



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1996

Ms. Sherry Lee
Executive Director
Texas State Board of Examiners
of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

Letter Opinion No. 96-147

Re: Whether the Board of Examiners of Psychologists may authorize the use of "psychological extenders" acting under the supervision of a licensed psychologists (ID# 38948)

Dear Ms. Lee:

Your predecessor in office asked for an opinion regarding the legality of licensed psychologists using non-licensed individuals to provide psychological services as "psychological extenders" under the supervision of licensed psychologists. More specifically, she asked the question in terms of the authority of the State Board of Examiners of Psychologists (the "board") to enact a rule empowering licensed psychologists to permit unlicensed individuals to perform psychological services under the supervision of the licensed psychologists. We believe such a practice or rule would contravene the express terms of the Psychologists' Certification and Licensing Act (the "act").

The act prohibits anyone from engaging in the practice of psychology or representing himself as a psychologist or a psychological associate unless he is certified, licensed, or exempt under the act. V.T.C.S. art. 4512c, § 20; *compare id. with* V.T.C.S. art. 4495b, §§ 3.06(d), .061 (allowing physicians, while providing supervision, to delegate medical acts to non-physicians). Accordingly, the act also provides a criminal penalty for anyone who practices psychology in violation of the act. V.T.C.S. art. 4512c, § 25. Moreover, the act provides no exemption for persons merely acting under the direction of a licensed psychologist. *See id.* § 22 (exemptions); *see also id.* § 21(a)(2) (requirement of two years of supervised practice prior to licensing). Therefore, the act expressly prohibits a non-certified, non-licensed, and non-exempt individual from engaging in the practice of psychology or representing himself as a psychologist or psychological associate. Psychological associates, even though licensed under the act, must act under supervision of a licensed psychologist. *Id.* §§ 19A(1)(2) (Psychological Associate Advisory Committee to recommend rules regarding supervision requirements for psychological associates practicing less than five years), 19A(1)(7) (same to recommend guidelines for practice with minimal supervision for psychological associates with five or more years experience); *see also* 22 T.A.C. § 465.18 (licensed psychologist responsible for supervision of certified psychologists and psychological associates).

Section 20 implicitly prohibits the board from enacting a rule that would allow licensed psychologists to permit unlicensed individuals to perform psychological services. Under Texas administrative law, agency rules are valid only if expressly or impliedly authorized by statute. *State v. Jackson*, 376 S.W.2d 341, 344-5 (Tex. 1964); *Bexar County Bail Bond Bd. v. Deckard*, 604 S.W.2d 214, 216 (Tex. Civ. App.--San Antonio 1980, no writ); Attorney General Opinion JM-1017 (1989) at 3; *see* 2 TEX. JUR. 3D *Administrative Law* § 16 (1979) (and authorities cited) (agency rules must be within clear intent of statute). In this case, the board is authorized to enact rules that are "not inconsistent with the Constitution and laws of this state." V.T.C.S. art. 4512c § 8(a). Because the practice of licensed psychologists using non-licensed, non-certified, and non-exempt individuals to provide psychological services would violate the Psychologists' Certification and Licensing Act, the State Board of Examiners of Psychologists may not enact a rule allowing such a practice.

S U M M A R Y

Licensed psychologists may not use non-licensed, non-certified, and non-exempt individuals to provide psychological services. Such a practice would violate the Psychologists' Certification and Licensing Act. Consequently, the State Board of Examiners of Psychologists may not enact a rule authorizing such a practice.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee