

CHAPTER 192
HB 650-FN - FINAL VERSION

8Mar2017... 0666h
04/20/2017 1315s
1Jun2017... 2086-EBA

2017 SESSION

17-0459
10/03

HOUSE BILL ***650-FN***

AN ACT relative to procedures of the board of psychologists.

SPONSORS: Rep. McGuire, Merr. 29; Rep. Cilley, Straf. 4; Rep. P. Schmidt, Straf. 19; Rep. Hatch, Coos 6; Rep. Kurk, Hills. 2; Sen. Reagan, Dist 17

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill makes various changes to the regulation of psychology practitioners including the requirements of the board of psychologists relating to investigation and hearings concerning disciplinary proceedings, the form of complaints against licensees, and the disclosure of patient records.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 192
HB 650-FN - FINAL VERSION

8Mar2017... 0666h
04/20/2017 1315s
1Jun2017... 2086-EBA

17-0459
10/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to procedures of the board of psychologists.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 192:1 Psychologists; Definition; Board Investigator. Amend RSA 329-B:2, II to read as follows:

2 II. "Board investigator" means the **psychologist** board member appointed by the board to
3 oversee the professional conduct investigation committee and serve as a liaison between the board
4 and that committee.

5 192:2 New Paragraphs; Psychologists; Definitions; Communication of Alleged Misconduct;
6 Complaint. Amend 329-B:2 by inserting after paragraph III the following new paragraphs:

7 III-a. "Communication of alleged misconduct" or "allegation" means a written statement
8 received by the board describing a claim of professional misconduct of a licensee under this chapter.
9 The term "allegation" shall include but not be limited to, such uses as "allegation of professional
10 misconduct," "letter of alleged misconduct," "statement of alleged misconduct," and "submission of
11 allegation of misconduct."

12 III-b. "Complaint" means a communication of alleged misconduct containing information
13 that, as the board shall determine, if true, could violate ethical codes, administrative rules, or the
14 law. A matter is considered a complaint when the board orders the change of status from allegation
15 to complaint.

16 192:3 Definition; Psychology Practice. Amend RSA 329-B:2, VII(d) to read as follows:

17 (d) Diagnosis, treatment, and management of mental and emotional disorder or
18 disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological **and**
19 **behavioral** aspects of **medical**/physical illness, accident, injury, or disability;

20 192:4 Receipts. Amend RSA 329-B:11 to read as follows:

21 329-B:11 Receipts and Disbursements. The board [~~of mental health practice, under its~~
22 ~~continuing responsibility to establish fees for psychologists,~~] shall receive and account for all fees
23 under the provisions of this chapter, and shall pay such moneys to the state treasurer to be
24 deposited in the general fund.

25 192:5 Board of Psychologists; Fees. Amend RSA 329-B:12 to read as follows:

26 329-B:12 Establishment of Fees[~~;- Continued Responsibility of Board of Mental Health Practice~~].

27 I. The fee for an initial license shall be \$300. The license shall be renewed biennially on or
28 before June 30 upon payment of a \$300 renewal fee.

29 II. The board [~~of mental health practice, pursuant to RSA 330-A:12, II,~~] shall [~~continue to~~]

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 2 -

1 establish fees applicable to psychologists for review of applicants; reinstatement of license; inactive
2 license status; reactivation of an inactive license; examination of applicants; transcribing and
3 transferring records; and other services, including investigations and hearings conducted under this
4 chapter.

5 192:6 Psychologist License; Criminal History Records Release; References to Fees Corrected.
6 Amend RSA 329-B:15, I(e) and II to read as follows:

7 (e) Has paid all fees established and collected by the board [~~of mental health practice~~].

8 (f) ***Has submitted a complete set of fingerprints and a notarized criminal***
9 ***history records release form in accordance with RSA 329-B:14-a.***

10 II. Examinations for applicants under this chapter shall be held by the board at least once
11 each year. The board shall determine the subject and scope of the examination, which may be
12 written, oral, or both. If an applicant fails the first examination, the applicant may be admitted to a
13 subsequent examination upon the payment of an additional fee in the amount established by the
14 board [~~of mental health practice under RSA 330-A:12~~].

15 192:7 Disciplinary Action. Amend RSA 329-B:21, I(c) to read as follows:

16 (c) Upon written [~~complaint~~], ***signed, and sworn statement*** of any person which
17 charges that a person licensed under this chapter has committed misconduct under paragraph II
18 and which specifies the grounds for such charges.

19 192:8 New Subparagraph; Disciplinary Proceedings; Misconduct. Amend RSA 329-B:21, II by
20 inserting after subparagraph (h) the following new subparagraph:

21 (i) Any misconduct according to the law, rules, or ethical requirements applicable at the
22 time of the alleged misconduct.

23 192:9 Investigations and Complaints. Amend RSA 329-B:22, I to read as follows:

24 I. The board shall investigate possible misconduct by licensees and other matters within the
25 scope of this chapter. Investigations may be conducted formally, after issuance of a board order
26 setting forth the general scope of the investigation, or informally, after a board vote to seek
27 additional information, without such an order. In either case, information gathered subsequent to
28 the initiation of and during such investigations shall be exempt from the public disclosure
29 provisions of RSA 91-A, except to the extent such information may later become the subject of a
30 public disciplinary hearing. The existence of a complaint and status of the investigation, without
31 disclosing the identity of those involved, shall be subject to the disclosure provisions of RSA 91-A.
32 The board may disclose information acquired in an investigation to law enforcement [~~or~~] ***only if it***
33 ***involves suspected criminal activity, to*** health licensing agencies in this state or any other
34 jurisdiction ***if the licensee has or is seeking additional licenses***, or [~~in response to~~] ***as***
35 ***required by*** specific statutory requirements or court orders. A licensee under this chapter shall be
36 promptly informed of the nature and scope of any pending investigation.

37 192:10 Investigations and Complaints; Psychological Records. RSA 329-B:22, VI is repealed

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 3 -

1 and reenacted to read as follows:

2 VI. Subject to the limitations of RSA 329-B:26, and this section, the board may, with just
3 cause and at any time, subpoena copies of mental health or psychological records from its licensees
4 and from hospitals and other health care providers licensed in this state. Such subpoenas shall be
5 served by certified mail or by personal delivery. A minimum of 15 days' advance notice shall be
6 allowed for complying with a subpoena duces tecum issued under this section. The board shall
7 obtain, handle, archive, and destroy mental health and psychological records as follows:

8 (a) If the client/patient owning the privilege is the person who has made the allegations
9 against the licensee, the board may access the records of such client/patient. The allegation
10 statement form provided by the board and initial follow up correspondence shall clearly indicate
11 that the making of allegations of misconduct by a client/patient who is the owner of the privilege
12 shall override the privacy of that record for the purpose of the board's confidential investigations
13 and proceedings. The client/patient's identity, however, shall not be disclosed to the public in any
14 manner or in any proceeding of the board without his or her consent. If the client/patient named in
15 the complaint is a child, the legitimate assertion of the privilege by one natural or adoptive parent
16 or legal guardian is sufficient for this paragraph to apply. The board may act on that parent or
17 guardian's initiation of complaint regardless of the objection of the other parent or guardian.

18 (b) If the person who has made the allegations against the licensee is not the owner of
19 the privilege for the records of the client/patient named in the complaint whose treatment is under
20 investigation by the board, the records for an investigation shall be treated as follows:

21 (1) When the board reviews the initial allegations and upon all further reviews of
22 the case by the board, the identity of the named client/patient shall be redacted from the documents
23 reviewed by the board.

24 (2) Upon issuance by the board of an order of investigation and prior to the
25 assignment of the case to the investigation team, the name of the client/patient under this
26 subparagraph shall be provided to the immediate investigation team in order to determine the need
27 for recusal of those members before accepting the assignment in a manner as described in
28 subparagraph (g).

29 (3) The record of a client/patient under this subparagraph that has been specifically
30 named in the complaint may be obtained by the board's investigation team as specified:

31 (A) The board may order its administrator or investigator to request permission
32 from the client/patient to obtain the record for the investigation, informing the client/patient about
33 the bounds of confidentiality of such records and the nature of the investigation process. If the
34 client/patient grants permission, the board may obtain the copies of the record from the licensee.

35 (B) If the client/patient denies permission for access to the record, or if the
36 board chooses to omit the request for permission, the procedures of subparagraphs (c)(4), (5), (6),
37 and (8) shall apply to the handling of those records and requests for interviews.

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 4 -

1 (4) Personally identifiable information pertaining to a client/patient under this
2 subparagraph shall remain known only to the immediate investigation team assigned to the case,
3 which may include an administrative prosecution unit attorney, a professional conduct investigator,
4 the board administrator, and only those additional investigative assistants as the immediate
5 investigation team deems necessary to accomplish the investigation of the case.

6 (5) All communication beyond the immediate investigation team, with the
7 professional conduct committee, consultants, or the board, pertaining to these clients/patients shall
8 be conducted without the use of personally identifiable information.

9 (6) At the conclusion of the investigation and prior to review of the report of
10 investigation, the identity of the client/patient under subparagraph (b) shall be disclosed to
11 members of the board to determine the need for recusal of its members as described in
12 subparagraph (g) of this section.

13 (7) The identity of a client/patient shall not be disclosed to the public in any manner
14 or in any proceeding of the board without his or her consent.

15 (c) Records of client/patients who are not named in the initial allegations shall be
16 treated as follows:

17 (1) If the investigation team wishes to obtain records of, or contact, clients/patients
18 not named in the original order of investigation, the investigation team shall make its request to the
19 board with reasons for the request, shall specify the scope of cases and types of records requested,
20 and shall state the name of the individual authorized to contact any client/patient.

21 (2) Upon issuance of an order of investigation by the board pertaining to treatment
22 of patients defined in this subparagraph, the names of the clients/patients that fulfill the criteria of
23 selection may be made available to the immediate investigation team for purposes of determining
24 whether recusal issues pertain to their selection for the investigation as described in subparagraph
25 (g).

26 (3) If the board orders investigation into client/patient cases who are not named in
27 the original allegations, it shall specify whether these clients/patients may be contacted directly by
28 the investigation team.

29 (4) For records requested under this subparagraph, a licensee shall be instructed to
30 provide records that are redacted of personally identifiable information as specified in subparagraph
31 (f). Each record shall be marked with an identifying code and the licensee shall provide to the board
32 administrator the contact information for corresponding clients/patients.

33 (5) The board administrator shall separately store in a secure manner the list of
34 these client/patient codes with corresponding contact information.

35 (6) If the investigation team has just cause to verify its redacted copies against
36 originals of the records of specified cases, it shall request permission of the board giving reason for
37 its request. If the board grants permission, the investigation team may have access to the identified

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 5 -

1 records. Originals of the records may be viewed at a time and location determined by the
2 investigation team. The investigation team may request a copy of the identified original records be
3 sent to the immediate investigation team. The investigation team may then proceed to review the
4 original or copies of the identified records in comparison with the redacted copies to ascertain their
5 completeness and accuracy. Copies and corrections to the redacted records may be made by the
6 investigation team, after which any identified copies in the possession of the investigation team
7 shall be destroyed and original records returned to the licensee.

8 (7) When permission has been granted by the board pursuant to subparagraph (c)(1)
9 to contact clients/patients pertaining to this subparagraph, access to the contact information is
10 limited to the professional conduct investigators and administrative prosecution unit attorneys
11 assigned to the case, the administrative clerk who manages the confidential files of the case, and
12 any assistants specifically approved by the board for contact.

13 (8) The member of the immediate investigation team making contact with
14 clients/patients pursuant to subparagraph (c)(1), shall request permission from the clients/patients
15 to conduct an interview and shall include an explanation that they may grant or refuse permission
16 for such interview and that there are no adverse personal consequences of any kind for refusal to
17 grant permission or for withdrawing permission at any time in the process. The investigation team
18 member may inform the clients/patients that refusal to participate may prevent the investigation to
19 proceed or reach a conclusion. The investigation team member shall predicate continuation of the
20 interview on the client/patient's agreement to a confidentiality agreement concerning the licensee
21 and the existence of the investigation.

22 (9) At the conclusion of the investigation and prior to review of the report of
23 investigation, the identity of the client/patient under this paragraph shall be disclosed to members
24 of the board to determine the need for recusal of its members as described in subparagraph (g).

25 (10) The identity of each client/patient shall be redacted by the administrator or
26 investigation team from any documents reviewed by the board.

27 (11) The identity of a client/patient defined in this subparagraph shall not be
28 disclosed to the public in any manner or in any proceeding of the board without his or her consent.

29 (d) The mental health or psychological records obtained through subparagraphs (a), (b),
30 and (c) shall, if archived, be treated as follows:

31 (1) At or before the conclusion of the licensee investigation case, including all
32 disciplinary action and completion, remediation and sanctions ordered and completed, and
33 completion of all appeals, and appeal periods, the client/patient records shall be reduced to those
34 clients/patients and sections of records that had been included in the prosecution, defense,
35 deliberation, and determination of the case. Client/patient materials not pertinent to the above
36 shall be destroyed;

37 (2) Materials retained in subparagraph (d)(1) pertaining to clients/patients other

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 6 -

1 than the complainant shall be redacted of all personally identifiable information; and

2 (3) The identification and contact information collected during the investigation for
3 clients/patients other than the complainant shall be destroyed prior to archiving.

4 (e) The archived mental health or psychological records shall be destroyed according to
5 the attorney general's archive destruction schedule.

6 (f) For the purposes of this paragraph:

7 (1) "Record" means health or psychological information collected from or about an
8 individual that:

9 (A) Is created or received by a health care provider, health plan, employer, or
10 health care clearinghouse; and

11 (B) Relates to the individual, the past, present, or future physical or mental
12 health or psychological condition of an individual, the provision of health care to an individual, or
13 the past, present, or future payment for the provision of health care to an individual.

14 (2) "Personally identifiable information" means information which identifies an
15 individual or which a reasonable person would believe can be used to identify an individual, which
16 includes common and uncommon identifiers, including but not limited to name, address, birth date,
17 social security number, court docket number, insurance policy number, and any other identifiers of
18 an individual and of the individual's known relatives, household members, and employers that a
19 reasonable person would believe could identify the individual to whom the record pertains.

20 (g) In the process of determining recusal, the security of the client/patient's identity
21 shall be preserved, as follows:

22 (1) Before engaging in any cases as defined in subparagraph (a), board members,
23 investigators, and others as specified in this paragraph with access to case files shall first review
24 the name of the client/patient before proceeding with the case. If a conflict of interest is revealed,
25 that person shall recuse himself or herself from the case.

26 (2) Before engaging in any cases defined in subparagraph (b), the immediate
27 investigation team members at the onset of investigation, board members at the time of reviewing
28 the findings of the formal investigation, and any others authorized in this paragraph to have access
29 to the case prior to commencing review of such cases shall first determine if there is a need for
30 recusal. The name and town of the client/patient shall be embedded in a list of at least 12 other
31 names and towns prepared by the board administrator. The list shall be reviewed by the team
32 member in the presence of the board administrator. Telephonic review is permitted. The member
33 shall not retain a written record of the list. The member shall indicate which if any names would
34 present reasons for recusal for that member. If the names indicated by the member do not include
35 the client/patient as known to the administrator, then the member shall be permitted to participate
36 in the case.

37 (3) If a client/patient as defined in subparagraphs (b) or (c) testifies or intends to

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 7 -

1 attend the hearing of the case involving his or her treatment, in which the board may see the
2 client/patient inadvertently or directly, the client/patient's name shall be revealed to the board
3 members so that they may have the opportunity to recuse themselves prior to the proceeding, and
4 the client/patient shall be informed beforehand of such disclosure.

5 (4) For recusal issues pertaining to clients/patients selected under paragraph (c) of
6 this section, the investigation team shall review the names of the clients/patients who qualify for
7 the scope of investigation as defined in the order by the board, after which team members shall
8 determine if recusal issues occur. The names and towns of the selected clients/patients shall be
9 embedded in a list containing at least 25 percent other names and towns prepared by the board
10 administrator. The list shall be reviewed by the team member in the presence of the board
11 administrator. Telephonic review is permitted. The member shall not retain a written record of the
12 list. Each member shall indicate which if any names would present reasons for recusal for that
13 member. If the names indicated by the member do not include the clients/patients as known to the
14 administrator, then the member shall be permitted to participate in the case. If a case presents a
15 recusal issue, then the investigation team shall either disqualify clients/patients from the list or
16 shall disqualify the team member from handling those cases, as the expeditious handling of the
17 investigation and the interests of justice require.

18 (5) When board members review the reports of investigations that include case
19 information pertaining to clients/patients as defined in subparagraph (c), they shall review their
20 names prior to reading such reports in the following manner:

21 (A) If there are 10 or fewer cases with individual clinical information presented,
22 then the methods of testing for recusal shall follow the recusal procedures of subparagraph (g)(2).

23 (B) When the report includes clinical information pertaining to more than 10
24 cases, then the recusal methods of subparagraph (g)(4) shall apply.

25 (C) When such clients'/patients' information is presented only in aggregate
26 form, no recusal is required.

27 (h) Testimony by clients/patients shall be handled with utmost regard for their privacy
28 and protection of their identity from public disclosure.

29 (1) A client/patient as defined under subparagraphs (b) or (c) shall not be compelled
30 to testify at a board hearing.

31 (2) If a client/patient as defined in subparagraphs (b) or (c) testifies at a hearing, his
32 or her identity shall be screened from the public view and knowledge, although the respondent and
33 attorneys shall be within the view of the client/patient. The board may view the client/patient. The
34 public's access to the view or information that would identify the client/patient shall be restricted.
35 At the board's discretion, the hearing may be closed to the public for the duration of the
36 client/patient's testimony.

37 (3) If a client/patient who is party to the complaint requests such privacy safeguards

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 8 -

as in subparagraph (h)(2), the accommodations of that subparagraph may likewise be made at the discretion of the board.

(i) Licensees shall comply with board requests for client/patient records and all redaction requirements specified under this section. Failure to comply with lawful requests of the board under this section may subject the licensee to discipline as the board may determine.

192:11 Investigations and Complaints; Response and Summary. Amend RSA 329-B:22, VIII and IX to read as follows:

VIII. Except for good cause shown, ~~[upon its determination that a formal or informal investigation shall be conducted,]~~ the board shall mail a copy of ~~[a complaint]~~ **any allegations of misconduct** to any licensee who is the subject of the ~~[complaint, and require the licensee to provide a detailed and good faith written response to allegations identified by the board]~~ **allegations. Allegations that do not rise to the level of complaint shall not require a response from the licensee. In the case of allegations meeting the level of complaint, licensees shall provide a detailed and good faith written response as directed by the board.** The licensee shall provide complete copies of the licensee's office records concerning any client or patient in the complaint **pursuant to RSA 329-B:22, VI.** The licensee shall respond to such request within a reasonable time period of not less than 30 days, as the board shall specify in its written request. The detailed complaint and licensee's response shall be exempt from disclosure under RSA 91-A unless the licensee successfully petitions the board to make them available pursuant to RSA 91-A:4. The patient's record shall be exempt from disclosure under RSA 91-A.

IX. The board may dismiss complaints when the undisputed allegations do not warrant disciplinary actions and may settle complaints informally with the consent of the licensee. Some or all of the allegations in a complaint may be consolidated with another complaint or with issues which the board chooses to investigate or hear on its own motion. If an investigation of a complaint results in an offer of settlement by the licensee, the board may settle the allegations against the licensee without the consent of a complainant, provided that the complainant is given an opportunity to comment on the terms of the proposed settlement. **Prior to the settlement or other negotiated termination of proceedings, the board, or an agent authorized by the board, shall provide the licensee with a summary of the investigation, which shall include an overview of the evidence, including incriminating and exculpatory elements. The summary of the investigation shall remain confidential to the licensee, his or her counsel, and other parties as determined by the board.**

192:12 New Section; Criminal History Record Checks. Amend RSA 329-B by inserting after section 14 the following new section:

329-B:14-a Criminal History Record Checks.

I. Every applicant for initial permanent licensure or reinstatement shall submit to the board a notarized criminal history record release form, as provided by the New Hampshire division

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 9 -

1 of state police, which authorizes the release of his or her criminal history record, if any, to the
2 board.

3 II. The applicant shall submit with the release form a complete set of fingerprints taken by
4 a qualified law enforcement agency or an authorized employee of the department of safety. In the
5 event that the first set of fingerprints is invalid due to insufficient pattern, a second set of
6 fingerprints shall be necessary in order to complete the criminal history records check. If, after 2
7 attempts, a set of fingerprints is invalid due to insufficient pattern, the board may, in lieu of the
8 criminal history records check, accept police clearances from every city, town, or county where the
9 person has lived during the past 5 years.

10 III. The board shall submit the criminal history records release form and fingerprint form
11 to the division of state police which shall conduct a criminal history records check through its
12 records and through the Federal Bureau of Investigation. Upon completion of the records check,
13 the division of state police shall release copies of the criminal history records to the board.

14 IV. The board shall review the criminal record information prior to making a licensing
15 decision and shall maintain the confidentiality of all criminal history records received pursuant to
16 this section.

17 V. The applicant shall bear the cost of a criminal history record check.

18 192:13 New Paragraph; Investigations and Complaints; Confidentiality. Amend RSA 329-B:22
19 by inserting after paragraph IX the following new paragraph:

20 X. Except as otherwise provided in this chapter, including paragraph VIII, the existence of
21 an allegation of misconduct shall be confidential and shall not be required to be reported by the
22 licensee to any person. Insurance carriers and certifying bodies shall be prohibited from asking
23 about the existence of such allegations and shall not hold the existence of such allegations in this
24 chapter against the licensee in any way, including, but not limited to, denial of any professional
25 privileges or increased costs, fees, or charges.

26 192:14 Hearings; References Corrected. Amend RSA 329-B:23, II to read as follows:

27 II. The board shall furnish the respondent and the complainant, if any, at least 15 days'
28 written notice of the date, time, and place of a hearing, except as otherwise provided in this chapter.
29 Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary
30 hearing, a statement as to whether the action has been initiated by a written ~~[complaint]~~, **signed,**
31 **and sworn statement** or upon the board's own motion, or both. If a written ~~[complaint]~~, **signed,**
32 **and sworn statement** is involved, the notice shall provide the complainant with a reasonable
33 opportunity to intervene as a party.

34 192:15 License Renewal; Reinstatement. Amend RSA 329-B:25, I and II to read as follows:

35 I. Licenses shall be valid for a period of 2 years and shall become invalid on the expiration
36 date unless renewed **or reinstated**. It shall be the duty of the board to notify every person licensed
37 by the board under this chapter of the date of expiration of the license and the amount of the fee

CHAPTER 192
HB 650-FN - FINAL VERSION
- Page 10 -

1 that shall be required for its renewal for 2 years. Such notice shall be mailed at least 2 months in
2 advance of the date of expiration of such license. Renewal shall be conditional upon filing a timely
3 and complete renewal application and payment of the **renewal** fee ~~[as set by the board of mental~~
4 ~~health practice under RSA 330-A:12]~~.

5 II. If a license is not renewed it may be reinstated not later than 6 months after the date of
6 license expiration upon compliance with rules adopted by the board and payment of the
7 **reinstatement** fee ~~[established by the board of mental health practice under RSA 330-A:12]~~. A
8 license may be placed on inactive status pursuant to rules adopted by the board.

9 192:16 Repeal; Board of Mental Health Practice; Reference to Psychologists Fees. RSA 330-
10 A:12, II, relative to responsibility for fees of the board of psychologists, is repealed.

11 192:17 Effective Date. This act shall take effect July 1, 2017.

Approved: June 30, 2017
Effective Date: July 01, 2017

