

ENGROSSED SENATE
BILL NO. 380

By: Stipe and Long of the
Senate

and

Gray of the House

[Licensed Behavioral Practitioner Act -
effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1930 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be identified as Chapter 44B of Title 59 of the Oklahoma Statutes and shall be known and may be cited as the "Licensed Behavioral Practitioner Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1931 of Title 59, unless there is created a duplication in numbering, reads as follows:

For the purpose of the Licensed Behavioral Practitioner Act:

1. "Advisory Board" means the Oklahoma Behavioral Practitioners Advisory Board appointed by the Commissioner;

2. "Behavioral health services" means the application of the scientific components of psychological and mental health principles, including, but not limited to, perception, motivation, biological psychology, social psychology, experimental psychology, and psychometric and quantification methodologies in order to:

- a. facilitate human development and adjustment throughout the life span,

- b. prevent, diagnose, or treat mental, emotional, or behavioral disorders or associated distress which interfere with mental health,
- c. conduct assessments or diagnoses for the purpose of establishing treatment goals and objectives, and
- d. plan, implement, or evaluate treatment plans using behavioral treatment interventions;

3. "Behavioral treatment interventions" means the application of empirically validated treatment modalities, including, but not limited to, operant and classical conditioning techniques, adherence/compliance methods, habit reversal procedures, cognitive behavior therapy, and parent training. Such interventions are specifically implemented in the context of a professional therapeutic relationship;

4. "Board" means the State Board of Health;

5. "Commissioner" means the State Commissioner of Health;

6. "Consulting" means interpreting or reporting scientific fact or theory in behavioral health to provide assistance in solving current or potential problems of individuals, groups, or organizations;

7. "Department" means the State Department of Health;

8. "Licensed behavioral practitioner" or "LBP" means any person who offers professional behavioral health services for compensation to any person and is licensed pursuant to the provisions of the Licensed Behavioral Practitioner Act. The term shall not include those professions exempted by Section 3 of this act;

9. "Licensed behavioral practitioner candidate" means a person whose application for licensure has been accepted and who is under supervision for licensure as provided in Section 1906 of Title 59 of the Oklahoma Statutes;

10. "Referral activities" means the evaluating of data to identify problems and to determine the advisability of referral to other specialists;

11. "Research activities" means reporting, designing, conducting, or consulting on research in behavioral health services;

12. "Specialty" means the designation of a subarea of behavioral practice that is recognized by a national certification agency or by the Board; and

13. "Supervisor" means a person who meets the requirements established by the Board and who is licensed pursuant to the Psychologist Licensing Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1932 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Licensed Behavioral Practitioner Act shall not be construed to include the pursuits of the following professionals acting within the scope of their duties as such professionals, nor shall the title "Licensed Behavioral Practitioner" or "LBP" be used by such professionals:

1. Physicians, psychologists, social workers, licensed professional counselors, marital and family therapists, and attorneys, who are licensed by their respective licensing authorities;

2. Rehabilitation counselors, vocational evaluation specialists, psychiatric and mental health nurses, alcohol and drug counselors, school administrators, school teachers, and school counselors, who are certified by their respective certifying authorities;

3. Persons in the employ of accredited institutions of higher education, or in the employ of local, state, or federal government; and

4. Members of clergy.

B. The Licensed Behavioral Practitioner Act shall not be construed to allow the practice of any of the professions specified in subsection A of this section by a licensed behavioral practitioner unless the licensed behavioral practitioner is also licensed or accredited by an appropriate agency, institution, or board.

C. 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 with the state shall be exempt from licensure as a Licensed Behavioral Practitioner if such activities and services are a part of the official duties of such person with the private nonprofit agency.

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

- a. psychologist, psychology, or psychological,
- b. licensed social worker,
- c. clinical social worker,
- d. certified rehabilitation specialist,
- e. licensed professional counselor,
- f. psychoanalyst, marital and family therapist, or licensed behavioral practitioner.

2. Such exemption to the provisions of this section 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.

3. State agencies contracting to provide behavioral health services shall 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 section shall provide services that are consistent with their training and experience. Agencies shall 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.

D. 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, shall be exempt from licensure as a Licensed Behavioral Practitioner if such activities and services are a part of the official duties of such person with the private for-profit contracting agency.

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

- a. psychologist, psychology, or psychological,
- b. licensed social worker,
- c. clinical social worker,
- d. certified rehabilitation specialist,
- e. licensed professional counselor,
- f. psychoanalyst, marital and family therapist, or licensed behavioral practitioner.

2. Such exemption to the provisions of this section 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.

3. State agencies contracting to provide behavioral health services shall 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 section shall provide services that are consistent with their training and experience. Agencies shall 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1933 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created the "Oklahoma Licensed Behavioral Practitioners Advisory Board" whose duty shall be to advise the State Department of Health on the provisions of the Licensed Behavioral Practitioners Act, except as otherwise provided by law.

2. The Advisory Board shall consist of seven (7) members who shall be appointed by the State Commissioner of Health with the advice and consent of the State Board of Health. Four members shall be licensed behavioral practitioners, one member shall be a licensed psychologist, and two members shall be lay persons who are not affiliated with any practice of behavioral health service delivery or delivering of health or mental health services. The Commissioner shall appoint successors for a four-year term.

3. All professional appointees shall be selected from a list of qualified candidates submitted by the Executive Committee of the North American Association of Masters in Psychology acting in conjunction with the executive committees of all state professional behavioral health associations which represent a specialty recognized pursuant to the Licensed Behavioral Practitioner Act.

B. Vacancies occurring in the Advisory Board shall be filled for the unexpired term by appointment by the Commissioner with the advice and consent of the Board from a list of qualified candidates submitted within thirty (30) days of such vacancy by the Executive Committee of the North American Association of Masters in Psychology acting in conjunction with the executive committees of all state professional behavioral health associations which represent a specialty recognized pursuant to Licensed Behavioral Practitioner Act. Such appointments shall be made within thirty (30) days after the candidates' names have been submitted if possible.

C. Any Advisory Board member may be removed by the Commissioner, after written notice, for incapacity, incompetence, neglect of duty, or misfeasance or malfeasance in office.

D. Members of the Advisory Board shall serve without compensation, but shall be reimbursed their actual and necessary travel expenses as provided by the provisions of the State Travel Reimbursement Act.

E. Advisory Board members shall be ineligible for reappointment for a period of three (3) years following completion of their term.

F. The Advisory Board shall hold at least four regular meetings each year. Meetings shall be held at such time and place as the Advisory Board may provide. The Advisory Board shall elect annually the following officers: A chair, a vice-chair, and a secretary. Four members of the Advisory Board shall constitute a quorum.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1934 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall, giving regard to the recommendations of the Oklahoma Licensed Behavioral Practitioners Advisory Board:

1. Prescribe, adopt, and promulgate rules to implement and enforce the provisions of the Licensed Behavioral Practitioner Act;

2. Adopt and establish rules of professional conduct; and
3. Set license and examination fees as required by Licensed Behavioral Practitioner Act.

B. The State Department of Health shall, giving regard to the recommendations of the Advisory Board, have the authority to:

1. Seek injunctive relief;
2. Request the district attorney to bring an action to enforce the provisions of the Licensed Behavioral Practitioner Act;
3. Receive fees and deposit the fees into the Licensed Behavioral Practitioners Revolving Fund as required by the Licensed Behavioral Practitioner Act;
4. Issue, renew, revoke, deny, suspend and place on probation licenses to practice behavioral health pursuant to the provisions of Licensed Behavioral Practitioner Act;
5. Examine all qualified applicants for licenses to practice behavioral health;
6. Investigate complaints and possible violations of Licensed Behavioral Practitioner Act;
7. Accept grants and gifts from various foundations and institutions; and
8. Make such expenditures and employ such personnel as the Commissioner may deem necessary for the administration of the Licensed Behavioral Practitioner Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1935 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Applications for a license to practice as a licensed behavioral practitioner shall be made to the State Department of Health in writing. Such applications shall be on a form and in a manner prescribed by the Commissioner. The application shall be accompanied by the fee required by the Licensed Behavioral

Practitioner Act, which shall be retained by the State Department of Health and not returned to the applicant.

B. Each applicant for a license to practice as a licensed behavioral practitioner shall:

1. Be possessed of good moral character;

2. Pass an examination based on standards promulgated by the State Board of Health pursuant to the Licensed Behavioral Practitioner Act;

3. Be at least twenty-one (21) years of age;

4. Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking, or suspending a license pursuant to this title; and

5. Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Licensed Behavioral Practitioner Act.

C. In addition to the qualifications specified by the provisions of subsection B of this section, an applicant for a license to practice as a licensed behavioral practitioner shall have:

1. Successfully completed at least forty-five (45) graduate semester hours (sixty (60) graduate quarter hours) of behavioral science-related course work. These forty-five (45) hours shall include at least a master's degree in a psychology or behavioral science field. All course work and degrees shall be earned from a regionally accredited college or university. The State Board of Health shall define what course work qualifies as "behavioral science-related" and what degrees or majors qualify as a "psychology or behavioral science field";

2. As of January 1, 2005, successfully completed at least sixty (60) graduate semester hours (ninety (90) graduate quarter hours) of behavioral science-related course work. These sixty (60) hours shall include at least a master's degree in a psychology or

behavioral science field. All courses and degrees shall be earned from a regionally accredited college or university.

The Board shall define what course work qualifies as "behavioral science-related" and what degrees or majors qualify as a "psychology or behavioral science field"; and

3. Three (3) years of supervised full-time experience in professional behavioral health services subject to the supervision of a licensed psychologist pursuant to conditions established by the Board. One (1) or two (2) years of experience may be gained at the rate of one (1) year for each thirty (30) graduate semester hours earned beyond the master's degree, provided that such hours are clearly related to the field of psychology or behavioral sciences and are acceptable to the Board. The applicant shall have no less than one (1) year of supervised full-time experience in behavioral science.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1936 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Examinations shall be held at such times, at such place, and in such manner as the State Commissioner of Health directs. An examination shall be held at least annually. The State Department of Health shall determine the acceptable grade on examinations. The examination shall cover such technical, professional, and practical subjects as relate to the practice of behavioral science. If an applicant fails to pass the examinations, the applicant may reapply and shall be allowed to take subsequent examinations. An applicant who has failed two successive examinations may not reapply for two (2) years from the date of the last examination.

B. The Commissioner shall preserve answers to any examination, and the applicant's performance on each section, for a period of two (2) years following the date of the examination.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1937 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An applicant who meets the requirements for licensure pursuant to the provisions of the Licensed Behavioral Practitioner Act, has paid the required license fees, and has otherwise complied with the provisions of the Licensed Behavioral Practitioner Act shall be licensed by the State Department of Health.

B. Licenses issued pursuant to the Licensed Behavioral Practitioner Act shall expire twenty-four (24) months from the date of issuance unless revoked. A license may be renewed upon application and payment of fees. The application for renewal shall be accompanied by evidence satisfactory to the Department that the applicant has completed relevant professional or continued educational experience during the previous twenty-four (24) months. Failure to renew a license as required by Licensed Behavioral Practitioner Act shall constitute a suspension of the license. A person whose license has been suspended may make application within one (1) year following the suspension in writing to the Department requesting reinstatement in a manner prescribed by the Department and payment of the fees required by the provisions of Licensed Behavioral Practitioner Act. The license of a person whose license has been suspended pursuant to this section for more than one (1) year shall not be renewed except upon making application and taking and passing the examination as required by the Licensed Behavioral Practitioner Act.

C. A licensed behavioral practitioner whose license is current and in good standing, who wishes to retire the license, may do so by informing the Department in writing and returning the license to the Department. A license so retired shall not be reinstated but retirement of the license shall preclude a person from applying for a new license at a future date.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1938 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Commissioner of Health shall have the power to issue licenses by endorsement for applicants licensed in other states to practice as a behavioral practitioner if the Commissioner deems such states to have qualifications and standards comparable to those required under this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1939 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No person licensed pursuant to the provisions of the Licensed Behavioral Practitioner Act shall disclose any information the licensee may have acquired from persons consulting the licensee in his or her professional capacity as a behavioral practitioner or be compelled to disclose such information except:

1. With the written consent of the client, or in the case of death or disability of the client, the consent of his or her personal representative or other person authorized to sue or the beneficiary of any insurance policy on his or her life, health, or physical condition;

2. If the person is a child under the age of eighteen (18) years and the information acquired by the licensed person indicated that the child was the victim or subject of a crime, the licensed person may be required to testify fully in relation thereto upon an examination, trial, or other proceeding in which the commission of such a crime is a subject of inquiry;

3. If the client waives the privilege by bringing charges against the licensed person;

4. When failure to disclose such information presents a danger to the health of any person; or

5. If the licensed behavioral practitioner is a party to a civil, criminal, or disciplinary action arising from such therapy, in which case any waiver of the privilege accorded by this section shall be limited to that action.

B. No information shall be treated as privileged and there shall be no privileges created by the Licensed Behavioral Practitioner Act as to any information acquired by the person licensed pursuant to the Licensed Behavioral Practitioner Act when such information pertains to criminal acts or violation of any law.

C. The Licensed Behavioral Practitioner Act shall not be construed to prohibit any licensed person from testifying in court hearings concerning matters of adoption, child abuse, child neglect, battery, or matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors on behalf of this client.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1940 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any person who represents himself or herself by the title "Licensed Behavioral Practitioner" or "LBP" without having first complied with the provisions of the Licensed Behavioral Practitioner Act, or who otherwise offers to perform behavioral health services, or who uses the title of Licensed Behavioral Practitioner or any other name, style, or description denoting that the person is licensed as a behavioral practitioner, or who practices behavioral science, upon conviction, shall be guilty of a misdemeanor and shall be punished by imposition of a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense and in addition may be imprisoned for a term not to exceed six (6) months in the county jail or by both such fine and imprisonment.

B. It shall be unlawful for any person not licensed under or specifically exempt from this act to advertise or otherwise offer to perform behavioral health services or to use the title of Licensed Behavioral Practitioner or any other name, style, or description denoting that the person is licensed as a licensed behavioral practitioner, or to practice behavioral science. Such action shall be subject to injunctive action by the State Commissioner of Health.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1941 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Department may deny, revoke, suspend, or place on probation any license or specialty designation issued pursuant to the provisions of 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 to practice behavioral health;
3. Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of this act;
4. Knowingly aided or abetted a person not licensed pursuant to these provisions in representing himself or herself as a licensed behavioral practitioner in this state;
5. Engaged in unprofessional conduct as defined by the rules established by the Board;
6. Engaged in negligence or wrongful actions in the performance of his or her duties; or
7. Misrepresented any information required in obtaining a license.

B. No license or specialty designation shall be suspended or revoked, nor a licensed behavioral practitioner placed on probation,

until notice is served upon the licensed behavioral practitioner and a hearing is held in conformity with Article II of the Administrative Procedures Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1942 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate rules governing any licensure action to be taken pursuant to the Licensed Behavioral Practitioner Act which shall be consistent with the requirements of notice and hearing under the Administrative Procedures Act. No action shall be taken without prior notice unless the State Commissioner of Health determines that there exists a threat to the health and safety of the residents of this state.

B. 1. Any person who is determined by the State Department of Health to have violated any provision of the Licensed Behavioral Practitioner Act, or any rule promulgated or order issued pursuant thereto, may be subject to an administrative penalty.

2. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00).

3. Administrative penalties imposed pursuant to this subsection shall be enforceable in the district courts of this state.

4. All administrative penalties collected shall be deposited into the Licensed Behavioral Practitioner Revolving Fund.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1943 of Title 59, unless there is created a duplication in numbering, reads as follows:

The hearings provided for by the Licensed Behavioral Practitioner Act shall be conducted in conformity with, and records made thereof as provided by, the provisions of Sections 301 through 325 of Title 75 of the Oklahoma Statutes.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1944 of Title 59, unless there is created a duplication in numbering, reads as follows:

All licensed behavioral practitioners, except those employed by federal, state, or local governmental agencies, shall, prior to the performance of service, furnish the client with a copy of the Statement of Professional Disclosure as promulgated by rule of the State Board of Health. A current copy of the document, signed by the client, shall be on file with the State Department of Health at all times.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1945 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A professional specialty designation area may be established by the State Department of Health upon receipt of a petition signed by fifteen qualified persons who are currently licensed as licensed behavioral practitioners, who have acquired at least sixty (60) semester hours, to increase to seventy-five (75) hours on and after January 1, 2005, of graduate credit in behavioral science or psychology-related course work from a regionally accredited college or university, and who meet the recognized minimum standards as established by appropriate nationally recognized certification agencies; provided, however, if a nationally recognized certification does not exist, the Department may establish minimum standards for specialty designations.

B. Upon receipt of credentials from the appropriate certification agency, the Department may grant the licensed behavioral practitioner the appropriate specialty designation. The licensed behavioral practitioner may attain specialty designation through examination. A licensed behavioral practitioner shall not claim or advertise a behavioral health specialty and shall not incorporate the specialty designation into the professional title of

such licensed behavioral practitioner unless the qualifications and certification requirements of that specialty have been met and have been approved by the Department and the appropriate certification agency.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1946 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Board of Licensed Behavioral Practitioners, to be designated the "Licensed Behavioral Practitioners Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received pursuant to this act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Health to meet expenses necessary for carrying out the purpose of the Licensed Behavioral Practitioner Act. Expenditures from the fund shall be approved by the State Commissioner of Health and shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1947 of Title 59, unless there is created a duplication in numbering, reads as follows:

Licensing fees and annual renewal fees shall be amounts fixed by the State Board of Health upon recommendations of the Oklahoma Licensed Behavioral Practitioners Advisory Board. The Board shall fix the amount of the fees so that the total fees collected will be sufficient to meet the expenses of administering the provisions of the Licensed Behavioral Practitioner Act and so that excess funds do not accumulate from year to year in the Licensed Behavioral Practitioners Revolving Fund. The Board shall not fix a license fee at an amount in excess of Five Hundred Dollars (\$500.00) and a

renewal fee at an amount in excess of Three Hundred Dollars (\$300.00). The fee for the issuance of a license to replace a license which was lost, destroyed, mutilated, or revoked shall be Twenty-five Dollars (\$25.00). The fee shall accompany the application for a replacement license. The fee for specialty designation shall not exceed One Hundred Fifty Dollars (\$150.00). The fee for an examination required pursuant to the Licensed Behavioral Practitioner Act shall not exceed Two Hundred Dollars (\$200.00).

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1948 of Title 59, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed to require reimbursement under the policies of health insurers and nonprofit hospital or medical service plans unless the contract specifically calls for reimbursement to licensed behavioral practitioners.

SECTION 20. This act shall become effective November 1, 1999.
Passed the Senate the 2nd day of March, 1999.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1999.

Speaker of the House of Representatives