

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 915

Senate Judiciary I Committee Substitute Adopted 5/29/91

Short Title: Psychologists' Conduct Code.

(Public)

Sponsors:

Referred to:

April 18, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A CODE OF CONDUCT FOR PRACTICING PSYCHOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.15 reads as rewritten:

"§ 90-270.15. ~~Refusal, Denial, suspension, or revocation of licenses, licenses, and other disciplinary and remedial actions; unprofessional conduct; relinquishing of license.~~

(a) ~~A license applied for, or issued under this Article may be refused, suspended, revoked, or otherwise limited, as provided in subsection (e) below, by the Board upon proof that the person to whom the license was issued: Any applicant for licensure and any person licensed under this Article shall have behaved in conformity with the ethical and professional standards specified in this section and in the rules and regulations of the Board. The Board may deny, suspend, revoke, discipline, place on probation, limit, or require remediation or rehabilitation, all as provided for in subsection (f) below, upon proof that the applicant or the person to whom the licenses was issued:~~

- (1) ~~Has been convicted of a felony; or felony or entered a plea of guilty or nolo contendere to any felony charge;~~
- (2) ~~Has been convicted of a or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude or involving turpitude, misrepresentation or fraud in dealing with the public or public, or conduct otherwise relevant to his fitness to practice psychology; or psychology, or a misdemeanor charge reflecting the inability to~~

- 1                   practice psychology with due regard to the health and safety of clients  
2                   or patients;
- 3           (3)       Has engaged in fraud or deceit in securing or attempting to secure a  
4                   license under this Article or the renewal thereof or has willfully  
5                   concealed from the Board material information in connection with  
6                   application for or renewal of a license under this Article or the renewal  
7                   ~~thereof; or Article;~~
- 8           (4)       ~~Is a habitual drunkard or is addicted to the use of deleterious habit-~~  
9                   ~~forming drugs; or~~
- 10          (4a)       Has demonstrated an inability to practice psychology with reasonable  
11                   skill and safety by reason of illness, inebriation, misuse of drugs,  
12                   narcotics, alcohol, chemicals, or any other substance affecting mental  
13                   or physical functioning, or as a result of any mental or physical  
14                   condition;
- 15          (5)       Has practiced any fraud, deceit, or misrepresentation upon the ~~public~~  
16                   public, the Board, or upon any individual in connection with the  
17                   practice of ~~psychology or psychology,~~ the offer of psychological  
18                   ~~services or services,~~ the filing of Medicare, Medicaid, or other claims to  
19                   any third party payor, or in any manner otherwise relevant to his  
20                   fitness for the practice of psychology; or
- 21          (6)       Has made ~~fraudulent or misleading~~ fraudulent, misleading, or  
22                   intentionally or materially false statements pertaining to his education,  
23                   licensure, professional credentials, or related to ~~his~~ qualifications or  
24                   fitness for the practice of psychology to the public, any individual, the  
25                   Board, or any other organization; ~~or~~
- 26          (7)       Has had a license or certification for the practice of psychology in any  
27                   other state, or territory of the United States, or any other country,  
28                   suspended or ~~revoked; or revoked,~~ or has been disciplined by any other  
29                   state or territorial licensing or certification board for conduct which  
30                   would subject him to discipline under this Article;
- 31          (8)       Has been guilty of ~~unprofessional~~ immoral, dishonorable,  
32                   unprofessional, or unethical conduct as defined ~~by~~ in this subsection,  
33                   in subsection (a1) below, or in the then-current code of ethics published  
34                   ~~by~~ of the American Psychological Association; or Association, except  
35                   as the provisions of such code of ethics may be inconsistent and in  
36                   conflict with the provisions of this Article, in which case, the  
37                   provisions of this Article control;
- 38          (9)       Has violated any provision of this Article or of the duly adopted rules  
39                   and regulations of the Board; or
- 40          (10)       ~~Has employed a psychologist who has no valid license or temporary~~  
41                   ~~license issued under this Article.~~
- 42                  (10a)       Has aided or abetted the unlawful practice of psychology by any  
43                               person not licensed by the Board.

1       (a1) The Board may deny licensure, and discipline or require remediation and  
2 rehabilitation, or any combination thereof, as specified in subsections (a) above and (e)  
3 below, upon proof of immoral, dishonorable, unprofessional, or unethical conduct.  
4 Immoral, dishonorable, unprofessional, or unethical conduct, has occurred whenever  
5 any person who has applied for or has been issued a license under this Article has  
6 engaged in any of the following acts or offenses:

7           (1)     Practiced psychology in such a manner as to endanger the welfare  
8                   of clients or patients;

9           (2)     Harassed or abused, sexually or otherwise, a client, patient, student,  
10                   supervisee, or trainee;

11          (3)     Exercised undue influence in such a manner as to exploit the client,  
12                   patient, student, supervisee, or trainee for the financial or other  
13                   personal advantage or gratification of the psychologist or a third  
14                   party;

15          (4)     Refused to appear before the Board after having been ordered to do  
16                   so in writing by the Chair;

17          (5)     Failed to cooperate with or to respond promptly, completely, and  
18                   honestly to the Board, to credentials committees, or to ethics  
19                   committees of professional psychological associations, hospitals, or  
20                   other health care organizations or educational institutions when  
21                   those organizations or entities have jurisdiction; or failed to  
22                   cooperate with institutional review boards or professional standards  
23                   review organizations, when those organizations or entities have  
24                   jurisdiction.

25          (6)     Failed to maintain a clear and accurate case record which  
26                   documents the following for each patient or client:

27           a.     Presenting problems, diagnosis, or purpose of the evaluation,  
28                   counseling, treatment, or other services provided;

29           b.     Fees, dates of services, and itemized charges;

30           c.     Summary content of each session of evaluation, counseling,  
31                   treatment, or other services, except that summary content need  
32                   not include specific information that may cause significant  
33                   harm to any person if the information were released;

34           d.     Test results or other findings, including basic test data; and

35           e.     Copies of all reports prepared;

36          (7)     Failed to competently use, administer, score, or interpret  
37                   psychological assessment techniques, including interviewing and  
38                   observation, or provided findings or recommendations which do  
39                   not accurately reflect the assessment data, or exceed what can  
40                   reasonably be inferred, predicted, or determined from test,  
41                   interview, or observational data;

42          (8)     Failed to provide competent diagnosis, counseling, treatment,  
43                   consultation, or supervision, in keeping with standards of usual and  
44                   customary practice in this State;

- 1           (9)     In the absence of established standards, failed to take all reasonable  
2                 steps to ensure the competence of services;  
3           (10)    Failed to cooperate with other psychologists or other professionals  
4                 to the potential or actual detriment of clients, patients, or other  
5                 recipients of service, or behaved in ways which substantially  
6                 impede or impair other psychologists' or other professionals'  
7                 abilities to perform professional duties; or  
8           (11)    Practiced psychology or conducted research outside the boundaries  
9                 of demonstrated competence or the limitations of education,  
10                training, or supervised experience.

11           (b)     A license issued under this Article ~~shall be~~ is automatically suspended by the  
12 ~~Board~~ operation of law after failure to renew a license for a period of more than three  
13 months after the annual renewal date. The Board may reinstate a license suspended  
14 under this subsection upon payment of a special fee of fifteen dollars (\$15.00), and may  
15 require that the applicant file a new application, furnish new supervisory reports or  
16 references or otherwise update his credentials, or submit to reexamination for  
17 reinstatement. Notwithstanding any provision to the contrary, the Board retains full  
18 jurisdiction to investigate alleged violations of this Article by any person whose license  
19 is suspended under this subsection and, upon proof of any violation of this Article by  
20 any such person, the Board may take disciplinary action as authorized by this section.

21           (c)     Except as provided otherwise in this Article, the procedure for revocation,  
22 suspension, ~~refusal, or other denial,~~ limitations of the license—license, or other  
23 disciplinary, remedial, or rehabilitative actions, shall be in accordance with the  
24 provisions of Chapter 150B of the General Statutes. The Board is required to provide  
25 the opportunity for a hearing under Chapter 150B to any applicant whose license is  
26 denied or to whom licensure is offered subject to any restrictions, probation,  
27 disciplinary action, remediation, or other conditions or limitations, or to any licensee  
28 before revoking, suspending, or restricting a license or imposing any other disciplinary  
29 action or remediation. If the applicant or licensee waives the opportunity for a hearing,  
30 the Board's denial, revocation, suspension, or other proposed action becomes final  
31 without a hearing having been conducted. Notwithstanding the foregoing, no applicant  
32 or licensee is entitled to a hearing for failure to pass an examination. In any proceeding  
33 before the Board, in any record of any hearing before the Board, in any complaint or  
34 notice of charges against any licensee or applicant for licensure, and in any decision  
35 rendered by the Board, the Board may withhold from public disclosure the identity of  
36 any clients or patients who have not consented to the public disclosure of treatment by  
37 the licensee or ~~psychologist~~ applicant. The Board may close a hearing to the public and  
38 receive in executive session evidence involving or concerning the treatment or delivery  
39 of psychological services to a client or a patient who has not consented to the public  
40 disclosure of such treatment or services as may be necessary for the protection and  
41 rights of such patient or client of the accused ~~psychologist~~ applicant or licensee and the  
42 full presentation of relevant evidence. All records, papers and other documents  
43 containing information collected and compiled by or on behalf of the Board, as a result  
44 of investigations, inquiries or interviews conducted in connection with licensing or

1 disciplinary matters will not be considered public records within the meaning of Chapter  
2 132 of the General Statutes; provided, however, that any notice or statement of charges  
3 against any licensee or applicant, or any notice to any licensee or applicant of a hearing  
4 in any proceeding, or any decision rendered in connection with a hearing in any  
5 proceeding, shall be a public record within the meaning of Chapter 132 of the General  
6 Statutes, notwithstanding that it may contain information collected and compiled as a  
7 result of such investigation, inquiry, or hearing except that identifying information  
8 concerning the treatment or delivery of services to a patient or client who has not  
9 consented to the public disclosure of such treatment or services may be deleted; and  
10 provided, further, that if any such record, paper or other document containing  
11 information theretofore collected and compiled by or on behalf of the Board, as  
12 hereinbefore provided, is received and admitted in evidence in any hearing before the  
13 Board, it shall thereupon be a public record within the meaning of Chapter 132 of the  
14 General Statutes, subject to any deletions of identifying information concerning the  
15 treatment or delivery of psychological services to a patient or client who has not  
16 consented to the public disclosure of such treatment or services.

17 (d) A person whose license has been ~~refused or revoked~~ denied or revoked, under  
18 the terms of this section may reapply to the Board for licensure after the passage of one  
19 calendar year from the date of such revocation. ~~The Board may reinstate a suspended~~  
20 ~~license upon payment of a special fee of fifteen dollars (\$15.00), and may require that the~~  
21 ~~applicant file a new application, furnish new supervisory reports or references or otherwise~~  
22 ~~update his credentials, or submit to reexamination for reinstatement.~~

23 (e) Upon proof that an applicant or licensee under this Article has engaged in any  
24 of the prohibited actions specified in ~~subsection (a)~~ subsections (a) and (a1) above, the  
25 Board may, in lieu of ~~refusal, denial,~~ suspension, or revocation, issue a formal reprimand  
26 or formally censure the applicant or licensee, may place the applicant or licensee upon  
27 probation with such appropriate conditions upon the continued practice as the Board  
28 may deem advisable, ~~or may require remediation or rehabilitation for the applicant or~~  
29 licensee, including care, counseling, or treatment by a professional or professionals  
30 designated or approved by the Board, the expense to be borne by the applicant or  
31 licensee, may require supervision for the services provided by the applicant or licensee  
32 by a licensee designated or approved by the Board, the expense to be borne by the  
33 applicant or licensee, may limit or circumscribe the professional psychological services  
34 provided by the applicant or licensee with respect to the extent, nature, or location of his  
35 practice as the Board deems advisable. ~~advisable, or may discipline and impose any~~  
36 appropriate combination of the foregoing. ~~In addition, the~~ ~~The~~ Board may impose such  
37 conditions of probation or restrictions upon continued practice at the conclusion of a  
38 period of suspension or as requirements for the restoration of a revoked or suspended  
39 license. In lieu of or in connection with any disciplinary proceedings or investigation,  
40 the Board may enter into a consent order relative to the discipline, ~~censure, probation~~  
41 supervision, probation, remediation or rehabilitation, or limitation of a licensee or  
42 applicant for a license.

43 (f) The Board may assess costs of disciplinary action against an applicant or  
44 licensee found to be in violation of this Article.

1       (g) When considering the issue of whether or not an applicant or licensee is  
2 physically or mentally capable of practicing psychology with reasonable skill and safety  
3 to patients or clients, then, upon a showing of probable cause to the Board that the  
4 applicant or licensee is not capable of practicing psychology with reasonable skill and  
5 safety to patients or clients, the Board may petition a court of competent jurisdiction to  
6 order the applicant or licensee in question to submit to a psychological examination by a  
7 psychologist to determine psychological status or a physical examination by a physician  
8 to determine physical condition, or both. Such psychologist or physician, shall be  
9 designated by the court. The expenses of such examinations shall be borne by the  
10 Board. Where the applicant or licensee raises the issue of mental or physical  
11 competence or appeals a decision regarding mental or physical competence, the  
12 applicant or licensee shall be permitted to obtain an evaluation at the applicant or  
13 licensee's expenses. If the Board suspects the objectivity or adequacy of the  
14 examination, the Board may compel an examination by its designated practitioners at its  
15 own expense.

16       (h) A licensee may, with the consent of the Board, voluntarily relinquish his  
17 license at any time. The Board may delay or refuse the granting of its consent as it may  
18 deem necessary in order to investigate any pending complaint, allegation, or issue  
19 regarding violation of any provision of this Article by the licensee.

20       (i) The Board may adopt such rules and regulations as it deems reasonable and  
21 appropriate to interpret and implement the provisions of this section."

22               Sec. 2. This act is effective upon ratification.