

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 1835

 By: Waldron

7 AS INTRODUCED

8 An Act relating to professions and occupations;
9 amending 59 O.S. 2011, Sections 1266.1, as last
10 amended by Section 45, Chapter 363, O.S.L. 2019,
11 1912, as last amended by Section 63, Chapter 363,
12 O.S.L. 2019 and 1925.15, as last amended by Section
13 65, Chapter 363, O.S.L. 2019 (59 O.S. Supp. 2020,
14 Sections 1266.1, 1912 and 1925.15), which relate to
15 disciplinary action; adding certain grounds for
16 disciplinary action; and providing an effective date.

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

16 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1266.1, as
17 last amended by Section 45, Chapter 363, O.S.L. 2019 (59 O.S. Supp.
18 2020, Section 1266.1), is amended to read as follows:

19 Section 1266.1 A. The State Board of Licensed Social Workers
20 may refuse to issue or renew the license of, or may suspend, revoke,
21 censure, reprimand, restrict or limit the license of, or fine, any
22 person pursuant to the Administrative Procedures Act or the
23 procedures set forth in the Social Worker's Licensing Act upon one
24 or more of the following grounds as determined by the Board:

- 1 1. Unprofessional conduct as determined by the Board;
- 2 2. Practicing outside the scope of practice authorized by the
3 Social Worker's Licensing Act;
- 4 3. Conduct which violates any of the provisions of the Social
5 Worker's Licensing Act or rules adopted pursuant to the Social
6 Worker's Licensing Act;
- 7 4. Incapacity or impairment that prevents a licensee from
8 engaging in the practice of social work with reasonable skill,
9 competence, and safety to the public;
- 10 5. Conviction of or a plea of guilty or nolo contendere to a
11 felony crime that substantially relates to the occupation of a
12 social worker and poses a reasonable threat to public safety;
- 13 6. Violations of the laws of this state, or rules pertaining
14 thereto, or of laws, rules and regulations of any other state, or of
15 the federal government pertaining to any aspect of the practice of
16 social work;
- 17 7. Misrepresentation of a material fact by an applicant or
18 licensee in securing or attempting to secure the issuance or renewal
19 of a license, or in statements regarding the applicant or licensee's
20 skills or the efficiency or value of any treatment provided or to be
21 provided, or using any false, fraudulent, or deceptive statement
22 connected with the practice or social work including, but not
23 limited to, false or misleading advertising;

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1 8. Fraud by a licensee in connection with the practice of
2 social work including engaging in improper or fraudulent billing
3 practices or violating Medicare and Medicaid laws or state medical
4 assistance laws;

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

8 10. Failing to comply with any stipulation or agreement
9 involving probation or settlement of any disciplinary matter with
10 the Board or with any order entered by the Board;

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

14 12. Conduct which violates the security of any licensure
15 examination materials;

16 13. Being the subject of the revocation, suspension, surrender
17 or other disciplinary sanction of a social worker or related license
18 or of other adverse action related to a social worker or related
19 license issued by this state, in another jurisdiction or country
20 including the failure to report such adverse action to the Board; ~~or~~

21 14. Being adjudicated by a court of competent jurisdiction,
22 within or without this state, as incapacitated, mentally
23 incompetent, chemically dependent, mentally ill and dangerous to the
24 public, or a psychopathic personality; or

1 15. Violating ethical standards that are a consensus of the
2 National Association of Social Workers and the School Social Work
3 Association of America.

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

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

- 18 a. the Board is satisfied that such action will not
19 endanger the public,
20 b. the licensee enters into an agreement with the Board
21 for a treatment and monitoring plan approved by the
22 Board,
23 c. the licensee progresses satisfactorily in such
24 treatment and monitoring program, and

1 d. the licensee complies with all terms of the agreement
2 and all other applicable terms of this section.

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

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

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

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

18 c. the licensee agrees that failure to satisfactorily
19 progress in such treatment and monitoring program
20 shall be reported to the Board by the treating
21 professional who shall be immune from any liability
22 for such reporting made in good faith, and

23 d. the licensee consents to the reports of the treating
24 physician or professional of the approved treatment

1 and monitoring program to the Board on the progress of
2 licensee at such intervals as the Board deems
3 necessary.

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

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

11 7. The impaired licensee who has enrolled in an approved
12 treatment and monitoring program and entered into an agreement with
13 the Board in accordance with this subsection shall have his or her
14 license suspended or revoked but enforcement of this suspension or
15 revocation shall be stayed by the length of time the licensee
16 remains in the program and makes satisfactory progress, complies
17 with the terms of the agreement, and adheres to any limitations on
18 the practice imposed by the Board to protect the public. The
19 licensee may petition the Board for reinstatement pursuant to
20 subsection D of this section. Failure to enter into such agreement
21 or to comply with the terms and make satisfactory progress in the
22 treatment and monitoring program shall disqualify the licensee from
23 the provisions of this section and the Board shall activate an
24 immediate investigation and disciplinary proceedings.

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

13 D. Any person whose license to practice social work in this
14 state has been suspended or restricted pursuant to the Social
15 Worker's Licensing Act, whether voluntarily or by action of the
16 Board, shall have the right to petition the Board for reinstatement
17 of such license. Such a petition shall be made in writing and in
18 the form prescribed by the Board. Upon investigation and hearing,
19 the Board may grant or deny such petition, or it may modify its
20 original finding to reflect any circumstances which have changed
21 sufficiently to warrant such modifications. The Board may also
22 require such person to pass an examination or examinations for
23 reentry into the practice of social work.

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

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

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

16 H. As used in this section:

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

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

1 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1912, as
2 last amended by Section 63, Chapter 363, O.S.L. 2019 (59 O.S. Supp.
3 2020, Section 1912), is amended to read as follows:

4 Section 1912. A. The State Board of Behavioral Health
5 Licensure may deny, revoke, suspend or place on probation any
6 license or specialty designation issued pursuant to the provisions
7 of the Licensed Professional Counselors Act to a licensed
8 professional counselor, if the person has:

9 1. Been convicted of a felony crime that substantially relates
10 to the practice of counseling and poses a reasonable threat to
11 public safety;

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

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

18 4. Engaged in unprofessional conduct as defined by the rules
19 established by the Board;

20 5. Engaged in negligence or wrongful actions in the performance
21 of his or her duties; ~~or~~

22 6. Misrepresented any information required in obtaining a
23 license; or

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1 7. Violated ethical standards that are a consensus of the
2 American Counseling Association and the American School Counselor
3 Association.

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

11 C. No license or specialty designation shall be suspended or
12 revoked, nor a licensed professional counselor placed on probation
13 until notice is served upon the licensed professional counselor and
14 a hearing is held in conformity with Article II of the
15 Administrative Procedures Act.

16 D. As used in this section:

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

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

1 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1925.15, as
2 last amended by Section 65, Chapter 363, O.S.L. 2019 (59 O.S. Supp.
3 2020, Section 1925.15), is amended to read as follows:

4 Section 1925.15 A. The State Board of Behavioral Health
5 Licensure may deny, revoke, suspend or place on probation any
6 license issued subject to the provisions of the Marital and Family
7 Therapist Licensure Act, if the person has:

8 1. Been convicted of a felony crime that substantially relates
9 to the practice of counseling and poses a reasonable threat to
10 public safety;

11 2. Violated ethical standards of the American Association for
12 Marriage and Family Therapy of such a nature as to render the person
13 found by the Board to have engaged in such violation unfit to
14 practice marital and family therapy;

15 3. Misrepresented any information required in obtaining a
16 license;

17 4. Engaged in fraud or deceit in connection with services
18 rendered or in establishing needed qualifications pursuant to the
19 provisions of the Marital and Family Therapist Licensure Act;

20 5. Knowingly aided or abetted a person not licensed pursuant to
21 these provisions in representing himself or herself as a licensed
22 marital and family therapist in this state;

23 6. Engaged in unprofessional conduct as defined by the rules
24 promulgated by the Board; or

1 7. Engaged in negligence or wrongful actions in the performance
2 of the duties of such person.

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

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

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

24 E. As used in this section:

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

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

9 SECTION 4. This act shall become effective November 1, 2021.
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11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
12 02/18/2021 - DO PASS.
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