

CHAPTER 16
SENATE BILL No. 443

AN ACT concerning the behavioral science regulatory board; relating to disciplinary authority; amending K.S.A. 65-5809, 65-6311, 74-5324, 74-5369, 74-7507 and 74-7508 and repealing the existing sections; also repealing K.S.A. 65-6318, 74-5335 and 74-5343.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-5809 is hereby amended to read as follows: 65-5809. The board may refuse to issue, suspend, limit, refuse to renew, *condition* or revoke any license granted under the professional counselors licensure act for any of the following reasons:

(a) Use of drugs or alcohol, or both, to an extent that impairs the individual's ability to engage in the practice of professional counseling;

(b) the individual has been convicted of a felony and, after investigation, the board finds that the individual has not been sufficiently rehabilitated to merit the public trust;

(c) use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to the provisions of the professional counselors licensure act or in obtaining permission to take any examination given or required pursuant to the provisions of the professional counselors licensure act;

(d) obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(e) incompetence, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor or clinical professional counselor;

(f) violation of, or assisting or enabling any individual to violate, any provision of the professional counselors licensure act or any rule and regulation adopted under such act;

(g) impersonation of any individual holding a license or allowing any individual to use a license or diploma from any school of a person licensed under the professional counselors licensure act or a diploma from any school of an applicant for licensure under the professional counselors licensure act;

(h) revocation or suspension of a license or other authorization to practice counseling granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized by the professional counselors licensure act;

(i) the individual is mentally ill or physically disabled to an extent that impairs the individual's ability to engage in the practice of professional counseling;

(j) assisting or enabling any person to hold oneself out to the public or offer to hold oneself out to the public as a licensed professional counselor or a licensed clinical professional counselor who is not licensed under the provisions of the professional counselors licensure act;

(k) the issuance of the license was based upon a material mistake of fact;

(l) violation of any professional trust or confidence;

(m) use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(n) unprofessional conduct as defined by rules and regulations adopted by the board; or

(o) the licensee has had a registration, license or certificate as a professional counselor revoked, suspended or limited, or has had other disciplinary action taken, or an application for a registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

Sec. 2. K.S.A. 65-6311 is hereby amended to read as follows: 65-6311. (a) The board may suspend, limit, revoke, *condition* or refuse to issue or renew a license of any social worker upon proof that the social worker:

(1) Has been convicted of a felony and, after investigation, the board finds that the licensee has not been sufficiently rehabilitated to merit the public trust;

(2) has been found guilty of fraud or deceit in connection with services rendered as a social worker or in establishing needed qualifications under this act;

(3) has knowingly aided or abetted a person, not a licensed social worker, in representing such person as a licensed social worker in this state;

(4) has been found guilty of unprofessional conduct as defined by rules established by the board;

(5) has been found to have engaged in diagnosis as authorized under K.S.A. 65-6319 and amendments thereto, even though not authorized to engage in such diagnosis under K.S.A. 65-6319 and amendments thereto;

(6) has been found guilty of negligence or wrongful actions in the performance of duties; or

(7) has had a license to practice social work revoked, suspended or limited, or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(b) Proceedings to consider the suspension, revocation or refusal to renew a license shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 3. K.S.A. 74-5324 is hereby amended to read as follows: 74-5324. The board may suspend, limit, revoke, *condition* or refuse to issue or renew a license of any psychologist upon proof that the psychologist: (a) Has been convicted of a felony involving moral turpitude; or (b) has been guilty of fraud or deceit in connection with services rendered as a psychologist or in establishing qualifications under this act; or (c) has aided or abetted a person, not a licensed psychologist, in representing such person as a psychologist in this state; or (d) has been guilty of unprofessional conduct as defined by rules and regulations established by the board; or (e) has been guilty of negligence or wrongful actions in the performance of duties; or (f) has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement or (g) has had a registration, license or certificate as a psychologist revoked, suspended or limited, or has had other disciplinary action taken, or an application for registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

Sec. 4. K.S.A. 74-5369 is hereby amended to read as follows: 74-5369. An application for licensure under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto, may be denied or a license granted under this act may be suspended, limited, revoked, *have a condition placed on it* or not renewed by the board upon proof that the applicant or licensee:

(a) Has been convicted of a felony involving moral turpitude;

(b) has been found guilty of fraud or deceit in connection with the rendering of professional services or in establishing such person's qualifications under this act;

(c) has aided or abetted a person not licensed as a psychologist, licensed under this act or an uncertified assistant, to hold oneself out as a psychologist in this state;

(d) has been guilty of unprofessional conduct as defined by rules and regulations of the board;

(e) has been guilty of neglect or wrongful duties in the performance of duties; or

(f) has had a registration, license or certificate as a masters level psychologist revoked, suspended or limited, or has had other disciplinary action taken, or an application for a registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

Administrative proceedings under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto shall be in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 5. K.S.A. 74-7507 is hereby amended to read as follows: 74-7507. (a) The behavioral sciences regulatory board shall have the following powers, duties and functions:

(a) (1) Recommend to the appropriate district or county attorneys prosecution for violations of this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act;

(b) (2) compile and publish annually a list of the names and addresses of all persons who are licensed under this act, are licensed under the licensure of psychologists act of the state of Kansas, are licensed under the professional counselors licensure act, are licensed under K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, are licensed under K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, are licensed under the marriage and family therapists licensure act or are registered under the alcohol and other drug abuse counselor registration act;

(c) (3) prescribe the form and contents of examinations required under this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act;

(d) (4) enter into contracts necessary to administer this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act;

(e) (5) adopt an official seal;

(f) (6) adopt and enforce rules and regulations for professional conduct of persons licensed under the licensure of psychologists act of the state of Kansas, licensed under the professional counselors licensure act, licensed under K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, licensed under K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, licensed under the marriage and family therapists licensure act or registered under the alcohol and other drug abuse counselor registration act;

(g) (7) adopt and enforce rules and regulations establishing requirements for the continuing education of persons licensed under the licensure of psychologists act of the state of Kansas, licensed under the professional counselors licensure act, licensed under K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, licensed under K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, licensed under the marriage and family therapists licensure act or registered under the alcohol and other drug abuse counselor registration act;

(h) (8) adopt rules and regulations establishing classes of social work specialties which will be recognized for licensure under K.S.A. 65-6301 to 65-6318, inclusive, and amendments thereto;

(i) (9) adopt rules and regulations establishing procedures for examination of candidates for licensure under the licensure of psychologists act of the state of Kansas, for licensure under the professional counselors licensure act, for licensure under K.S.A. 65-6301 to ~~65-6318~~ 65-6320, inclusive, and amendments thereto, for licensure under K.S.A. 74-5361 to ~~74-5372~~, inclusive 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, for licensure under the marriage and family therapists licensure act, for registration under the alcohol and other drug abuse counselor registration act and for issuance of such certificates and such licenses;

(j) (10) adopt rules and regulations as may be necessary for the administration of this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to ~~65-~~

~~6318 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to 74-5372, inclusive~~ 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act and the alcohol and other drug abuse counselor registration act and to carry out the purposes thereof;

(11) appoint an executive director and other employees as provided in K.S.A. 74-7501 and amendments thereto; and

(12) exercise such other powers and perform such other functions and duties as may be prescribed by law.

(b) *The behavioral sciences regulatory board, in addition to any other penalty, may assess an administrative penalty, after notice and an opportunity to be heard, against a licensee or registrant for a violation of any of the provisions of the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act in an amount not to exceed \$1,000. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215 and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.*

(c) *If an order of the behavioral sciences regulatory board is adverse to a licensee or registrant of the board, the costs shall be charged to such person as in ordinary civil actions in the district court in an amount not to exceed \$200. The board shall pay any additional costs and, if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed in accordance with statutes governing taxation of witness fees and costs in the district court.*

Sec. 6. K.S.A. 74-7508 is hereby amended to read as follows: 74-7508. (a) In connection with any investigation, based upon a written complaint or other reasonably reliable written information, by the behavioral sciences regulatory board, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained by and in possession of any clinic or office of a practitioner of the behavioral sciences, or other public or private agency if such document, report, record or other physical evidence relates to practices which may be grounds for disciplinary action.

(b) In all matters pending before the behavioral sciences regulatory board, the board shall have the power to administer oaths and take testimony. For the purpose of all investigations and proceedings conducted by the behavioral sciences regulatory board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents, reports, records or any other physical evidence if such documents, reports, records or other physical evidence relates to practices which may be grounds for disciplinary action. Within five days after the service of the subpoena on any person requiring the production of any documents, reports, records or other physical evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the documents, reports, records or other physical evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the allegation which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the documents, reports, records or other physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such documents, reports, records or other physical evidence.

(2) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the board's duly authorized agent to produce documents, reports, records or other physical evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's

opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the allegation which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the documents, reports, records or other physical evidence which is required to be produced.

(3) (A) *If the board determines that an individual has practiced without a valid license a profession regulated by the board for which the practitioners of the profession are required by law to be licensed in order to practice the profession, in addition to any other penalties imposed by law, the board, in accordance with the Kansas administrative procedure act, may issue a cease and desist order against such individual.*

(B) *Whenever in the judgment of the behavioral sciences regulatory board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, 74-5361 to 74-5374, inclusive, and K.S.A. 2003 Supp. 74-5375, and amendments thereto, the licensure of psychologists act, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act, or any valid rule or regulation of the board, the board may make application to any court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.*

(c) Any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the behavioral sciences regulatory board shall be confidential and shall not be disclosed by the board or its employees in a manner which identifies or enables identification of the person who is the subject or source of the information except the information may be disclosed:

(1) In any proceeding conducted by the board under the law or in an appeal of an order of the board entered in a proceeding, or to any party to a proceeding or appeal or the party's attorney;

(2) to the person who is the subject of the information or to any person or entity when requested by the person who is the subject of the information, but the board may require disclosure in such a manner that will prevent identification of any other person who is the subject or source of the information; or

(3) to a state or federal licensing, regulatory or enforcement agency with jurisdiction over the subject of the information or to an agency with jurisdiction over acts or conduct similar to acts or conduct which would constitute grounds for action under this act. Any confidential complaint or report, record or other information disclosed by the board as authorized by this section shall not be redisclosed by the receiving agency except as otherwise authorized by law.

(d) Nothing in this section or any other provision of law making communications between a practitioner of one of the behavioral sciences and the practitioner's client or patient a privileged or confidential communication shall apply to investigations or proceedings conducted pursuant to this section. The behavioral sciences regulatory board and its employees, agents and representatives shall keep in confidence the content and the names of any clients or patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

(e) *In all matters pending before the behavioral sciences regulatory board, the board shall have the power to revoke the license or registration of any licensee or registrant who voluntarily surrenders such person's license or registration pending investigation of misconduct or while charges of misconduct against the licensee are pending or anticipated.*

(f) *In all matters pending before the behavioral sciences regulatory board, the board shall have the option to censure the licensee or registrant in lieu of other disciplinary action.*

Sec. 7. K.S.A. 65-5809, 65-6311, 65-6318, 74-5324, 74-5335, 74-5369, 74-5343, 74-7507 and 74-7508 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.