

LSBEP Opinions

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OPINION No. 001: PSYCHOPHARMACOLOGY ASSESSMENT AND/OR CONSULTATION

July 30, 1999

It is the opinion of the Louisiana State Board of Examiners of Psychologists that it is within the scope of practice of psychology to gain competence in the field of psychopharmacology. Psychologists who gain competence in psychopharmacology may provide consultation to professionals regarding psychotropic medications.

OPINION No. 002: CLINICAL/COUNSELING EXPERIENCE

September 24, 1999; Revised 7/16/04

Professional activities having a requisite number of years of clinical or counseling experience may include activities performed with the designated specialties of clinical, counseling, school, or clinical neuropsychology, however, such requisite experience shall not include internship or any other experience or activities prior to licensure.

OPINION No. 003: BROADCAST ASSESSMENT AND/OR INTERVENTION

February 4, 2000

It is the opinion of the Louisiana State Board of Examiners of Psychologists that although the topic of Media Presentations is addressed in Standard 3.04 Media Presentations further clarification of this area of practice is needed due to the potential for harm to the public as this practice area expands. According to Standard 3.04:

When psychologists provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they take reasonable precautions to ensure that (1) the statements are based on appropriate psychological literature and practice, (2) the statements are otherwise consistent with this Ethics Code, and (3) the recipients of this information are not encouraged to infer that a relationship has been established with them personally.

Background

It is clear that media activity is not per se unethical. However, psychologists who practice in this area need to be especially careful regarding potential violation of Ethical Principles 1.03 (Professional and Scientific Relationships) and 1.19 (Exploitive Relationships). Entertainment is frequently the foremost purpose of broadcast mental health presentations but the mental health professional must never allow entertainment considerations to outweigh or dilute the principles of ethical mental health practice. Data are not readily available on the effects of media psychology on the consumer.

Suggestions for Ethical Media Practice

Those who enter this practice area are advised to be aware of ethical considerations, the rules of the Federal Communications Commission (FCC), and suggestions for ethical practice which have been developed by the Association for Media Psychology. Special attention should be paid to Ethical Principle 1.19a (Exploitive Relationships).

If participating in a call-in format, the psychologist should assure that all calls are screened off air and such screening procedures be developed by the psychologist rather than the show's producer. Whoever is responsible for such screening should receive sufficient training, analogous to that provided to crisis line workers, so that immediate referral to appropriate community resources is made for those callers who need such assistance.

Disclaimers should be developed for media shows. These disclaimers should include the fact that the presentation is not considered to provide a therapeutic relationship and that some individuals may be placed on hold for a period of time prior to being heard. Note should also be made that some callers may be referred for individual professional assistance rather than being heard "on air."

Media professionals need to be aware of those areas of concern which are most likely to arise in this setting and to be aware of their limitations of knowledge in those areas. Typical areas of concern are marriage issues, child care and discipline, various forms of emotional distress, issues of sexuality including contraception, addictions, and career issues. There is also a special need to be aware of cultural, ethnic, and special interest group differences which may impact responses but that such group membership may not be obvious in a call-in format.

Given the limited contact with the person available in call-in format media work, psychologists should avoid making suggestions for major life changes, criticism of reported prior forms of intervention, specific diagnosis of problems. In order to make the limitations of such presentations clear, a standard disclaimer should be developed and aired repeatedly on the program.

If asked to serve as a guest on a talk show, psychologists should be clear about their role. It is best to view the show before agreeing to participate. If the psychologist finds that the show exploits guests this may be a situation in which the psychologist may be in a position to influence the show's producers by explaining the parts of the Ethics Code which led the psychologist to decline the offer.

Because this practice area is relatively new, this is also an area where peer consultation should be used in any case in which the psychologist has questions about the ethics of the situation.

OPINION No. 004: REPEALED

Repealed February 10, 2006

OPINION No. 005: ADVERTISEMENT

December 8, 2000

It is the opinion of the LSBEP that advertisement is defined as any form of public dissemination of information, announcement, or listing of services of a psychological nature

as defined in the practice of psychology, including but not limited to radio, television, newspaper, magazine, telemarketing, internet, webpage, business card, stationery, flyer or brochure, telephone, yellow pages, outdoor advertising including business signs, building directories, billboards, etc.

It shall be considered a violation of §709 Conduct of Supervision for any supervising psychologist to promote the services of any supervisee via advertisement of any nature. Violators will be subject to disciplinary action such as suspension.

No psychologist shall advertise services for which he is not trained or certified to perform as documented by transcript of coursework or approved continuing education.

OPINION No. 006: RECORDS RETENTION

March 9, 2001; Revised 8/25/10

Opinion No. 006: Records Retention

March 9, 2001; Revised 8/25/10; Statutory References updated 5/13/16

In light of the absence of a generally accepted standard or rule for the retention of patient records, the Louisiana State Board of Examiners of Psychologists establishes the following Opinion which includes reference to the State of Louisiana RS 40:1165.1, pertaining to health care information records and is in accord with this statute as it applies to a “health care provider” as defined in LA R.S. 40:1231.1.

Further, RS 40:1165.1(3)(a) states: “Medical and dental records shall be retained by a physician or dentist in the original, microfilmed, or similarly reproduced form for a minimum period of six years from the date a patient is last treated by a physician or dentist.” It should be noted here that state law is silent on the distinction between records of adults vs. minors.

The current guidelines from APA governing record retention state: “In the absence of a superseding requirement, psychologists may consider retaining full records until 7 years after the last date of service delivery for adults or until 3 years after a minor reaches the age of majority, whichever is later. In some circumstances, the psychologist may wish to keep records for a longer period, weighing the risks associated with obsolete or outdated information, or privacy loss, versus the potential benefits associated with preserving the records (See Guideline 8).” In the State of Louisiana, age of majority is considered to be 18 years of age (Guideline #7: American Psychologist, Vol. 62, No. 9, p.999, December 2007).

Individual circumstances and the discretion of the psychologist may warrant retention beyond these times. Retention of financial records pertaining to patients may fall under other state or federal standards and the psychologist may wish to consult a certified professional accountant, attorney or other financial expert. The psychologist should be acquainted with the Ethical Standards related to the preserving of records and data (LAC, Chapter 13, Ethical Principle 6.01; 6.02) as well as other Louisiana laws related to this issue.

It should also be noted that HIPAA does require that you maintain certain documents required by the law - such as policies and procedures manuals and records of certain disclosures -for six years from the date of creation or the date when the document was in effect, whichever is later. For example, if you implement new HIPAA policies and procedures today, you must keep a copy of the now outdated policies and procedures for another six years. However, HIPAA does not govern how long clinical records themselves must be maintained (APA Practice Update, September 2008).

Considering all of the above references and that the APA guidelines do not mandate adherence in the presence of other relevant statutory requirements, it is the opinion of the Louisiana State Board of Examiners that each psychologist should formally establish a comprehensive record retention policy and plan for their practice that establishes the minimum record retention period to comply with RS 40:1165.1(3)(a) and this can apply to records of both adults and minors. Electronic health records should be treated the same as paper records (See APA Record Keeping Guideline #8). This record retention policy and plan should be written and become part of the office policy and procedures. Such information should also be communicated to clients as part of the general discussion of how the practice manages protected health information (PHI) under HIPAA (part of the Notice of Privacy Practices) and the records containing such PHI.

There may be compelling reasons for records to be maintained beyond the minimally required period under state statutes. By establishing a written record retention policy and plan, each psychologist can determine for their practice, what would be a reasonable record retention period given the use of records, the population of individuals who are receiving services, forensic involvement, etc.

Destruction of records should be accomplished using an acceptable methodology and compliant with all state and federal regulations pertaining to the protection and security of PHI. It would be advisable to keep a log of those records that have been destroyed, the date of last use, and the date of destruction.

Records maintained within organizational settings are controlled by policies and procedures of the organization and should be examined by the psychologist employee/contractor to insure that they comply with state law, ethical principles of the APA, and federal statutory requirements (for example HIPAA).

References and resources:

Ethical Principles of Psychologists and Code Of Conduct (2002), American Psychological Association; <http://www.apa.org/ethics/code/index.aspx>;

APA Record Keeping Guidelines (American Psychologist, Vol. 62, No. 9, 2007); <http://www.apa.org/practice/guidelines/record-keeping.pdf>;

APA Practice Directorate Updates (2008): <http://www.apapracticecentral.org/update/2008/09-30/client-record-retention.aspx>;

RS 40:1299.96: <http://www.legis.state.la.us/lss/lss.asp?doc=97291>;

Louisiana Administrative Code, Title 49, Chapter 13.

Louisiana Secretary of State, Records Management Division:
<http://www.sos.louisiana.gov/tabid/487/Default.aspx>;

OPINION No. 007: DATE OF DOCTORAL DEGREE

March 9, 2001

RS 37:2356.A.4 requires an applicant for licensure in Louisiana to hold a doctoral degree with a major in psychology from a school or college as defined in that same chapter.

It is the Opinion of the Board of Examiners of Psychologists that the date an applicant actually “holds” their degree is the date which is reflected on their transcript from the school or college from which the degree was obtained.

OPINION No. 008: SUPERVISION OF UNLICENSED ASSISTANTS

March 9, 2001

The Board eliminated the procedure of registering unlicensed assistants commencing July 1, 1998. This was not set forth to be considered as ongoing policy, which would not change according to trends regarding the functions of the unlicensed assistant or the supervisor.

The Opinion of the Board is that the supervisor shall make arrangements for supervision in his or her absence. In the case of prolonged illness or absence, the supervisor should designate another licensed psychologist to perform as full supervisor with all of the responsibilities of the original supervisor. In like manner, this means that the legal and professional responsibility for the welfare of all clients would be transferred to the temporary supervisor. Therefore, the same responsibility of “functional authority” over the psychological services, which are provided by the unlicensed assistant, would be legally and professionally expected of the temporary supervisor. The Opinion of the Board is that the Board would not need to be notified of this temporary change of supervisor.

OPINION No. 009: PRESENTERS OF EDUCATIONAL SERVICES ON PSYCHOLOGICAL TOPICS

December 7, 2001

It is the sense of the Louisiana State Board of Examiners of Psychologists that a person does not need to be licensed as a psychologist in this state in order to provide educational programs here on psychological topics. However, in order to present him(her)self as a psychologist in this state in the course of presenting an educational program, the person

must either be 1) licensed in Louisiana, 2) licensed in another jurisdiction, 3) a psychology faculty member at a university, or 4) an acceptable sponsor of continuing education as defined by LA Statute 805.

This statement assumes that the program is educational and not therapeutic. A license to practice psychology in Louisiana or supervision by or association with a Louisiana psychologist would be required to conduct a therapeutic program in this state that is either labeled as being “psychological” or in which the person conducting it presents him(her)self as a psychologist.

OPINION No. 010: QUALIFICATIONS OF A SUPERVISING PSYCHOLOGIST

June 14, 2002

It is the opinion of the Louisiana State Board of Examiners of Psychologists (LSBEP) that in order to meet the supervisor duties and qualifications described in Sections 701 and 705 of the Louisiana Administrative Code, Title 46, Part LXIII, typically the supervising psychologist shall have been licensed for a minimum of one year and supervise no more than two candidates for licensure at the same time. On a case-by-case basis, at the discretion of the LSBEP, exceptions to these requirements may be granted. The LSBEP retains the right to approve or deny any supervisory relationship

OPINION No. 011: PSYCHOLOGISTS ORDERING MEDICAL TESTS

March 14, 2003; Revised 9/10/2004

Except for Medical Psychologists practicing under the provisions of R.S. 37:2371-2378, it is generally advisable for psychologists to avoid ordering medical tests. This is particularly true if the psychologist is considered the primary caregiver. If the psychologist is the primary caregiver and has reason to believe there is physical pathology, referral to a physician is generally the appropriate course of action.

OPINION No. 012: SUPERVISION OF PSYCHOLOGY STUDENTS/INTERNS/POST-DOCS TOWARD LICENSURE

October 20, 2010; Revised 5/13/2011

In October 2010, the Louisiana State Board of Examiners of Psychologists (LSBEP) rendered Opinion #012 on the supervision of psychology students/interns/post-docs toward licensure by Medical Psychologists. At that time, this opinion was based on an examination of the statutes created under ACT 251 of the 2009 legislature and the statute that give LSBEP regulatory authority over psychologists who are defined in LA R.S. 37:2352(6). LSBEP using a conservative interpretation of the respective statutes determined that because LAC Title 46, Part 63, Chapter 7, section 705(A) in part states: “Responsibility for the overall supervision of the supervisee's professional growth resides in the licensed psychologist,” that the ‘psychologist’ referred to here is someone who meets the definition in LA R.S.

37:2352(6). Therefore, LSBEP felt that only those psychologists who were currently licensed by LSBEP may be clinical supervisors of those individuals who need such supervision to meet the requirements for licensure under LAC Title 46, Part 63, Chapter 7.

Since this opinion was rendered, Dr. John Bolter, representing the Medical Psychologist Advisory Committee (MPAC) and Dr. Robert Marier, representing the Louisiana State Board of Medical Examiners (LSBME) has each formally requested that LSBEP reconsider the opinion rendered in October of 2010. These representatives presented evidence from the respective statutes and from prior LSBEP actions, particularly related to approving supervision of applicants and candidates for licensure by psychologists who are licensed in states other than Louisiana. Had LSBEP used Opinion 012 of 10.19.10, it should have declared that supervision to be invalid based on the argument that those out of state psychologists did not meet the statutory definition of 'psychologist' under R.S. 37:2352(6). This has not been the case as LSBEP routinely accepts that psychologists duly licensed by other jurisdictions can be supervisors of those seeking licensure by LSBEP. LSBEP further sought a legal opinion from its attorney and that opinion confirmed that medical psychologists (MPs) could act as valid supervisors in this context. This was based on a broader interpretation of the applicable sections under Chapter 28 of the Revised Statutes, particularly Subpart A of Section 2365 that expressly authorizes those duly licensed as medical psychologists by LSBME to represent themselves as psychologists.

Therefore, based on an examination of the evidence presented above, LSBEP now revises Opinion 012, to state that MPs may supervise psychology interns/students/post-docs toward licensure. This opinion also creates an understanding that LSBEP does not have direct regulatory control over supervisors not licensed by LSBEP. Should a complaint arise based on the supervisory relationship, LSBEP would have the authority to investigate and based on the outcome of that investigation, take appropriate action against a Louisiana licensee. LSBEP does not have that authority when the psychologist is licensed in another jurisdiction. LSBEP's only option in that circumstance is to submit a complaint to the board with jurisdiction. The same would hold true if a complaint was filed against an MP acting as supervisor. In this case, LSBEP could only file a complaint with LSBME. It is hoped that no such action will be necessary but if it does occur, that LSBEP and LSBME would work together to find the most appropriate method to fulfill our obligations to protect the public through the proper exercise of regulatory control.

OPINION No. 013: TELEPSYCHOLOGY

April 5, 2012

Telepsychology means the practice of psychology as those terms are defined in LAC Title 37 Section 2352(5), by distance communication technology such as but not necessarily limited to telephone, email, Internet-based communications and videoconferencing. It is the opinion of the Louisiana State Board of Examiners of Psychologists that in order to practice telepsychology within the State of Louisiana, one must hold a current, valid license issued by the Louisiana State Board of Examiners or shall be a supervisee of a licensee being delegated

telepsychology practices. One must abide by all federal and state laws and regulations in the practice of telepsychology (e.g. HIPPA).

Licensees should understand that this rule does not authorize licensees to practice telepsychology in service to clients domiciled in jurisdictions other than Louisiana, and licensees bear the responsibility for complying with laws, rules and/or policies for the practice of telepsychology set forth by other jurisdictional boards of psychology. Licensees practicing telepsychology shall comply with all of the rules of professional conduct. Licensees should also recognize that telepsychology is not appropriate for all psychological problems and clients, and decisions regarding the appropriate use of telepsychology are made on a case-by-case basis.

OPINION No. 014: MANDATORY REPORTING OF CHILD ABUSE

July 13, 2012

It is the Louisiana State Board of Examiners of Psychologists [LSBEP] opinion that in order to provide the greatest possible protection, as promptly as possible, for endangered children, psychologists should refer to and abide by Children's Code Article 609 and 610, as well as LA R.S. §14:403. Furthermore, It is the opinion of the LSBEP that psychologists are mandatory reporters and shall report suspected child abuse or neglect to the appropriate agency, regardless if it is a concurrent report.

OPINION No. 015: SPECIAL ACCOMMODATIONS

April 19, 2013

It is the Louisiana State Board of Examiners of Psychologists [LSBEP] opinion that any candidate with documented disabilities or impairments may be granted the opportunity to be tested under nonstandard conditions so long as appropriate supporting information is supplied to the Board along with the request for special accommodations. The LSBEP will recognize and accept supporting documentation from a current treating physician or psychologist who evaluated the individual within the past 3 years. It is the LSBEP's authority to review, approve and/or deny all requests for special accommodations.

OPINION No. 016: PROFESSIONAL WILLS

May 10, 2013

The Louisiana State Board of Examiners of Psychologists [hereinafter "Board"] opines that all licensees should prepare and execute a Professional Will. It is our opinion that a Professional Will is an important tool in preparation for unexpected events. A Professional Will is a

detailed set of instructions, including specific information regarding location of and access to records, research materials and patient information, to an appointed team of trusted colleagues who will serve as professional executors upon the event of a death or incapacitation. The Board further opines that a Professional Will represents a way of providing care to consumers and sparing family members the obligation.

OPINION No. 017: RETENTION OF CONTINUING EDUCATION RECORDS

September 13, 2013

The Louisiana State Board of Examiners of Psychologists (LSBEP) opines that all Louisiana licensed psychologists should retain continuing education records for 6 years from the last renewal date. Continuing education records include but are not limited to: certificates of attendance and certificates of completion.

OPINION No. 018: PSYCHOLOGIST ADVERTISING AS BEHAVIOR ANALYSTS

December 13, 2013

The Louisiana State Board of Examiners of Psychologists [LSBEP] issues this opinion pursuant to the Behavior Analyst Practice Act – Act 351. This opinion is for the purpose of clarification that psychologists cannot advertise as “ Behavior Analysts” unless licensed by the Louisiana Behavior Analyst Board.

OPINION No. 019: PSYCHOLOGIST EMERGENCY CERTIFICATE

MAY 13, 2016; AMENDED DECEMBER 16, 2016.

The Louisiana State Board of Examiners of Psychologists [LSBEP] opines that it is within the scope of practice for a qualified psychologist to execute a Psychologist Emergency Certificate in accordance with LA R.S. 28:53.