

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

SENATE BILL NO. 2113
(Human Services Committee)
(At the request of the Board of Psychologist Examiners)

AN ACT to create and enact five new sections to chapter 43-32 of the North Dakota Century Code, relating to powers of the board of psychologist examiners, investigations, licensure renewal, and disciplinary hearings; to amend and reenact sections 43-32-01, 43-32-02, 43-32-03, 43-32-05, 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, and 43-32-30 of the North Dakota Century Code, relating to the board of psychologist examiners, licensure and regulation of psychologists, continuing education, and client records; and to repeal sections 43-32-18 and 43-32-28 of the North Dakota Century Code, relating to licensing of psychologists without examination and disciplinary hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-32-01. Definitions.

1. "Board" means the North Dakota state board of psychologist examiners.
2. "Practice of psychology" means the observation, description, evaluation, interpretation, ~~and~~ or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and ~~of~~ enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, and other therapeutic techniques based on 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~~ providing psychological services to individuals, families, groups, and the public ~~and is without regard to~~ regardless of 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 degree in a program of study substantially psychological in nature, and 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~~. At least one member must be engaged primarily in providing service in psychology, and at least one member must be engaged primarily in teaching, training, or research in psychology. Each member must ~~have the following qualifications~~:

1. Be a resident of this state.
2. ~~After the first five appointments, must be~~ Be a licensed psychologist licensed under this chapter.
3. ~~Has, at least five years prior to appointment, Have~~ received a doctorate degree in psychology from a school or college ~~as defined in this chapter~~ at least five years before appointment.
4. ~~Has been~~ Have 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:

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

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

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

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

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

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

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

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

Complaints - Investigations.

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

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

43-32-13. Annual license and fee. ~~On or before~~ Before January first of each year, every licensed psychologist in the state shall pay to the secretary of the board an annual license fee ~~to be~~ determined by ~~regulation of~~ the board not to exceed one hundred dollars. The secretary of the board, upon payment of the annual license fee by a person licensed under this chapter, shall issue a certificate of annual license. ~~No~~ A person may not hold himself out as a licensed psychologist until the annual license fee has been paid. The ~~violation~~ board shall revoke the license of a person who ~~violates this section is cause for revocation of his license by the board.~~ Annually, the board shall annually mail a renewal notice to all licensed psychologists at the address on file with the board.

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

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

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

Continuing education requirements - Renewal. Absent a showing of good cause, the board may not renew a license issued under this chapter without proof the continuing education requirements established by rule of the board have been met. A person whose license is not renewed because of failure to meet the continuing education requirements must be reinstated and the license renewed if, within one year from the date of nonrenewal, the person demonstrates to the secretary of the board the

continuing education requirements have been satisfied and pays the renewal fee and a late fee to be determined by rule of the board.

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

43-32-16. Board to keep records.

1. The board shall keep a record of its proceedings and a register of all applicants for licensing which must show:
 - a. The name, age, and residence of each applicant.
 - b. The date of ~~the~~ each applicant's application.
 - c. The place of business of ~~such~~ each applicant.
 - d. A summary of the educational and other qualifications of ~~such applicants~~ each applicant.
 - e. Whether ~~or not~~ an examination was required of an applicant.
 - f. Whether ~~or not~~ a license was granted to an applicant.
 - g. The date of the action of the board.
 - h. ~~Such other~~ Any information ~~as may be deemed~~ the board determines necessary or advisable ~~by the board~~ in aid of the ~~above~~ requirements of this subsection.
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~~ of board proceedings, 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, may 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~~ submits 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 degree in~~ a program of studies substantially psychological in nature.
4. ~~3. Demonstrates professional competence as shown by passing such~~ Has passed the examinations, written or oral, or both, as the board deems necessary.

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

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

Postdoctoral supervised psychological employment.

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

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

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

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

43-32-27. Denial - Revocation or suspension of license - Grounds.

1. The board, after notice and hearing and by an affirmative vote of at least ~~three of its five~~ a majority of board members, ~~shall may~~ withhold, deny, revoke, or suspend any psychologist license issued or applied for ~~in accordance with the provisions of~~ under this chapter, or otherwise discipline a licensed psychologist, upon proof ~~that~~ the applicant or licensed psychologist:
 4. a. Has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a psychologist, or ~~where~~ when the board determines finds, following after the conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
 2. b. Is using any narcotic or ~~any~~ alcoholic beverage to an extent or in a manner dangerous to ~~himself~~ the psychologist, any other person, or the public, or to an extent that ~~such~~ the use impairs ~~his~~ the psychologist's ability to perform the work of a professional psychologist with safety to the public.
 3. c. Has impersonated another person holding a psychology license or allowed another person to use ~~his~~ the psychologist's license.
 4. d. Has used fraud or deception in applying for a license or in taking an examination ~~provided for in~~ under this chapter.

- ~~5.~~ e. Has allowed ~~his~~ the psychologist's name or license issued under this chapter to be used in connection with any person ~~or persons~~ who ~~perform~~ performs psychological services outside of the area of ~~their~~ that person's training, experience, or competence.
- ~~6.~~ f. Is legally adjudicated insane or mentally incompetent, ~~the~~. The record of such the adjudication being is conclusive evidence thereof of that fact.
- ~~7.~~ g. Has engaged in any form of unethical conduct as defined in "Ethical ~~Standards for Principles of~~ Psychologists and Code of Conduct" as adopted and published by the American psychological association, ~~1953~~ 1992, ~~and as or revised editions if adopted by the board by rule.~~
- ~~8.~~ h. Has become grossly negligent in the practice of ~~his~~ the profession.
- ~~9.~~ i. Has willfully or negligently violated ~~any of the provisions of~~ this chapter.
- j. Has engaged in an act in violation of rules adopted by the board.

~~The suspension by the board of the license of a psychologist must be for a period not exceeding one year.~~

- ~~2.~~ A person ~~who has been refused a license, or whose license has been revoked, under the provisions of this section, may reapply for licensing after two years have elapsed from the date of such denial or revocation.~~

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

Hearing. All hearings must be conducted pursuant to chapter 28-32. For purposes of a hearing, the licensee or applicant is the sole party in interest under section 28-32-08 and section 28-32-05 applies only to the licensee or applicant.

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

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

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

43-32-30. Persons exempt from the provisions of this chapter. ~~The provisions of this~~ This chapter ~~do does~~ not apply to the following:

1. Any person in the employ of any federal, state, county or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the activities and services of the person are a part of the duties of the person's office or position with such agency, nonprofit corporation or institution. This exemption is not available or effective after July 1, ~~1970~~ 1999. However, the exemption period may be extended by the board in individual cases where hardship or other good cause is shown by the agency, nonprofit corporation or institution covered, or where the person affected has received from a school or college a master's degree in psychology and the person's activities and services with such agency, nonprofit corporation or institution are performed under the supervision of a licensed psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.

2. ~~A student, or intern, or resident in psychology~~ pursuing a course of study in psychology at a school or college, ~~if such the activities and services constitute are~~ a part of the person's supervised course of study ~~if, provided the person student or intern~~ does not use the title "psychologist" and the student, ~~or~~ intern, ~~or resident~~ status is clearly stated.
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~~ A 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. An applicant licensed to practice psychology in another jurisdiction, pending disposition of the applicant's application, if 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 if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
9. A psychologist resident performing services supervised as provided under section 14 of this Act.

SECTION 20. REPEAL. Sections 43-32-18 and 43-32-28 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2113.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 95 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State