

1 ENGROSSED HOUSE
2 BILL NO. 3105

By: Caldwell of the House

and

Yen of the Senate

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7 An Act relating to professions and occupations;
8 amending 59 O.S. 2011, Sections 1352.1, 1353, 1360,
9 1362, 1366, 1369, 1370, as amended by Section 8,
10 Chapter 183, O.S.L. 2015 and 1375 (59 O.S. Supp.
11 2015, Section 1370), which relate to the
12 Psychologists Licensing Act; authorizing State Board
13 of Examiners of Psychologists to establish certain
14 fees; providing that expenditures from certain fund
15 be made by warrants issued by State Treasurer;
16 requiring applicant for licensure to graduate from
17 certain doctoral programs after certain year;
18 requiring applicant to pay for certain costs;
19 requiring Board to publish list of licensed
20 psychologists on website; permitting Board to impose
21 certain administrative fine; permitting Board to keep
22 investigative file confidential; requiring
23 psychologists to report certain information to the
24 Board; providing for immunity; permitting Board to
defer certain disciplinary action and psychologist to
enter into certain agreement; 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. 2011, Section 1352.1, is
amended to read as follows:

1 Section 1352.1 The State Board of Examiners of Psychologists,
2 in addition to the other powers and duties prescribed by the
3 Psychologists Licensing Act, shall have the power and duty to:

4 1. Regulate the practice of psychology in this state; and

5 2. Examine and issue the appropriate licenses pursuant to the
6 provisions of the Psychologists Licensing Act to applicants
7 qualified in the practice of psychology; and

8 3. Continue in effect, suspend, revoke, modify, or deny,
9 pursuant to the provisions of the Psychologists Licensing Act and
10 such conditions as the Board may prescribe, licenses for the
11 practice of psychology in this state; and

12 4. Investigate complaints, and hold hearings pursuant to the
13 provisions of Sections 301 through 326 of Title 75 of the Oklahoma
14 Statutes; and

15 5. Initiate prosecution; and

16 6. Reprimand or place on probation or both any holder of a
17 license pursuant to the provisions of the Psychologists Licensing
18 Act; and

19 7. Adopt and promulgate standards of professional conduct for
20 psychologists; and

21 8. Develop and promulgate the rules and regulations and
22 establish fees, not otherwise provided in the Psychologist Licensing
23 Act, necessary to effectuate the provisions of the Psychologists
24 Licensing Act; and

1 9. Enforce the standards and rules and regulations promulgated
2 pursuant to the provisions of the Psychologists Licensing Act; and

3 10. Exercise all incidental powers and duties which are
4 necessary and proper to effectuate the provisions of the
5 Psychologists Licensing Act.

6 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1353, is
7 amended to read as follows:

8 Section 1353. No person shall represent himself or herself as a
9 psychologist or engage in the practice of psychology unless the
10 person is licensed pursuant to the provisions of the Psychologists
11 Licensing Act. The provisions of the Psychologists Licensing Act
12 shall not apply to:

13 1. The teaching of psychology, the conduct of psychological
14 research, or the provision of psychological services or consultation
15 to organizations or institutions; provided, that such teaching,
16 research, or service does not involve the delivery or supervision of
17 direct psychological services to individuals or groups of
18 individuals who are themselves, rather than a third party, the
19 intended beneficiaries of the services, without regard to the source
20 or extent of payment for services rendered. Nothing in the
21 Psychologists Licensing Act shall prevent the provision of expert
22 testimony by psychologists who are otherwise exempt from the
23 provisions of Section 1351 et seq. of this title. Persons holding
24 an earned doctoral degree in psychology from an institution of

1 higher education may use the title "psychologist" in conjunction
2 with the activities permitted by this subsection;

3 2. Qualified members of other professions, including, but not
4 limited to, physicians, licensed social workers, licensed
5 professional counselors, licensed marital and family therapists, or
6 pastoral counselors, doing work of a psychological nature consistent
7 with their training and consistent with the code of ethics of their
8 respective professions provided they do not hold themselves out to
9 the public by any title or description incorporating the word
10 psychological, psychologist, or psychology;

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

15 4. The activities and services of a person in the employ of a
16 private, nonprofit behavioral services provider contracting with the
17 state to provide behavioral services to the state if such activities
18 and services are a part of the official duties of such person with
19 the private nonprofit agency.

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

23 (1) psychologist, psychology or psychological,

24 (2) licensed social worker,

- 1 (3) clinical social worker,
- 2 (4) certified rehabilitation specialist,
- 3 (5) licensed professional counselor,
- 4 (6) psychoanalyst, or
- 5 (7) marital and family therapist.

6 b. Such exemption to the provisions of the Psychologists
7 Licensing Act shall apply only while the unlicensed
8 individual is operating under the auspices of a
9 contract with the state and within the employ of the
10 nonprofit agency contracting with the state. Such
11 exemption will not be applicable to any other setting.

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

1 5. The activities and services of a person in the employ of a
2 private, for-profit behavioral services provider contracting with
3 the state to provide behavioral services to youth and families in
4 the care and custody of the Office of Juvenile Affairs or the
5 Department of Human Services on March 14, 1997, if such activities
6 and services are a part of the official duties of such person with
7 the private for-profit contracting agency.

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

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

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

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

16 6. The activities and services of a student, intern, or
17 resident in psychology, pursuing a course of study at a university
18 or college that is regionally accredited by an organization
19 recognized by the United States Department of Education, or working
20 in a training center recognized by that university or college, if
21 the activities and services constitute a part of the supervised
22 course of study for the student, intern, or resident;

23 7. Individuals who have been certified as school psychologists
24 by the State Department of Education. They shall be permitted to

1 use the term "certified school psychologist". Such persons shall be
2 restricted in their practice to employment within those settings
3 under the purview of the State Board of Education;

4 8. The activities and services of a person who performs
5 psychological services pursuant to the direct supervision of a
6 licensed psychologist or psychiatrist or an applicant for licensure
7 who is engaged in the applicant's postdoctoral year of supervision.
8 Such person shall be subject to approval by the Board and to such
9 rules as the Board may prescribe pursuant to the provisions of the
10 Psychologists Licensing Act;

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

19 10. The activities and services of a nonresident of this state
20 who renders consulting or other psychological services if such
21 activities and services are rendered in cooperation with the
22 American Red Cross or as a member of the Disaster Response Network
23 of the American Psychological Association. The Board shall be
24 informed prior to initiation of services; or

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

6 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1360, is
7 amended to read as follows:

8 Section 1360. The secretary of the Board shall receive and
9 account for all monies derived under this act. The secretary shall
10 pay these monies monthly to the State Treasurer who shall keep them
11 in a separate fund to be known as the "Psychologists Licensing
12 Fund". All monies received in said fund are hereby appropriated to
13 the Board. ~~Monies may be paid out of this fund upon proper voucher
14 approved by the chair of the Board and attested by the secretary of
15 the Board~~ Expenditures from the Psychologist Licensing Fund shall
16 be made upon warrants issued by the State Treasurer against claims
17 filed as prescribed by law with the Director of the Office of
18 Management and Enterprise Services for approval and payment. It is
19 further provided that all monies in the "Psychologists Licensing
20 Fund" at the end of each fiscal year, being the unexpended balance
21 of such fund, shall be carried forward and placed to the credit of
22 the "Psychologists Licensing Fund" for the succeeding fiscal year.
23 The Board may make expenditures from this fund for any purpose which
24 is reasonably necessary to carry out the provisions of this act;

1 provided that all reimbursement for expenses shall be paid only from
2 the "Psychologists Licensing Fund". No money shall ever be paid
3 from the General Revenue Fund for the administration of this act and
4 any expenses or liabilities incurred by said Board shall not
5 constitute a charge on any state funds other than said
6 "Psychologists Licensing Fund".

7 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1362, is
8 amended to read as follows:

9 Section 1362. An applicant is qualified to take the examination
10 to be licensed when the applicant has met the following criteria:

11 1. Applicants for licensure shall possess a doctoral degree in
12 psychology from an institution of higher education. The degree
13 shall be obtained from a recognized program of graduate study in
14 psychology as defined by the rules and regulations of the Board. ~~By~~
15 Applicants for licensure who graduated before January 1, 1997,
16 applicants shall have completed a doctoral program in psychology
17 that meets recognized acceptable professional standards as
18 determined by the Board. Applicants for licensure who graduated on
19 or after January 1, 1997, shall have completed a doctoral program in
20 psychology that is accredited by the American Psychological
21 Association (APA). In areas where no accreditation exists,
22 applicants for licensure shall have completed a doctoral program in
23 psychology that meets recognized acceptable professional standards
24 as determined by the Board. When a new specialty of professional

1 psychology is recognized as being within the accreditation scope of
2 the APA, doctoral programs within that specialty will be afforded a
3 transition period of eight (8) years from their first class of
4 students to the time of their accreditation. During that transition
5 period, graduates of such programs may sit for licensure examination
6 whether or not the program has been accredited. This also applies
7 to new doctoral programs of specialties previously recognized within
8 the scope of APA accreditation. Applicants trained in institutions
9 outside the United States shall meet requirements established by the
10 Board.

11 2. For admission to the licensure examination, applicants shall
12 demonstrate that they have completed two (2) years of supervised
13 professional experience, one (1) year of which shall be
14 postdoctoral. In accordance with the rules and regulations
15 promulgated by the Board, applicants may be allowed to sit for
16 examination during the applicant's second year of experience. The
17 criteria for appropriate supervision shall be in accordance with
18 regulations which shall be promulgated by the Board. Postdoctoral
19 experience shall be compatible with the knowledge and skills
20 acquired during formal doctoral or postdoctoral education in
21 accordance with professional requirements and relevant to the
22 intended area of practice.

23 3. Applicants shall be required to show evidence of good
24 character; that is, that they have not been convicted of a criminal

1 offense that bears directly on the fitness of the individual to be
2 licensed. Each applicant shall submit to a national criminal
3 history record check, as defined in Section 150.9 of Title 74 of the
4 Oklahoma Statutes. The costs associated with the national criminal
5 history record check shall be paid by the applicant.

6 SECTION 5. AMENDATORY 59 O.S. 2011, Section 1366, is
7 amended to read as follows:

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

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

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

23 SECTION 6. AMENDATORY 59 O.S. 2011, Section 1369, is
24 amended to read as follows:

1 Section 1369. The State Board of Examiners of Psychologists
2 shall ~~annually maintain and publish a~~ an up-to-date list of all
3 psychologists licensed under this act on the website of the Board.
4 The list shall contain the name and address of the psychologist and
5 such other information that the Board deems desirable. ~~The list~~
6 ~~shall be arranged both alphabetically and geographically. The Board~~
7 ~~shall mail a copy of this list to each person licensed under this~~
8 ~~act, shall place a copy on file with the Secretary of State and~~
9 ~~shall furnish copies to the public upon request.~~

10 SECTION 7. AMENDATORY 59 O.S. 2011, Section 1370, as
11 amended by Section 8, Chapter 183, O.S.L. 2015 (59 O.S. Supp. 2015,
12 Section 1370), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

1 C. No license shall be suspended or revoked nor the licensee
2 placed on probation or reprimanded until the licensee has been given
3 an opportunity for a hearing before the Board pursuant to the
4 provisions of subsection D of this section. Whenever the Board
5 determines that there has been a violation of any of the provisions
6 of the Psychologists Licensing Act or of any order of the Board, it
7 shall give written notice to the alleged violator specifying the
8 cause of complaint. The notice shall require that the alleged
9 violator appear before the Board at a time and place specified in
10 the notice and answer the charges specified in the notice. The
11 notice shall be delivered to the alleged violator in accordance with
12 the provisions of subsection E of this section not less than ten
13 (10) days before the time set for the hearing.

14 D. On the basis of the evidence produced at the hearing, the
15 Board shall make findings of fact and conclusions of law and enter
16 an order thereon in writing or stated in the record. A final order
17 adverse to the alleged violator shall be in writing. An order
18 stated in the record shall become effective immediately, provided
19 the Board gives written notice of the order to the alleged violator
20 and to the other persons who appeared at the hearing and made
21 written request for notice of the order. If the hearing is held
22 before any person other than the Board itself, such person shall
23 transmit the record of the hearing together with recommendations for
24 findings of fact and conclusions of law to the Board, which shall

1 thereupon enter its order. The Board may enter its order on the
2 basis of such record or, before issuing its order, require
3 additional hearings or further evidence to be presented. The order
4 of the Board shall become final and binding on all parties unless
5 appealed to the district court as provided for in the Administrative
6 Procedures Act.

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

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

23 G. If the psychologist fails or refuses to appear, the Board
24 may proceed to hearing and determine the charges in his or her

1 absence. If the psychologist pleads guilty, or if upon hearing the
2 charges, a majority of the Board finds them to be true, the Board
3 may enter an order suspending or revoking the license of the
4 psychologist, reprimanding the psychologist, or placing the
5 psychologist on probation or any combination of penalties authorized
6 by the provisions of this section.

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

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

14 J. As used in this section:

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

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

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

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1 SECTION 8. AMENDATORY 59 O.S. 2011, Section 1375, is
2 amended to read as follows:

3 Section 1375. The Board shall make an annual report to the
4 Governor, not later than the 15th day of November of each year,
5 which report shall contain an account of all monies received,
6 licenses issued, suspended, or revoked and all expenditures made by
7 said Board in the ~~twelve (12) months~~ previous fiscal year prior to
8 said date.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1370.3 of Title 59, unless there
11 is created a duplication in numbering, reads as follows:

12 A. A licensed psychologist shall report to the Board
13 information regarding a psychologist suspected of practicing
14 psychology while being impaired or incapacitated by misuse of drugs,
15 narcotics, alcohol, chemicals, or as a result of any mental or
16 physical condition. Any person making a report to the Board under
17 this section shall be immune from any civil or criminal liability
18 resulting from such reports, provided such reports are made in good
19 faith.

20 B. The Board may defer disciplinary action under Section 1370
21 of this title for an impaired psychologist who voluntarily signs an
22 agreement, in a form satisfactory to the Board, agreeing to enter a
23 Board-approved treatment and monitoring program for impaired
24 practitioners. The impaired psychologist shall consent, in

1 accordance with applicable law, to the release of any treatment
2 information to the Board from anyone within the approved treatment
3 program.

4 C. In the event the psychologist fails to comply with the
5 agreement terms and make satisfactory progress in the treatment and
6 monitoring program, the Board shall suspend the license immediately
7 and assign a hearing date for the matter to be presented to the
8 Board.

9 D. Any person who enters into an agreement under this section
10 shall be responsible for any and all costs associated with
11 participation in the treatment program.

12 E. A psychologist's participation in a treatment program does
13 not prevent the Board from conducting additional proceedings for
14 acts or omissions of acts not specifically related to the
15 impairment.

16 SECTION 10. This act shall become effective November 1, 2016.

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