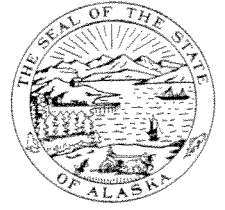


# Representative Bob Herron

Rep.Bob.Herron@legis.state.ak.us

State Capitol • Juneau, Alaska 99801-1182  
Phone: (907) 465-4942 • Fax: (907) 465-4589



House District 38  
Kuskokwim & Johnson Rivers  
Kuskokwim Bay & Nelson Island

Akiachak  
Akiak  
Atmautluak  
Bethel  
Cheforak  
Eek  
Goodnews Bay  
Kasigluk  
Kipnuk  
Kongiganak  
Kwethluk  
Kwigillingok  
Lower Kalskag  
Mekoryuk  
Mertarvik  
Napakiak  
Napaskiak  
Newtok  
Nightmute  
Nunapitchuk  
Oscarville  
Platinum  
Quinhagak  
Toksook Bay  
Tuluksak  
Tununak  
Tuntutuliak  
Upper Kalskag

## Sponsor Statement

HB110 has the support of the Psychological Licensing Board as well as the Executive Board of the Alaska Psychological Association. Its main purpose is to clarify statutory language regarding the licensing of psychologists. Under current law, any mental health professional working in a government agency, private mental health clinic, or other mental health organization could potentially practice as a licensed psychologist. The Psychological Licensing Board believes that anyone working in any setting that is holding themselves out as a psychologist must have a psychological license. The bill, therefore, replaces the broader language with language to allow only school psychologists to be exempt. It also requires that the school district maintain appropriate supervision of the activities of the school psychologist. The bill also adds a section exempting an officer or employee of the US Gov't while executing official duties.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 17, 2009

**SUBJECT:** Sectional summary (HB 110; Work Order No. 26-LS0474\A)

**TO:** Representative Bob Herron  
Attn: Marianna Carpeneti

**FROM:** Alpheus Bullard *TLAB*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Removes language that prevented a person from taking a psychological associate examination if the person had failed an examination administered by the Board of Psychologist and Psychological Associate Examiners in the preceding six months.

**Section 2.** Clarifies that the state's laws regulating psychologists and psychological associates (AS 08.86) do not apply to (1) school psychologists performing duties within school district facilities for a school district employer and (2) officers or employees of the United States Government practicing psychology while in the discharge of their official duties.

**Section 3.** Changes the statutory definition of "to practice psychology," by providing that certain activities constitute the "practice of psychology" whether or not they are rendered or offered for a fee.

TLAB:plm  
09-180.plm

**HOUSE BILL NO. 110**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HERRON

Introduced: 2/4/09

Referred: Health and Social Services, Labor and Commerce

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the practice and licensing of psychologists."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 \* **Section 1.** AS 08.86.162 is amended to read:

4 **Sec. 08.86.162. Qualifications for associates' examination.** A person is  
5 entitled to take a psychological associate examination if the board finds that the person  
6 [:]

7 (1) has not engaged in dishonorable conduct related to the practice of  
8 counseling or psychometry;

9 (2) holds a master's degree with primary emphasis on psychology from  
10 an academic institution whose program of graduate study for a master's degree in  
11 psychology meets the criteria established by the board by regulation, with the  
12 equivalent of at least 48 semester credit hours of graduate course work directly related  
13 to a specialized area of psychology in which licensure is requested, including a  
14 practicum; and

15 (3) [REPEALED]

(4)] has the recommendation of an immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees [; AND

(5) HAS NOT WITHIN THE PRECEDING SIX MONTHS FAILED AN EXAMINATION GIVEN BY THE BOARD].

\* **Sec. 2.** AS 08.86.180(b) is amended to read:

(b) This section does not apply to

(1) a person employed as a school psychologist [BY A GOVERNMENTAL UNIT, EDUCATIONAL INSTITUTION OR PRIVATE AGENCY WHO MAY BE REQUIRED TO ENGAGE IN SOME PHASE OF WORK OF A PSYCHOLOGICAL NATURE IN THE COURSE OF THE PERSON'S EMPLOYMENT], if the school district [EMPLOYER] maintains appropriate supervision of psychological activities and professional conduct, and if the person is performing the psychological activities as part of the duties for which the person was employed, is performing the activities solely within the facilities of the school district [ORGANIZATION] in which the person is employed or under the supervision of the school district [ORGANIZATION IN WHICH THE PERSON IS EMPLOYED], and does not render or offer to render psychological services to the public for compensation in addition to the salary the person receives from the school district [ORGANIZATION];

(2) an officer or employee of the United States government practicing psychology while in the discharge of the officer's or employee's official duties;

(3) a student, intern, or resident in psychology pursuing a course of study approved by the board as qualifying training and experience for a psychologist, if that person's activities constitute a part of that person's supervised course of study and that person is designated by titles such as "psychology intern" or "psychology trainee";

(4) [(3)] a qualified member of another profession, in doing work of a psychological nature consistent with that person's training and consistent with the code of ethics of that person's profession, if the person does not hold out to the public by a title or description of services incorporating the words "psychology," "psychological,"

"psychologist," "psychometry," "psychotherapy," "psychotherapeutic,"  
 "psychotherapist," "psychoanalysis," or "psychoanalyst" or represent to be trained,  
 experienced, or qualified to render services in the field of psychology; or [.]

(4) [REPEALED

(5)] a physician engaged in the normal practice of medicine for which  
 the physician is licensed under AS 08.64.

\* **Sec. 3.** AS 08.86.230(6) is amended to read:

(6) "to practice psychology" means to render or offer to render [FOR A  
 FEE] to individuals, groups, organizations, or the public for the diagnosis, prevention,  
 treatment, or amelioration of psychological problems and emotional and mental  
 disorders of individuals or groups or for conducting research on human behavior, a  
 psychological service involving the application of psychological principles, methods,  
 and procedures of understanding, predicting, and influencing behavior, including

(A) the principles pertaining to learning, perception,  
 motivation, emotions, and interpersonal relationships;

(B) the methods and procedures of interviewing, counseling,  
 psychotherapy, biofeedback, behavior modification, and hypnosis;

(C) constructing, administering, and interpreting tests of mental  
 abilities, aptitudes, interests, attitudes, personality characteristics, emotions,  
 and motivations.

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number

Bill Version

HB110

(j) Publish Date

Identifier (file name)

HB110-DHSS-BHA-03-13-09

Dept. Affected:

Health & Social Services

Title

Psychologists' Licensing & Practice

RDU

Behavioral Health

Component

Behavioral Health Administration

Sponsor

Herron

Requester

House HSS

Component Number

2665

## Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
-----------------------------	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES (</b>							
-----------------------------	--	--	--	--	--	--	--

## FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

## POSITIONS

Full-time							
Part-time							
Temporary							

## ANALYSIS: (Attach a separate page if necessary)

This bill will have no significant fiscal impact on Behavioral Health. The bill relates to the practice and licensing of psychologists including a change in the qualifications of who is eligible to take a psychological associate examination and a clarification of Sec. 08.86.180 indicating who can practice psychology and who is exempt from those requirements (Section (b)).

Prepared by: Melissa Stone

Division: Behavioral Health

Phone: 269-3410

Date/Time: 3/12/09 5:00 PM

Approved by: Alison Elgee, Assistant Commissioner

DHSS Finance & Management Services

Date: 3/13/2009

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

HB 110

( ) Publish Date:

Identifier (file name): HB110-CED-CBPL-03-16-09

Dept. Affected: DCCED

Title Psychologists' Licensing and Practice

RDU Corp, Bus, & Prof Licensing (117)

Component Corp., Bus., & Prof. Licensing

Sponsor Representative Herron

Requester House Health and Social Services

Component Number 2360

## Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## CAPITAL EXPENDITURES

## CHANGE IN REVENUES ( )

## FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

## POSITIONS

Full-time							
Part-time							
Temporary							

## ANALYSIS: (Attach a separate page if necessary)

HB 110 amends AS 08.86, the statutes governing psychologists and psychological associates allowing psychological associates to take or re-take the licensure examination when ready; and exempts school psychologists and federal employees from State licensing requirements while performing their duties as employees. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Chief

Division Corporations, Business & Professional Licensing

Approved by: Emil Notti, Commissioner

Commerce, Community and Economic Development

Phone (907) 465-2144

Date/Time 3/16/09 10:25 AM

Date 3/16/2009

person's out-of-state license or certificate were essentially similar to or higher than the examination and qualification requirements for licensure under this chapter;

(2) is a diplomate in good standing of the American Board of Professional Psychology; or

(3) is certified or registered with a credentialing organization in psychology approved by the board in regulation and with requirements essentially similar to or higher than the requirements for licensure under this chapter. (§ 1 ch 136 SLA 1967; am § 10 ch 58 SLA 1980; am § 3 ch 29 SLA 1983; am § 4 ch 63 SLA 1986; am § 7 ch 36 SLA 2005)

**Effect of amendments.** — The 2005 amendment, effective June 3, 2005, added paragraph (3) and made a related stylistic change.

## Article 4. Licensing of Psychological Associates.

### Section

160. Licensing requirements

162. Qualifications for associates' examination

### Section

164. Scope of practice by associate

166. Temporary license

**Administrative Code.** — For experience and education, see 12 AAC 60, art. 2.

For examinations, see 12 AAC 60, art. 3.

**Sec. 08.86.160. Licensing requirements.** (a) The board shall issue a psychological associate license to a person who

(1) holds an earned master's degree from an academic institution whose program of graduate study for a master's degree in psychology meets the criteria established by the board by regulation in

(A) clinical psychology;

(B) counseling psychology; or

(C) education in a field of specialization considered equivalent by the board;

(2) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;

(3) has two years of post master's supervised experience approved by the board; and

(4) takes and passes the objective examination developed or approved by the board for psychological associates.

(b) The board may not deny recognition as an accredited or approved academic institution to an educational institution solely because its program has not been accredited by a professional organization of psychologists. (§ 5 ch 65 SLA 1973; am § 4 ch 51 SLA 1996)

**Effect of amendments.** — The 1996 amendment, effective September 4, 1996, rewrote this section.

### NOTES TO DECISIONS

Applied in *Allred v. State*, 554 P.2d 411 (Alaska 1976).

**Sec. 08.86.162. Qualifications for associates' examination.** A person is entitled to take a psychological associate examination if the board finds that the person:

(1) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;



(2) holds a master's degree with primary emphasis on psychology from an academic institution whose program of graduate study for a master's degree in psychology meets the criteria established by the board by regulation, with the equivalent of at least 48 semester credit hours of graduate course work directly related to a specialized area of psychology in which licensure is requested, including a practicum;

(3) *[Repealed, § 11 ch 51 SLA 1996.]*

(4) has the recommendation of an immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees; and

(5) has not within the preceding six months failed an examination given by the board. (§ 5 ch 65 SLA 1973; am §§ 11, 12, 21 ch 58 SLA 1980; am § 5 ch 63 SLA 1986; am § 2 ch 21 SLA 1992; am § 11 ch 51 SLA 1996)

**Revisor's notes.** — The definition of "supervised experience" in former (3) of this section was enacted as an amendment to AS 08.86.230(11). Renumbered in 1980.

**Effect of amendments.** — The 1996 amendment, effective September 4, 1996, repealed paragraph (3).

#### NOTES TO DECISIONS

**Applied** in *Allred v. State*, 554 P.2d 411 (Alaska 1976).

**Sec. 08.86.164. Scope of practice by associate.** (a) A psychological associate shall be licensed to provide psychological services within the nature and extent of the psychological associate's training and experience as defined in regulation.

(b) *[Repealed, § 11 ch 51 SLA 1996.]*

(c) *[Repealed, § 11 ch 51 SLA 1996.]*

(d) *[Repealed, § 11 ch 51 SLA 1996.]*

(e) *[Repealed, § 11 ch 51 SLA 1996.]* (§ 13 ch 58 SLA 1980; am § 6 ch 63 SLA 1986; am §§ 5, 11 ch 51 SLA 1996)

**Effect of amendments.** — The 1996 amendment, effective September 4, 1996, in subsection (a), substituted "to provide psychological services within" for "for specific activities or areas of competence as deter-

mined by" and "as defined in regulation" for "and those areas shall be specified on the license" and repealed subsections (b)-(e).

**Sec. 08.86.166. Temporary license.** The board may issue a temporary license to a person who meets the requirements of AS 08.86.160(a)(1), (2), and (4). A temporary license issued under this section is valid only for the time period identified in the person's plan for the purpose of obtaining supervised experience to meet the requirement of AS 08.86.160(a)(3). (§ 6 ch 51 SLA 1996)

### Article 5. Prohibitions and Penalties.

#### Section

- 170. Use of title
- 180. Practice of psychology
- 190. Name under which person practices
- 200. Confidentiality of communication

#### Section

- 204. Grounds for imposition of disciplinary sanctions
- 210. Penalty
- 220. Limits or conditions on license; discipline

**Administrative Code.** — For rules of professional conduct, see 12 AAC 60, art. 4.

**Sec. 08.86.170. Use of title.** (a) Unless licensed under this chapter, a person may not use the title "psychologist" or a title, designation, or device indicating or tending to indicate that the person is a psychologist or practices psychology.

chology from an academic degree in psychology meets the equivalent of at least 48 credit hours in psychology related to a specialized area of psychology;

a licensed psychologist, or

action given by the board. 5 ch 63 SLA 1986; am § 2

ments. — The 1996 amendment, 4, 1996, repealed paragraph (3).

psychological associate shall determine the nature and extent of the regulation.

am § 6 ch 63 SLA 1986;

defined in regulation" for "and specified on the license" and b)-(e).

a temporary license to a person, and (4). A temporary license is identified in the person's license as meeting the requirement of AS

ties.

sition of disciplinary sanctions

ns on license; discipline

chapter, a person may not use a title indicating or tending to indicate that the person is a psychological associate or practices counseling or psychometrics. (§ 1 ch 136 SLA 1967; am § 6 ch 65 SLA 1973)

(b) Unless licensed under this chapter, a person may not use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that the person is a psychological associate or practices counseling or psychometrics. (§ 1 ch 136 SLA 1967; am § 6 ch 65 SLA 1973)

**Cross references.** — For professional designation requirements for psychologists, see AS 08.02.010.

#### NOTES TO DECISIONS

**Applied** in *Allred v. State*, 554 P.2d 411 (Alaska 1976).

**Sec. 08.86.180. Practice of psychology.** (a) Unless licensed under this chapter, a person may not practice psychology or hold out publicly as a psychologist or as practicing psychology. A person holds out as a psychologist by using a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst" or when holding out publicly to be trained, experienced, or qualified to render services in the field of psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of the person's employment, if the employer maintains appropriate supervision of psychological activities and professional conduct, and if the person is performing the psychological activities as part of the duties for which the person was employed, is performing the activities solely within the facilities of the organization in which the person is employed or under the supervision of the organization in which the person is employed, and does not render or offer to render psychological services to the public for compensation in addition to the salary the person receives from the organization;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board as qualifying training and experience for a psychologist, if that person's activities constitute a part of that person's supervised course of study and that person is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, in doing work of a psychological nature consistent with that person's training and consistent with the code of ethics of that person's profession, if the person does not hold out to the public by a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst" or represent to be trained, experienced, or qualified to render services in the field of psychology.

(4) [Repealed, § 15 ch 65 SLA 1973.] — psychiatrists

(5) a physician engaged in the normal practice of medicine for which the physician is licensed under AS 08.64.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state.

(d) Nothing in this section prohibits a licensed clinical social worker, a licensed marital and family therapist, or a licensed professional counselor from holding out to the public by a title or description of services incorporating the words "psychoanalysis," "psychoanalyst," "psychotherapy," "psychotherapist," or "psychotherapeutic." (§ 1 ch 136 SLA 1967; am § 10 ch 69 SLA 1970; am §§ 7, 15 ch 65 SLA 1973; am §§ 14, 15 ch 58 SLA 1980; am §§ 4, 5 ch 29 SLA 1983; am § 1 ch 77 SLA 2006)

**Effect of amendments.** — The 2006 amendment, effective September 17, 2006, substituted "licensed clinical social worker, a licensed marital and family

therapist, or a licensed professional counselor" for "clinical social worker," and inserted "psychoanalysis," "psychoanalyst," in subsection (d).

**Collateral references.** — Psychologist, 81 ALR2d 791.

*Sec. 08.86.185. Practice of counseling and psychometrics. [Repealed, § 24 ch 58 SLA 1980. For current law, see AS 08.86.180.]*

**Sec. 08.86.190. Name under which person practices.** (a) A licensed psychologist may practice psychology only under that person's own name.

(b) A licensed psychological associate may practice counseling or psychometry only under that person's own name. (§ 1 ch 136 SLA 1967; am § 9 ch 64 SLA 1973)

#### NOTES TO DECISIONS

**Applied** in *Allred v. State*, 554 P.2d 411 (Alaska 1976).

**Sec. 08.86.200. Confidentiality of communication.** (a) A psychologist or psychological associate may not reveal to another person a communication made to the psychologist or psychological associate by a client about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to

(1) a case conference with other mental health professionals or with physicians and surgeons;

(2) a case in which the client in writing authorized the psychologist or psychological associate to reveal a communication;

(3) a case where an immediate threat of serious physical harm to an identifiable victim is communicated to a psychologist or psychological associate by a client;

(4) disclosures of confidential communications required under Rule 504, Alaska Rules of Evidence; or

(5) proceedings conducted by the board or the department where the disclosure of confidential communications is necessary to defend against charges that the psychologist or psychological associate has violated provisions of this chapter; information obtained by the board or department under this paragraph is confidential and is not a public record for purposes of AS 40.25.110 — 40.25.140.

(b) Notwithstanding (a) of this section, a psychologist or psychological associate shall report to the appropriate authority incidents of child abuse or neglect as required by AS 47.17.020, incidents of abuse of a vulnerable adult as required by AS 47.24.010, and incidents of abuse of disabled persons disclosed to the psychologist or psychological associate by a client. In this subsection "disabled person" means a person who has a physical or mental disability or a physical or mental impairment, as defined in AS 18.80.300. (§ 1 ch 136 SLA 1967; am § 10 ch 65 SLA 1973; am § 7 ch 63 SLA 1986; am §§ 1, 2 ch 102 SLA 1988; am § 1 ch 129 SLA 1994; am § 7 ch 51 SLA 1996)

**Revisor's notes.** — In 2000, "AS 40.25.110 — 40.25.140" was substituted for "AS 09.25.110 — 09.25.140" to reflect the 2000 renumbering of AS 09.25.110 — 09.25.140.

**Effect of amendments.** — The 1994 amendment, effective July 9, 1994, substituted "abuse of a vulnerable adult" for "elder abuse" in the first sentence in subsection (b).

The 1996 amendment, effective September 4, 1996, in subsection (a), substituted "mental health professionals" for "psychologists, psychological associates," in paragraph (1) and added the semicolon and the language following it at the end of paragraph (5).

#### NOTES TO DECISIONS

**Enactment as "anti-gossip" measure.** — For case discussing enactment of this section as an "anti-gossip" measure rather than as creation of a statutory privilege in criminal cases, see *Allred v. State*, 554 P.2d 411 (Alaska 1976).

**Assertion of insanity defense waives privilege.** — The psychotherapist-patient privilege is waived by the assertion of a defense of insanity as to communications which are relevant to that defense. *Post v. State*, 580 P.2d 304 (Alaska 1978).

## Marianna Carpeneti

---

**From:** Laughlin, Wilda J (HSS) [wilda.laughlin@alaska.gov]  
**Sent:** Tuesday, March 17, 2009 12:32 PM  
**To:** Marianna Carpeneti  
**Cc:** Casto, L Diane (HSS)  
**Subject:** HB 110

Mari,

In response to your question regarding department comments on HB 110, the Department of Health and Social Services has reviewed these recommended changes and does not believe they will impact our department or our community-based provider system in their ability to provide quality work of a psychological nature.

Wilda Laughlin, DHSS Legislative Liaison  
Juneau: 907-465-1613  
Cell: 907-723-3802

3/17/2009

***Bradbury Psychological Services  
P.O. Box 1748  
Bethel, AK 99559  
Ph. (907) 543-3266  
FAX (907) 543-4767  
E-mail: lorin192@unicom-alaska.com***

February 11, 2009

Representative Bob Herron  
State Capitol  
Juneau, AK 99801-1182

Re: HB 110

Dear Mr. Herron:

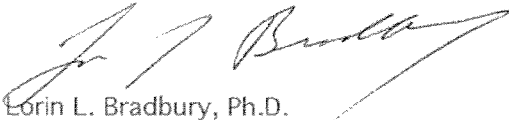
This letter is in support of HB 110, which has the support of both the Board of Psychologist and Psychological Associate Examiners, and the Alaska Psychological Association. The most substantial change by passage of this bill will be to AS 08.86.180(b). Passage of this bill is clearly in the best interest of the public because it provides the level of protection to the public that was originally intended by the passage of a licensing law for psychologists.

As the law currently stands, it has led some to believe that AS 08.86.180(b)(1) exempts a variety of individuals who might be eligible for licensure from the requirement of licensure. Passage of HB 110 will more clearly define who needs to obtain licensure.

Passage of this bill will not discriminate against school psychologists who are credentialed by the Department of Education, nor against those already exempted from licensure by federal law. Also, it will not negatively impact other mental health professionals because they are already protected under AS 08.86.180(b)(5) and (d).

Thank you for your support of this very worthy piece of legislation.

Sincerely,



Lorin L. Bradbury, Ph.D.

Chairman

Board of Psychologist and Psychological Associate Examiners

Alaska Psychological Association

*Advancing psychology as a science, profession, and means of promoting human welfare*

P.O. Box 241292  
Anchorage, Alaska 99524  
ak-pa.org  
(907) 344-8878

2/26/08

Lorin Bradbury Ph.D.  
Chairperson  
Board of Psychologists and Psychological  
Associate Examiners

Dear Dr. Bradbury;

The Executive Board of the Alaska Psychological Association voted unanimously at its February 11<sup>th</sup> meeting to support the efforts of the Psychological Licensing Board to modify the language of the Psychology Licensing Law that describes who can call themselves Psychologists or advertise themselves as Psychologists. Currently in the Scope of practice section of our license, any mental health professional working in a government agency, private mental health clinic or other mental health organization could potentially practice as a licensed psychologist and advertise themselves as such in providing psychological evaluations, psychological testing and related psychological reports to the public or other agencies. The Alaska Psychological Association Executive Board appointed Phillip Baker Ed.D. And Robert Lane Ph.D. to work with the Psychological Licensing Board to help prepare and testify in new legislation to close this loop hole. We feel that anyone working in any setting that is holding themselves out as a psychologist, MUST HAVE A PSYCHOLOGIST LICENSE.

This letter was written to display the support of our professional organization for this proposed legislation. If there are further questions about this letter, please direct them to Dr. Phillip Baker Ed.D., Legislative Chair Person for the Alaska Psychological Association. Dr. Baker's telephone number is: (907) 562-2392. His email address is:

Sincerely,

*Phillip Baker Ed.D.*

Phillip Baker Ed.D.  
Licensed Clinical Psychologist  
AK-PA Legislative Chairperson

# Model Act for State Licensure of Psychologists

As APA policy, the Model Act serves as a prototype for drafting state legislation regulating the practice of psychology. State legislatures are encouraged to use the language of this document and the policies that it espouses as the model for their own state licensure law. Inevitably each state law will reflect compromises and changes particular to that state, but the APA Model Act is meant to serve as a guide for those involved in the drafting process. State licensing boards must develop their own rules and regulations to supplement the legislation proposed here.

This is the fourth set of guidelines for state legislation regulating the practice of psychology that has been developed by the American Psychological Association (APA). The first model for such regulation was developed and adopted as APA policy in 1955 (APA, 1955).

The 1955 guidelines stood for 12 years, during which the number of states enacting licensure legislation grew from 9 to 32. In 1967 the APA Committee on State Legislation (COSL) prepared the first revision of the guidelines. That revision was more comprehensive, provided more detailed guidance, and covered more issues relating to regulation of the practice of psychology, while reaffirming the basic concept found in the 1955 model (APA, 1967).

By 1977 all states and the District of Columbia had enacted licensure legislation. APA's Council of Representatives then determined that the model approved in 1967 was outdated and directed COSL to undertake a revision. However, in January 1979 the Council of Representatives failed to approve the revised model guidelines, leaving the 1967 guidelines to remain as APA policy.

In 1984 the Council of Representatives directed the Board of Professional Affairs (BPA) to develop another revision of the existing 1967 model for the Council's consideration. BPA, in turn, directed its Committee on Professional Practice (COPP) to prepare it.

A COPP subcommittee undertook this effort. Its early drafts were based on a review of the comments provided by APA governance units and divisions regarding the 1979 COSL proposal. Specific recommendations were received from the Board of Directors (B/D) Subcommittee on the Future of Professional Psychology in April 1985. Numerous drafts were subsequently developed and revised based on comments provided by members of COPP and BPA, the American Association of State Psychology Boards, individual psychologists from around the country and Canada, relevant APA divisions and governance groups, unaffiliated psychology interest groups, and APA legal counsel. This document, Draft 14, is the result of three years of continual discussion, review, and compromise by many concerned and dedicated APA members. It was passed unanimously by the Council of Representatives on February 7, 1987.

Each section of the proposed Model Act is introduced by commentary, the purpose of which is to explain the rationale for the proposed section that follows. To differentiate between the commentary and the proposed statutory language, the latter is set in smaller type.

## A. Declaration of Policy

This section declares that the intent of legislation for state licensure of psychologists is to ensure the practice of psychology in the public interest. The consumer should be assured that psychological services will be provided by qualified professionals. The public must also be protected from the consequences of unprofessional conduct by persons licensed to practice psychology.

The practice of psychology in (name of state) is hereby declared to affect the public health, safety, and welfare, and to be subject to regulation to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.

## B. Definitions

Definitions provide consistent interpretation throughout the Act without unnecessary repetition of terms. Thus *Board* once defined in this section can subsequently be cited with the same meaning as presented in the definition.

In defining *institution of higher education*, professional schools are included as a result of a number of suggestions to recognize these institutions' growing contributions to the education and training of professional psychologists. It is further recognized that many foreign institutions prepare psychologists for professional practice, and provision should be made to accommodate them in Board regulations.

In 1979, the definition of the *practice of psychology* appeared to be the major obstacle that prevented passage of the Committee on State Legislation's (COSL) guidelines. A predominant concern in defining the practice of psychology for the purpose of licensure is to describe psychological services adequately. These services must be specified in order to identify clearly the areas of psychological services, provided to individuals or groups of individuals, that require qualified and sound professional psychological practice. The final definition in this section deals with the term *psychologist* as it applies to the Act in the provision of psychological services. The title "psychologist" is also used by psychologists who are exempt from licensure as specified in Section J of this Act in their roles as teachers, researchers, and consultants to or employees of organizations.

1. *Board* means the (name of state) State Board of Examiners of Psychologists.



2. *Institution of higher education* means any regionally accredited institution of higher education in the United States, including a professional school, that offers a full-time doctoral course of study in psychology that is acceptable to the Board. For Canadian universities, it means an institution of higher education that holds recognized membership in the Association of Universities and Colleges of Canada.
3. *Practice of psychology* is defined as the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. Psychological services may be rendered to individuals, families, groups, and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered. (See Section J for exemptions.)
4. *Psychologist*: A person represents himself or herself to be a psychologist if that person uses any title or description of services incorporating the words *psychology*, *psychological*, or *psychologist*, or if he or she possesses expert qualification in any area of psychology, or if that person offers to the public or renders to individuals or to groups of individuals services defined as the practice of psychology in this Act.

### C. State Board of Examiners of Psychologists

Legislation concerning the membership of the Board of Examiners should designate a sufficient number of members to accomplish the work of the Board, as well as make provisions for the appointment of public members. The appointing authority shall ensure that specialties in psychology are represented, as well as trainers and practitioners.

The Model Act was developed over a period of three years, and was largely the work of Jarold R. Niven and Norma P. Simon, both members of the Board of Professional Affairs' Committee on Professional Practice (COPP). In the last year major revisions were accomplished by a COPP subcommittee chaired by Norma P. Simon and consisting of Jarold R. Niven, R. Mark Mays, David H. Reilly, and Tommy T. Stigall. As a member of the Board of Directors Subcommittee on the Future of Professional Psychology, Carl N. Zimet played a major role in the coordination process. Other COPP members who worked on the project over the three years include Jean L. Balinky, Jacob Chwast, Herbert Dorken, G. Rita Dudley, Thomas J. Hefele, Hannah R. Hirsh, Robert J. Resnick, and Castellano B. Turner. Bev Hitchins served as staff liaison to the project with the support of Patricia J. Aletky, Paul D. Nelson, and Russ Newman.

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ners. A minimum of five psychologists plus one public member is recommended.

The addition of public (consumer) members on boards is a recognition of the impact of consumerism on the current functioning of boards. The involvement of the public in Board affairs can be of great value to both psychology and the public and should be viewed as an opportunity to enhance the stature of psychology with the public.

Obviously, members should be appointed at staggered times so that the entire group of members is not replaced at any one time.

There is hereby created the (*name of state*) State Board of Examiners of Psychologists. The Board shall consist of minimally five licensed psychologists and one public member. At least two members shall be engaged full-time in the doctoral teaching and training of psychologists, and at least two members shall be engaged full-time in the professional practice of psychology. Psychologist Board members shall be licensed to practice in this state.

Each psychologist serving on the Board shall have a minimum of five years of postlicensure experience. Board members shall reflect a diversity of practice specialties.

Board members shall be appointed who are free from conflicts of interest in performing the duties of the Board. A public member shall not be a psychologist, an applicant or former applicant for licensure as a psychologist, a member of another health profession, or a member of a household that includes a psychologist, or otherwise have conflicts of interest or the appearance of such conflicts with duties as Board members. Appointments to the Board shall be made by the duly constituted appointing authority in this state. The appointing authority in this state shall solicit nominations from psychological organizations and licensed psychologists in this state. The term of office shall be five years, with provision for reappointment for one additional term. Lengths of terms of Board members shall be staggered. The Board as first constituted shall have two members, including the public member, appointed for five years; one member appointed for four years; two members appointed for three years; and one member appointed for two years.

It is clear that the Board will need, from time to time, to adopt or delete rules and regulations to carry out the provisions of the Act that establish and enable the Board to operate. It is wise to have this authority clearly established within the Act.

In addition to the powers set forth elsewhere in this Act, the Board may adopt rules and regulations to carry out the provisions of this Act.

It is desirable for the Board to be self-supporting. Self-generated fees should be sufficient to cover all costs. This avoids the necessity of the Board's returning to the budgetary authority for approval each time fees must be increased in order for the Board to remain self-supporting. Boards should consider carefully the various elements of expense in establishing fees. Items such as overhead, examination costs, travel and per diem, disciplinary proceedings, and other expenses should be considered.



The Board shall, from time to time, establish reasonable fees for the issuance and renewal of licenses and its other services. Fees shall be set so as to defray the cost of administering the provisions of this Act, including applications, examinations, enforcement, and the cost of maintaining the Board.

It is important to have within the Act a statement that a member of the Board shall not be civilly liable for any act performed in good faith and within the scope of duties of the Board. It should be noted that such a statement does not pertain to any criminal charges brought against a member of the Board.

A member of the Board or any employee or agent of the Board shall not be held civilly liable for any act performed in good faith and within the scope of the duties of the Board.

## **D. Requirements for Licensure**

This recommendation includes significant changes from the 1967 guidelines. It should be noted that terms such as *department of psychology* and *PhD* are explicitly excluded from the recommended wording.

There is a core of basic theory, principles, and accumulated knowledge that all professional psychologists should possess. Each practitioner must also master the specific skills and knowledge appropriate for the competent performance of psychological practice. The language of the model requires the Board to specify its criteria for acceptable professional education in psychology. In this regard, the Board will be guided by national standards.

This revision states that by 1995 all applicants for licensure must minimally be graduates of a regionally accredited institution of higher education and must have completed a training program accredited by the American Psychological Association. Where no accreditation exists, the applicant will be required to meet standards developed by the Board. These standards will be based on recognized standards for the area of competence. The law recognizes that new doctoral programs may be developed in newly or already recognized specialties of professional psychology. In such instances, the law affords those programs an eight-year period in which to achieve accreditation, during which the graduates of those programs may sit for licensure.

### **1. Educational Requirements**

The Act recognizes the doctorate as the minimum educational requirement for entry into professional practice as a psychologist.

Applicants for licensure shall possess a doctoral degree in psychology from an institution of higher education. The degree shall be obtained from a recognized program of graduate study in psychology as defined by the rules and regulations of the Board.

By 1995 applicants for licensure shall have completed a doctoral program in psychology that is accredited by the American Psychological Association (APA). In areas where no accreditation exists, applicants for licensure shall have completed a doctoral

program in psychology that meets recognized acceptable professional standards as determined by the Board. When a new specialty of professional psychology is recognized as being within the accreditation scope of the APA, doctoral programs within that specialty will be afforded a transition period of eight years from their first class of students to the time of their accreditation. During that transition period, graduates of such programs may sit for licensure examination whether or not the program has been accredited. The same principle applies as well to new doctoral programs of specialties previously recognized within the scope of APA accreditation.

Applicants trained in institutions outside the United States shall meet requirements established by the Board.

### **2. Experience Requirements**

APA recommends that legislation requires one year of supervised experience subsequent to the granting of the doctorate. In rules and regulations, the Board must define acceptable supervised experience at the predoctoral and postdoctoral levels as well as mechanisms for evaluation of this experience. Psychologists are required to limit their practice to their demonstrated areas of professional competence. Experience should be compatible with training.

For admission to the licensure examination, applicants shall demonstrate that they have completed two years of supervised professional experience, one year of which shall be postdoctoral. The criteria for appropriate supervision shall be in accordance with regulations to be promulgated by the Board. Postdoctoral experience shall be compatible with the knowledge and skills acquired during formal doctoral or postdoctoral education in accordance with professional requirements and relevant to the intended area of practice. Applicants shall be required to show evidence of good character, that is, that they have not been convicted of a criminal offense that bears directly on the fitness of the individual to be licensed.

### **3. Examinations**

APA recommends that the Act specify the requirements for examination and the conditions under which the Board is authorized to waive examination. All examinations serve the purpose of verifying that a candidate for licensure has acquired a basic core of knowledge in the discipline of psychology and can apply that knowledge to the problems confronted in the practice of psychology. Boards should clearly specify the conditions under which the endorsement of another license will be granted. The Board shall administer examinations to qualified applicants on at least an annual basis. The Board shall determine the subject matter and scope of the examination and shall require a written, and may require an oral examination of each candidate for licensure. The Board at its discretion, according to rules and regulations promulgated by the Board, may waive said examination of candidates for licensure.

### **4. Prior Credentials**

APA recommends that the Act provide for continued licensure of persons already licensed as a psychologist at the time of enactment of a new law.

A person who is licensed as a psychologist under the provisions of (*cite relevant section(s) of previous licensing law*) as of the effective date of this Act shall be deemed to have met all requirements for licensure under this Act and shall be eligible for renewal of licensure in accordance with the provisions of this Act.

### **E. Interstate Practice of Psychology**

Psychologists may have legitimate interests in practicing in another jurisdiction for a limited amount of time. This section provides for limited practice in a jurisdiction other than the state in which the psychologist is licensed. The psychologist must have an earned doctoral degree in another jurisdiction.

Nothing in this Act shall be construed to prohibit the practice of psychology in this state by a person holding an earned doctoral degree in psychology from an institution of higher education who is licensed or certified as a psychologist under the laws of another jurisdiction, provided that the aggregate of sixty (60) days of professional services as a psychologist per year under the provision of this subsection is not exceeded.

### **F. Temporary Authorization to Practice**

This portion of the Act provides for the conditions under which a licensed psychologist may practice until obtaining licensure in another jurisdiction. Provision is also made for the Board to waive examination if the requirements met by the psychologist in the original jurisdiction are judged to be equivalent to those in this state.

A psychologist licensed or certified under the laws of another jurisdiction may be authorized by the Board to practice psychology as defined in this Act for a maximum of one year, provided that the psychologist has made application to the Board for licensure and has met the educational and experience requirements for licensure in this state. Denial of licensure terminates this authorization. The Board may choose to waive examination if a psychologist has been licensed in another jurisdiction on the basis of qualifications that are not less than those required for licensure in this state.

### **G. Limitation of Practice**

This provision of the Act is intended to ensure that licensed psychologists will not practice outside the limits of their competence. The burden of proof is on the applicant to provide evidence, acceptable to the Board, that the applicant has obtained the training necessary to engage in the practice of psychology in the specified area of competence. The Board may wish to develop forms that provide for the specification of the intended area of practice and the evidence necessary to document competence. This provision recognizes the broad areas of specialization (e.g., clinical, counseling, school, industrial/organizational) and emerging specialties (e.g., neuropsychology, environmental) and the variety of academic training as separate from proficiencies. It is expected that if the psychologist is trained in a broad specialty area, there are many proficiencies within that training that are possible areas of competence. This limitation is intended to ensure

that a psychologist trained in one area (e.g., experimental, developmental) will not practice in another area (e.g., counseling, industrial/organizational) without completing a retraining program.

The Board shall ensure through regulations and enforcement that licensees limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

### **H. Inactive Status**

A psychologist who is on military assignment outside the state, suffering from health problems, on sabbatical, or who moves to another state may wish to be on inactive status. Relieving the psychologist from paying the fee will make it possible for that person to remain in good standing without being an active practitioner.

A psychologist in good standing who will not be practicing in the state for at least one year may petition the Board to have his or her license placed on inactive status without penalty. When such psychologist wishes to return to practice, an application shall be made to the Board, which shall reinstate him or her upon payment of the registration fee for the current year.

### **I. Practice Without a License**

The Act must clearly specify what constitutes a violation of law and what penalties may be imposed for practice without a license or for misrepresentation of oneself as a psychologist. State legislatures have the latitude to determine penalties for such illegal activities. Boards are provided with the authority to suspend or revoke licenses and to prescribe conditions for reinstatement.

It shall be a violation of this Act for any person not licensed in accordance with the provisions of this Act to represent himself or herself as a psychologist. It shall be a violation of this Act for any person not licensed in accordance with the provisions of this Act to engage in the practice of psychology as defined in this Act, whether practicing as an individual, firm, partnership, corporation, agency, or other entity.

Any person who shall represent himself or herself as a psychologist in violation of this Act, or who shall engage in the practice of psychology in violation of this Act, shall be guilty of a misdemeanor and shall be fined not less than \_\_\_\_ dollars and not more than \_\_\_\_ dollars and, in addition thereto, may be imprisoned for not more than \_\_\_\_ months. Each day such person shall practice psychology without meeting all the requirements of all laws now in force and of this Act shall constitute a separate offense. Any person filing or attempting to file, as his or her own, a diploma or license of another or a forged affidavit of identification shall be guilty of a felony and shall be subject to the punishment prescribed for forgery in the second degree.

Whenever a license to practice as a psychologist in the state has been suspended or revoked, it shall be unlawful for the person whose license has been so suspended or revoked to practice psychology in this state. The Board may issue, with or without reexamination, a new license whenever it deems such course safe and just.

The Board on its own motion may investigate any evidence or

allegation that appears to show that any person is or may be in violation of any provision of this Act.

## J. Exemptions

1. There should be an exemption from licensure for persons engaged solely in teaching, research, or provision of psychological services to organizations, because such activities are unlikely to pose a risk of immediate harm to the public health or welfare. For example, an organizational psychologist providing consultation to business in order to improve efficiency, a teacher of child development courses at a university, a researcher in the field of sleep disorders, and a social psychologist researching group behavior in stressful situations would all be exempt. The exemption should not be determined on the basis of work setting or place of primary employment, but on the basis of the purpose of the activity as defined in Section B3 (Practice of psychology). The exemption should not be allowed if the individual engages in the direct delivery or supervision of psychological services to individuals or groups of individuals in any setting. Persons engaged in teaching, research, or the provision of psychological services to organizations should not be excluded from licensure if they meet the statutory requirements for licensure.

Nothing in this Act shall be construed to prevent the teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions, provided that such teaching, research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered. Nothing in this Act shall prevent the provision of expert testimony by psychologists who are otherwise exempted by this Act. Persons holding an earned doctoral degree in psychology from an institution of higher education may use the title "psychologist" in conjunction with the activities permitted by this subsection.

2. Members of other established professions, such as physicians, attorneys, and clergy, may provide services that are similar or related to the scope of practice of psychology. They should be exempted from licensure on the condition that they not represent themselves to be psychologists.

Nothing in this Act shall be construed to prevent members of other recognized professions that are licensed, certified, or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics, provided that they do not represent themselves to be psychologists. Duly recognized members of the clergy shall not be restricted from functioning in their ministerial capacity, provided that they do not represent themselves to be psychologists.

3. It is recognized that school psychologists who are certified by the state education agency are permitted to use the term *school psychologist* or *certified school psychologist* as long as they are practicing in the public schools.

Individuals who have been certified as school psychologists by the (cite relevant state education authority or statutory provisions) shall be permitted to use the term "school psychologist" or "certified school psychologist." Such persons shall be restricted in their practice to employment within those settings under the purview of the state board of education. By 1995 such exempted persons should be certificated by the state board of education on the basis of having completed a program for the preparation of school psychologists that is accredited by a specialized professional accrediting body recognized by the Council on Postsecondary Accreditation.

4. Graduate students, interns, postdoctoral trainees, and applicants for licensure are permitted to function under the supervision of a licensed psychologist, as are assistants not eligible for licensure in some states. None may use the title psychologist, but titles such as *psychological trainee*, *psychological intern*, *psychological resident*, and *psychological assistant* would be permissible under this exemption. The supervising psychologist is responsible for the actions of the student, trainee, or assistant. The Board is required to adopt regulations defining the nature and extent of training for qualified assistants and supervision for each category.

Nothing in this Act shall be construed to prevent persons from engaging in activities defined as the practice of psychology, provided that such persons shall not represent themselves by the title "psychologist." Such persons may use the terms "psychological trainee," "psychological intern," "psychological resident," and "psychological assistant" and provided further that such persons perform their activities under the supervision and responsibility of a licensed psychologist in accordance with regulations promulgated by the Board. Nothing in this section shall be construed to apply to any person other than:

- (a) a matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;
- (b) an individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under the provisions of this Act; or
- (c) a qualified assistant employed by, or otherwise directly accountable to, a licensed psychologist. The Board in regulations shall determine the number of assistants that a psychologist may employ and the conditions under which they will be supervised.

## K. Grounds for Suspension or Revocation of Licenses

In order to have an effective law, the Board must have the power to suspend and revoke a license. In the previous guidelines, the offenses requiring suspension or revocation were not specified. Many state laws specify these offenses. Actions that are a violation of the standards subscribed to by the Board should be clearly stated in the licensing law. Two considerations are specified below that refer to specific points in the text that follows:

## 1. Concerning Numbers 6 and 7

The Board shall specify, in rules and regulations, criteria for determining how long or under what conditions an individual or group of individuals remains a patient or a client.

## 2. Concerning Number 17

In this section, physical condition shall be differentiated from physical disability. There is no intent to obstruct physically disabled candidates' entry into the profession of psychology nor from practicing their profession after licensure as long as they practice with reasonable skill and safety to patients or clients.

A psychologist and anyone under his or her supervision shall conduct his or her professional activities in conformity with ethical and professional standards promulgated by the Board under its rules and regulations.

The Board shall have the power and duty to suspend, place on probation, or require remediation for any psychologist for a specified time, to be determined at the discretion of the Board, or to revoke any license to practice psychology or to take any other action specified in the rules and regulations whenever the Board shall find by a preponderance of the evidence that the psychologist has engaged in any of the following acts or offenses:

1. fraud in applying for or procuring a license to practice psychology;
2. immoral, unprofessional, or dishonorable conduct as defined in the rules and regulations promulgated by the Board;
3. practicing psychology in such a manner as to endanger the welfare of clients or patients;
4. conviction of a felony (a copy of the record of conviction, certified to by the clerk of the court entering the conviction shall be conclusive evidence);
5. conviction of any crime or offense that reflects the inability of the practitioner to practice psychology with due regard for the health and safety of clients or patients;
6. harassment, intimidation, or abuse, sexual or otherwise, of a client or patient;
7. engaging in sexual intercourse or other sexual contact with a client or patient;
8. use of repeated untruthful or deceptive or improbable statements concerning the licensee's qualifications or the effects or results of proposed treatment, including functioning outside of one's professional competence established by education, training, and experience;
9. gross malpractice or repeated malpractice or gross negligence in the practice of psychology;
10. aiding or abetting the practice of psychology by any person not licensed by the Board;
11. conviction of fraud in filing Medicare or Medicaid claims or in filing claims to any third party payor (a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence);
12. exercising undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;
13. the suspension or revocation by another state of a license to practice psychology (a certified copy of the record of suspension or revocation of the state making such a suspension or revocation shall be conclusive evidence thereof);

14. refusal to appear before the Board after having been ordered to do so in writing by the executive officer or chair of the Board;

15. making any fraudulent or untrue statement to the Board;

16. violation of the code of ethics adopted in the rules and regulations of the Board; and

17. inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

When the issue is whether or not a psychologist is physically or mentally capable of practicing psychology with reasonable skill and safety to patients or clients, then, upon a showing of probable cause to the Board that the psychologist is not capable of practicing psychology with reasonable skill and safety to patients, the Board may petition a court of competent jurisdiction to order the psychologist in question to submit to a psychological examination by a psychologist to determine psychological status and/or a physical examination by a physician to determine physical condition. Such psychologist and/or physician is to be designated by the court. The expense of such examination shall be borne by the Board. Where the psychologist raises the issue of mental or physical competence or appeals a decision regarding his or her mental or physical competence, the psychologist shall be permitted to obtain his or her own evaluation at the psychologist's expense. If the objectivity or adequacy of the examination is suspect, the Board may complete an examination by its designated practitioners at its own expense. When mental or physical capacity to practice is at issue, every psychologist licensed to practice psychology in the state shall be deemed to have given consent to submit to a mental or physical examination or to any combination of such examinations and to waive all objections to the admissibility of the examination, or to previously adjudicated evidence of mental incompetence.

## L. Board Hearings and Investigations

In the interest of protecting the public, the Board must have authority to regulate the practice of psychology. This section specifies the powers and duties of the Board to conduct investigations, hold hearings, consider evidence or allegations brought against a psychologist, and to discipline a licensee for violation of law or regulation. Both the Board and licensee are required to follow due process standards in any disciplinary proceeding.

The Board on its own motion may investigate or cause to be investigated any allegation or evidence that appears to show that a psychologist licensed to practice in this state is, or may be, in violation of this Act or of any of the acts, offenses, or conditions set forth by the Board in rules and regulations.

The Board shall have the power and duty to suspend, place on probation, or require remediation for a licensee for a specified time, to be determined at the discretion of the Board, or to revoke any license to practice psychology, whenever the licensee shall be found by the Board, by a preponderance of the evidence, to have engaged in conduct prohibited by this Act or rules and regulations duly promulgated pursuant thereto.

Any psychologist holding a license to practice in this state is required to report to the Board any information such psychologist in good faith may have that appears to show that any psychologist holding a license to practice in this state may be in violation of this Act or guilty of any of the acts, offenses, or

conditions set forth by the Board. Any psychologist who in good faith makes such a report to the Board shall be absolutely immune from civil liability to any person for any statement or opinion made in such report.

If, in the opinion of the majority of the Board, there is probable cause that the information provided to it under the provisions of this section may be valid, the Board shall request by registered mail a formal interview with the psychologist. If the psychologist who is ordered to a formal interview before the Board refuses to appear for such interview, such refusal shall be considered grounds for the Board, at its discretion, to suspend or revoke the license of such psychologist. Any proceeding for suspension or revocation of a license to practice as a psychologist in this state shall be conducted in accordance with procedures established by the Board. The psychologist shall be informed of his or her rights concerning Board hearings and investigations:

1. the right to notice and hearing;
2. the right to self-representation or representation by counsel;
3. the right to produce witnesses and to confront and cross-examine opposing witnesses;
4. the right to a written decision setting forth the violation, findings of fact, sanctions, and reasons for the sanctions;
5. a determination of the size of the vote necessary to find a violation;
6. a determination whether the hearing will be closed or open to the public; and
7. the right to an appeal to an administrative board of review and/or to a court of competent jurisdiction.

The licensee may knowingly and voluntarily waive his or her right to the formal adversary proceeding described in this section.

The Board shall have the right to conduct an *ex parte* hearing if, after due notice, the individual fails or refuses to appear. The Board shall have the right to issue subpoenas for production of documents and witnesses and to administer oaths. The Board shall have the right to apply to a court of competent jurisdiction to take appropriate action should a subpoena not be obeyed.

The Board shall temporarily suspend the license of a psychologist without a hearing simultaneously with the institution of proceedings for a hearing provided under this section if the Board finds that evidence in its possession indicates that the psychologist's continuation in practice may constitute an immediate danger to the public. Appropriate officials may petition the court for an injunction barring further practice unless or until the person is properly licensed. The injunction may be issued in addition to, or in lieu of, the criminal sanctions provided for in this section.

A psychologist may surrender his or her license when such person is charged with unethical conduct and upon receipt of that charge, that person decides to surrender the license, such surrender and acceptance by the Board shall constitute acknowledgment by the psychologist of guilt as charged.

A psychologist may request in writing to the Board that a restriction be placed upon his or her license to practice as a psychologist. The Board, in its discretion, may accept a surrender or grant such a request for restriction and shall have the authority to attach such restrictions to the license of the psychologist to practice psychology within this state or otherwise to discipline the licensee.

Subsequent to the holding of a hearing and the taking of evidence by the Board as provided for in this section, if a majority of the

Board finds that a psychologist is in violation of this Act or guilty of any of the acts, offenses, or conditions as enumerated by the Board, the following actions may be taken:

1. The Board may revoke or suspend the license and impose a monetary penalty.
2. The Board may suspend imposition of a revocation or suspension of a license and/or a monetary penalty.
3. The Board may impose revocation or suspension of a license and/or a monetary penalty, but suspend enforcement thereof by placing the psychologist on probation, which probation shall be revocable if the Board finds the conditions of the probation order are not being followed by the psychologist.
4. As a condition of probation the Board may require the psychologist to submit to care, counseling, or treatment by a professional designated by the Board. The expense of such action shall be borne by the psychologist.
5. The Board may, at any time, modify the conditions of the probation and may include among them any reasonable condition for the purpose of the protection of the public, or for the purpose of the rehabilitation of the probationer, or both.
6. The Board shall have the power to require restitution when necessary.
7. The Board shall have the power to assess the costs of the disciplinary proceeding.

## M. Privileged Communication

This section regulates and limits the powers of the judicial system. The courts or other administrative agencies with subpoena power have the right to make use of all relevant information in the judicial fact-finding process unless this right of access to information is specifically limited. Historically, courts and legislatures have been charged with fact-finding in order to seek truth and administer justice. At the same time they have attempted to maintain the integrity of the confidential and private relationship between psychologist and patient or client. However, some societal issues have emerged, such as child abuse and sexual abuse, that have changed the absolute nature of privileged communication. Though the privilege is not absolute, it is designed to be sufficiently broad to cover all situations except those specifically enumerated. It is a privilege "owned" by the patient or client, who may assert it or waive it, although the psychologist may assert it for a patient or client who wishes to maintain such privilege of communication. It is understood that the privilege encompasses only communications between the patient or client and the psychologist in a professional relationship.

In judicial proceedings, whether civil, criminal, or juvenile; in legislative and administrative proceedings; and in proceedings preliminary and ancillary thereto, a patient or client, or his or her guardian or personal representative, may refuse to disclose or prevent the disclosure of confidential information, including information contained in administrative records, communicated to a psychologist licensed or otherwise authorized to practice psychology under the laws of this jurisdiction, or to persons reasonably believed by the patient or client to be so licensed, and their agents, for the purpose of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder. In the absence of evidence to the contrary, the psychologist is presumed authorized to claim the privilege on the patient's or client's behalf.



This privilege may not be claimed by the patient or client, or on his or her behalf by authorized persons, in the following circumstances:

1. where abuse or harmful neglect of children, the elderly, or disabled or incompetent individuals is known or reasonably suspected;
2. where the validity of a will of a former patient or client is contested;
3. where such information is necessary for the psychologist to defend against a malpractice action brought by the patient or client;
4. where an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;
5. in the context of civil commitment proceedings, where an immediate threat of self-inflicted damage is disclosed to the psychologist;
6. where the patient or client, by alleging mental or emotional damages in litigation, puts his or her mental state at issue;
7. where the patient or client is examined pursuant to court order; or
8. in the context of investigations and hearings brought by the patient or client and conducted by the Board, where violations of this Act are at issue.

## N. Severability

As with any law, one provision may be subject to court challenge and ruled invalid or unconstitutional. For example, it is not legally clear whether state licensing boards can regulate persons working for federal agencies. Thus, if any provision is ruled invalid or unconstitutional, it is

important that the entire Act not be affected. This can only be achieved by inserting a clause at the end of the Act stating that each provision of the Act is severable from all other provisions and that the declaration that one section is invalid or unconstitutional will not affect the constitutionality or enforceability of any other section.

If any section in this Act or any part of any section thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of any section or part thereof.

## O. Effective Date

In any law regulating a profession there needs to be a specific date establishing when the law shall become effective. Thus, the final paragraph states:

This Act shall become effective upon the date it is signed by the Governor or on the date it otherwise becomes effective by operation of law.

## REFERENCES

- APA Committee on Legislation. (1955). Joint report of the APA and CSPA (Conference of State Psychological Associations). *American Psychologist*, 10, 727-756.
- APA Committee on Legislation. (1967). A model for state legislation affecting the practice of psychology 1967: Report of the APA Committee on Legislation. *American Psychologist*, 22, 1095-1103.