An Act

ENROLLED HOUSE
BILL NO. 3105

By: Caldwell of the House

and

Yen of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 1352.1, 1353, 1360, 1362, 1366, 1369, 1370, as amended by Section 8, Chapter 183, O.S.L. 2015 and 1375 (59 O.S. Supp. 2015, Section 1370), which relate to the Psychologists Licensing Act; authorizing State Board of Examiners of Psychologists to establish certain fees; providing that expenditures from certain fund be made by warrants issued by State Treasurer; requiring applicant for licensure to graduate from certain doctoral programs after certain year; requiring applicant to pay for certain costs; requiring Board to publish list of licensed psychologists on website; permitting Board to impose certain administrative fine; permitting Board to keep investigative file confidential; requiring psychologists to report certain information to the 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.

SUBJECT: Psychologists Licensing Act

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:

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

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

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

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

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

5. Initiate prosecution; and

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

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

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

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

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

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

Section 1353. No person shall represent himself or herself as a psychologist or engage in the practice of psychology unless the

person is licensed pursuant to the provisions of the Psychologists Licensing Act. The provisions of the Psychologists Licensing Act shall not apply to:

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

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

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

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

a. Any person who is unlicensed and operating under these exemptions shall not use any of the following official titles or descriptions <u>or derivatives thereof</u>:

(1) psychologist, psychology or psychological,

(2) licensed social worker,

(3) clinical social worker,

(4) certified rehabilitation specialist,

(5) licensed professional counselor,

(6) psychoanalyst, or

(7) marital and family therapist.

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

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

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

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

(1) psychologist, psychology or psychological,

(2) licensed social worker,

(3) clinical social worker,

(4) certified rehabilitation specialist,

(5) licensed professional counselor,

(6) psychoanalyst, or

(7) marital and family therapist.

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

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

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

7. Individuals who have been certified as school psychologists by the State Department of Education. They shall be permitted to use the term "certified school psychologist". Such persons shall be restricted in their practice to employment within those settings under the purview of the State Board of Education;

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

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

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

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

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

Section 1360. The secretary of the Board shall receive and account for all monies derived under this act. The secretary shall pay these monies monthly to the State Treasurer who shall keep them in a separate fund to be known as the "Psychologists Licensing Fund". All monies received in said fund are hereby appropriated to the Board. ~~Monies may be paid out of this fund upon proper voucher~~

~~approved by the chair of the Board and attested by the secretary of the Board~~ Expenditures from the Psychologist Licensing Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment. It is further provided that all monies in the "Psychologists Licensing Fund" at the end of each fiscal year, being the unexpended balance of such fund, shall be carried forward and placed to the credit of the "Psychologists Licensing Fund" for the succeeding fiscal year. The Board may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of this act; provided that all reimbursement for expenses shall be paid only from the "Psychologists Licensing Fund". No money shall ever be paid from the General Revenue Fund for the administration of this act and any expenses or liabilities incurred by said Board shall not constitute a charge on any state funds other than said "Psychologists Licensing Fund".

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

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

1. Applicants for licensure shall possess a doctoral degree in psychology from an institution of higher education. The degree shall be obtained from a recognized program of graduate study in psychology as defined by the rules and regulations of the Board. ~~By~~ Applicants for licensure who graduated before January 1, 1997, ~~applicants~~ shall have completed a doctoral program in psychology that meets recognized acceptable professional standards as determined by the Board. Applicants for licensure who graduated on or after January 1, 1997, shall have completed a doctoral program in psychology that is accredited by the American Psychological Association (APA). In areas where no accreditation exists, applicants for licensure shall have completed a doctoral program in psychology that meets recognized acceptable professional standards as determined by the Board. When a new specialty of professional psychology is recognized as being within the accreditation scope of the APA, doctoral programs within that specialty will be afforded a transition period of eight (8) years from their first class of students to the time of their accreditation. During that transition period, graduates of such programs may sit for licensure examination whether or not the program has been accredited. This also applies to new doctoral programs of specialties previously recognized within

the scope of APA accreditation. Applicants trained in institutions outside the United States shall meet requirements established by the Board.

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

3. Applicants shall be required to show evidence of good character; that is, that they have not been convicted of a criminal offense that bears directly on the fitness of the individual to be licensed. Each applicant shall submit to a national criminal history record check, as defined in Section 150.9 of Title 74 of the Oklahoma Statutes. The costs associated with the national criminal history record check shall be paid by the applicant.

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

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

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

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

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

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

SECTION 7. AMENDATORY 59 O.S. 2011, Section 1370, as amended by Section 8, Chapter 183, O.S.L. 2015 (59 O.S. Supp. 2015, 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, impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per incident, or assess reasonable costs 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;

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

4. Conviction of a felony crime that substantially relates to the business practices of psychology or poses a reasonable threat to public safety;

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

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

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;

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

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;

10. Conviction of or pleading guilty or nolo 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;

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;

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;

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;

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

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

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 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. 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 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.

J. As used in this section:

1. "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; and

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

K. The Board may keep confidential its investigative files.

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

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

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

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

B. The Board may defer disciplinary action under Section 1370 of this title for an impaired psychologist who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing to enter a Board-approved treatment and monitoring program for impaired practitioners. The impaired psychologist shall consent, in accordance with applicable law, to the release of any treatment information to the Board from anyone within the approved treatment program.

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

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

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

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

Passed the House of Representatives the 2nd day of March, 2016.

Scott C. Martin

Presiding Officer of the House
of Representatives

Passed the Senate the 18th day of April, 2016.

A. Griffin

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 19th

day of April, 2016, at 4:46 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 25th

day of April, 2016, at 1:35 o'clock P M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 25

day of April, 2016, at 2:45 o'clock P. M.

By: Chris Benge