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Legislature Mandates Online Renewals and Psychologist Profiles

The 77th Texas Legislature passed two bills which will change the way that the Texas State Board of Examiners of Psychologists, as well as many other health-licensing agencies, provide services.

SB 187 and SB 645

Senate Bill 187 and Senate Bill 645 require this Board and other health licensing boards to place their applications and renewals online and to accept online payment through the Texas Online e-portal. The particulars of how this is to be accomplished will be determined not by the individual boards but by a new entity named the Texas Online Authority and by the Texas Department of Information Resources. The members of the Texas Online Authority will be appointed by the Governor.

Additionally, this legislation requires that certain health-licensing boards place profiles of some of their licensees in an online format so that it is available to members of the public.

These bills require that renewal fees of licensees must be raised by not more than \$5. However, the exact amount that the renewal fees for licensees of the Psychology Board will have to be raised to cover the costs of establishing the online service has not yet been determined by the Texas Online Authority.

The legislation required the Psychology Board to begin collecting the additional \$5 renewal fee for licensed psychologists beginning January 1, 2002.

With their renewal forms, licensed psychologists now receive a survey requesting the information that is legislatively required to be included on the profile. However, according to the legislation, while the profile renewal fee increase has to be collected starting in January, the actual profiles do not have to be online until 2005.

In initial meetings regarding this legislation, the Board has been told that in January 2003 the agency's renewal forms will be available online and that online payment will be accepted. Other agencies are scheduled to go online with their renewals even sooner. However, no date has been given this agency as to when applications for licensure will be available online.

There are still many questions regarding these two important pieces of legislation most of which the Board cannot answer at this time, but it is clear that the Texas Legislature is eager to transform health licensing into an online service for the convenience of licensees, applicants, and members of the public. The Board supports this effort wholeheartedly and looks forward to this beneficial change in services.

Changes to the Applications Process

In preparation for e-government, the Psychology Board has reviewed its application process and made several substantial changes which will ease the transition to online services and add to the convenience of the applicants.

After application files are complete in that all materials required are received, the Applications Committee, rather than the full Board at a regularly scheduled Board meeting, will approve applicants to take the required examinations and for final licensure. The Chairman of the Applications Committee is a Board member appointed by the Chair of the Board. The Committee will review applications monthly.

This change is also timely in that it coordinates with the computerization of the national psychology examination and the transition of the jurisprudence examination to an open book, mail out version.

The Board expects that for some applicants these changes in application processing and examinations could save months of delay in waiting to take the sit-down examinations and/or for Board approval.

Other Changes

In order to adhere to the directives of the e-government legislation, it may be necessary for the Board to make even more changes in the renewal and application process. Some changes may even have to be made in the Psychologists' Licensing Act by the 78th Legislative Session to allow these new e-government endeavors to succeed.

Legal Issues Dealing with Informed Consent

**By Brett Norbraten
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Informed consent, a concept embodied in Board Rule 465.11, is one of the most important but often overlooked ethical obligations of Board licensees.

Here are several important practice tips to remember when reviewing your own compliance with the Board's informed consent rule:

- (1) (1) Informed consent cannot be retroactively given. The Rule clearly states that you should describe your services prior to the initiation of the professional relationship. However, changes in the nature of the services that are provided may be documented in real-time during the evolution of the professional relationship.
- (2) Informed consent is defined in Rule 465.1(4) as the "documented" consent of the patient or client. The elements of the informed consent and the patient's consent should be in writing; however, it may be documented by videotape or audiotape. If a complaint arises later, a licensee needs to be able to document in all cases that the patient knowingly consented to the services that were provided. The simplest method of documenting the patient's consent is by getting a dated signature.
- (3) Informed consent applies to all Board licensees, including Licensed Specialists in School Psychology. The mechanics of obtaining the consent in the public schools may be different than in a psychologist's private practice; however, there should be a standardized form or format to document the services that the LSSP provides. If informed consent as contemplated by the Board Rules are precluded by law, the licensee should follow the default provision of Rule 465.11(h).
- (4) Please remember that the "patient" or "client" is defined as the recipient of your professional services. Third parties (attorneys, relatives) are often involved in a financial or referral role prior to the inception of the professional relationship; however, it should be made clear to all to whom the licensee owes his or her professional duty.
- (5) Related to point 4: the licensee's services may reasonably be used for public disclosure (forensic services, child custody evaluations, other material to be provided to a third party). It is vitally important that potential limits to confidentiality are provided to the patient in advance.
- (6) Where multiple related patients are receiving professional services, the licensee must again explain the limits of confidentiality, access to records, or other patient rights that may be infringed because of the set-up. This becomes especially important in court-ordered child custody evaluations (covered in Rule 465.18(c) and (d), effective in late April 2002), where a combination of the duties outlined in points 4 and 5 come into play.

New and Amended Rules

Following is the text of new and amended Texas State Board of Examiners of Psychologists' rules finally adopted since the issuance of the June 1, 2001 Rulebook. For amended rules, new language is underlined

and deleted language appears in brackets. Also, current text of rules may be viewed at: <http://www.sos.state.tx.us> by accessing the TAC viewer.

461.7. License Statuses.

(a) - (d) (No change.)

(e) Retirement Status. A person who is on active or inactive status with the Board may retire by notifying the Board in writing prior to the renewal date for the license. A person seeking to retire after his or her renewal date must submit proof of compliance with the Board's continuing education requirement. A person with a pending complaint, a restricted license, or who is otherwise not in compliance with all applicable Board rules may not retire his or her license. Permission to retire will not be granted for the purpose of allowing a licensee to avoid compliance with Section 461.11 of this title (relating to Continuing Education) unless the licensee presents to the Board evidence of extreme medical hardship and the Board grants the request. A person who retires shall be reported to have retired in good standing.

(f) - (h) (No change.)

461.11. Continuing Education.

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

(c) Permitted activities.

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

(4) When obtained, any submitted continuing education hours [other than hours banked pursuant to subsection (g) of this section,] must have been obtained during the 12 months prior to the renewal period for which they are submitted.

(d) - (f) (No change.)

463.5. Application File Requirements.

To be complete, an application file must contain whatever information or examination results the Board requires. Unless specifically stated otherwise by Board rule, all applications for licensure by the Board must contain:

(1) An application and required fee(s);

[(2) Two current passport pictures of the applicant.]

(2) [(3)] Official transcripts indicating the date the degree required for licensure was awarded or conferred. Transcripts must be sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;

(3) [(4)] Documentation that applicant has complied with Board Rule §§463.14 of this title (relating to Written Examinations);

(4) [(5)] Three acceptable reference letters from three different psychologists, two of whom are licensed or were licensed at the time of applicant's training;

(5) [(6)] Supportive documentation and other materials the Board may deem necessary, including current employment arrangements and the name of all jurisdictions where the applicant currently holds a certificate or license to practice psychology; and

(6) [(7)] A written explanation and/or meeting with the Board or a committee of the Board, prior to final approval, if the application file contains any negative reference letters.

463.9. Licensed Specialist in School Psychology.

(a) (No change.)

(b) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid National Certified School Psychologist (NCSP) certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

(1) - (7) (No change.)

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

463.11. Licensed Psychologist.

(a) Application Requirements by Provisional Licensure. This application is provided free of charge to the applicant who has taken the oral examination. Upon passage of the oral examination, the applicant may submit the licensed psychologist application. An application for licensure as a psychologist includes, in addition to the requirements set forth in §§463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of the Board's Oral Examination.

(3) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal year must be documented by the Director of Internship Training.

(b) (No change.)

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) - (K) (No change.)

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules [in effect during the supervision experience regardless of setting].

(M) (No change.)

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist may use this title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §§501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) (No change.)

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association; or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) - (ii) (No change.)

(iii) The internship agency must have two or more full-time [equivalent] licensed psychologists on the staff as primary supervisors.

(iv) - (ix) (No change.)

[(x)]The internship level psychology trainees must have titles such as "intern", "resident", "fellow", or other designation of trainee status.]

[(x)] [(xi)] The internship agency must inform prospective interns about [have a written statement or brochure which describes] the goals and content of the internship, as well as [stated clear] the expectations for quantity and quality of trainee's work [and must be made available to prospective interns]; or

(C)The successful completion of an organized internship program in a school district meeting the following criteria:

(i) - (viii) (No change.)

(ix) The internship site shall inform interns concerning [The internship must be memorialized by a written contractual agreement specifying] the period of the internship and the training objectives of the program.

(x) - (xiii) (No change.)

(3) (No change.)

(d) (No change.)

463.14. Written Examinations.

(a) Jurisprudence Examination. All applicants for licensure by the Board are required to pass the Jurisprudence Examination prior to licensure. [Applications for licensure by reciprocity may take the Jurisprudence Examination at times mutually agreed upon between them and the Board's office. All other applicants must take the examination at the times regularly scheduled by the Board.]

(b) - (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. All applicants, both doctoral and masters level, must receive a minimum score of ninety [seventy] percent (90%) [(70%)] 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.)

463.19. Time Limit on Examination Failures and Passing Scores.

(a) Applicants must successfully pass all examinations required of them within two [three] years from [of the first examination date immediately following] the date they are approved by the Board to sit for the [each] exams [exam]. Failure to do so will result in termination of application. The Board may adjust this requirement within 10 days to provide flexibility in the Board's scheduling of Oral Examinations[examinations].

(b) For the purpose of fulfilling application requirements for licensure, a passing score on the Board's Jurisprudence Examination [examination] is valid for only four years, unless the applicant has other active licensure with the Board at the time the application is received by the Board.

465.2. Supervision.

(a) - (g) (No change.)

(h) Licensed psychological associates and provisionally licensed psychologists must be under the supervision of a licensed psychologist and may not engage in independent practice.

465.3. Providers of Psychological Services.

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

[(c) An individual may not provide psychological services under a license from this Board and services or activities under another professional license simultaneously. Patients and clients who receive services and activities provided by an individual who holds more than one professional license must be informed of the license under which the services and activities are being provided.]

465.4. Employment of Individuals Not Licensed by This Board.

(a) Individuals Licensed in Another Profession. Psychologists may employ or utilize individuals who are licensed members of another profession to provide only activities or services permitted by the applicable license or licenses held by that individual. In addition, a Board licensee may supervise a licensed member of another profession to the extent permissible by the other profession's statute and regulations. Any service provided by the licensed member of another profession [These services and activities] may not be described or represented to the patient or client as psychological services, and the individual must be clearly identified to the patient or client as a licensee of the applicable profession who is providing services pursuant to that individual's own license.

(b) (No change.)

465.5. Practice of Psychology.

(a) Multiple Licensure. Individuals may provide services allowed under the definition of practice of any active license(s) they hold. If a service such as, but not limited to, psychotherapy and family counseling, is allowed under more than one license, individuals may use those licenses simultaneously in treating a client. However, a licensee of the Board is liable for any service considered to be the practice of psychology, regardless of any other license the individual may be using. Similarly, if the licensee holds two licenses with this Board, any complaint or disciplinary action is directed to the licensee's psychology practice as a whole, as opposed to one or the other license. Additionally, individuals offering services outside the practice of psychology must avoid confusing or misleading clients by clearly identifying the license(s) under which services are being delivered.

(b) Practice of Psychology. The Following activities are covered by the definition of the "provision of psychological services" in Board Rule §§465.1(10). This list is not intended to be exhaustive, but includes examples of the activities that, when performed by a licensee, are subject to Board Rules:

(1) conducting or administering testing that requires the use of psychological education, training, knowledge, or skills;

(2) the provision of biofeedback when such provision involves the use of education, training, skills, or knowledge in psychology;

(3) projective techniques, including, but not limited to, Rorschach, Thematic Apperception Test, Roberts Apperception Test, Sentence Completion tests and Holtzman Ink Blot;

(4) career and vocational counseling;

(5) the practice of hypnosis and hypnotherapy for health care purposes;

(6) marriage and family counseling and therapy; and

(7) alcohol and substance abuse treatment.

465.6. Listings, Public Statements and Advertisements, Solicitations and Specialty Titles.

(a) (No change.)

(b) Public Statements and Advertisements.

(1) (No change.)

[(2) A licensee's authorization of or use in any advertising or listing for the practice of psychology of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board which conferred the aforementioned certification. A licensee may not use the term "Board Certified" or "Board Approved" or any similar words or phrase calculated to convey the same meaning if the claimed board certification has expired and has not been removed at the time the advertising in question was published or broadcast.]

(2) [(3)] Licensees who learn of false or deceptive statements about their practices of psychology or their status as providers of psychological services make reasonable efforts to correct such statements.

(C) Solicitation of Testimonials and/or Patients.

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

(d) Specialty Titles. A psychologist may use a specialty title only when one of the following criteria have been met:

(1) Doctorate in the area of specialization;

[(2) Diplomat status in that area from the American Board of Professional Psychology;]

(2) [(3)] Retraining under the American Psychological Association retraining guidelines of 1977;

(3) [(4)] Documentation that the title has been used for five years and documentation of academic course work and relevant applied experience, if an individual was matriculated in a doctoral program in psychology in 1977 or before

[(4)] Certificate of proficiency from the American Psychological Association's College of Professional Psychology.]

(4) Certification or approval or diplomat status has been granted by a professional refereed board, provided that the licensee indicates the name of the board which granted the title and that the individual's status with the specialty board is current and in good standing. Use of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board that conferred the aforementioned specialty title, certification, approval, or diplomat status.

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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) Definition.

(A) The specialist in school psychology license permits the licensee to provide school psychological services in the public schools of this state.

(B) A licensed specialist in school psychology means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students [including the assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures]. Such activities include, but are not

limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs.

(C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(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 [retaining] 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 within the competency of or which are not readily available from the licensed specialists 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.

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

470.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise;

(1) - (5) (No change.)

[(6) Applications Dispute Committee - Committee appointed by the Chair to conduct informal settlement conferences concerning application and licensing disputes and to make recommendations to the Board for its review.]

(7) - (26) (Renumbered.).

470.8. Informal Disposition of Complaints.

(a) (No change.)

[(b) Applications Disputes.]

[(1) After an appeal has been properly requested in accordance with §§463.30 of this title (relating to Time Period for Appealing a Decision), the matter shall be referred to the Applications Dispute Committee. The applicant shall be offered an opportunity to attend an informal conference and show compliance with all Board licensing requirements, in accordance with §§2001.054 of the Administrative Procedure Act.]

[(2) The Applicant shall be notified in writing and by certified mail of the time, place and location of the informal settlement conference. If the applicant declines to attend or fails to appear, the matter may be handled by the Committee as a default disposition.]

[(3) Informal conferences shall be conducted by the Chair of the Application Dispute Committee. 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 applicant and/or the applicant'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.]

[(4) 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.]

[(5) At the conclusion of the settlement conference, the applications dispute Committee shall make whatever proposals and/or recommendations that it deems appropriate to the Board for its review. At the conclusion of its review, the Board or reaffirm its decision to disapprove the application. Should the applicant dispute the Board's final determination, the matter may be referred to SOAH for a formal hearing.]

[(6) Applicants wishing to appeal the Board's final determination must indicate, in writing, that they wish to have the dispute referred to SOAH for a formal hearing. So that the matter may be timely scheduled for hearing, the notice must be submitted to the Board no later than 60 days from the date the Board reaffirmed its decision to disapprove the application for licensure.]

(b) [(c)] 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.

470.21. Disciplinary Guidelines.

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

(c) Revocation. The Board shall revoke the license of any licensee if the Board determines that the continued practice of psychology by the licensee poses a harm to the public. Licensees who violate the following Board rules shall be subject to revocation without reference to subsections (e) through (i) of this section:

(1) 465.13(b)(3) and (b)(6) pertaining to certain forms of sexual impropriety with current patients;

(2) 465.33(d) as it pertains to sexual relations, defined in 465.33(c), with current patients; and

(3) 469.7(d)(5), (d)(8), and (d)(10) pertaining to certain felony convictions and judgments.

(d) The rules enumerated above are not intended to be exhaustive. The Board may recommend revocation for licensees who violate one or more Board rules that are not listed above.

(d) - (e) (Renumbered to e - f.)

(g) - (i) (No change.)

The following rules have been repealed:

465.5. Status of Licensed Psychological Associates and Provisionally Licensed Psychologists.

465.25. Testing.

465.26. Biofeedback.

465.27. Projective Techniques.

465.28. Career and Vocational Counseling.

465.29. Hypnosis for Health Care Purposes and Hypnotherapy.

465.30. Marriage and Family Counseling and Therapy.

465.31. Alcohol and Substance Abuse Treatment.