

TSBEP NEWSLETTER
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TO: All Qualified Psychologists and LSSPs

FROM: Darrel D. Spinks, General Counsel

RE: Professional Reviewers needed for TSBEP

The Board is currently looking for psychologists and LSSPs willing to act in the capacity of a professional reviewer for complaints made to the Board. At a minimum, professional reviewers for the Board must have been licensed for at least 5 years, and must not have received any disciplinary sanctions from the Board.

Serving as a professional reviewer is an important contribution to the Board's work. The Board relies on its professional reviewers to apply professional expertise to the more complex complaints the Board receives, and to assist the Board in determining whether a rule violation has occurred.

The Board provides an honorarium of \$100.00 per complaint reviewed and is authorized to grant up to six hours of continuing education credit per year (three hours per review, to a maximum of six hours in a twelve-month period).

If you meet the minimum qualifications and would be willing to serve as a professional reviewer, I would ask that you submit a copy of your current curriculum vitae and ask you to identify areas in which you have particular expertise. In addition, it would be helpful if you provided a breakdown of your current practice, indicating the percentage of your practice that is devoted to general forensic, child custody work, general therapy, etc.

If approved to serve as a professional reviewer, you will receive a package of information to further explain the role of the professional reviewer. You would then be contacted when your expertise matches up with a complaint the Board has received that appears to be complex in nature or appears to have technical issues associated with specific reports. The Board makes every effort to limit our solicitations to each reviewer to once per year.

333 Guadalupe, Suite 2-450, Austin, Texas 78701
(Administration) 512-305-7700 (Enforcement) 512-305-7709 (TDD) 1-800-735-2989
(Fax) 512-305-7701 <http://www.tsbep.texas.gov>

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Please call or email to let me know if you would be interested in pursuing this opportunity to be of service to the Board and your colleagues. You may reach me on my direct line at 512-305-7705, or via email to Darrel@tsbep.texas.gov.

Thank you for your consideration.

Sincerely,
Darrel D. Spinks
General Counsel

Rule Changes Concerning Forensic Services

The Texas State Board of Examiners of Psychologists has made recent rule changes concerning forensic services. Changes were made to Board rules 465.1(3) Definitions and 465.18 Forensic Services.

The purpose of these changes is to clarify the circumstances in which the delivery of psychological services should be considered the provision of forensic psychological services. Primarily, these circumstances involve services to third parties. Specifically, Board rule 465.18 expands section (a)(1) to read – A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding such as a divorce, child custody determination, fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees, must comply with all applicable Board rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

By expanding the list of the types of situations that potentially involve a legal proceeding, the Board intends to further alert licensees to the need to adhere to the standards set forth in this rule for the delivery of forensic psychological services and therefore the need for licensees to adjust their regular provision of services accordingly.

In recent years complaints against licensees involving the provision of forensic services have frequently resulted in disciplinary action against the licensees. In such cases the Board has observed that a licensee failed to recognize the potential for a legal proceeding and therefore failed to adhere to the forensic rule in the provision of services. Therefore, the licensee is vulnerable to a violation of this rule and the recipient of those services may have grounds to file a complaint against the licensee.

Additionally, the Board expanded the language that defines forensic psychology in Board rule 465.1(3) Definitions. The definition now states that forensic psychology is the provision of psychological services involving courts, legal claims, or the legal system. Further, the rule states that a forensic evaluation is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question. Additionally, forensic services would include fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.

The Board encourages all licensees to study these two rules involving forensic services closely. These rules are important not only to licensees who regularly provide forensic services but also

to those licensees who are unfamiliar with legal proceedings, and yet who may easily find themselves in a situation where they are in fact providing forensic services for third parties.

Increased Costs to Licensees for Failure to Obtain Continuing Education

In fiscal year 2011, which ended August 31, 2011, the Texas State Board of Examiners of Psychologists had more continuing education complaints than it did all other types of complaints. Although the number of continuing education complaints has continued to increase in the last few years, never before has the number outpaced the number of other types of complaints received by the Board.

When a licensee fails to renew their license by their renewal deadline plus the 45 day grace period, the Board files a complaint against the licensee. In fiscal year 2011, the Board filed 120 of these complaints, compared to 104 of all other types of complaints received.

Any complaint requires the agency to use its limited enforcement and legal resources, and as the number of continuing education complaints has increased, there are fewer resources to expend for complaints from patients and other consumers.

Therefore, the Board has raised its charges to licensees who fail to obtain annual continuing education in a timely manner. Although the Board has leeway to raise or lower the fees charged due to mitigating or aggravating factors, it can be expected that for a first time failure of a licensee to obtain continuing education that results in the Board filing a complaint against the licensee, there will be an administrative fee of \$250 plus an administrative cost of \$250. This first offense will remain non-disciplinary and the 45 day grace period of submitting timely continuing education will still be in place.

However, for second and subsequent continuing education complaints, disciplinary action will be levied consisting of administrative penalties and higher administrative costs.

The Board hopes that by increasing the fees and costs charged for failure to obtain continuing education in a timely manner licensees will be encouraged to obtain the mandated annual continuing education as required and therefore can avoid having complaints filed against them.

Additional Waivers for Oral Examination

In recent years the number of candidates for the Oral Examination has increased as has the number of persons obtaining licensure with the Texas State Board of Examiners of Psychologists. The Board recognizes that applicants wishing licensure in this state who are currently licensed in other states have met certain training requirements. Further, the Board recognizes the value of assisting licensees in mobility from other states to this state. Therefore, the Board has amended Board rule 463.15 to include two additional waiver options for certain applicants.

Before this rule amendment there were three options for waiver from the Oral Examination: 1) the applicant who is a specialist with the American Board of Professional Psychology, 2) the applicant who is a health service provider with the National Register of Health Service Providers in Psychology, and 3) the applicant who qualifies for licensure under reciprocity.

The amended rule now adds the following two waiver options: 1) the applicant has been actively licensed for the independent practice of psychology at the doctoral level in another state for at least the five years immediately preceding application for licensure as a psychologist and who has no disciplinary action from any health licensing board provided that documentation of this status is provided directly to the Board from the other health licensing board and 2) the applicant was required to take an oral examination in order to provide independent practice of psychology at the doctoral level and to obtain licensure as a licensed psychology in another state provided that confirmation of passage of that exam is provided to the Board from the other state.

The Board believes that applicants who can meet either of these additional waiver options have demonstrated that they can practice independently at the doctoral level and that therefore they have sufficiently met the goal of the Oral Examination which is to demonstrate the ability to provide psychological services independently at least at the entry level.

**Disciplinary Actions:
November 2011 Board Meeting**

Michael D. Whitley, Ph.D., Licensed Psychologist

(Houston)

Complaint: Respondent failed to document informed consent, including informed consent concerning Respondent's financial policies and fee arrangement.

Sanction: Respondent was required to complete three hours of continuing education in record keeping and informed consent, and assessed an administrative penalty of \$500.00.

Lisa Mary Mancuso, Ph.D., Licensed Psychologist

(Houston)

Complaint: Respondent failed to report two legal actions to the Board.

Sanction: Respondent was assessed an administrative penalty of \$750.00.

Resignations in Lieu of Adjudication/CE

1) Karen Orsak Jackson, Ph.D. (CE Complaint)

(Denton)

2) Steven Craig DeAlmeida, Ed.D.

(Houston)

**Disciplinary Actions:
February 2012 Board Meeting**

Fabian Aguirre, M.A., Licensed Psychological Associate

(Austin)

Complaint: Respondent entered into and maintained an improper dual relationship with a patient by engaging in a sexual relationship.

Sanction: Respondent's license was suspended for a period of two years, with the second year being probated upon a favorable psychological evaluation to determine fitness to practice. Respondent is also required to provide his supervisors with a copy of the Board's disciplinary order, submit quarterly reports to the Board from his supervisor, and was assessed an administrative penalty of \$1,500.00.

Johnny Kenneth Burkhalter, Ph.D., Licensed Psychologist

(San Angelo)

Complaint: Respondent failed to respond to a written request for records within the time prescribed by law.

Sanction: Respondent was assessed an administrative penalty of \$400.00.

Jim Larkin Holston Cox, Ph.D., Licensed Psychologist

(Helotes)

Complaint: Respondent failed to report an arrest within the time prescribed by law.

Sanction: Respondent was required to complete three hours of continuing education, and assessed an administrative penalty of \$750.00.

William M. Moss, M.A., Licensed Psychological Associate

(Corpus Christi)

Complaint: Respondent failed to report an arrest within the time prescribed by law, and is suffering from personal problems which impair his competency and offer the potential to harm patients.

Sanction: Respondent's license was revoked, and Respondent was assessed an administrative penalty of \$3,000.00.

Joann C. Ondrovik, Ph.D., Licensed Psychologist

(Paris)

Complaint: Respondent failed to create or maintain adequate treatment notes, and failed to maintain her records so as to permit adequate regulatory and administrative review of the psychological services being provided.

Sanction: Respondent's license was reprimanded, and Respondent was assessed an administrative penalty of \$2,500.00, and required to complete twelve hours of continuing education.

Marta Elena Otero, Psy.D., Licensed Psychologist

(Fort Worth)

Complaint: Respondent made child visitation recommendations without conducting a forensic evaluation.

Sanction: Respondent's license was reprimanded, and Respondent was assessed an administrative penalty of \$2,000.00, and required to complete six hours of continuing education.

Annette G. Raj, M.A., LSSP

(Houston)

Complaint: Respondent failed to comply with a prior Board order.

Sanction: Respondent's license was revoked, and Respondent was assessed an administrative penalty of \$3,000.00.

Frank Edward Saucedo, M.A., LSSP

(Austin)

Complaint: Respondent failed to report an arrest within the time prescribed by law.

Sanction: Respondent was required to complete three hours of continuing education, and assessed an administrative penalty of \$750.00.

Rebecca Smith Sterling, Ph.D., Licensed Psychologist

(San Antonio)

Complaint: Respondent rendered a forensic opinion concerning visitation and access without conducting a forensic evaluation.

Sanction: Respondent's license was reprimanded, and Respondent was required to complete three hours of continuing education, and assessed an administrative penalty of \$2,500.00.

Rachel Tova Winer, Ph.D., Licensed Psychologist

(Houston)

Complaint: Respondent failed to respond to a written request for records within the time prescribed by law.

Sanction: Respondent was assessed an administrative penalty of \$1,000.00.

Resignations in Lieu of Adjudication/CE

- 1) Joanna Jones Ellis, Ph.D. (Plano)
- 2) Lisa Ann O'Donnell, M.A. (CE Complaint) (Stillwater, OK)
- 3) Jean S. Walker, M.S. (CE Complaint) (Gulf Shores, AL)