



# COMMONWEALTH of VIRGINIA

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February 20, 2007

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The Honorable H. Morgan Griffith  
Member, House of Delegates  
P.O. Box 406  
Richmond, Virginia 23218

Dear Delegate Griffith:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You ask whether the regulation governing the general practice standards promulgated by the Virginia Board of Psychology authorizes an individual licensed as an applied psychologist who claims to have special individual training in neuropsychological testing, assessment, and diagnosis of brain injury to perform acts within the scope of practice of a clinical psychologist. Specifically, you ask whether such an individual may conduct diagnostic testing and measure and assess neuropsychological functioning in order to render an expert opinion.

## Response

It is my opinion that the general practice standards established by the Board of Psychology do not authorize a licensed applied psychologist, regardless of specialized training, to perform neuropsychological testing or render an expert opinion relating to such testing since these acts constitute the practice of clinical psychology requiring licensure as a clinical psychologist. Finally, it is my opinion that a licensed applied psychologist who wishes to provide neuropsychological testing must apply for and be licensed as a clinical psychologist.

## Background

You advise that the Brain Injury Services of Southwest Virginia program ("Program"), through funds allocated by the Virginia Department of Rehabilitative Services, determines eligibility for case management and other services for brain injury survivors. Eligibility for Program services requires definitive documentation of brain injury. However, where the brain trauma is unclear, clinical and neuropsychological assessment to confirm the diagnosis and to provide guidance to Program managers is obtained from either a doctor of medicine, doctor of osteopathic medicine, or a licensed clinical psychologist with experience and training relating to brain injury.

You relate that a licensed applied psychologist claiming to have special individual training in neuropsychological testing, assessment, and diagnosis of brain injury has requested that the Program find her competent and legally authorized to provide neuropsychological testing and assessment of brain injury. You ask whether the general practice standards would permit a licensed applied psychologist to provide neuropsychological testing.

### Applicable Law and Discussion

Chapter 36 of Title 54.1<sup>1</sup> governs the practice of psychology. Section 54.1-3600 defines an “applied psychologist” as “an individual licensed to practice applied psychology” and a “clinical psychologist” as “an individual licensed to practice clinical psychology.” Further, § 54.1-3600 defines the “practice of applied psychology” as the “application of the principles and methods of psychology to improvement of organizational function, personnel selection and evaluation, program planning and implementation, individual motivation, development and behavioral adjustment, as well as consultation on teaching and research.” Finally, under § 54.1-3600, the “practice of clinical psychology” “includes, but is not limited to:”

1. “Testing and measuring” which consists of the psychological evaluation or assessment of personal characteristics such as intelligence, abilities, interests, aptitudes, achievements, motives, personality dynamics, psychoeducational processes, neuropsychological functioning, or other psychological attributes of individuals or groups.

2. “Diagnosis and treatment of mental and emotional disorders” which consists of the appropriate diagnosis of mental disorders according to standards of the profession and the ordering or providing of treatments according to need. Treatment includes providing counseling, psychotherapy, marital/family therapy, group therapy, behavior therapy, psychoanalysis, hypnosis, biofeedback, and other psychological interventions with the objective of modification of perception, adjustment, attitudes, feelings, values, self-concept, personality or personal goals, the treatment of alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological aspects of physical illness, pain, injury or disability.

3. “Psychological consulting” which consists of interpreting or reporting on scientific theory or research in psychology, rendering expert psychological or clinical psychological opinion, evaluation, or engaging in applied psychological research, program or organizational development, administration, supervision or evaluation of psychological services.

The Board of Psychology’s regulation in 18 VAC § 125-20-40 provides, in pertinent part, that “[i]ndividuals licensed in one licensure category who wish to practice in another licensure category shall submit an application for the additional licensure category in which the licensee seeks to practice.” The Board’s general practice standards regulation in 18 VAC § 125-20-150(B) provides that:

Persons licensed by the board shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by training and appropriate experience. Delegate to their employees, supervisees, residents and research assistants only those responsibilities such persons can

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<sup>1</sup>Chapter 36 is codified in scattered sections. See VA. CODE ANN. §§ 54.1-3600 to 54.1-3606.1, 54.1-3611, 54.1-3614, 54.1-3616 (2005).

be expected to perform competently by education, training and experience. Take ongoing steps to maintain competence in the skills they use[.]

The respective scopes of practice for clinical psychology and applied psychology are defined expressly in § 54.1-3600. Clinical psychology includes psychological evaluation or assessment of neuropsychological functioning, diagnosis and treatment of mental and emotional disorders, and rendering expert psychological or clinical psychological opinions and evaluations.<sup>2</sup> Applied psychology, however, is different in that its scope of practice pertains to the “application of the principles and methods of psychology to improvement of organizational function, personnel selection and evaluation, program planning and implementation, individual motivation, development and behavioral adjustment, as well as consultation on teaching and research.”<sup>3</sup>

Statutes must be construed to reflect legislative intent.<sup>4</sup> An analysis of legislative intent includes appraisal of the subject matter and purpose of the statute, as well as its express terms.<sup>5</sup> “The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow or strained construction.”<sup>6</sup> Words and phrases in a statute must be considered in the context in which they are used to arrive at a construction consistent with the purpose of the statute.<sup>7</sup>

By statutory definition,<sup>8</sup> the practice of applied psychology neither includes nor authorizes neuropsychological testing or the rendering of expert opinions in the field of clinical psychology. Such functions expressly are included within the practice of clinical psychology. An individual licensed as an applied psychologist who claims to be qualified to provide such testing must submit an application for the “additional licensure category” in which the licensee seeks to practice.<sup>9</sup> Therefore, a licensed applied psychologist claiming to possess specialized training beyond the licensed scope of practice is required to apply to the Board of Psychology for additional licensure as a clinical psychologist.

Additionally, the general practice standards in 18 VAC § 15-20-150(B)(1) do not otherwise authorize an individual licensed as an applied psychologist to perform neuropsychological testing or render expert opinions in the field of clinical psychology. It is well-settled that the interpretation given a statute by the administrative agency charged with its administration and enforcement is entitled to great

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<sup>2</sup>See § 54.1-3600 (defining “practice of clinical psychology”).

<sup>3</sup>*Id.* (defining “practice of applied psychology”).

<sup>4</sup>See *Branch v. Commonwealth*, 14 Va. App. 836, 839, 419 S.E.2d 422, 424 (1992).

<sup>5</sup>See *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 679, 222 S.E.2d 793, 797 (1976); *see also Wood v. Henry Co. Pub. Sch.*, 255 Va. 85, 94-95, 495 S.E.2d 255, 260-61 (1998) (discussing statutory construction rules of *eiusdem generis* and *noscitur a sociis*).

<sup>6</sup>*Vollin*, 216 Va. at 679, 419 S.E.2d at 797.

<sup>7</sup>See *Op. Va. Att’y Gen.*: 1995 at 205, 207; *id.* at 123, 127.

<sup>8</sup>See § 54.1-3600 (defining “practice of applied psychology”).

<sup>9</sup>See VA. ADMIN. CODE § 125-20-40 (2004) (requiring individual licensed in one licensure category and wishing to practice in another licensure category to obtain additional licensure).

The Honorable H. Morgan Griffith  
February 20, 2007  
Page 4

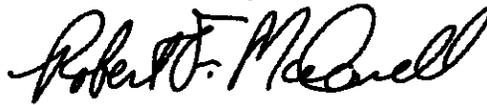
weight.<sup>10</sup> Similarly, the General Assembly is presumed to be cognizant of such an administrative construction of a statute<sup>11</sup> and that such agency interpretation is entitled to deference.<sup>12</sup>

### Conclusion

Accordingly, it is my opinion that the general practice standards established by the Board of Psychology do not authorize a licensed applied psychologist, regardless of specialized training, to perform neuropsychological testing or render an expert opinion relating to such testing since these acts constitute the practice of clinical psychology requiring licensure as a clinical psychologist. Finally, it is my opinion that a licensed applied psychologist who wishes to provide neuropsychological testing must apply for and be licensed as a clinical psychologist.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

6:13; 6:22; 1:941/06-106

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<sup>10</sup>Forst v. Rockingham Poultry Mktg. Coop., 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981); Winchester TV Cable Co. v. State Tax Comm'r, 216 Va. 286, 290, 217 S.E.2d 885, 889 (1975); Miller v. Commonwealth, 180 Va. 36, 42, 21 S.E.2d 721, 723 (1942); 1995 Op. Va. Att'y Gen. 250, 252; 1991 Op. Va. Att'y Gen. 161, 167.

<sup>11</sup>Miller, 180 Va. at 42, 21 S.E.2d at 723.

<sup>12</sup>Forst, 222 Va. at 276, 279 S.E.2d at 403; 1991 Op. Va. Att'y Gen. 20, 22.