



*An affiliate of the  
American Psychological  
Association*

# PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

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<http://www.papsy.org>

March 5, 2004

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Mr. Scot Schalles  
Regulatory Analyst  
IRRC  
333 Market Street  
Harrisburg PA 17110-0333

Original: 2378

Dear Mr. Schalles:

On behalf of the Pennsylvania Psychological Association I am following up on our previous letter regarding proposed regulations 16A-6314 (Notice Requirements) from the State Board of Psychology. It was brought to my attention that I might not have clarified one concern with those proposed regulations adequately in my letter of January 12, 2004.

The Board stated in its Notice Requirements that it has the authority to discipline whenever "the misdemeanor evidences that the licensee is unable to practice with reasonable skill and safety by reason of illness, drunkenness, etc." The wording suggests that the Board could discipline a psychologist on the basis of any misdemeanor whenever it concluded that the misdemeanor evidenced impairment. This is in clear contradiction of the Professional Psychologists Practice Act. The Professional Psychologists Practice Act specifically states that when the Board has probable cause of impairment it may "compel a psychologist to submit to a mental or physical examination" to determine if they are impaired (Section 8 (8)).

In other words, a misdemeanor unrelated to the practice of psychology evidencing impairment should trigger a compelled examination; it should not, as the Board states, trigger a disciplinary action by itself.

Thank you for your consideration of our perspectives.

Sincerely,

Samuel Knapp, Ed.D.

Director of Professional Affairs



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January 12, 2004

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PENNSYLVANIA COMMISSION

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Consultant

Susan M. Shanaman, J.D.

Judith Pachter Schulder  
Counsel, State Board of Psychology  
PO Box 2649  
Harrisburg, PA 17105-2649

RE: State Board of Psychology Proposed Regulation on Notice of Revocation  
and Suspension

Dear Ms. Pachter Schulder:

On behalf of the Pennsylvania Psychological Association we are  
responding to the proposed amendments to Section 41.91 and 41.92 of the  
regulations of the State Board of Psychology.

We oppose the adoption of 41.91a. We support 41.91b as written.  
We support the intent of 41.92, although we have concerns about its clarity.

### Proposed Section 41.91a

We have several concerns about this proposed section. First, we believe  
the State Board of Psychology is exceeding its statutory authority in requiring the  
reporting of all misdemeanors. Second we have a concern that the Board's  
definition of being convicted in 41.91 is not the same as the definition of being  
convicted in the Professional Psychologists Practice Act. Furthermore, the  
proposed regulation does not allow for the option of having a conviction  
overturned upon appeal.

We will deal with each of these concerns below

### Reporting of All Misdemeanors

The State Board of Psychology has the authority to discipline  
psychologists for felonies or for misdemeanors in the practice of psychology.  
Consequently, we do not believe that psychologists should be mandated to report  
to the State Board of Psychology misdemeanors unrelated to the practice of  
psychology.

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DOS LEGAL COUNSEL

The introductory comments imply that one of the goals of the mandatory reporting of all misdemeanors is to identify when a licensee is “unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material” (p. 60). It is not clear to us which misdemeanors would automatically trigger evidence that a psychologist was impaired.

Although we applaud the State Board of Psychology for taking the issue of impairment among psychologists seriously, we regret that the Bureau of Professional and Occupational Affairs is doing so little to address the issue proactively. At one time the Bureau of Professional and Occupational Affairs had a progressive and highly effective program for encouraging licensees to get the needed treatment and, at the same time, protecting the welfare of the public. We regret that this program has been so greatly vitiated by administrative decisions within the Bureau of Professional and Occupational Affairs. We see this as one more step on the part of the Bureau to retreat from the effective treatment model it had once used and adopting a punishment oriented model of responding to impairments.

#### *Inconsistency in Description of “Convicted”*

However, we also question whether the proposed regulation 41.91 is too narrow in some respects. The proposed regulations do not require the reporting of some misdemeanors in the practice of psychology. According to Section 8 (a) (6) of the Professional Psychologists Practice Act, the State Board of Psychology may suspend, revoke, limit or restrict a license or reprimand a licensee for

Being convicted of a felony in any state or Federal court or being convicted of the equivalent of a felony in any foreign country, or being convicted of a misdemeanor in the practice of psychology. As used in this clause the term “convicted” includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere or receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in lieu of felony charges.

The proposed regulation does require the reporting of a plea of guilty or nolo contendere. However, the proposed regulations would not require psychologists to report any misdemeanor, even if it occurred in the practice of psychology, in which there was probation without verdict, disposition in lieu of a trial, or an Accelerated Rehabilitative Disposition (ARD) even though the Board has the authority to punish psychologists in those circumstances.

According to these regulations, for example, a psychologist who was found guilty of a misdemeanor in the practice of psychology and entered into an ARD program would not be required to report the misdemeanor to the Board within 30 days. However, the psychologist could be disciplined by the Board on the basis of this misdemeanor. We believe that any misdemeanor in the practice of psychology can be quite serious, represents a potential threat to the public, and should be reported to the Board within 30 days.

*Overturned on Appeal*

The proposed regulations appear to require reporting even when a conviction is on appeal. We believe this issue should be addressed.

**Proposed Section 41.91b**

We support 41.65 (b) as written. Currently it can take several months or even a year or longer before these disciplinary actions in other states are reported to the State Board of Psychology. We believe that this provision would be a positive step in protecting public welfare.

**Proposed Section 41.92**

The State Board of Psychology proposes that psychologists who are suspended should inform current clients or patients of this suspension. We support the apparent intent of this proposed regulation, but we have concerns about its ambiguous wording.

Sometimes the State Board of Psychology will suspend a licensee, but “stay” the suspension on the condition that the psychologist will fulfill certain acts such as getting supervision or taking continuing education courses. It is not clear whether or not individuals with “stayed” suspensions should be required to notify current clients or patients. The Board uses the term “active suspension,” but we have been unable to find a legal description of the term “active suspension.” We do not know if the term “active suspension” excludes those who have a “stayed suspension.”

We believe that this issue should be clarified.

Sincerely,



Samuel Knapp, Ed.D.

Director of Professional Affairs



Rachael Baturin, M. P. H., J. D.

Professional Affairs Associate