

September 27, 2019

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VIA HAND DELIVERY

Daniel Collins, J.D.
Executive Director
N.C. Psychology Board
895 State Farm Road, Suite 101
Boone, NC 28607

RE: Supervision of Licensed Psychological Associates; Proposal re 21 NCAC 54.2008 (h)(3)

Dear Mr. Collins:

I represent the North Carolina Psychological Association, and I write to you to state NCPA's objection to the rule changes, proposed by the North Carolina Psychology Board, which would eliminate all required supervision of a licensed psychological associate after the LPA has worked for a specified period of time in supervised practice. *See*, 21 N.C. Admin. Code 54.2008 (h)(3); *N.C. Register*, vol. 34, no. 5, pp. 397 *et seq.*, at p. 413. I will comment on the fundamental question of the Board's statutory authority to dispense altogether with supervision for LPAs after a stated period of time. Annette Perot, Ph.D., a Past-President of NCPA and its current liaison to the Board, will address other issues, and I concur in her statement. But the issue of the Board's authority to make the proposed changes regarding supervision is entirely a question of law, not one of policy or discretion. Therefore, NCPA has asked me to address it.

The N.C. Psychology Board does not have the statutory authority to allow LPAs to practice without any supervision after some period of supervised practice.

First, an agency or board can only exercise the powers given to it by its organic statute, "[t]he responsibility for determining the limits of statutory grants of authority to an administrative agency is a judicial function for the courts to perform," *High Rock Lake Partners v. N.C. Dept. of Transp.*, 366 N.C. 315, 319, 735 S.E. 2d 300, 303 (2012), and the courts will not "follow an administrative interpretation in direct conflict with the clear intent and purpose of the act under consideration." *Id.* According to this standard, the N.C. Psychology Practice Act, N.C. Gen. Stat., § 90-270.1, *et seq.*, requires supervision throughout the LPA's career. The clear purpose of the Act is to protect the public, and the Act clearly distinguishes between levels of professional education and training for licensees. It says applicants for licensure as an LPA, unlike licensed psychologists (LPs),

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(1) . . .

(2) For licensed psychological associate applicants, until they have . . . been informed by the Board of permanent licensure . . . *after which time supervision is required only for those activities specified in subsection (e) of this section.*

N.C. Gen. Stat., § 90-270.5(c) (emphasis added). There is no such requirement in N.C. Gen. Stat., § 90-270.5(c)(1) that LPs must be supervised after permanent licensure.

Looking then at subsection (e) of this section of the Act, which lists the areas of practice where permanently licensed LPAs must continue to have supervision, it says:

(e) A licensed psychological associate *shall be supervised* by a qualified licensed psychologist, or other qualified professionals, in accordance with Board rules specifying the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. A licensed psychological associate who provides health services shall be supervised . . . [by] a qualified licensed psychologist holding health services provider certification, in accordance with Board rules. Except as provided below, supervision, including the supervision of health services, *is required only* when a licensed psychological associate engages in: assessment of personality functioning; neuropsychological evaluation; psychotherapy, counseling, and other interventions with clinical populations for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior; and, the use of intrusive, punitive, or experimental procedures, techniques, or measures. The Board shall adopt rules implementing and defining this provision, and as the practice of psychology evolves, *may identify additional activities requiring supervision in order to maintain acceptable standards of practice.*

N.C. Gen. Stat., § 90-270.5(e) (emphasis added). Note the various places where the statute says key sophisticated areas of psychological practice, such as assessment of personality functioning, must be supervised, while all others do not need to be supervised at all. And, note that the Act contemplates the possibility of adding other practice activities to the list of those that require supervision as the field of psychology “evolves,” but there is no hint in the Act that any activities will be removed by evolution from the list of supervised activities.

Against all the indications that the Act requires supervision for all LPAs throughout their career, it appears that the Board hangs its decision to dispense with supervision on its authority to set the “amounts of supervision.” NCPA replies that no supervision is not an “amount” of supervision, it is the absence of supervision; abolishing supervision is not “implementing” it, it is ending it.

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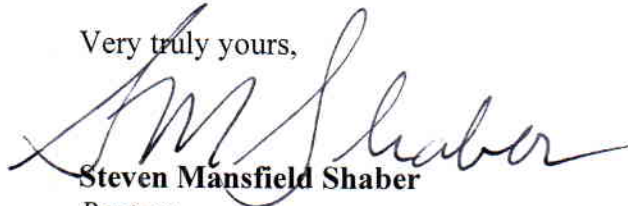
Second, the Board has always, up to now, required some amount of supervision for LPAs. A Board's longstanding and consistent understanding of its own organic statute is evidence of the actual meaning of the statute, and when a Board changes its mind about what a law means, after holding the same opinion for decades, its new opinion is suspect and probably wrong.

Finally, North Carolina psychologists who were responsible for drafting the Act say that they understood at the time that the Act required ongoing supervision for LPAs. Likewise former Board members agree that they always understood the Act to mean LPAs have to be supervised.

In conclusion, let me say that NCPA did not object when supervision requirements were relaxed for LPAs but not eliminated, and it is open to discussing a path toward allowing unsupervised practice by LPAs consistent with work being undertaken by the American Psychological Association.

Thank you for your attention to this. NCPA reserves the right to expand on its position statement later during the comment period.

Very truly yours,



Steven Mansfield Shaber
Partner

SMS/dt

cc:	Martha Turner-Quest Executive Director N.C. Psychological Association	Via Email
	Elliot Silverstein, Ph.D., J.D. President N.C. Psychological Association	Via Email