

Forensic Services Rule Amended and Board Offers Pointers

Board Rule 465.18 pertaining to forensic services was recently amended to include more specific rules for engagements that involve child custody.

Complaints regarding psychologists who perform child custody evaluations represent the fastest growing segment of consumer complaints received by the Board. In general, most of the complaints involve one of the four areas listed below.

If you are unsure about your duties and/or limitations, please contact the Board in writing or by telephone with your ethics questions **prior** to accepting the engagement. Please note, however, that consulting with Board staff is not a guarantee that a complaint will not be filed or that all possible ethical problems have been resolved.

(1) Prohibited Dual Relationship

If you have served in a therapeutic or counseling capacity with a patient, it is a prohibited dual relationship to serve in both a therapeutic (counseling) and evaluative (forensic) forensic with the same patient. This rule is echoed in the child custody portion of the forensic rule, and assumes that a licensee's objectivity is compromised where there has been prior involvement as a therapist or advocate for the patient or the patient's immediate family. However, this prohibition may be trumped by a court order.

(2) Document Everything

Inappropriate substantiation and/or documentation are some of the primary problems in forensic engagements. If a licensee makes an attempt to obtain an interview, but is rebuffed, that fact should be documented.

(3) Informed Consent

Obtain comprehensive informed consent in writing from all parties, especially in child custody cases. Although the scope of the forensic services is generally set out in an agreement or court order, the licensee must still obtain informed consent from all parties in accordance with Rules 465.11 (informed consent in general) and 465.18.

(4) Limitations

If asked a question (either during testimony or in a written query) that exceeds the scope of a licensee's professional services, the licensee should decline to answer based on insufficient information. This limitation especially applies to a situation in which a licensee is asked to render an opinion on the psychological characteristics/make-up of a person that the licensee has not examined. If such an opinion is rendered, the licensee must make clear that the examination has not taken place and how this affects the validity or reliability of the licensee's opinion.

By Brett Norbraten
General Counsel

Online Renewal Application Option Now Available

Online renewal application is a reality as of January 2003! The first licensees who can participate in online renewal application are those whose expiration dates are January 31, 2003. From this month and forward, all licensees renewing their licenses and who are not being audited may take advantage of this easy-to-use, time saving option for renewal application.

Information about online renewal application will be provided with each licensee's regular renewal form. Also, after the licensee goes online, step-by-step information is provided.

Online renewal application includes online payment by credit card. The online renewal application includes a receipt option. Licensees will be mailed their renewal permits within 7 business days upon approval of completed online applications.

If licensees miss the deadline for renewing their license, they can still renew online and pay the renewal fee and the late renewal fee online.

Continuing education courses submitted online must be reviewed by staff the next day. If continuing education credits are insufficient or not acceptable, the renewal application will not be processed and the license cannot be renewed. If this occurs, the Board staff will notify the licensee that their license is not renewed and indicate the problem that must be corrected.

As required by state law, all licensees of this Board are now paying a slightly increased annual renewal fee in order to fund the establishment of the program through the Texas Online portal. There is no additional fee to the licensee for using the online system. Therefore, again the Board urges licensees to take advantage of this new option.

New and Amended Rules

Following is the text of new and amended TSBEP rules finally adopted since the issuance of the July 1, 2002 Rulebook. For amended rules, new language is underlined and deleted language appears in brackets. Also, current text of rules and effective dates may be viewed at: <http://www.sos.state.tx.us> by accessing the TAC viewer.

The Board also provides a summary of the most significant changes to the Rules of Conduct.

463.13 Requirements for Experienced Out-of-State Applicants.

(a) An applicant who provides documentation that the applicant has been actively licensed and in good standing as a psychologist in another jurisdiction [for 10 years, and] for at least 5 consecutive years immediately preceding the filing of [consecutively before] the application, [is submitted] must meet the following requirements, which are a substitute for Board rule 463.11:

- (1) The applicant must have already obtained provisional licensure and must document that the applicant is a provisionally licensed psychologist in good standing.
- (2) Supervised experience. The applicant must affirm that the applicant has received 3,000 hours of experience Supervised by a psychologist licensed in the state where the supervision took place. At least half of these hours (1,500 hours) must have been completed after the doctoral degree was conferred or completed. The formal internship year may be met either before or after the doctoral degree was conferred or completed, as indicated on the official transcript.
- (3) The applicant must document

that the applicant has not received any disciplinary action by any other jurisdiction and that there is no pending action or complaint against the applicant in any other jurisdiction.

(b) Licensees holding the

Certification of Professional Qualification in Psychology (CPO) Credential granted by the Association of State and Provincial Psychology Boards (ASPPB). An out-of-state licensee holding a CPO credential granted by the ASPPB meets the requirements of Board rule 463.11. In addition, out-of-state licensees who hold a CPO credential must meet requirements (a)(1) and (a)(3) listed above. The Board reserves the right to accept or reject licensure for persons holding the CPO credential.

463.14. Written Examinations.

(a) - (e) (No change.)

(f) Cutoff Scores. The minimum acceptable score for the EPPP is seventy percent (70%) of questions scored for psychologist licensure applicants and fifty-five percent (55%) of questions scored for psychological associate licensure applicants on the pencil and paper version of the test. For computer-delivered EPPP examinations, the cutoff scaled scores are 500 and 450 respectively. Applicants for licensure as a psychological associate must receive a minimum score of eighty percent (80%) of questions scored on the Board's Jurisprudence Examination. All other applicants for licensure[, both doctoral and masters level,] must receive a minimum score of ninety percent (90%) of questions scored on the Board's Jurisprudence Examination. The exam score of applicants for licensure who have already taken the EPPP must satisfy the requirements of the Board as of the date of application to the Board.

(g) (No change.)

465.1. Definitions. The following terms have the following meanings:

(1) - (2) (No change.)

(3) "Forensic services [psychology]" is the provision of psychological services involving a court of law or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a trial or hearing.

(4) - (8) (No change.)

(9) "Professional standards" are those standards determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(10) - (12) (No change.)

(13) "Sexual Relationship" has the

definition set forth in §§465.33(c) of this title (relating to Improper Sexual Conduct).]

(13) [(14)] "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

465.9. Competency.

(a) - (h)

(i) Emergency Situations. In emergencies, when licensees are asked to provide services to individuals for whom appropriate mental health services are not available and for which the licensee has not obtained the necessary competence, licensees may provide such services only to the extent necessary to ensure that services are not denied. If ongoing services are provided, licensees must comply with Board rule 465.9(d) as soon as practicable or refer the patient as per Board rule 465.9(h).

465.11. Informed Consent/Describing Psychological Services.

(a) Licensees obtain and document in writing informed consent concerning all services they intend to provide to the patient, client or other recipient(s) of the psychological services, using language that is reasonably understandable to the recipients unless consent is precluded by applicable federal or state law.

(b) - (g) (No change.)

465.12. Privacy and Confidentiality

(a) (No change.)

(b) Licensees must inform their patients or clients about confidentiality and foreseeable limitations on confidentiality created by existing and reasonably foreseeable circumstances prior to the commencement of services as a part of the informed consent process described in Rule 465.11.

(c) - (f) (No change.)

(g) Licensees may share information for consultation purposes without consent only to the extent necessary to achieve the purposes of the consultation. Licensees shall exclude [and excluding] information that could lead to the identification of the patient or client.

(h) (No change.)

(i) Licensees include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

465.13. Personal Problems, Conflicts and Dual Relationships.

(a) (No change.)

(b) Dual Relationships.

(1)-(2) (No change.)

[(3) Licensees do not have sexual relationships with a client or patient.]

(3)[(4)] Licensees do not provide psychological services to an individual with whom they have had sexual relationships.

[(5) Licensees do not have sexual relationships with persons over whom they

have supervisory, evaluative or other authority, including students, trainees or supervisees.]

(4)[(6)] Licensees do not terminate the delivery of psychological services with an individual in order to engage in a sexual relationship with that person.

(5)[(7)] A licensee considering a professional relationship that would result in a dual or multiple relationship shall take appropriate measures, such as obtaining professional consultation or assistance, to determine whether there is a risk that the dual relationship could impair the licensee's objectivity or cause harm to the other party. If potential for impairment or harm exists, the licensee shall not provide services regardless of the wishes of the other party.

(6)[(8)] A licensee in a potentially harmful dual or multiple relationship must cease to provide psychological services to the other party, regardless of the wishes of that party.

465.15. Fees and Financial Arrangements.

(a) General Requirements.

(1)-(3) (No change.)

(4) In reporting their services [their reports] to third-party payers [for services], licensees accurately state the nature, date and amount of the services provided, the fees, and the identity of the individual(s) who actually provided the services.

(b) (No change.)

465.16. Evaluation, Assessment, Testing, and Reports.

(a) - (b) (No change.)

(c) Limitations.

(1) - (4) (No change.)

(5) Licensees provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When such an examination is not practical, licensees document the efforts they made to obtain such an examination and clarify the probable impact of their limited information to the reliability and validity of their conclusions.

(d) (No change.)

465.17. Therapy and Counseling.

(a) (No change.)

(b) Treatment plans.

(1) - (2) (No change.)

(3) Licensees alter and document the alteration in the treatment plan when clinically indicated.

(4) Licensees confer with and obtain consent from the recipient(s) concerning significant alterations in the treatment plan in accordance with Board rule 465.11(b).

465.38. Psychological Services in the Schools.

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) - (2) (No change.)

(3) Providers of School

Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include licensed specialists in school psychology, and interns or trainees as defined in §§463.9 of this title (relating to Licensed Specialist in School Psychology). Nothing in this rule prohibits public schools from contracting with licensed psychologists and licensed psychological associates who are not licensed specialists in school psychology to provide psychological services, other than school psychology, in their areas of competency. School districts may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, which are not readily available from the licensed specialist in school psychology employed by the school district. Such contracting must be on a short term or part time basis and cannot involve the broad range of school psychological services listed in paragraph (1)(B) of this section. An LSSP who contracts with a school district to provide school psychological services may not permit an individual who does not hold a valid LSSP to perform any of the contracted school psychological services.

(4) - (7) (No change.)

470.8. Informal Disposition of Complaints.

(a) Complaints.

(1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, or dismissal in accordance with §§2001.056 of the Administrative Procedure Act.

(2) Prior to the imposition of disciplinary sanction(s) against a license, the licensee shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with §§2001.054(c) of the Administrative Procedure Act.

(3) Informal conferences shall be conducted by the Chair of the Disciplinary Review Panel. The conference shall also be attended by the designated representative, legal counsel of the agency or an attorney employed by the office of the attorney general, and other representative(s) of the agency as the executive director and legal counsel may deem necessary for proper conduct of the conference. The licensee and/or the licensee's authorized representative(s) may attend the informal conference and shall be provided an opportunity to be heard and to present witnesses, affidavits, letters, reports, and any information deemed relevant for the Board's consideration in the matter. [Although the The licensee's attendance and participation is voluntary, the Committee may handle the matter as a default disposition if the licensee declines to attend or fails to appear at the informal conference].

(4) In any case where charges are based upon information provided by a person (complainant) who filed a complaint with the Board, the complainant may attend the informal conference. A complainant who chooses to attend an informal conference shall be provided an opportunity to be heard, at a time separate from the respondent, with regard to violations based upon the information provided by the complainant. Nothing herein requires a complainant to attend an informal conference.

(5) Informal conferences shall not be deemed meetings of the Board and no formal record of the proceedings at such

conferences shall be made or maintained. Any informal record of conferences shall be made by mechanical or electronic means at the discretion of the Committee Chair.

(6) Any proposed consent order shall be presented to the Board for its review. At the conclusion of its review, the Board shall approve or disapprove the proposed consent order. Should the Board approve the proposed consent order, the appropriate notation shall be made in the minutes of the Board; and the proposed consent order shall be entered as an official action of the Board. Should no agreement be entered into, the Board may refer the matter to SOAH for a formal hearing.

(b) Confidentiality of Informal Settlement Conferences. The Panel may take any and all steps necessary to ensure the confidentiality of the informal settlement conference in accordance with §§501.205 of the Act, including, but not limited to, conducting the entirety of the conference in executive session.

470.11. Service in Non-Rulemaking Proceedings.

- Where service of notice by the agency is required, all parties shall be notified either personally, by first class mail, or by certified mail, return receipt requested, to the party's last known mailing address as shown in Board records. If any party has appeared by attorney or other representative, service shall be made by the methods above upon such attorney or representative.

470.18. The Record.

- The record in a contested case includes:

- (1) all pleadings, motion, and intermediate rulings;
- (2) evidence received or considered by the Board;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on these matters;
- (5) proposed findings of fact and conclusions of law, as well as exceptions thereto;
- (6) any decision, opinion, or report made by the Administrative Law Judge; and
- (7) all staff memoranda or briefs submitted to or considered by the Administrative Law Judge or Board decision makers.

- **470.20. Computation of Time.**

In computing time periods prescribed by these rules, or by order of the agency, the day of the act, event or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday, in which case the time period will end on the next day that the agency is open.

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470.21. Disciplinary Guidelines.

- (a) - (d) (No change.)
- (e) Disciplinary Sanctions. If the Board does not revoke the license of a licensee as part of a disciplinary matter, it may impose the following disciplinary sanctions which are listed in descending order of severity:
 - (1) Suspension for a definite period of time;
 - (2) Suspension plus probation of any or all of the suspension period;
 - (3) Probation of the license for a definite period of time;
 - (4) Reprimand [for a definite period of time].
- (f) - (i) (No change.)

473.1. Application Fees. (Not Refundable)

- (a) Psychological Associate Licensure \$180 [\$160]
- (b) Provisionally Licensed Psychologist \$330 [\$310]
- (c) Licensure \$170 [\$150]
- (d) Reciprocity \$470 [\$450]
- (e) Licensed Specialist in School Psychology \$210 [\$190]

473.2. Examination Fees. (Not Refundable)

- (a) (No change.)
- (b) Jurisprudence \$210 [\$200]
- (c) Oral Examination \$320 [\$300]

473.3. Annual Renewal Fees (Not Refundable)

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- (a) Psychological Associate Licensure - \$90
- (b) Psychological Associate Licensure over the age of 70 - \$15
- (c) Provisionally Licensed Psychologist - \$85
- (d) Provisionally Licensed Psychologist over the age of 70 - \$15
- (e) Psychologist Licensure - \$180
- (f) Psychologist Licensure over the age of 70 - \$15
- (g) Psychologist with Health Service Provider Status - \$20
- (h) Psychologist with Health Service Provider status over the age of 70 - No Fee
- (i) Licensed Specialist in School Psychology - \$33
- (j) Licensed Specialist in School Psychology over the age of 70 - \$13

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473.4 Late Fees for Renewals (Non Refundable)

- (a) (No change.)
- (b) Licensed Specialists in School Psychology
 - (1) One day to ninety days – \$105 [\$100]
 - (2) Ninety-one days to less than one year – \$210 [\$200]

Significant Amendments to the Rules of Conduct

By Brett Norbraten, General Counsel

The following is a summary of significant rule changes to the Board's Rules of Conduct, Chapter 465, since the last issue of the Rulebook.

465.9 (Competence, adopted): APA Standard. Added section about emergency situations when licensees are asked to provide services to individuals for whom appropriate mental health services are not available and for which the licensee has not obtained the necessary competence. Licensees may provide such services only to the extent necessary to ensure that services are not denied. If ongoing services are provided, licensees must either gain the competence or refer the patient.

465.11 (Informed Consent, adopted): The actual informed consent must be documented in writing.

465.12 (Confidentiality, adopted): APA Standard, that licensees include in written and oral reports and consultations only information germane to the purpose for which the communication is made.

465.13 (Dual Relationships, adopted): Sections about sexual relationships removed, as they are covered in another rule.

465.16 (Assessments, adopted): APA Standard. In an assessment, licensees provide opinions about the psychological characteristics of individuals only after they have conducted an adequate examination. If this is not performed, licensees document any efforts they made to obtain such an examination and clarify the probable impact of their limited information on the reliability and validity of their conclusions.

465.17 (Treatment Plans, adopted): Licensees must document alterations in treatment plans. In addition, licensees must obtain informed consent from the patient for significant alterations.

Preview of Profile Information Online

The target date for the beginning of the online database of profile information about licensed psychologists is the summer of 2003. Since this program is now being yet known. Therefore, the following information is somewhat tentative but is provided to assist psychologists in understanding this new program and requirement for licensure renewal.

For the past year the Board has collected the required profile information in a paper format with the paper renewal application form. However, beginning this summer all psychologists will be encouraged to submit profile information online whether or not they choose to submit their renewal application online. For those few psychologists who do not choose to submit profile information online, paper submission will be an option.

The mandated online profile system requires all affected health licensing agencies to agree on the interpretation of each profile information item. Therefore, the questions may change slightly from the original questions on the paper profile information collection. Also, because of this change, all profile information will have to be submitted again by each psychologist.

It is important to note that some of the required profile information fields will be verified by the Board while others will not be. Those items that are verified by the Board will be identified for the public.

By summer implementation, submission of profile information will be mandatory for renewal of licensure in accordance with state law. It will take a year to collect all the profile information about licensed psychologists in this state. It is suspected that profile information will be made available to the public online from the beginning with a warning that this is not a complete database of information until a future time.

As soon as the online profile option is available, licensees will receive final details of implementation with their paper renewal applications.