

SENATE BILL NO. 2113

Introduced by

Human Services Committee

(At the request of the Board of Psychologist Examiners)

1 A BILL for an Act to create and enact six new sections to chapter 43-32 of the North Dakota
2 Century Code, relating to powers of the board of psychologist examiners, investigations,
3 licensure renewal, disciplinary hearings and civil penalties for unauthorized practice of
4 psychology; to amend and reenact sections 43-32-01, 43-32-02, 43-32-03, 43-32-05,
5 43-32-08.1, 43-32-13, 43-32-14, 43-32-16, 43-32-19, 43-32-20, 43-32-21, 43-32-27, 43-32-29,
6 and 43-32-30 of the North Dakota Century Code, relating to the board of psychologist
7 examiners, licensure and regulation of psychologists, continuing education, and client records;
8 and to repeal sections 43-32-18 and 43-32-28 of the North Dakota Century Code, relating to
9 licensing of psychologists without examination and disciplinary hearings.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Section 43-32-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-32-01. Definitions.**

- 14 1. "Board" means the North Dakota state board of psychologist examiners.
- 15 2. "Practice of psychology" means the observation, description, evaluation,
16 interpretation, ~~and~~ or modification of human behavior by the application of
17 psychological principles, methods, and procedures for the purpose of preventing or
18 eliminating symptomatic, maladaptive, or undesired behavior and of enhancing
19 interpersonal relationships, work and life adjustment, personal effectiveness,
20 behavioral health, and mental health. The term includes psychological testing and
21 the evaluation or assessment of personal characteristics, such as intelligence,
22 personality, abilities, interests, aptitudes, and neuropsychological functioning;
23 counseling, psychotherapy, and other therapeutic techniques based on
24 psychological principles; diagnosis and treatment of mental and emotional disorder

or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes the rendering of psychological services to individuals, families, groups, and the public and is without regard to whether payment is received for services rendered.

3. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

4. "Psychology resident" means an individual who has received from an accredited school or college a doctorate, with a program of study substantially psychological in nature, who is involved in supervised psychological employment.

5. "School or college" means any university or other institution of higher learning that is accredited by a regional accrediting association, offering a full-time graduate course of study in psychology.

SECTION 2. AMENDMENT. Section 43-32-02 of the North Dakota Century Code is amended and reenacted as follows:

43-32-02. State board of psychologist examiners - How appointed -

Qualifications. The governor shall appoint a state board of psychologist examiners consisting of five members, each of whom must have the following qualifications:

1. Be a resident of this state.
2. ~~After the first five appointments, must be~~ Be a licensed psychologist under this chapter.
3. Has, at least five years prior to appointment, received a doctorate degree in psychology from a school or college as defined in this chapter.
4. Has been actively engaged in the practice of teaching or research of psychology for a period of at least five years.
5. As to at least one member, is currently engaged primarily in rendering service in psychology and as to at least one member, is engaged primarily in teaching, training, or research in psychology.

SECTION 3. AMENDMENT. Section 43-32-03 of the North Dakota Century Code is amended and reenacted as follows:

1 **43-32-03. Tenure of members - Vacancies and oath of office.** ~~After the first five~~
2 ~~appointments, the~~ The term of office of each member of the board ~~must be~~ is three years and
3 until ~~his~~ a successor is appointed and qualified. ~~The terms of the first members of the board~~
4 ~~expire as follows: one member, June 30, 1968; two members June 30, 1969; and two~~
5 ~~members June 30, 1970.~~ The governor shall fill all vacancies by appointment but in case of a
6 vacancy before the expiration of a term, the appointment must be for the residue of the term
7 only. A person appointed to the board ~~shall qualify~~ qualifies by taking the oath required of civil
8 officers.

9 **SECTION 4. AMENDMENT.** Section 43-32-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-32-05. Compensation of members - Expenses of board and members thereof.**
12 Each member of the board ~~shall serve~~ serves without compensation, but ~~he shall~~ is entitled to
13 receive ~~such~~ mileage and travel expenses while engaged in the performance of ~~the board~~
14 ~~duties of his office~~ as ~~is~~ provided in section 54-06-09. The secretary of the board ~~shall~~ is
15 entitled to receive ~~such~~ salary or other compensation, and ~~such~~ allowance for clerical and other
16 expenses of the board, as the board ~~shall determine~~ determines.

17 **SECTION 5.** A new section to chapter 43-32 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Authority to appoint or employ.** The board may appoint or employ persons to assist
20 the board in carrying out its duties under this chapter.

21 **SECTION 6. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-32-08.1. Continuing education requirements.** The board shall adopt rules
24 establishing requirements for the continuing education of psychologists. The board may refuse
25 to renew, suspend, revoke, or place on probationary status any license issued under this
26 chapter on proof that the licensee has failed to meet applicable continuing education
27 requirements. Applicants for accreditation of continuing education courses, classes, or
28 activities may be charged a reasonable fee determined by the board.

29 **SECTION 7.** A new section to chapter 43-32 of the North Dakota Century Code is
30 created and enacted as follows:

31 **Complaints - Investigations.**

- 1 1. A person aggrieved by the actions of a psychologist licensed under this chapter
2 may file a written complaint with the board citing the specific allegations of
3 misconduct by the psychologist. The board shall notify the psychologist of the
4 complaint and request a written response from the psychologist.
- 5 2. The board may investigate a complaint on its own motion, without requiring the
6 identity of the complainant to be made a matter of public record, if the board
7 concludes that good cause exists for preserving the confidentiality of the
8 complainant.
- 9 3. A psychologist who is the subject of an investigation by the board shall cooperate
10 fully with the investigation. Cooperation includes responding fully and promptly to
11 any reasonable question raised by or on behalf of the board relating to the subject
12 of the investigation, and providing copies of patient records when reasonably
13 requested by the board and accompanied by the appropriate release.
- 14 4. In order to pursue the investigation, the board has the power to subpoena and
15 examine witnesses and records, including patient records, and to copy,
16 photograph, or take samples. It may require the licensed psychologist to give
17 statements under oath, to submit to a physical or psychological examination, or
18 both, by a physician or physicians or other qualified evaluation professionals
19 selected by the board if it appears to be in the best interest of the public that this
20 evaluation be secured. The patient records that are released to the board are not
21 public records.
- 22 5. Unless there is a patient release on file allowing the release of information at the
23 public hearing, patient records acquired by the board in its investigation are
24 confidential and closed to the public. All board meetings wherein patient testimony
25 or records are taken or reviewed are confidential and closed to the public. If no
26 patient testimony or records are taken or reviewed, the remainder of the meeting is
27 an open meeting unless a specific exemption is otherwise applicable.

28 **SECTION 8. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **43-32-13. Annual license and fee.** On or before January first of each year, every
31 licensed psychologist in the state shall pay to the secretary of the board an annual license fee

1 to be determined by ~~regulation~~ rule of the board ~~not to exceed one hundred dollars~~. The
2 secretary of the board, upon payment of the annual license fee by a person licensed under this
3 chapter, shall issue a certificate of annual license. ~~No~~ A person may not hold himself oneself
4 out as a licensed psychologist until the annual license fee has been paid. The violation of this
5 section is cause for revocation of ~~his~~ a license issued by the board. The board shall annually
6 mail a renewal notice to all licensed psychologists at the address currently on file with the
7 board.

8 **SECTION 9. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-32-14. Payment of delinquent license fees - Reinstatement.** Any person who
11 has been a licensed psychologist in this state under the provisions of this chapter, and who has
12 had ~~his~~ the license revoked because of ~~his~~ the failure to pay the annual license fee, must be
13 reinstated and ~~his~~ the license renewed by his paying if within one year from the date of
14 revocation the person pays to the secretary of the board the amount of the annual license fees
15 in which he is then in default and a late fee to be determined by rule of the board.

16 **SECTION 10.** A new section to chapter 43-32 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Continuing education requirements - Renewal.** Absent a showing of good cause,
19 the board may not renew a license issued under this chapter absent proof that the continuing
20 education requirements established by rule of the board have been met. A person whose
21 license is not renewed because of failure to meet the continuing education requirements must
22 be reinstated and the license renewed if, within one year from the date of nonrenewal, the
23 person demonstrates to the secretary of the board, the continuing education requirements have
24 been satisfied and pays the renewal fee and a late fee to be determined by rule of the board.

25 **SECTION 11. AMENDMENT.** Section 43-32-16 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **43-32-16. Board to keep records.**

- 28 1. The board shall keep a record of its proceedings and a register of all applicants for
29 licensing which must show:
 - 30 a. The name, age, and residence of each applicant.
 - 31 b. The date of the application.

- c. The place of business of ~~such~~ the applicant.
- d. A summary of the educational and other qualifications of ~~such~~ the applicants.
- e. Whether or not an examination was required.
- f. Whether or not license was granted.
- g. The date of the action of the board.
- h. Such other information as may be deemed necessary or advisable by the board in aid of the above requirements.

2. ~~The~~ Except as otherwise provided by law, the records of the board are public records and evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board, bearing the seal of the board, is admissible in evidence with the same force and effect as if the original were produced.

SECTION 12. AMENDMENT. Section 43-32-19 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19. Licensing of psychologists from other states. Upon application and accompanied by the required fee, the board may, without written or oral examination, issue a license to any person who at the time of application furnishes evidence satisfactory to the board that ~~he~~ the applicant is licensed or certified as a psychologist by a similar board of another state whose standards, in the opinion of the board, are not lower than those required by this chapter.

SECTION 13. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20. Licensing - Written and oral examination - Qualifications of applicants. The board shall issue a license as a psychologist to each applicant who files an application upon a form and in ~~such~~ a manner ~~as~~ the board prescribes, accompanied by the required fee, and who ~~furnishes evidence~~ demonstrates to the board that ~~he~~ the applicant:

1. ~~Is of good moral character~~ Will adhere to the American psychological association ethical principles of psychologists and code of conduct, 1992, or revised editions if adopted by the board by rule.
2. ~~Is not found by the board to be engaged in unethical practices.~~
3. Has received from an accredited school or college as defined by this chapter a doctorate, with a program of studies substantially psychological in nature.

1 4. ~~3. Demonstrates professional competence as shown by passing such~~ Has passed
2 the examinations, written or oral, or both, as the board deems necessary.

3 5. ~~4. Has not, within the preceding six months, failed an examination given~~ completed at
4 least two full years of supervised professional experience, one year of which must
5 be an internship program, and one year of which must be postdoctoral. Both years
6 of experience must comply with the board's rules.

7 **SECTION 14.** A new section to chapter 43-32 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Postdoctoral supervised psychological employment.**

- 10 1. Supervision may only be performed by a licensed psychologist with a competency
11 in supervision in professional psychology in the area of practice being supervised.
12 2. Supervision of an applicant for licensure as a licensed psychologist must include at
13 least two hours of regularly scheduled direct supervision a week for full-time
14 employment, one hour of which must be with the supervisor on a one-to-one basis.
15 The remaining hour may be with other mental health professionals designated by
16 the supervisor. The board may approve an exception to the weekly supervision
17 requirement for a week when the supervisor was ill or otherwise unable to provide
18 supervision. The board may prorate the two hours per week of supervision for
19 persons preparing for licensure on a part-time basis.
20 3. The board may adopt rules regarding supervision requirements and reporting.

21 **SECTION 15. AMENDMENT.** Section 43-32-21 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-32-21. Consideration of application and notice to applicant.** Upon investigation
24 of the application and other evidence submitted, the board shall, not less than thirty days prior
25 to the examination, notify each applicant that the application and evidence submitted for
26 licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, ~~said the~~
27 notice must state the reasons for ~~such~~ rejection and explain the right to a hearing under chapter
28 28-32, if a hearing is requested within thirty days.

29 **SECTION 16. AMENDMENT.** Section 43-32-27 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **43-32-27. Denial - Revocation or suspension of license - Grounds.** The board,
2 after notice and hearing and by an affirmative vote of at least ~~three of its five~~ a majority of board
3 members, ~~shall~~ may withhold, deny, revoke, or suspend any psychologist license issued or
4 applied for in accordance with the provisions of this chapter, or otherwise discipline a licensed
5 psychologist, upon proof that the applicant or licensed psychologist:

- 6 1. Has been convicted of an offense determined by the board to have a direct bearing
7 upon a person's ability to serve the public as a psychologist, or where the board
8 determines, following conviction of any offense, that a person is not sufficiently
9 rehabilitated under section 12.1-33-02.1.
- 10 2. Is using any narcotic or any alcoholic beverage to an extent or in a manner
11 dangerous to ~~himself~~ the psychologist, any other person, or the public, or to an
12 extent that ~~such~~ the use impairs ~~his~~ the psychologist's ability to perform the work of
13 a professional psychologist with safety to the public.
- 14 3. Has impersonated another person holding a psychology license or allowed another
15 person to use ~~his~~ the psychologist's license.
- 16 4. Has used fraud or deception in applying for a license or in taking an examination
17 provided for in this chapter.
- 18 5. Has allowed ~~his~~ the psychologist's name or license issued under this chapter to be
19 used in connection with any person or persons who perform psychological services
20 outside of the area of their training, experience, or competence.
- 21 6. Is legally adjudicated insane or mentally incompetent, the record of ~~such~~ the
22 adjudication being conclusive evidence thereof.
- 23 7. Has engaged in any form of unethical conduct as defined in "Ethical ~~Standards for~~
24 Principles of Psychologists and Code of Conduct" as adopted and published by the
25 American psychological association, ~~1953~~ 1992, ~~and as or revised editions if~~
26 adopted by the board by rule.
- 27 8. Has become grossly negligent in the practice of ~~his~~ the profession.
- 28 9. Has willfully or negligently violated any of the provisions of this chapter.
- 29 10. Has engaged in an act in violation of rules adopted by the board.

30 ~~The suspension by the board of the license of a psychologist must be for a period not~~
31 ~~exceeding one year. A person who has been refused a license, or whose license has been~~

1 revoked, under the provisions of this section, may reapply for licensing after two years have
2 elapsed from the date of ~~such denial or~~ revocation.

3 **SECTION 17.** A new section to chapter 43-32 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Hearing.** All hearings must be conducted pursuant to chapter 28-32. For purposes of
6 the hearing, the licensee or applicant is deemed to be the sole party in interest under section
7 28-32-08 and the provisions of section 28-32-05 apply only to the licensee or applicant.

8 **SECTION 18. AMENDMENT.** Section 43-32-29 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-32-29. Appeal from decision of board.** An appeal from the final decision of the
11 board in any matter covered by this chapter may be taken to the Burleigh County district court
12 ~~of or the aggrieved party's county in which the decision was made~~ of residence in accordance
13 with the provisions of chapter 28-32.

14 **SECTION 19. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-32-30. Persons exempt from the provisions of this chapter.** The provisions of
17 this chapter do not apply to the following:

- 18 1. ~~Any person in the employ of any federal, state, county or municipal agency, or~~
19 ~~other political subdivision, or any nonprofit corporation or educational institution~~
20 ~~presently chartered by this state, insofar as the activities and services of the~~
21 ~~person are a part of the duties of the person's office or position with such agency,~~
22 ~~nonprofit corporation or institution. This exemption is not available or effective after~~
23 ~~July 1, 1970. However, the exemption period may be extended by the board in~~
24 ~~individual cases where hardship or other good cause is shown by the agency,~~
25 ~~nonprofit corporation or institution covered, or where the person affected has~~
26 ~~received from a school or college a master's degree in psychology and the~~
27 ~~person's activities and services with such agency, nonprofit corporation or~~
28 ~~institution are performed under the supervision of a licensed psychologist.~~
29 2. A student; ~~or intern, or resident in psychology~~ pursuing a course of study in
30 psychology at a school or college if ~~such~~ the activities and services constitute a
31 part of the person's supervised course of study ~~if,~~ provided the person does not

use the title "psychologist" and the student; or intern,~~or resident~~ status is clearly stated.

2. A psychology resident performing services under supervision under section 43-32-20.1.

3. A nonresident, duly licensed or certified in the state of the person's residence who does not practice psychology in this state for a period of more than thirty days in any calendar year.

4. A lecturer from any school or college who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology unless the lecturer is licensed to practice psychology in this state.

5. Any person who is employed by a public school and whose activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only when the person has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.

6. A person who is certified, licensed, or registered in this state in another health care profession, whose scope of practice is consistent with the accepted standards of that person's profession, and who does not represent to be rendering psychological services.

7. The practice of psychology by an applicant licensed to practice psychology in another jurisdiction, pending disposition of the applicant's application, provided the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.

8. A person employed by an agency, nonprofit corporation, or institution who is currently exempt from licensure continues to be exempt as long as the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

1 **SECTION 20.** A new section to chapter 43-32 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Unauthorized practice - Civil penalty.** In addition to any other penalty, the board may
4 levy a civil penalty of no more than one thousand dollars per offense upon any unlicensed
5 person who, after a hearing or informal resolution in accordance with chapter 28-32, is found to
6 have practiced psychology without a license issued by the board. In addition, the board may
7 assess costs and attorney's fees of the investigation and administrative proceeding against the
8 unlicensed person found to have been practicing psychology without a currently valid license.
9 An appeal from any fine imposed pursuant to this section may be made pursuant to the
10 provisions of chapter 28-32.

11 **SECTION 21. REPEAL.** Sections 43-32-18 and 43-32-28 of the North Dakota Century
12 Code are repealed.