

No. 2016-53

## AN ACT

SB 772

Amending the act of March 23, 1972 (P.L.136, No.52), entitled "An act relating to the practice of psychology, providing for licensing of psychologists, making certain acts illegal and providing penalties," further providing for definitions, for necessity for license, for qualifications for license, for refusal, suspension or revocation of license and for reporting of multiple licensure; making editorial changes; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 2, 3, 6, 8 and 8.1 of the act of March 23, 1972 (P.L.136, No.52), known as the Professional Psychologists Practice Act, amended or added April 25, 1986 (P.L.89, No.33), are amended to read:

Section 2. Definitions.—As used in this act:

"Board" means the State Board of Psychology in the Department of State.

"Commissioner" means the Commissioner of Professional and Occupational Affairs in the Department of State.

"Person" means an individual, corporation, partnership, association, unincorporated organization or a government or any political subdivision, agency or instrumentality thereof.

"Practice of psychology" means offering to render or rendering to individuals, corporations, institutions, governmental agencies, or the public for remuneration any service involving the following:

(i) The application of established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personality evaluation, group relations, and behavior adjustment. The application of said principles includes, but is not restricted to, counseling and the use of psychological methods with persons or groups with adjustment problems in the areas of work, family, school, and personal relationships; measuring and testing of personality, intelligence, aptitudes, and emotions, and offering services as a psychological consultant. ***Psychologists with appropriate education, training and experience may diagnose and use psychological methods in the treatment of a mental, emotional or nervous illness or disability; alcoholism and other substance abuse; disorders of habit or conduct; psychological aspects of physical illness, accident, injury or disability; and psychoeducational evaluation, therapy, remediation and consultation.***

(ii) (a) "Measuring and testing," consisting of the psychological assessment and evaluation of abilities, attitudes, aptitudes, achievements, adjustments, motives, personality dynamics and/or other psychological attributes of individuals, or groups of individuals by means of standardized measurements or other methods, techniques or procedures recognized by the science and profession of psychology, (b) "psychological methods," consisting of the application of principles of learning and motivation in an interpersonal situation with the objectives of modification of perception and

adjustment, and requiring highly developed skills in the disciplines, techniques, and methods of altering through learning processes, attitudes, feelings, values, self-concept, personal goals and adaptive patterns, (c) "psychological consulting," consisting of interpreting or reporting upon scientific fact or theory in psychology, rendering expert psychological opinion, psychological evaluation, or engaging in applied psychological research.

Section 3. Necessity for License.—It shall be unlawful for any person to engage in the practice of psychology or to offer or attempt to do so or to hold himself out to the public by any title or description of services incorporating the words "psychological," "psychologist" or "psychology" unless he shall first have obtained a license pursuant to this act, except as hereinafter provided:

(1) Simple acts of persuasion or suggestion by one person to another, or to a group.

(2) Persons licensed to practice any of the *other* healing arts in this Commonwealth shall be exempt from the provisions of this act. Nothing in this act shall be construed to limit the practice of persons licensed to practice any of the *other* healing arts in any way. Nothing **[herein] in this act** shall be construed as authorizing any person licensed as a psychologist to engage in any manner in the practice of any of the *other* healing arts as defined in the laws of this Commonwealth on the effective date of this act. The psychologist who engages in practice shall assist his client in obtaining professional help for all relevant aspects of his problem that fall outside the boundaries of the psychologist's own competence. Provision must be made for the diagnosis and treatment of relevant health care problems by an appropriate qualified practitioner of the *other* healing arts. ***Nothing in this act shall be construed as extending to a person licensed as a psychologist any authority or rights which are not granted under this act.***

(3) Nothing in this act shall be construed to prevent qualified members of other recognized professions, including, but not limited to, clergy, drug and alcohol abuse counselors, mental health counselors, social workers, **[marriage counselors, family counselors,]** crisis intervention counselors, ***marriage and family therapists***, pastoral counselors, rehabilitation counselors and psychoanalysts, from doing work of a psychological nature consistent with the training and the code of ethics of their respective professions or to prevent volunteers from providing services in crisis or emergency situations.

(4) Nothing in this act shall be construed to limit the practice of psychology or use of an official title on the part of a person employed as a psychologist by a Federal[, State, county, or municipal] agency[, or other political subdivisions], ***the Department of Corrections or the Department of Human Services*** or those persons certified and employed as school psychologists in the public and private schools of the Commonwealth ***or in a facility or as part of an educational program regulated by the Department of Education***, in so far as such practice is a part of the normal function of his position or is performed on behalf of or according to the usual expectations of his employer.

***(4.1) Psychological testing and psychological assessments selected, administered, scored and interpreted by employes of the Department of Corrections and the Department of Human Services under the direction of a licensed psychologist shall be exempt from the provisions of this act. As used in this clause the term "under the direction of a licensed psychologist" means the licensed psychologist shall review each psychological test and psychological assessment selected, administered, scored and interpreted by the employe and shall cosign the corresponding report. The licensed psychologist shall have the professional responsibility for the selection, administration, scoring and interpretation of the psychological test or psychological assessment by the employe.***

***[(5) Nothing in this act is to be construed as restricting the use of the term "social psychologist" by any person who meets the qualifications specified in section 6.]***

***(6) Nothing in this act shall be construed to limit the practice of psychology or use of an official title on the part of a member of the faculty or staff of a duly accredited university, college[, hospital] or State-approved nonpublic school in so far as such practice is a part of the normal function of his position or is performed on behalf of or according to the usual expectations of his employer. Nothing in this act shall be construed to limit the practice of psychology or use of an official title on the part of a student, intern or resident in psychology, pursuing a course of study in a duly accredited university, college or hospital or similar training facility for the qualified training of psychologists, provided that such practice and use of title constitute a part of his supervised course of study, and he is designated by such titles as "psychology intern," "psychology trainee," or other title clearly indicating such training status. Nothing in this act shall be construed to limit the activities of a faculty or staff member of a duly accredited university, college, or hospital, or research unit of a duly recognized business or industrial firm or corporation, in the performance of experimental and scientific research activities for the primary purpose of contributing to or enlarging upon scientific principles of psychology. Nothing in this act shall be construed to limit the use of the term "psychology," "psychologist," or "psychological," in connection with the aforementioned experimental or scientific research activities or for the purpose of publication of the research findings in professional and scientific journals, or for the purpose of providing scientific information to any user of such information.***

***(7) Nothing in this act shall be construed to prohibit the practice of psychology by a person who, in the opinion of the board meets the minimum qualifications for licensure under this act, provided said person is on temporary assignment in this Commonwealth, as temporary is defined by board regulation.***

***(7.1) The board may issue a temporary license to an applicant for licensure as a psychologist who holds a similar or current license from another state, province or territory and whose standards, in the opinion of the board, are substantially equivalent to those required under this act. The board may refuse a temporary license to a psychologist who is the subject of past or pending disciplinary action in another jurisdiction.***

(8) Nothing in this act shall be construed to prohibit employes of business and industrial organizations from applying the principles of psychology described in section 2 to the employment placement, evaluation, selection, promotion or job adjustment of their own officers or employes or those of any associated organization. No business or industrial firm or corporation may sell or offer to the public or to individuals or to other firms or corporations for remuneration any psychological acts or services as are part of the practice of psychology unless such services are performed by individuals duly and appropriately licensed under this act.

(9) Nothing in this act shall be construed to limit the activities of a clerical or administrative employe in the performance of duties incidental to and necessary to the work of a psychologist, provided that the clerical or administrative employe acts at all times under the supervision of a licensed psychologist, and provided further that the employe does not assume to the independent practice of psychology.

**[(10) Nothing in this act shall be construed to prohibit a school psychologist certified by the Department of Education from performing in private practice those acts which he is permitted to perform in the public and private schools of the Commonwealth.]**

*(10.1) A person who on or before June 30, 2017, has completed all requirements for certification as an Educational Specialist I or II in school psychology issued by the Department of Education or one who is enrolled in a program leading to certification as an Educational Specialist I or II in school psychology on or before June 30, 2018, may perform in private practice an act which the person is permitted to perform in the public and private schools of this Commonwealth if the person satisfies the following:*

*(i) the person is employed by a public or private school in this Commonwealth or by a facility or as part of an educational program regulated by the Department of Education; and*

*(ii) holds a valid certificate as an Educational Specialist I or II in school psychology issued by the Department of Education that is in good standing.*

(11) Nothing in this act shall be construed to prohibit a psychologist licensed under this act from employing and supervising postdoctoral individuals completing the experience requirement for licensure who shall be designated as "psychology interns," "psychology residents" or "psychological trainees." Such individuals shall perform their duties under the full direction, control and supervision of a licensed psychologist, pursuant to regulations of the board.

(12) Nothing in this act shall be construed to prohibit a psychologist licensed under this act from employing professional employes with graduate training in psychology. Such individuals shall perform their duties under the full direction, control and supervision of a licensed psychologist, pursuant to regulations of the board.

Section 6. Qualifications for License.—(a) An applicant shall be qualified for a license to practice psychology after submission of proof satisfactory to the board that the applicant:

(1) is of acceptable moral character; and

(2) is either (i) a graduate of an accredited college or university holding a degree of Doctor of Philosophy in psychology, Doctor of Psychology, or Doctor of Education in psychology and has not less than two years of supervised experience[, **at least one of which was obtained subsequent to the granting of the doctoral degree**], provided that such experience is acceptable to the board pursuant to criteria established by board regulations, or (ii) a graduate of an accredited college or university holding a doctoral degree in a field related to psychology and has not less than two years of supervised experience[, **at least one of which was obtained subsequent to the granting of the doctoral degree**], provided such experience and training are acceptable to the board as being equivalent to the above pursuant to criteria established by board regulations; and

(3) has passed an examination duly adopted by the board; and

(4) has paid all appropriate fees in the amount determined by the board by regulation; and

(5) has not been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or of an offense under the laws of another jurisdiction which if committed in this Commonwealth would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act," unless:

(i) at least ten years have elapsed from the date of conviction;

(ii) the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations; and

(iii) the applicant otherwise satisfies the qualifications contained in or authorized by this act.

As used in this clause the term "convicted" shall include a judgment, an admission of guilt or a plea of nolo contendere.

(b) Each applicant shall submit an affidavit or affirmation of the applicant as to the verity of the application. Any applicant who knowingly or willfully makes a false statement of fact in his application shall be subject to prosecution for perjury.

(c) In case of failure at any examination, the applicant shall have[, **after the expiration of six months and within two years,**] the privilege of a second examination by the board with the payment of an additional fee. The board may adopt regulations governing the eligibility of applicants who have failed to pass two examinations in order to be admitted to subsequent examinations.

Section 8. Refusal, Suspension or Revocation of License.—(a) The board may refuse to issue a license or may suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following reasons:

(1) Failing to demonstrate the qualifications or standards for a license contained in this act or regulations of the board.

(2) Making misleading, deceptive, untrue or fraudulent representations in the practice of psychology.

(3) Practicing fraud or deceit in obtaining a license to practice psychology.

(4) Displaying gross incompetence, negligence or misconduct in carrying on the practice of psychology.

(5) Submitting a false or deceptive biennial registration to the board.

(6) Being convicted of a felony in any state or Federal court or being convicted of the equivalent of a felony in any foreign country, or being convicted of a misdemeanor in the practice of psychology. As used in this clause the term "convicted" includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere or receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges.

(7) Having a license to practice psychology suspended, revoked or refused or receiving other disciplinary action by the proper psychology licensing authority of another state, territory or country.

(8) Being unable to practice psychology with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition. In enforcing this clause, the board shall, upon probable cause, have authority to compel a psychologist to submit to a mental or physical examination by a physician or a psychologist approved by the board. Failure of a psychologist to submit to such examination when directed by the board, unless such failure is due to circumstances beyond his or her control, shall constitute an admission of the allegations against him or her, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A psychologist affected under this clause shall at reasonable intervals, as determined by the board, be afforded an opportunity to demonstrate that he or she can resume a competent practice of psychology with reasonable skill and safety.

(9) Violating a lawful regulation promulgated by the board, including, but not limited to, ethical regulations, or violating a lawful order of the board previously entered in a disciplinary proceeding.

(10) Knowingly aiding, assisting, procuring or advising any unlicensed person to practice psychology, contrary to this act or regulations of the board.

(11) Committing immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or failure to conform to, the standards of acceptable and prevailing psychological practice. Actual injury to a client need not be established.

(12) Soliciting any engagement to perform professional services by any direct, in-person or uninvited soliciting through the use of coercion, duress, compulsion, intimidation, threats, overreaching or harassing conduct.

(13) Failing to perform any statutory obligation placed upon a licensed psychologist.

(14) Intentionally submitting to any third-party payor a claim for a service or treatment which was not actually provided to a client.

(15) Failing to maintain professional records in accordance with regulations prescribed by the board.

(b) When the board finds that the license or application for license of any person may be refused, revoked, restricted or suspended under the terms of subsection (a), the board may:

- (1) Deny the application for a license.
- (2) Administer a public reprimand.
- (3) Revoke, suspend, limit or otherwise restrict a license as determined by the board.
- (4) Require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
- (5) Suspend enforcement of its findings thereof and place a licensee on probation with the right to vacate the probationary order for noncompliance.
- (6) Restore a suspended license to practice psychology and impose any disciplinary or corrective measure which it might originally have imposed.
- (7) ***Take other action as the board in the board's discretion considers proper, including precluding a suspended licensee from engaging in counseling or any other form of mental health practice.***

(c) All actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) The board shall temporarily suspend a license under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The provisions of subsection (c) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board but in no event longer than one hundred eighty days.

(e) A license issued under this act shall automatically be suspended upon the legal commitment of a licensee to an institution because of mental incompetence from any cause upon filing with the board of a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this section the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this section shall not be stayed pending an appeal of conviction. Restoration of such license shall be made as provided in this act for revocation or suspension of such license.

Section 8.1. Reporting of Multiple Licensure.—Any licensed psychologist of this Commonwealth who is also licensed to practice psychology *or another health profession* in any other state, territory or country shall report this information to the board on the biennial registration application. Any disciplinary action taken in any other state, territory or country shall be reported to the board on the biennial registration application or within ninety days of disposition, whichever is sooner. Multiple licensure shall be noted by the board on the psychologist's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against said psychologist in this Commonwealth.

Section 2. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of sections 2, 3, 6, 8 and 8.1 of the act.

(2) Section 20 of the act of April 25, 1986 (P.L.89, No.33), entitled "An act amending the act of March 23, 1972 (P.L.136, No.52), entitled 'An act relating to the practice of psychology, providing for licensing of psychologists, making certain acts illegal and providing penalties,' reestablishing the State Board of Psychologist Examiners as the State Board of Psychology; providing for its composition, powers and duties; changing provisions relating to the issuance of licenses and the suspension and revocation of licenses; providing for fees; providing for penalties; and making repeals," is repealed.

Section 3. This act shall take effect in 60 days.

APPROVED—The 23rd day of June, A.D. 2016

TOM WOLF