

1 **SENATE FLOOR VERSION**

2 February 25, 2019

3 SENATE BILL NO. 623

By: Ikley-Freeman of the Senate

4 and

5 Walke of the House

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7
8 An Act relating to professions and occupations;
9 amending 59 O.S. 2011, Section 1266.1, as amended by
10 Section 2, Chapter 40, O.S.L. 2015 (59 O.S. Supp.
11 2018, Section 1266.1), which relates to the Social
12 Worker's Licensing Act; adding certain grounds for
13 disciplinary action; amending 59 O.S. 2011, Section
14 1912, as last amended by Section 11, Chapter 183,
15 O.S.L. 2015 (59 O.S. Supp. 2018, Section 1912), which
16 relates to the Licensed Professional Counselors Act;
17 adding certain grounds for disciplinary action;
18 amending 59 O.S. 2011, Section 1925.15, as last
19 amended by Section 12, Chapter 183, O.S.L. 2015 (59
20 O.S. Supp. 2018, Section 1925.15), which relates to
21 the Marital and Family Therapist Licensure Act;
22 specifying certain grounds for disciplinary action;
23 and providing an effective date.
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18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1266.1, as
20 amended by Section 2, Chapter 40, O.S.L. 2015 (59 O.S. Supp. 2018,
21 Section 1266.1), is amended to read as follows:

22 Section 1266.1. A. The State Board of Licensed Social Workers
23 may refuse to issue or renew the license of, or may suspend, revoke,
24 censure, reprimand, restrict or limit the license of, or fine, any

1 person pursuant to the Administrative Procedures Act or the
2 procedures set forth in the Social Worker's Licensing Act upon one
3 or more of the following grounds as determined by the Board:

4 1. Unprofessional conduct as determined by the Board;

5 2. Practicing outside the scope of practice authorized by the
6 Social Worker's Licensing Act;

7 3. Conduct which violates any of the provisions of the Social
8 Worker's Licensing Act or rules adopted pursuant to the Social
9 Worker's Licensing Act;

10 4. Incapacity or impairment that prevents a licensee from
11 engaging in the practice of social work with reasonable skill,
12 competence, and safety to the public;

13 5. Conviction of or a plea of guilty or nolo contendere to a
14 felony in a court of competent jurisdiction of any state or federal
15 court of the United States if the acts involved would have
16 constituted a felony under the laws of this state;

17 6. Any act involving moral turpitude or gross immorality;

18 7. Violations of the laws of this state, or rules pertaining
19 thereto, or of laws, rules and regulations of any other state, or of
20 the federal government pertaining to any aspect of the practice of
21 social work;

22 8. Misrepresentation of a material fact by an applicant or
23 licensee in securing or attempting to secure the issuance or renewal
24 of a license, or in statements regarding the applicant or licensee's

1 skills or the efficiency or value of any treatment provided or to be
2 provided, or using any false, fraudulent, or deceptive statement
3 connected with the practice or social work including, but not
4 limited to, false or misleading advertising;

5 9. Fraud by a licensee in connection with the practice of
6 social work including engaging in improper or fraudulent billing
7 practices or violating Medicare and Medicaid laws or state medical
8 assistance laws;

9 10. Engaging or aiding and abetting an individual to engage in
10 the practice of social work without a license, or falsely using the
11 title of social worker;

12 11. Failing to comply with any stipulation or agreement
13 involving probation or settlement of any disciplinary matter with
14 the Board or with any order entered by the Board;

15 12. Being found by the Board to be in violation of any of the
16 provisions of the Social Worker's Licensing Act or rules adopted
17 pursuant to the Social Worker's Licensing Act;

18 13. Conduct which violates the security of any licensure
19 examination materials;

20 14. Being the subject of the revocation, suspension, surrender
21 or other disciplinary sanction of a social worker or related license
22 or of other adverse action related to a social worker or related
23 license issued by this state, in another jurisdiction or country
24 including the failure to report such adverse action to the Board; ~~or~~

1 15. Being adjudicated by a court of competent jurisdiction,
2 within or without this state, as incapacitated, mentally
3 incompetent, chemically dependent, mentally ill and dangerous to the
4 public, or a psychopathic personality; or

5 16. Violating ethical standards that are a consensus of the
6 National Association of Social Workers and the School Social Work
7 Association of America.

8 B. 1. The Board may defer action with regard to an impaired
9 licensee who voluntarily signs an agreement, in a form satisfactory
10 to the Board, agreeing not to practice social work and to enter an
11 approved treatment and monitoring program in accordance with this
12 section; provided, however, that this section shall not apply to a
13 licensee who has been convicted of, pleads guilty to, or enters a
14 plea of nolo contendere to a felonious act prohibited by Oklahoma
15 law or a conviction relating to a controlled substance in a court of
16 law of the United States or any other jurisdiction or a conviction
17 related to sexual misconduct.

18 2. A licensee who is physically or mentally impaired due to
19 mental illness or addiction to drugs or alcohol may qualify as an
20 impaired social worker and have disciplinary action deferred and
21 ultimately waived subject to the following conditions:

- 22 a. the Board is satisfied that such action will not
23 endanger the public,
24

1 b. the licensee enters into an agreement with the Board
2 for a treatment and monitoring plan approved by the
3 Board,

4 c. the licensee progresses satisfactorily in such
5 treatment and monitoring program, and

6 d. the licensee complies with all terms of the agreement
7 and all other applicable terms of this section.

8 3. Failure to enter such agreement or to comply with the terms
9 and make satisfactory progress in the treatment and monitoring
10 program shall disqualify the licensee from the provisions of this
11 section and the Board may activate an immediate investigation and
12 disciplinary proceeding. Upon completion of the rehabilitation
13 program in accordance with the agreement signed by the Board, the
14 licensee may apply for permission to resume the practice of social
15 work upon such conditions as the Board determines necessary.

16 4. The Board may require a licensee to enter into an agreement,
17 pursuant to this subsection, which includes, but is not limited to,
18 the following provisions:

19 a. the licensee agrees that the license shall be
20 suspended or revoked indefinitely under this section,

21 b. the licensee agrees to enroll in a treatment and
22 monitoring program approved by the Board,

23 c. the licensee agrees that failure to satisfactorily
24 progress in such treatment and monitoring program

1 shall be reported to the Board by the treating
2 professional who shall be immune from any liability
3 for such reporting made in good faith, and

4 d. the licensee consents to the reports of the treating
5 physician or professional of the approved treatment
6 and monitoring program to the Board on the progress of
7 licensee at such intervals as the Board deems
8 necessary.

9 5. The ability of an impaired social worker to practice shall
10 only be restored and charges dismissed when the Board is satisfied
11 by the reports it has received from the approved treatment program
12 that the licensee can resume practice without danger to the public.

13 6. The impaired licensee shall consent, in accordance with
14 applicable law, to the release of any treatment information to the
15 Board from anyone within the approved treatment program.

16 7. The impaired licensee who has enrolled in an approved
17 treatment and monitoring program and entered into an agreement with
18 the Board in accordance with this subsection shall have his or her
19 license suspended or revoked but enforcement of this suspension or
20 revocation shall be stayed by the length of time the licensee
21 remains in the program and makes satisfactory progress, complies
22 with the terms of the agreement, and adheres to any limitations on
23 the practice imposed by the Board to protect the public. The
24 licensee may petition the Board for reinstatement pursuant to

1 subsection D of this section. Failure to enter into such agreement
2 or to comply with the terms and make satisfactory progress in the
3 treatment and monitoring program shall disqualify the licensee from
4 the provisions of this section and the Board shall activate an
5 immediate investigation and disciplinary proceedings.

6 C. Any social worker who has substantial evidence that a
7 licensee has an active addiction for which the licensee is not
8 receiving treatment under a program approved by the Board pursuant
9 to an agreement entered into under this section, is diverting a
10 controlled substance, or is mentally or physically incompetent to
11 carry out the duties of the license, shall make or cause to be made
12 a report to the Board. Any person who makes a report pursuant to
13 this section in good faith and without malice shall be immune from
14 any civil or criminal liability arising from such reports. Failure
15 to provide such a report within a reasonable time from receipt of
16 knowledge may be considered grounds for disciplinary action against
17 the licensee.

18 D. Any person whose license to practice social work in this
19 state has been suspended or restricted pursuant to the Social
20 Worker's Licensing Act, whether voluntarily or by action of the
21 Board, shall have the right to petition the Board for reinstatement
22 of such license. Such a petition shall be made in writing and in
23 the form prescribed by the Board. Upon investigation and hearing,
24 the Board may grant or deny such petition, or it may modify its

1 original finding to reflect any circumstances which have changed
2 sufficiently to warrant such modifications. The Board may also
3 require such person to pass an examination or examinations for
4 reentry into the practice of social work.

5 E. The Board may issue a cease and desist order to stop an
6 individual from engaging in an unauthorized practice or violating or
7 threatening to violate a statute, rule, or order which the Board has
8 issued or is empowered to enforce. The cease and desist order must
9 state the reason for its issuance and give notice of the
10 individual's right to request a hearing under the Administrative
11 Procedures Act. Nothing herein shall be construed as barring
12 criminal prosecutions for violations of the Social Worker's
13 Licensing Act.

14 F. All final decisions by the Board shall be subject to
15 judicial review pursuant to the Administrative Procedures Act.

16 G. Any individual whose license to practice social work is
17 revoked, suspended, or not renewed shall return such license to the
18 offices of the Board within ten (10) days after notice of such
19 action.

20 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1912, as
21 last amended by Section 11, Chapter 183, O.S.L. 2015 (59 O.S. Supp.
22 2018, Section 1912), is amended to read as follows:

23 Section 1912. A. The State Board of Behavioral Health
24 Licensure may deny, revoke, suspend or place on probation any

1 license or specialty designation issued pursuant to the provisions
2 of the Licensed Professional Counselors Act to a licensed
3 professional counselor, if the person has:

4 1. Been convicted of a felony crime that substantially relates
5 to the practice of counseling or poses a reasonable threat to public
6 safety;

7 2. Been convicted of a misdemeanor involving moral turpitude;

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

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

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

16 6. Engaged in negligence or wrongful actions in the performance
17 of his or her duties; ~~or~~

18 7. Misrepresented any information required in obtaining a
19 license; or

20 8. Violated ethical standards that are a consensus of the
21 American Counseling Association and the American School Counselor
22 Association.

23 B. If the Board determines that a felony conviction of an
24 applicant renders the convicted applicant unfit to practice

1 counseling, the Board shall provide notice and opportunity to the
2 applicant, by certified mail at the last-known address, for an
3 administrative hearing to contest such determination before the
4 Board may deny the application. The request shall be made by the
5 applicant within fifteen (15) days of receipt of the notice.

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

11 D. As used in this section:

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

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

20 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1925.15, as
21 last amended by Section 12, Chapter 183, O.S.L. 2015 (59 O.S. Supp.
22 2018, Section 1925.15), is amended to read as follows:

23 Section 1925.15. A. The State Board of Behavioral Health
24 Licensure may deny, revoke, suspend or place on probation any

1 license issued subject to the provisions of the Marital and Family
2 Therapist Licensure Act, if the person has:

3 1. Been convicted of a felony crime that substantially relates
4 to the practice of counseling or poses a reasonable threat to public
5 safety;

6 2. Been convicted of a misdemeanor crime involving moral
7 turpitude;

8 3. Violated ethical standards of the American Association of
9 Marriage and Family Therapy of such a nature as to render the person
10 found by the Board to have engaged in such violation unfit to
11 practice marital and family therapy;

12 4. Misrepresented any information required in obtaining a
13 license;

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

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

20 7. Engaged in unprofessional conduct as defined by the rules
21 promulgated by the Board; or

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

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1 B. If the Board determines that a felony conviction of an
2 applicant renders the convicted applicant unfit to practice
3 counseling, the Board shall provide notice and opportunity to the
4 applicant, by certified mail at the last-known address, for an
5 administrative hearing to contest such determination before the
6 Board may deny the application. The request shall be made by the
7 applicant within fifteen (15) days of receipt of the notice.

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

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

22 E. As used in this section:

23 1. "Substantially relates" means the nature of criminal conduct
24 for which the person was convicted has a direct bearing on the

1 fitness or ability to perform one or more of the duties or
2 responsibilities necessarily related to the occupation; and

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

7 SECTION 4. This act shall become effective November 1, 2019.

8 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
9 February 25, 2019 - DO PASS

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