

**TEXAS STATE
BOARD OF
EXAMINERS OF
PSYCHOLOGISTS**

EXECUTIVE DIRECTOR
Darrel D. Spinks

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OPINION COMMITTEE

May 21, 2013

Via U.S. Certified Mail No. 7010 2780 0002 0835 3648

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548



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FILE # ML-47275-13

I.D. # 47275

RQ-1126-GA

Dear Mr. Abbott:

The Texas State Board of Examiners of Psychologists (the Board) seeks an Attorney General Opinion regarding the following issue(s):

1. Whether an individual licensed as a specialist in school psychology (LSSP) who is employed by a regionally accredited institution of higher education (University) *as an LSSP*, is exempt from the Psychologists' Licensing Act (the Act)?
2. Is the use of the official title of psychologist or psychological associate by a University when describing employees, a requirement before those employees may be considered exempt from the Act? By way of example, would an LSSP employed by a University to provide psychological services and given the title of associate professor, rather than psychologist or psychological associate, be exempt from the Act?

For the purpose of this request, you may presume that all activity, service, or use of official titles by an individual is within the scope of their employment, unless otherwise indicated.

The primary section of the Act at issue is §501.004, the relevant portions of which are set out below:

Sec. 501.004. APPLICABILITY. (a) This chapter does not apply to:

(1) the activity or service of a person, or the use of an official title by the person, who is employed as a psychologist or psychological associate by a governmental agency or regionally accredited institution of higher education if the person performs duties the person is employed by the agency or institution to perform within the confines of the agency or institution¹;

(2) the activity or service of a student, intern, or resident in psychology if:

(A) the person is pursuing a course of study to prepare for the profession of psychology under qualified supervision in a recognized training institution or facility;

(B) the activity or service is part of the person's supervised course of study; and

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(C) the person is designated as a "psychological intern," as a "psychological trainee," or by another title that clearly indicates the person's training status

The mission of the Board is to protect the public by ensuring that psychological services are provided to the people of Texas by qualified and competent practitioners who adhere to established professional standards. The Board does this by promulgating rules² regarding licensure and practice in accordance with the terms of the Act found at Tex. Occ. Code Ann. §501.001, *et seq.* By way of example, the Board has promulgated rules regarding the licensure and practice of LSSPs in accordance with Tex. Occ. Code Ann. §501.260.

Pursuant to Board rule 463.1(2), the LSSP license is required by law for the practice of school psychology in the public schools of Texas, and Board rule 465.38(1)(A) goes on further to state that the LSSP license permits the licensee to provide school psychological services only in Texas public schools. A person utilizing the LSSP license may not provide psychological services in any context or capacity outside of their employment or contract with the public school system. Furthermore, while Tex. Occ. Code Ann. §501.004(a)(1) expressly exempts the activity or service of individuals employed as psychologists or psychological associates by a University, the Act contains no such exemption for LSSPs. Thus, pending the requested opinion, it is the Board's tentative position that an individual employed as a specialist in school psychology by a University is not exempt from the Act and must refrain from providing psychological services outside of the public school setting.

The Board seeks guidance however, where an individual licensed as a specialist in school psychology is employed by a University as a psychologist or psychological associate, with the presumed intent of securing exemption from the Act. While the Board acknowledges that it does not have jurisdiction over those individuals or use of official titles exempted from the Act under §501.004, to what extent does the use of the official title of psychologist and psychological associate by a University when describing employees, exempt those employees from the Act? For example, would an individual licensed as a specialist in school psychology, yet hired as and given the official title of psychological associate by the employing University, be exempt from the Act? Alternatively, would an LSSP employed by a University to provide psychological services and given the title of associate professor, rather than psychologist or psychological associate, be exempt from the Act?

The Board has received several inquiries from LSSPs who are employed by Universities in a professorial role, inquiring about the psychological services they may provide while acting within the scope of their employment with the University. The Board is concerned that while these individuals may claim they are not practicing under their LSSP license, but rather acting within the scope of their employment as faculty, they are providing psychological services without exemption and contrary to the Board's rules. By way of example, the Board recently received a letter from an LSSP employed by a University, whereby the LSSP indicated that she was teaching and providing supervision to practicum students enrolled at the University. Pursuant to Board rule 461.5(10), both teaching and supervision constitute the provision of psychological services. Thus, unless this LSSP is exempt from the Act, she may not teach or provide supervision outside of an employment or contractual relationship with a public school.

Because this issue has the potential to affect numerous LSSPs employed by Universities throughout the state, the Board felt it prudent to seek advice from the Office of the Attorney General before responding to the inquiries it has received.

The Board appreciates your review of this matter and looks forward to your opinion. If additional information is required, please contact Darrel D. Spinks, the Board's Executive Director, at (512) 305-7700.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim F. Branaman Ph.D.", written in a cursive style.

Tim F. Branaman, Ph.D.
Chair, Texas State Board of Examiners of Psychologists

¹ The phrase "within the confines of the agency or institution" has been previously interpreted by the OAG to refer to duties within the scope of employment. See Op. Tex. Att'y Gen. No. JC-0321 (2001).

² Texas State Board of Examiners of Psychologists' Rules, 22 TAC, Pt. 21