

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 720
HOUSE BILL 779

AN ACT TO CREATE THE NORTH CAROLINA BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS AND TO PROVIDE FOR THE LICENSING OF EMPLOYEE ASSISTANCE PROFESSIONALS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 31.

"Employee Assistance Professionals.

"§ 90-500. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) 'Board' means the Board of Employee Assistance Professionals.
- (2) 'Consultation' means the act of giving expert advice on the role of an employee assistance professional in assisting troubled employees.
- (3) 'Employee assistance professional' means a person who provides the following services to the public in a program designed to assist in the identification and resolution of job performance problems in the workplace:
 - a. Expert consultation and training of appropriate persons in the identification and resolution of job performance issues related to the employees' personal concerns.
 - b. The confidential, appropriate, and timely assessment of problems.
 - c. Short-term problem resolution for issues that do not require clinical counseling or treatment.
 - d. Referrals for appropriate diagnosis, treatment, and assistance to certified or licensed professionals when clinical counseling or treatment is required.
 - e. Establishment of linkages between workplace and community resources that provide such services.
 - f. Follow-up services for employees and dependents who use such services.
- (4) 'Certified employee assistance professional' means an employee assistance professional who is certified by the Employee Assistance Certification Commission and who has the necessary professional

qualifications to provide the employee assistance program services listed in subdivision (2) of this section, which services can be worksite based and are designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns.

- (5) 'Employee Assistance Certification Commission' means the national body with the authority to certify employee assistance professionals based on experience and the passing of a national examination.

"§ 90-501. Board of Employee Assistance Professionals; members.

- (a) The Board of Employee Assistance Professionals is created.
- (b) The Board consists of five members to be appointed by the Governor. Members shall serve for terms of five years. All members must be residents of North Carolina.
- (c) The following requirements shall apply to appointments to the Board:
- (1) Two members shall be licensed employee assistance professionals who are privately employed.
- (2) One member shall not be directly or indirectly engaged in the employee assistance profession.
- (3) Two members shall be licensed employee assistance professionals.
- (d) The licensed employee assistance professionals appointed pursuant to subdivision (1) or (3) of subsection (c) of this section must have been engaged in the active practice of being an employee assistance professional for no less than five years.
- (e) The North Carolina Chapter of the Employee Assistance Professionals Association shall submit a list of at least three nominees for each appointment. The Governor may make appointments from this list.
- (f) Any member of the Board shall be removed from the Board upon certification by the Board to the Governor that the member no longer satisfies the employment requirements set forth in subsection (c) of this section for appointment to the Board. The Governor shall appoint a replacement from a list of nominees submitted by the North Carolina Chapter of the Employee Assistance Professionals Association within 60 days of the Governor's receiving the list of nominees.
- (g) Members shall serve until their successors are appointed and duly qualified. Any vacancy occurring on the Board shall be filled by the Governor appointing a member for the balance of the unexpired term. A Board member who has served a five-year term shall not be eligible for reappointment during the one-year period following the appointment of that member's successor.
- (h) In making appointments to the Board, the Governor shall strive to ensure that at least one member serving on the Board is 60 years of age or older and that at least one member serving on the Board is a member of a racial minority.
- (i) For each day engaged in the business of the Board, members shall receive compensation of fifty dollars (\$50.00) and shall receive reimbursement for actual expenses.
- (j) Annually, the members of the Board shall elect a chair and a secretary.

(k) The Board shall meet as frequently as is reasonably necessary to implement the provisions of this Article. Three or more members of the Board shall constitute a quorum for the purpose of transacting business.

(l) For administrative purposes, the Board shall be an independent entity. The Department of Human Resources shall provide staff to the Board to assist the Board in transacting its business.

"§ 90-502. Powers and duties of the Board.

The Board shall:

- (1) Approve educational programs and establish and prescribe the curricula and minimum standards for training required to prepare persons for licensure and licensure renewal under this Article.
- (2) Adopt rules governing the issuance, renewal, suspension, and revocation of licenses.
- (3) Establish minimum standards governing the activities and operations of licensed employee assistance professionals.
- (4) Issue licenses.
- (5) Establish and collect fees.
- (6) Assess civil penalties as provided in this Article.

"§ 90-503. License requirements.

(a) An applicant must satisfy all of the following requirements to be eligible to be licensed under this Article:

- (1) Have obtained a masters degree.
- (2) Have obtained a degree in any field of human services at either the undergraduate degree level or the masters degree level.
- (3) Be certified by the Employee Assistance Certification Commission.
- (4) Maintain certification by being recertified by the Employee Assistance Certification Commission every three years by either passing an examination or by completing continuing education in accordance with rules adopted by the Board.

(b) Notwithstanding the requirements of subsection (a) of this section, a person who has received a certification as an employee assistance professional from the Employee Assistance Certification Commission may apply until January 1, 2000, to the Board for licensure and shall receive a license as an employee assistance professional upon proof of such certification and upon payment of a fee in an amount established by the Board.

(c) Licenses must be obtained by each individual employee assistance professional. A company or organization shall not be issued a license.

(d) Any person desiring to be licensed under this Article as an employee assistance professional shall apply to the Board on a form approved by the Board. The applicant shall submit with the application form a fee in an amount established by the Board. The applicant shall complete the application, submitting all information the Board deems necessary to evaluate the applicant.

(e) Each license shall be valid for a period of up to three years.

"§ 90-504. License renewals.

(a) Renewal of any license issued under the provisions of this Article may be accomplished by paying a fee in an amount established by the Board, submitting a renewal application, and otherwise complying with rules adopted by the Board.

(b) Any person licensed as an employee assistance professional shall renew his or her license according to rules adopted by the Board.

(c) If any licensee fails to renew his or her license within 60 days after the date the application becomes due, the license of that person shall be revoked automatically without further notice or hearing, unless the licensee specifically requests an extension.

"§ 90-505. Requirements for persons licensed out-of-state.

An applicant who is currently certified by the Employee Assistance Certification Commission or licensed in another state and who:

- (1) Is in good standing in another state;
- (2) Meets the licensure requirements approved by the Board;
- (3) Resides in this State, or resides outside the State and is employed by a service operating in this State; and
- (4) Submits an application with a fee in an amount established by the Board

is eligible to apply for a license under this Article.

"§ 90-506. Violations; enforcement; penalties.

(a) Whenever the Board has reason to believe that a violation of this Article, any rule adopted by the Board, or any order of the Board is occurring or about to occur, the Board may initiate any of the following enforcement measures:

- (1) Commence a civil action in any court of the county in which the alleged offender resides or does business. The Board may seek and the court may grant any form of relief, including injunctive relief.
- (2) If the activity involved appears to be a criminal offense, refer the matter to the appropriate district attorney for prosecution.
- (3) For any person who fails to be licensed as required by this Article, the Board may assess a civil penalty against that person in an amount not to exceed fifty dollars (\$50.00) per day for each violation.

(b) In assessing a penalty under subdivision (3) of subsection (a) of this section, the Board shall consider all of the following:

- (1) Whether the amount of the penalty imposed will be a substantial economic deterrent to the violator.
- (2) The circumstances leading to the violation.
- (3) The severity of the violation and the risk of harm to the employee.
- (4) Any economic benefits gained by the violator as a result of the violation.

(c) Civil penalties assessed by the Board pursuant to subdivision (3) of subsection (a) of this section are final 30 days after the date the assessment is served upon the alleged violation, unless the alleged violator seeks review by the Board within that time.

"§ 90-507. Hearings.

Hearings before the Board on enforcement or disciplinary actions shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

"§ 90-508. Representation as licensed professional.

No person shall, by verbal claim, advertisement, letterhead, card, or in any other way, represent that he or she is a licensed employee assistance professional unless that person possesses a valid license pursuant to this Article. Nothing in this Article shall prohibit an unlicensed person from providing the services described in G.S. 90-500(3) if that person refrains from representing that he or she is a licensed employee assistance professional.

"§ 90-509. Other prohibited activities.

The Board may deny, suspend, or revoke any license, or otherwise discipline an applicant or holder of a license who the Board finds engaged in one or more of the following activities:

- (1) Willfully or repeatedly violating any provision of this Article or any rule of the Board adopted pursuant to this Article.
- (2) Fraudulently or deceptively procuring or attempting to procure a license, presenting evidence of qualification to the Board, or processing the examination to secure a license.
- (3) Willfully failing to display a license.
- (4) Fraudulently or deceptively misrepresenting or engaging in dishonest or illegal practices in or connected with the practice of employee assistance.
- (5) Circulating knowingly untrue, fraudulent, misleading, or deceptive advertising.
- (6) Engaging in gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence, or incompetence in the course of the practice of employee assistance.
- (7) Unprofessionally or unethically engaging in practices in connection with the practice of employee assistance, which activities are in violation of the standards of professional conduct prescribed by the Board.
- (8) Engaging in conduct reflecting unfavorably upon the profession of employee assistance professionals.
- (9) Willfully making any false statement as to material in any oath or affidavit when such statement is required by this Article.
- (10) Being convicted of a felony five years prior to applying for a license or while licensed.
- (11) Permitting or allowing another to use another person's license for the purpose of providing or offering employee assistance services.
- (12) Engaging in practice under a false or assumed name, or impersonating another practitioner of a like, similar, or different name.
- (13) Failing to inform clients fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used.

- (14) Referring a client to further obtain services from a source that would directly or indirectly financially profit the referring licensed employee assistance professional when these services are not in the best interest of the client.
- (15) Denying a client's reasonable requests for access to any records concerning the client, or, when providing clients with access to records, failing to take due care to protect the confidences of other information contained in those records.
- (16) Failing to obtain the informed consent of a client before taping, recording, or permitting third-party observation of the client's activities.
- (17) Failing to clarify the nature and directions of an employee assistance professional's loyalties and responsibilities as mandated by law and as mandated by their contractual agreement with a company.
- (18) Failing to fully inform consumers as to the purpose and nature of evaluative research, treatment, or educational training or failing to freely acknowledge that a client, student, or participant in research has freedom of choice with regard to his or her participation.
- (19) Failing to attempt to terminate a consulting relationship when it is reasonably clear that the relationship is not benefiting the consumer. An employee assistance professional who finds that his or her services are being used by employers beyond their contractual agreement, or beyond their licensed qualification, in a way that is not beneficial to the participants, shall make his or her observations known to the responsible persons and propose modification or termination of the engagement. Upon request, the Board shall advise and clarify in regard to such matters within a reasonable amount of time, and shall not revoke the employee assistance professional's license.
- (20) Consenting through a contractual agreement to provide services such as prolonged therapy, that the employee assistance professional is not licensed to provide.

"§ 90-510. Investigations; good faith reports of violations.

The Board may, on its own motion, investigate any report indicating that a licensee is or may be in violation of the provisions of this Article. Any person who in good faith reports to the Board any such information shall not be subject to suit for civil damages as a result of reporting this information.

"§ 90-511. Employee assistance professional practice by members of other professional groups.

(a) Nothing in this Article shall be construed to prevent qualified members of other professional groups, as determined by the Board, including, but not limited to, licensed psychologists, licensed psychological associates, licensed clinical social workers, nurses, physicians, or members of the clergy, from doing or advertising that they perform the work of an employee assistance professional consistent with the accepted standards of their respective professions.

(b) Nothing in this Article shall be construed to prevent a staff member of a community mental health center from advertising, claiming, working, or in any other way representing that the member is an employee assistance professional consistent with the standards of a mental health center."

Sec. 2. Notwithstanding the provisions of G.S. 90-501(b) to the contrary, as enacted in Section 1 of this act, the Governor shall make initial appointments to the Board of Employee Assistance Professionals created in G.S. 90-501, as enacted by Section 1 of this act, to serve for terms as follows:

- (1) For the initial appointments made pursuant to G.S. 90-501(c)(1), one shall serve for a one-year term, and the other shall serve for a three-year term.
- (2) The initial appointments made pursuant to G.S. 90-501(c)(2) shall serve for a two-year term.
- (3) For the initial appointments made pursuant to G.S. 90-501(c)(3), one shall serve for a four-year term, and the other shall serve for a five-year term.

The Governor shall make initial appointments to the Board within 90 days of the effective date of this section.

Notwithstanding the provisions of G.S. 90-501, as enacted by Section 1 of this act, each initial Board member, except the member who is not directly or indirectly engaged as an employee assistance professional, shall have five years continuous experience as an employee assistance professional immediately preceding his or her appointment and currently shall be certified by the Employee Assistance Certification Commission.

Sec. 3. This act becomes effective January 1, 1997.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives