonable in relation to the amount of the bond;

20. Willful failure to return collateral security to the principal when the principal is entitled thereto;

21. For failing to notify the Commissioner of a change of address, as noted on the license, within five (5) days after a change is made, or failing to respond to a properly mailed notification within a reasonable amount of time;

22. For failing to file a report as required by Section 1314 of this title;

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23. For filing a materially untrue monthly report;

24. For filing false affidavits regarding cancellation of the appointment of an insurer;

25. Forcing the Commissioner to withdraw deposited monies to pay forfeitures or any other outstanding judgments;

26. For failing to pay any fees to a district court clerk as are required by this title or failing to pay any fees to a municipal court clerk as are required by this title or by Section 28-127 of Title 11 of the Oklahoma Statutes;

27. For uttering an insufficient check to the Insurance Commissioner for any fees, fines or other payments received by the Commissioner from the bail bondsman; and

28. For failing to pay travel expenses for the return of the defendant to custody once having guaranteed the expenses pursuant to the provisions of subparagraph d of paragraph 3 of subsection C of Section 1332 of this title.

B. In addition to any applicable denial, censure, suspension, or revocation of a license, any person violating any provision of Section 1301 et seq. of this title may be subject to a civil penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each occurrence. This fine may be enforced in the same manner in which civil judgments may be enforced. Any order for civil penalties entered by the Commissioner or authorized decision maker for the Insurance Department which has become final may be filed with the court clerk of Oklahoma County and shall then be enforced by the judges of said county.

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C. No bail bondsman or bail bond agency shall advertise as or hold itself out to be a surety company.

D. If any bail bondsman is convicted by any court of a violation of any of the provisions of this act, the license of the individual shall therefore be deemed to be immediately revoked, without any further procedure relative thereto by the Commissioner.

E. For one (1) year after notification by the Commissioner of an alleged violation, or for two (2) years after the last day the person was licensed, whichever is the lesser period of time, the Commissioner shall retain jurisdiction as to any person who cancels his bail bondsman's license or allows the license to lapse, or otherwise ceases to be licensed, if the person while licensed as a bondsman allegedly violated any provision of this title. Notice and opportunity for hearing shall be conducted in the same manner as if the person still maintained a bondsman's license. If the Commissioner or a hearing examiner determines that a violation of the provisions of Sections 1301 through 1340 of this title occurred, any order issued pursuant to the determination shall become a permanent record in the file of the person and may be used if the person should request licensure or reinstatement.

F. <u>An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.</u>

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G. Any law enforcement agency, district attorney's office, court clerk's office, or insurer that is aware that a licensed bail bondsman has been convicted of or has pleaded guilty or nolo contendere to any crime, shall notify the Insurance Commissioner of that fact.

H. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 14. AMENDATORY 59 O.S. 2001, Section 1370, as amended by Section 24, Chapter 313, O.S.L. 2004 (59 O.S. Supp. 2007, 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 State Board of Examiners of Psychologists 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 whenever the Board shall find by 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 promulgated by the Board;

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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~~ crime that substantially relates to the practice of psychology;

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.~~ 6. Engaging in sexual intercourse or other sexual contact with a client or patient;

~~8.~~ 7. 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.~~ 8. Gross malpractice or repeated malpractice or gross negligence in the practice of psychology;

~~10.~~ 9. Aiding or abetting the practice of psychology by any person not approved by the Board or not otherwise exempt from the provisions of Section 1351 et seq. of this title;

~~11.~~ 10. Conviction of or pleading guilty or nolo ~~contendre~~ contendere to fraud in filing Medicare or Medicaid claims or in filing claims with any third party payor. A copy of the record of plea or conviction, certified by the clerk of the court entering the plea or conviction, shall be conclusive evidence of the plea or conviction;

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~~12.~~ 11. 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.~~ 12. 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.~~ 13. 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.~~ 14. Making any fraudulent or untrue statement to the Board;

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

~~17.~~ 16. 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.

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 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. 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 the notice. The notice shall be delivered to the alleged violator in

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accordance with the provisions of subsection E of this section not less than ten (10) days before the time set for the hearing.

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 the order to the alleged violator and to 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. <u>An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.</u> The order of the Board shall become final and binding on all parties unless appealed to the district court as provided for in the Administrative Procedures Act.

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

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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 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 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.

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 penalties authorized by the provisions of this section.

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

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.

<u>J. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability</u>

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to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 15. AMENDATORY 59 O.S. 2001, Section 1503A, is amended to read as follows:

Section 1503A. A. To be eligible for a pawnshop license, an applicant shall:

1. Be of good moral character;

2. Have net assets of at least Twenty-five Thousand Dollars ($25,000.00); and

3. Show that the pawnshop will be operated lawfully and fairly within the purpose of the Oklahoma Pawnshop Act~~, Section 1501 et seq. of Title 59 of the Oklahoma Statutes~~.

B. The Administrator shall find ineligible an applicant who has a ~~felony~~ crime conviction which ~~directly~~ substantially relates to the ~~duties and responsibilities of the~~ occupation of a pawnbroker.

C. If the Administrator is unable to verify that the applicant meets the net assets requirement for a pawnshop license, the Administrator may require a finding, including the presentation of a current balance sheet, by an accounting firm or individual holding a permit to practice public accounting in this state, that the accountant has reviewed the books and records of the applicant and that the applicant meets the net assets requirement.

D. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Administrator within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification.

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Nothing herein shall require the Administrator to issue or reinstate any license, certificate or registration when the Administrator deems that such action would be harmful to the profession or the public.

E. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 16. 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

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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. A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of conviction~~ <u>that substantially relates to speech-language pathology or audiology</u>.

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

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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.

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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~~ An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public. The applicant may also 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.

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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.

F. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 17. 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;~~

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

~~3.~~ 2. Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of this act;

~~4.~~ 3. Knowingly aided or abetted a person not licensed pursuant to these provisions in representing himself as a licensed professional counselor in this state;

~~5.~~ 4. Engaged in unprofessional conduct as defined by the rules established by the Board;

~~6.~~ 5. Engaged in negligence or wrongful actions in the performance of his duties; or

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~~7.~~ 6. 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.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 18. 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;~~

~~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~~ that substantially relates to the practice of marital and family therapy;

~~3.~~ 2. 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.~~ 3. Misrepresented any information required in obtaining a license;

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~~5.~~ 4. 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.~~ 5. 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.~~ 6. Engaged in unprofessional conduct as defined by the rules promulgated by the State Board of Health; or

~~8.~~ 7. 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. An applicant whose license is denied, revoked, suspended or not renewed may appeal the decision to the Board within thirty (30) days of that decision. If the appeal is successful, the applicant shall be entitled to receive the license or certification. Nothing herein shall require the Board to issue or reinstate any license, certificate or registration when the Board deems that such action would be harmful to the profession or the public.

~~C.~~ D. 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

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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.

E. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 19. 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;~~

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

~~3.~~ 2. Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of this act;

~~4.~~ 3. 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;

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~~5.~~ 4. Engaged in unprofessional conduct as defined by the rules established by the State Board of Health;

~~6.~~ 5. Engaged in negligence or wrongful actions in the performance of the licensee's duties; or

~~7.~~ 6. 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.

C. As used in this section, "substantially relates" means the nature of criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 69 of Title 21, unless there is created a duplication in numbering, reads as follows:

Licensing boards may take into consideration convictions of felony crimes. However, such convictions shall not operate as an automatic bar to registration, certification or licensing for any trade, profession or occupation. Arrest records not leading to a conviction and misdemeanor convictions may also be taken into consideration in connection with an application for a license. However, such arrest records or convictions shall not operate as an automatic bar to registration, certification

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or licensing for any trade, profession or occupation. Boards and agencies shall state explicitly, in writing, the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if the decision is based in whole, or in part, on conviction of a felony. Completion of parole or probation supervision shall be prima facie evidence of rehabilitation.

SECTION 21. This act shall become effective November 1, 2008.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY, dated 03-27-08 - DO PASS, As Amended and Coauthored.

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