

**TEXAS STATE
BOARD OF
EXAMINERS OF
PSYCHOLOGISTS**

EXECUTIVE DIRECTOR
Sherry L. Lee



MEMBERS OF THE BOARD

Emily G. Sutter, Ph.D.
Chair
Friendswood

Barry E. Dewlen, Ph.D.
Vice-chair
San Antonio

Don Goldston, M.S.
Denton

Jane Halebian, M.A.
Dallas

Betty Holmes Ray
Abilene

M. David Rudd, Ph.D.
Temple

Denise Shade, M.Ed.
Dallas

Nelda Smith, M.A.
Longview

Brian H. Stagner, Ph.D.
College Station

RECEIVED

APR 3 2000

OPINION COMMITTEE

March 30, 2000

RECEIVED

APR 03 2000

OPINION DIVISION

BY CERTIFIED MAIL # Z 408 148 815
RETURN RECEIPT REQUESTED

The Honorable John Cornyn
Attorney General of the State of Texas
Opinions Committee
P. O. Box 12548
Austin, Texas 78711-2548

RQ-0213-JC

FILE # ML-41349-00

I.D. # 41349

RE: Request for Attorney General's Opinion.

Dear Sir:

Pursuant to Texas Government Code §402.042, the Texas State Board of Examiners of Psychologists requests your opinion regarding the legality of the attached Board policy statement. Specifically, the policy states, "Complaints received by the Board concerning the 'activities and services' of a licensee in an exempt setting are referred to the appropriate exempt agency so that the matter can be resolved in the most expedient and proper manner." The Board requests your opinion on the following matters:

1. Is Attorney General Opinion Number JM-1247 still a valid opinion?
2. By forwarding complaints to an exempt facility for investigation, does the Board violate its duty to investigate complaints filed against its licensees?
3. Is it necessary to obtain a formal written agreement, such as a memorandum of understanding, between the Board and the exempt agency or institution before a complaint can be referred for investigation at the agency level?
4. What, if any, is the Board's recourse if an exempt agency or facility is unwilling to permit the Board to investigate an alleged violation and

is unwilling to conduct their own investigation on behalf of the Board?

5. If a complaint must be dismissed due to the Board's inability to investigate the matter, has the Board violated Section 501.204(a)(2) of the Act, which requires the Board to ensure that a complaint is not dismissed without appropriate consideration?

DISCUSSION

Section 501.004(a)(1) of the Psychologists' Licensing Act¹ states that the Act "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 institution."

Section 501.155(a) of the Act states that, "the board may cooperate with an agency that is not subject to this chapter to formulate voluntary guidelines to be observed in the training, activities, and supervision of persons who perform psychological services." Further, 501.155(b) states, "Except as provided by subsection (a), the board may not adopt a rule that relates to the administration of an agency that is not subject to this chapter." The Board has interpreted Section 501.155 to mean that the Board may request that an exempt agency or institution perform the investigation concerning disciplinary violations that may have been committed by a licensee during the course of employment at that agency.


In Opinion Number JM-1247, the Board was advised that a person who voluntarily chooses to be licensed by this Board "is subject to the provisions of that act, even if that person holds employment that would exempt him or her from the licensing or certification requirements of the act." As a result, this agency has attempted to conduct investigations and resolve consumer complaints relating to violations that have occurred while the licensee was providing psychological services in an exempt setting.

Regretfully, the board has experienced mixed results with regard to the amount of cooperation it has received from other agencies and institutions during the Board's direct investigation into alleged violations. For example, board investigators have experienced difficulties obtaining requested documents, mental health records, or other information needed to substantiate the complainant's alleged violations. The Board's difficulty in investigating the complaints first hand has necessitated the forwarding of complaints to the exempt facility for investigation at the agency level. Once an investigation has been completed and the results received, the Board would then be able to determine the appropriate disciplinary action to be taken against the licensee. Unfortunately, in the majority of cases the Board does not receive a response of any kind from the exempt facilities. Without the ability to ascertain whether or not a violation has been committed, the Board is compelled to dismiss the complaint.

The Texas State Board of Examiners of Psychologists is committed to regulating the professional practice of psychology so that the public of Texas receives only the highest quality of psychological services. For this reason, the Board endeavors to adhere to the requirements of its Act by thoroughly investigating and resolving every complaint that is filed with this agency. Similarly, the Board also recognizes that licensees have the right to due process, such as detailed notice of the violations and matters being asserted against them, before any disciplinary action can be taken against their license to practice psychology. Finally, the Board is cognizant of the fact that exempt facilities, such as regionally accredited institutions of higher education, have far more investigative and legal resources available to them than the Psychology Board and may be in a better position to investigate complaints occurring in their facilities. Therefore, the Board respectfully requests the attorney general's opinion with regard to this policy statement.

Thank you for your assistance in this matter. Should you need additional information, please contact Amy Swann, the Board's general counsel, at (512) 305-7700.

Sincerely,



Sherry L. Lee

Executive Director, The Texas State Board of Examiners of Psychologists

Enclosures

¹ Formally Section 22 of V.T.C.S. art. 4512c.