

SUNSET EVALUATION REPORT
PSYCHOLOGISTS
Chapter 465, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

Report No. 81-6
February 1981

FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of psychologists under Chapter 465, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate psychologists to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of psychologists is described in Chapter 1 of this report under "Framework for Evaluation." That framework will also serve as the framework for conducting subsequent evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we applied was whether there existed an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. Then the other criteria for evaluation were applied.

We acknowledge the cooperation and assistance extended to our staff by the Department of Regulatory Agencies and other officials contacted during the course of our examination.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

February 1981

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	1
2	BACKGROUND	7
	Occupational Characteristics	8
	Regulation of Psychologists in the United States	9
	Hawaii's Legislative History	11
	Provisions of Chapter 465, HRS	12
3	EVALUATION OF THE REGULATION OF THE PRACTICE OF PSYCHOLOGY	15
	Summary of Findings	15
	Need for Regulation	15
	Effectiveness of Chapter 465 to Protect the Public from Potential Harm	19
	Operational Problems	25
	Recommendations	27
	Appendix – Affected Agencies	29

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 465.

Scope of the Evaluation

This report examines the history of the statute on licensing of psychologists and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendation.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.

5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of restricting the profession or vocation to protect the public from the potential harm.
6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits", Sec. 14.

2. *Ter. v. Fritz Kraft*, 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Chapter 465, Hawaii Revised Statutes, regulates the practice of psychology. No person may represent himself to be a psychologist or engage in the practice of psychology without being licensed under the chapter.

The "practice of psychology" is defined in the statute as the performance of any professional service which consists of, requires, and is limited to the application of psychological principles and procedures for the purpose of understanding, predicting, or influencing the behavior of individuals to assist them in attaining: maximum personal growth; optimal work; family, school, and interpersonal relationships; and healthy personal adjustment.

The law then defines "the application of psychological principles and procedures" to include a variety of activities, to-wit: interviewing, counseling, and psychotherapy; administering and interpreting instruments for the assessment and evaluation of mental abilities, aptitudes, interests, attitudes, personal characteristics, emotions, and motivations; diagnosis, prevention, and amelioration of adjustment problems; hypnosis; the resolution of interpersonal and social conflict; educational and vocational counseling; personnel selection; evaluation and planning for effective work and learning situations; conducting research contributing directly to any of these.

The law exempts certain persons from the requirements of the chapter. Among those exempt are college and university professors; employees of local, state, and federal governments; physicians and surgeons; students of psychology and interns and residents in psychology; and persons who perform any of the enumerated activities only incidental to their lawful occupational purpose.¹

There are currently 184 persons licensed by the State to practice psychology in Hawaii.

1. The validity of the exemption of this last class of persons is in some doubt since the enactment of Act 91, SLH 1980. See text, Chapter 3, *infra*.

Occupational Characteristics

But for the express exemptions in the statute, every person doing any of the things enumerated would be subject to Chapter 465. The law encompasses a broad spectrum of activities because the term "psychology" itself covers a wide range of matters. Indeed, there is considerable disagreement among psychologists as to where psychology ends and other behavioral sciences begin.

Major divisions. The study of psychology may be divided into physiological, social, and developmental psychology. Physiological psychology concentrates on the physical characteristics of persons and studies the interrelationships of the nervous systems, receptors, and endocrine glands, with behavioral and mental processes. Social psychology deals with groups of persons and studies the psychological processes which occur within such groups. Developmental psychology is concerned with pre- and post-natal growth and with the development and maturation of behavior, and it studies, among other things, the effect of early experience on later development.

Psychology may also be viewed in terms of applied psychology and clinical psychology. Applied psychology uses the principles of psychology to reach some practical ends. For example, applied psychology is used to identify and resolve industrial problems related to employment and personnel practices, working conditions, fatigue, morale, rewards for work and efficiency; to correct problems related to machine design, working conditions, skills, learning ability, and efficiency; to effectively advertise, sell, and package goods and services to consumers; to maximize efficiency in learning and instruction.

Clinical psychology specializes in the diagnosis and treatment of individuals with behavioral, emotional, or mental problems. Treatment includes the use of such techniques as persuasion, psychoanalysis, nondirective or directive therapy or counseling, behavior modification, psychodrama, and hypnotic suggestions.

Employment. Psychologists are employed both by government and by private industry, and some are in independent or group practice. They work as researchers, educators, administrators, industrial psychologists, marketing specialists, health service providers, etc.

Health insurance coverage. Medicaid, Medicare, CHAMPUS (Civilian Health and Medical Program of the Uniformed Services), and HMSA (Hawaii Medical Service Association) provide health insurance coverage for the services of psychologists. In general, each requires that the psychologist who provides psychological services for which insurance coverage is claimed be licensed under the appropriate state law.

In addition, CHAMPUS requires that the psychologist possess a doctoral degree in clinical psychology and have a minimum of two years of supervised experience in clinical psychology in a licensed hospital, a mental health center, or other appropriate clinical setting, or be listed on the national register of health service providers in psychology maintained by the American Psychological Association, a national organization of psychologists. The requirements to be on the national register are a doctoral degree, a state license, and two years of professional experience, one of which is post-doctoral.

Medicare requires that if the state or jurisdiction where the psychologist is practicing has no licensing law, the psychologist must possess a doctoral degree in clinical psychology from a program approved by the American Psychological Association or have a recognition of competency through the American Board of Examiners for Professional Psychologists (which grants diplomate certificates to those who possess a doctoral degree in psychology, pass an examination, and have five years of post-doctoral experience) or through an endorsement of the psychological association of the state in which the psychologist practices.

Medicaid and Medicare further require that the psychological services be ordered by a physician and, in the case of Medicare, that the psychological treatment be in a physician-directed clinic.

Regulation of Psychologists in the United States

The demand for psychological services rose after World War II. Due to a limited supply of psychiatrists, psychologists were called upon to provide direct counseling and psychotherapy.

With this rise in the use of psychologists, the American Psychological Association (APA) became concerned with establishing proper guidelines in the practice of psychology and with establishing statutory legitimacy of the profession. It, together with its component state associations, began to lobby for the licensure of psychologists.

Connecticut in 1945, Virginia in 1946, and Kentucky in 1948 were the first states to adopt such legislation.

In 1967, the APA proposed a model licensing law. The proposed model law required licensing for the use of the title of psychologist and for the practice of psychology. It imposed a requirement of a doctoral degree and at least one year of supervised experience for licensing and provided for the adoption of the official code of ethics of the APA. It exempted persons in governmental agencies, academic institutions, research laboratories, and business corporations from the requirements of licensing.

By 1978, 51 jurisdictions had some form of regulation of psychologists. Twenty-three states and the District of Columbia required licensing for both the practice of psychology and the use of the title "psychologist." Nineteen states required licensing for the use of the title, but not for the practice of psychology, and three states required licensing only for the practice of psychology. Five states required licensing only for the practice of psychology by persons calling themselves "psychologists." In these five states, a person could practice psychology without a license if he did not call himself a psychologist.

Of the 51 jurisdictions, 43 required a doctoral degree with an *emphasis* in psychology. Four states specified a doctoral degree with a *major* in psychology. In these four states, such degrees as a PhD in education with an emphasis in educational psychology were not sufficient. Four other states required a master's degree in psychology.

Since 1978, South Dakota and Florida have sunsetted their regulation of psychologists. In both states anyone may now practice psychology without a license.²

Third-party medical payments for psychological services have not been affected by the lack of licensing. For example, in South Dakota, with respect to payments by Medicare, psychological diagnostic testing services were made eligible for Medicare payments if such services were rendered by psychologists certified by the Medicare

2. In Florida, the legislature terminated its licensing statute for the express reason that the licensing law did not protect against quackery and the term "psychologist" was ill-defined.

Regional Office. Psychological treatments were already eligible for payment under Medicare rules and regulations if such treatments were administered by psychologists in physician-directed clinics. The Blue Cross/Blue Shield plans in South Dakota have not covered treatments by psychologists; they have covered treatments only by psychiatrists.

In addition to South Dakota and Florida, three other states, Alaska, Kansas, and Arizona, conducted sunset reviews of their licensing laws. They each decided to retain their statutes, citing cases of known abuses and concluding that there was a continuing need for regulation because of the nature of the profession and the potential harm that unethical or incompetent practitioners could cause.

Hawaii's Legislative History

Hawaii's statute regulating psychologists was first enacted in 1967.³ Impetus for regulation came from the Hawaii Psychological Association, an affiliate of the American Psychological Association. From the outset, considerable difficulty was encountered in defining what constitutes the practice of psychology.

The law as enacted in 1967 provided that "no person shall represent himself to be a certified psychologist without first having obtained a certificate" as provided in the law. It defined a person as representing himself to be a certified psychologist "when he offers services as a certified psychologist, including psycho-diagnostic or psycho-therapeutic services, gratuitously or for pay, either publicly or privately." The use of the terms "psycho-diagnostic" and "psycho-therapeutic" raised objections from social scientists other than psychologists. They claimed that the terms included many of their activities.

A compromise of sorts was reached in 1967 when the law was limited to prohibiting the use of the title "certified psychologist" by unlicensed persons. The law expressly allowed any person to carry on any psychological activities without a license, provided such person did not hold himself out to the public as a certified psychologist.

3. Act 290, SLH 1967.

In 1971, the law was extensively amended.⁴ Chapter 465, HRS, as it now appears is substantially the law as it was amended in 1971. The 1971 amendments broadened the licensure provisions of the law and made the practice of psychology as well as the use of the title “psychologist” subject to licensing. It provided a broad definition of “the practice of psychology,” which definition is the one currently in effect.

The definition when initially proposed triggered a burst of protest from clergymen, nurses, social workers, vocational counselors, personnel managers, and others. They claimed that the definition was so broad that it covered many of their normal activities and thus made each of them subject to the licensing requirements of the law. Again, a compromise of sorts was reached. The list of persons exempt from the law was revised. The revision exempted from the law, not only college and university professors, government workers, physicians and surgeons, but also any person who offers psychological services as defined in the law, where the activities so offered are “incidental” to the person’s lawful occupational purpose.

In 1980, the Legislature made some amendments to the list of exempt persons.⁵

Provisions of Chapter 465, HRS

Board of Certification for Practicing Psychologists. Chapter 465 creates a board of certification for practicing psychologists. It is placed within the Department of Regulatory Agencies for administrative purposes. The board consists of five members representing various specialties of the profession who qualify for certification under Chapter 465, and two members from the community at large.

The board’s powers and duties include: examining the qualifications of applicants for certification (license); preparing, administering, and grading examinations and tests given to applicants; keeping a record of all actions taken on applications for certification; submitting annual reports in writing to the Governor; promulgating, amending, and repealing rules and regulations as may be proper for the purposes of Chapter 465; and revoking or suspending any certificate for causes enumerated in the statute.

4. Act 84, SLH 1971.

5. Act 91, SLH 1980.

Licensing requirements. To qualify for a license, a person (1) must be of good moral character; (2) hold a doctoral degree from an accredited institution of higher education with training and education in the field of psychology adequate to the satisfaction of the board or hold a diplomate certificate in good standing granted by the American Board of Examiners in Professional Psychology; and (3) pass such examination (written or oral, or both) as may be prescribed by the board.⁶

The statute provides that an applicant may be granted a license without an examination if the applicant holds a doctoral degree as provided above and either is certified or licensed to practice psychology in another state deemed by the board to have standards equivalent to Hawaii's or is a diplomate in good standing of the American Board of Examiners in Professional Psychology.⁷ This is provided that the applicant has not previously failed to pass an examination in psychology prescribed by the board.

The rules and regulations elaborate on the statutory licensing requirements. The rules specify that for an applicant's doctoral degree to be considered adequate for licensing purposes, the graduate level training program leading to the degree must have required the applicant to demonstrate competence in each of the following areas: scientific and professional ethics and standards; history and systems; research design and methodology; and statistics and psychometrics. In addition, the training program must have required the applicant to demonstrate competence in the substantive content areas of biological bases of behavior; cognitive-affective areas of behavior, social basis of behavior; and individual differences. The training program must also have included an internship of at least the equivalent of one year of full-time practice under the supervision of a person who holds a doctorate in psychology and who has at least two years of experience in the work supervised.

The board in practice requires both a written and an oral examination for licensing. The written examination is one which has been developed by the American Association of State Psychology Boards.

Denial, suspension, and revocation of licenses. The statute provides that the board "shall refuse to grant a certificate to any applicant and may revoke or suspend any

6. There is some ambiguity in the way the statute is worded. However, the requirements as written in the text appear to be a reasonable interpretation of the statute and are followed in practice.

7. See footnote 6 above.

certificate” on any of these grounds: habitual use of narcotic drugs or any other substance which impairs the intellect and judgment to such an extent as to incapacitate the applicant or certificate holder; habitual drunkenness; violation of Chapter 465; or any unethical practice of psychology as defined by the board in accordance with its own rules and regulations.

For the purposes of the last enumerated ground, the board has adopted essentially the code of ethics of the American Psychological Association. As adopted by the board, the code encompasses 13 major areas and statements of conduct, including: avoidance of misrepresentation of professional qualifications or affiliations with professional organizations; reporting fairly and accurately; safeguarding information obtained by the psychologist in his practice; respecting the integrity and protecting the welfare of clients; providing psychological services for the purposes of diagnosis, treatment, or personalized advice only in the context of a professional relationship; adhering to professional rather than commercial standards in making known one’s availability as a psychologist; and limiting access to testing devices to persons with professional interests who will safeguard their use. The rules expand on the 13 topics.

Chapter 3

EVALUATION OF THE REGULATION OF THE PRACTICE OF PSYCHOLOGY

This chapter contains our evaluation of the regulation of the practice of psychology. We determine, here, whether there is a need to regulate the practice of psychology; and we consider whether the present regulation contributes to public protection.

Summary of Findings

Our findings are:

1. There is no clear evidence that the practice of psychology poses potential harm to public health, safety, or welfare, although there is an intuitive perception that it does.
2. The present regulatory scheme is overbroad. At the same time, the statute is vague as to who is exempt from regulation.
3. The educational and examination requirements for licensing under Chapter 465 appear to bear little relationship to the protection of the public from the potential harm perceived as arising from the practice of psychology.
4. The Board of Certification for Practicing Psychologists does not aggressively investigate and pursue complaints against psychologists lodged with the board.
5. The validity of the restrictions imposed by the Board of Certification for Practicing Psychologists on advertising by psychologists is constitutionally questionable.

Need for Regulation

We stated in Chapter 1 that licensing of an occupation or profession is warranted if (among other things) there exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession. In the case of psychologists, the potential harm is indistinct. The harm that is usually identified with the practice of psychology is based principally on an intuitive perception arising from the nature of the practice itself.

Of particular concern to those who advocate the regulation of psychologists is that aspect of the practice of psychology known as psychotherapy where mental illness and emotional distress (i.e., problems in personal, social, and interpersonal adjustments) are treated. Potential harm is perceived as flowing from the improper application in psychotherapy of such psychological procedures and techniques as hypnotic suggestions, psychodrama, and psychoanalysis, and in more recent times, such methods as sexual contact, physical assault, and drugs.

Two kinds of harm are perceived: (1) harm to the mental or emotional state of a person and (2) physical abuse of a person.

Mental or emotional harm. Among the negative effects on the mental or emotional state of a person perceived as flowing from the improper application of psychological methods are intensification of existing symptoms (i.e., depression, guilt), stimulation of new symptoms which are more dysfunctional than the old symptoms, precipitation of suicide or psychotic breakdown, and lasting dependence on the therapist.

The problem is, there is no way to prove or disprove the genuineness of this perceived danger. Psychology is not an exact science. There are many differing theories of human behavior and many differing techniques for dealing with mental illness and emotional distress. None of the theories and none of the techniques are based on reliable, scientific data. Thus, there is no way to prove or disprove any of the theories or the effectiveness of the different techniques. This being so, although behavioral changes may occur following therapy, including changes leading to precipitous actions, there is no way to link such changes to therapy itself. The causal connection between therapy and subsequent patient behavior or mental state cannot be established.

Physical abuse. Physical injury is more readily manifested and traceable to therapy, if therapy is the cause, than mental or emotional injury. Physical abuse is perceived as arising from the improper use of those therapeutic methods which involve the physical touching of patients, such as sexual contact and physical assault.

The difficulty here, however, is in determining when therapy ends and abuse begins. What is abuse to a patient may be therapy to a therapist. Note the following court cases in which the plaintiff alleged abuse and the defendant claimed therapy.

Case No. 1. The defendant psychologist developed a new form of treatment known as "rage reduction therapy" or "Z-therapy." The purpose of the therapy was to break down a patient's resistance through extensive use of tactile stimulation while the patient was immobilized. This induced repressed anger to escape. The plaintiff, unaware of the nature of the technique, voluntarily entered the treatment, after being referred to the psychologist for an adverse drug reaction to marijuana and/or other drugs. The defendant diagnosed plaintiff as an incipient schizophrenic and treated her with more than ten hours of his newly developed therapy. The plaintiff alleged she was poked, beaten, and tortured during this time, and that as a result she suffered severe bruising of the upper half of her body, complete kidney failure, as well as aggravation of her preexisting mental condition.

Case No. 2. The defendant was an encounter group leader. He ran a human relations group for the "Leadership Consulting Service," a training organization operating under the auspices of Boston University. The plaintiff claimed that the leader physically grabbed her by the arms, raised her from a seated position, threw her over his shoulder and then onto the floor, where he slapped her. The plaintiff alleged contusion of the hip; pains in the neck, shoulder, and back; headaches; discomfort; and nervous upset.

Case No. 3. The defendant was a practicing psychologist whose license was revoked by the Board of Medical Examiners of the State of California on the recommendations of the Psychology Examining Committee. The defendant was charged with illegal prescription of drugs and unprofessional behavior. Specifically it was alleged that he engaged in physical intimacies with three female patients. The committee stated that at least one of these patients suffered great emotional distress from his actions. The defendant claimed that no evidence existed that anyone was harmed by his treatment and asserted that positive benefits might possibly have been achieved. Furthermore, he claimed that expert opinion existed that would consider his treatment acceptable.

In Case No. 1, the plaintiff prevailed and was awarded damages. In Case No. 2, the matter was settled out of court for a nominal sum. In Case No. 3, the license revocation was upheld. Their actual disposition aside, the cases illustrate the fact that drawing the line between therapy and abuse can be very troublesome.

Statistical data. The problems in linking behavior or the mental or emotional states to treatment and in establishing abuse in treatment are reflected in the statistics on consumer complaints. Over the years, there have been only a handful of complaints about psychological treatments, and in most, if not all, of these cases, the impropriety of treatment could not be substantiated. Note the following.

From 1976 to 1980, there were 17 complaints lodged against psychologists with the Department of Regulatory Agencies (DRA). But, of the 17, only three were for alleged improper treatment of patients. The remainder were for unlicensed practice, overcharging, fraudulent claims against the Hawaii Medical Service Association, etc. Of the three, one alleged rape, and two charged inhuman treatment and sexual abuse. However, none of the three complaints was ever substantiated.

In the past several years complaints were also lodged with the Hawaii Psychological Association (HPA). There were five written complaints. Of the five, only one complaint was on the treatment itself. It alleged sexual misconduct by a psychologist against a patient. After an investigation, the HPA ethics committee concluded that the charges were unfounded. The remaining four written complaints involved questions of proper professional relationship between psychologists and psychiatrists and their employees.

In addition to the five written complaints, some 32 other complaints were lodged with HPA in the past several years. These included practicing without appropriate training in a specialty, improper sexual advances and suggestions, advertising contrary to professional standards, and using a critical therapeutic stage to take advantage of a client. The disposition of these cases is unclear. HPA's policy, however, is to try to resolve the complaints informally and only when such informal methods fail are complaints put in writing. Based on this practice, it appears that most of these complaints were disposed of informally.

Complaints against psychologists are also lodged with the Office of Consumer Protection and the Office of the Ombudsman. Complaints lodged with these offices have generally been about unlicensed practices and about the psychology board's authority and procedures, and not about treatment or abuse in treatment.

Conclusion. Although it is difficult to connect subsequent behavior with therapy and to distinguish therapy from abuse, there is nevertheless a sense that there exists a potential harm in the practice of psychology such as to warrant the regulation of the practice and those who engage in the practice. This sense arises from the very uncertainty that surrounds the practice of psychology. It arises also from the fact that psychology, and psychotherapy in particular, deal with the mind and emotions of people and utilize techniques that are not easily understood by the public in general. It further arises from the nature of the therapeutic process which places great power in the hands of

the therapist and thus seemingly provides opportunity for unethical conduct on the part of the therapist.

Such intuitive perceptions about the potential dangers of psychology and the practice of psychology are not sufficient to warrant the regulation of the profession and the practice. The action of the State of Florida is instructive in this regard. Florida opted to allow its regulatory statute to expire on the basis that, despite widespread intuitive feeling that regulation is necessary, there was no clear evidence that a significant and discernible harm or danger to the public health, safety, or welfare existed.

However, should the Hawaii Legislature decide to retain Chapter 465, it will be in the company of several other states which reviewed their regulatory statutes and concluded intuitively, given the nature of the profession and practice, that a potential for harm to the public existed, warranting the continued existence of their statutes. These states include Alaska, Kansas, and Arizona.

Effectiveness of Chapter 465 to Protect the Public from Potential Harm

In this section we assume that the perceived, potential harm to the mental or emotional state of persons and the perceived, potential harm of physical abuse arising from the application of psychological principles and procedures are sufficient to warrant the regulation of psychologists and the practice of psychology. On that assumption, we examine the efficacy of Chapter 465 to protect the public from such harm.

We examine first the scope of the law and, then, the licensing requirements to determine whether these provisions adequately address the potential injuries.

Scope of Chapter 465. Chapter 465 is broadly worded, and the liberal application of the statute would bring a wide range of persons within the coverage of the law. At the same time, the law is ambiguous and raises questions whether all who should be covered are in fact covered by the law.

1. The coverage. We have already described in Chapter 2 the provisions of Chapter 465 which define the practice of psychology. However, because the wording of the statute on these matters is significant to our discussion here, we quote the pertinent statutory provision in full below.

“Sec. 465—1 Definitions. As used in this chapter:

...

- (5) A person practices ‘psychology’ who performs any professional service which consists of, requires, and is limited to the application of psychological principles and procedures for the purpose of understanding, predicting, or influencing the behavior of individuals in order to assist in their attainment of maximum personal growth; optimal work; family, school and interpersonal relationships; and healthy personal adjustment. The application of psychological principles and procedures includes: interviewing, counseling and psychotherapy; administering and interpreting instruments for the assessment and evaluation of mental abilities, aptitudes, interests, attitudes, personal characteristics, emotions and motivations; diagnosis, prevention, and amelioration of adjustment problems; hypnosis; the resolution of interpersonal and social conflict; educational and vocational counseling; personnel selection; evaluation and planning for effective work and learning situations; conducting research contributing directly to any of these.”

It is readily seen that the definition of the practice of psychology contained in Section 465—1(5) is extremely broad. Note the use of such terms as “personal growth,” “optimal work,” and “family, school and interpersonal relationships.” Note, too, the enumeration of such activities as “interviewing,” “counseling,” “amelioration of adjustment problems,” “educational and vocational counseling,” and “personnel selection.”

Section 465—1(5) standing alone covers nearly every occupation which, in whole or in part, advises and assists people. It includes social workers, mental health nurses, pastoral counselors and chaplains, school counseling and guidance personnel, vocational counselors, special education teachers, recreational therapists, marriage counselors, drug abuse counselors, patient advocates, foster parents for emotionally disturbed children, board and care home providers, adult day care program workers, and staff of social rehabilitation programs and halfway houses. The definition can also include lawyers, personnel managers, industrial engineers, management consultants, marketing specialists, and other behavioral scientists such as sociologists and political scientists, all of whom employ one or more of the enumerated principles or procedures to influence behavior.

The scope of Section 465—1(5) is inconsistent with a commonsense view that many of the activities and occupations encompassed within it pose no substantive threat to public health, safety, or welfare. Moreover, the occupations included within the definition generally have their own distinct educational and training requirements. Under Chapter 465, however, no persons in such occupations can perform their trade unless

they have, in addition, a doctoral degree in psychology or work under the supervision of a licensed psychologist. To impose on them this additional requirement is unreasonable.

2. *The exemptions.* In 1971, when the present Section 465-1(5) was enacted, clergymen, social workers, and others protested the broadness of the definition of the term, "practice of psychology." As a result, Section 465-3(6) was added to the statute. Section 465-3(6) as adopted in 1971 provides as follows:

"Nothing in this chapter shall in any way restrict any person from carrying on any of the aforesaid activities, provided that such person does not offer psychological services as defined in this chapter except as such activities are incidental to his lawful occupational purpose."

This exception is in addition to the following other persons who are excepted from the provisions of Chapter 465: (a) a college or university employee who teaches, lectures, consults or engages in research in psychology; (b) a person who performs psychological services under a person qualified under Chapter 465; (c) a government employee; (d) a student of psychology, a psychological intern or a resident in psychology; and (e) a physician or surgeon.

The addition of Paragraph (6) to Section 465-3 was intended to exclude from the application of Chapter 465 persons in such professions as "nurses, social workers, vocational counselors, personnel managers and other professions intending to assist or be of comfort to other human beings."¹ Notwithstanding this intent, Paragraph (6) is ambiguous. It is not entirely clear what specific occupations fall within the meaning of Paragraph (6), and when, if at all, the rendering of psychological services ceases to be "incidental" to a lawful occupational purpose.

The ambiguity of Paragraph (6) is reflected in the position taken by the Board of Certification for Practicing Psychologists and by the individual members of the board in differing cases.

- (1) Although the intent of Paragraph (6) seemed clearly to exclude family counselors and social workers from regulation under Chapter 465, the board has ruled that they are subject to the chapter. Many family counselors and social workers have ignored this ruling, and the board has taken action against some of them, but not against others.

1. House Standing Committee Reports No. 486 and No. 594, 1971; Senate Standing Committee Report No. 695, 1971.

- (2) The board has ruled that nurses are not subject to Chapter 465. It based its ruling not on Paragraph (6) but on the fact that nurses are regulated under Chapter 457, HRS. There is nothing in Chapter 465 which exempts persons regulated by other statutes.
- (3) A former member of the board and the executive secretary to the board have opined that clergymen are subject to Chapter 465 if their services are provided to the general public and they receive compensation for such services, but not if they provide services only to their parishioners. Why clergymen are subject to Chapter 465 in one instance, but not in another, when the services provided and the potential harm, if any, are the same, is unstated.
- (4) The board has excepted from regulation a counseling center established on the campus of a private higher educational institution. The reason for this exception is unexplained. There appears to be nothing in Chapter 465 to permit this exception.
- (5) The board has required biofeedback, cybernetics, mind control, and similar programs to comply with Chapter 465 in some cases, but has failed to insist on compliance in other cases. The board appears confused and uncertain in this area, particularly when claims are made that the thrust of the programs in question is educational or religious.

There are numerous other occupations which apply psychological principles and techniques. The Board of Certification for Practicing Psychologists has not yet taken any position with respect to them, but among the occupations which apply psychological principles and techniques are private elementary and secondary school counselors, occupational therapists, drug abuse counselors, child abuse counselors, and industrial personnel counselors. Whether any of them are exempt under the language of Paragraph (6) is considerably in doubt.

3. *Act 91, SLH 1980.* In 1980, the Legislature amended Section 465-3. It made one substantive change in the section which need not concern us here. The Legislature also made what it termed "technical changes" to the section "without amending the substantive intent."² One such "technical amendment" consisted of taking Paragraph (6) out of the enumeration of exempt persons and making it a separate Subsection (b) of Section 465-3.

Although only a technical change was intended, due to problems in draftmanship, the change of Paragraph (6) to Subsection (b) appears to have nullified the exemption of persons who perform psychological services incidental to their lawful occupational

2. See Senate Standing Committee Report No. 846-80, 1980.

purposes. Subsection (b), as adopted in 1980 reads:

“Nothing in this chapter shall in any way restrict any person from carrying on any of the activities *in subsection (a)*, provided that such person does not offer psychological services as defined in this chapter except as such activities are incidental to his lawful occupational purpose.” [Emphasis added.]

“Subsection (a)” mentioned in Subsection (b) refers to the enumeration of exempt persons. It seems that what the Legislature intended was to make reference, not to Subsection (a), but to Section 465-1(5), which defines the practice of psychology. Before 1980, the language was “any of the aforesaid activities” rather than “any of the activities in subsection (a).” The use of the term “aforesaid activities” posed no problems for it obviously referred to the activities mentioned in Section 465-1(5).

The Attorney General has been informed of the defect in Act 91. However, in light of the committee reports on the legislation indicating that only a technical change, and no substantive change, was intended with respect to this exemption, the Attorney General has advised that Subsection (b) of Section 465-3 should be applied as Paragraph (6) was applied before the change.

4. *Conclusion.* Section 465-1(5) covers too much, and Section 465-3(b) (formerly Section 465-3(6)), assuming that it validly continues to exempt persons who render psychological services or perform psychological activities only as an incident to their lawful occupational purposes, is far too ambiguous. Given this state of affairs, Chapter 465 does not constitute an effective means of coping with the harm perceived as arising from the practice of psychology or the application of psychological principles and procedures.

The broadness of the statute encourages its breach. Note those social workers who are unlicensed, even though the board has ruled that they are subject to Chapter 465. Note, also, ministers, lawyers, and others. The vagueness of the exemption encourages subterfuge to escape regulation. Note encounter and other groups which claim exemption on religious and educational grounds.

If the perceived harm warrants the regulation of psychologists and the practice of psychology, the persons and practices which should be subject to such regulation should be statutorily redefined. In such redefinition, those persons and activities that clearly pose no real harm to public health, safety, or welfare should be excluded from regula-

tion. The redefinition, at the same time, should ensure that those persons and practices that obviously appear to pose the perceived potential harm are made subject to regulation.

Given the uncertainties surrounding psychology and the practice of psychology, such a redefinition may be difficult to achieve. Nevertheless an attempt needs to be made if a rational, meaningful, and effective regulatory scheme is to be devised.

Licensing requirements. For a person to be licensed under Chapter 465, the person must hold a doctoral degree from an accredited institution of higher education with training and education in psychology or hold a diplomate certificate granted by the American Board of Examiners of Professional Psychology; and pass an oral and written examination. For a diplomate certificate, the American Board of Examiners of Professional Psychology requires a doctoral degree in clinical psychology, five years of professional experience beyond the doctoral level, and passage of a written examination administered by the American Board of Examiners. These requirements are of doubtful validity and relevance in protecting the public from the perceived potential dangers arising from the practice of psychology.

1. Doctoral degree or diplomate certificate. The possession of a doctoral degree in psychology is the single most important requirement for licensing. This requirement has been advocated by the American Psychological Association (APA) and its affiliated state organizations. Yet, it has never been demonstrated that possession of such doctoral degree is essential to assure the competence of individuals in the proper application of psychological principles and procedures.

Indeed, even among psychologists, there is a sharp division of opinion as to the relevance of a doctoral degree. At the 1973 conference of APA, a group of psychologists seriously and forcefully pushed for the acceptance of a master's degree in psychology for state licensing. Although that push was unsuccessful, there is currently under consideration by the APA a proposal to revise its standards for credentials to permit a master's degree acquired before 1974 and five years of experience before 1980 as an alternative to the doctoral degree.

The view of these psychologists who advocate doing away with the need for a doctoral degree for licensing is supported by several studies. These studies show that even a college education is not necessary for the rendering of effective therapy and that paraprofessionals can be trained to provide satisfactory counseling services.

2. *Written examination.* The written examination administered to applicants for licensing under Chapter 465 is developed by the Professional Examination Service in cooperation with the American Association of State Psychology Boards. The four-and-a-half-hour examination includes the subjects of general psychology, general methodology, clinical psychology, behavior modification and other applications of psychology, professional conduct, ethics, and the law and rules and regulations which apply to psychologists.

The examination assesses the applicant's knowledge of psychological principles and the ethics of the profession. However, it does not assess the skills and techniques of the applicants, and in the view of a number of theorists and practitioners, the examination is flawed in this respect. These theorists and practitioners believe that interpersonal skills and personal qualities, such as the ability to empathize or handle conflict, to create warm and genuine relationships, are essential qualities for a therapist. Though empirical research is limited, the available studies tend to support this contention.

In the absence of evaluation of the skills and techniques of applicants for license, the written examination is not a full measurement of competency. The examination does only a little more than what the academic programs have done in conferring doctoral degrees on the applicants.

3. *Oral examination.* The oral examination is an hour's examination on general psychology and methodology, with an emphasis on the applicant's area of specialization. The examination is without standardization in questions and grading, and it relies heavily on the subjective feelings of the members of the board. It thus cannot be said to contribute in any way to assessing the competency of the applicants.

Operational Problems

In this section we discuss the administration of the law in licensing psychologists. Two operational difficulties of some importance are highlighted. In particular, we discuss here the complaint handling process of the Board of Certification for Practicing Psychologists and the board-imposed restrictions on advertising by psychologists.

Complaint handling. Our study revealed that the method of handling complaints registered with the Board of Certification for Practicing Psychologists is far from adequate. There is a clear absence of aggressive investigation and decisive resolution of complaints. The board's handling of three complaints lodged against a single psychologist operating in a residential treatment facility illustrates the deficiency.

The complaints against the psychologist were filed with the board, one in 1975, another in 1976, and the third in 1979. The first complaint alleged the illegal use of drugs in therapy by the psychologist. The second alleged neglect in treatment. The third alleged sexual abuse.

The first complaint was dropped by the board when witnesses refused to testify, even though a Deputy Attorney General had found evidence that the psychologist used marijuana and LSD as part of therapy on a regular and continuing basis. In light of the seriousness of the alleged offense, it would seem that the board should have exerted considerably more effort in investigating and pursuing this case. It could have, for instance, resorted to the use of subpoenas in an effort to get the witnesses to testify.

The second complaint appears to have atrophied by sheer nonaction. The records on this case are sparse, and the recollection of the board and the staff of DRA is vague. There is a terse notation in the records that there was no basis for prosecution in this case, but there is nothing to show that this was the official decision of the board and, if so, on what basis that decision was reached. The current chairman of the board believes that the former chairman closed the case, but the investigators at DRA believe that the case is still open. The case was opened four years ago, and there is no indication that anything was done or will be done in the matter. For all practical purposes, the case is dead.

The processing of the third complaint ended when the board learned that the psychologist had moved to the mainland and did not intend to return to Hawaii. Investigation into the case began two months after the filing of the complaint when an investigator from DRA spoke to the psychologist. Thereafter, the investigator and the board lost track of the psychologist. For two months, the investigator sought to reach the psychologist by telephone, without success. Four months after the complaint was filed, the investigator finally called the psychologist's attorney in an effort to reach the psychologist. It was then that it was learned that the psychologist had moved to the mainland. The board's records officially show that the case was closed for insufficient evidence to support the complainant's charges.

Chapter 465 vests in the board the power to revoke or suspend any license for violation of the chapter, unethical practices, and other causes. Implied in this power is the obligation to monitor the performance of licensed psychologists and to vigorously investigate any complaint of wrongdoing. The board clearly is not carrying out this duty.

It is of interest to note that, as of October 1980, the board has not suspended or revoked a single license.

Advertising restrictions. By rules of the Board of Certification for Practicing Psychologists, psychologists are restricted in advertising their practice. Advertisements in phone books are limited to name, highest relevant degree, certification status, address, phone number, and identification of the psychologist's major areas of practice. Announcements of individual private practice are limited to a simple statement of name, highest relevant degree, certification or diplomate status, address, telephone number, office hours, and a brief explanation of the types of services offered. The rules and regulations further direct psychologists, in establishing their rates, to consider the charges made by other professional persons in comparable work.

These rules have been taken from the code of ethics of APA. The validity of the restrictions contained in the code has been challenged by the U.S. Federal Trade Commission. The commission contends that these restrictions do not protect the public, but rather fosters a lack of competition and monopolistic conditions.

Given recent court cases on freedom of speech, press, and associations and the constitutional right of various professions to advertise, it appears that a close examination of the above rules is in order. As a general principle, it seems that the right to advertise may not be abridged, in the absence of some compelling state interest to restrict such advertising.

Recommendations

That there is a potential harm arising from the conduct of the practice of psychology cannot be proved or disproved. There is, however, an intuitive feeling that such potential harm exists. Whether this intuitive perception is sufficient, given the uncertainties of the practice, to warrant the continuing regulation of psychologists and the practice of psychology, is for the Legislature to decide. We make no recommendations in this regard, except to note that generally intuitive judgment, without evidence of potential harm, does not warrant the regulation of an occupation.

If Chapter 465 is allowed to continue in force, we recommend as follows:

- 1. The Legislature, upon consultation with the Board of Certification for Practicing Psychologists and with practicing psychologists and all others interested,*

redefine the definition of the practice of psychology to exclude all such occupational endeavors and activities which clearly pose little danger to public health, safety, or welfare, and to limit the application of Chapter 465 to those activities which appear more obviously to pose such harm.

2. The Legislature and the Board of Certification for Practicing Psychologists review the educational and examination requirements for licensing with the view toward making the requirements relevant to the protection of the public from the perceived potential harm in the practice of psychology.

3. The Board of Certification for Practicing Psychologists more aggressively investigate and process complaints.

4. The Board of Certification for Practicing Psychologists, in consultation with the Department of Attorney General, review its restrictions on advertising by psychologists.

APPENDIX

AFFECTED AGENCIES

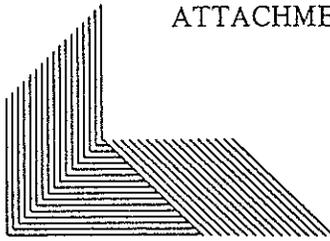
AGENCY RESPONSE

The two agencies affected by this Sunset Evaluation Report are the Board of Certification for Practicing Psychologists and the Department of Regulatory Agencies. On February 2, 1981, we transmitted this report to the affected agencies, invited them to respond to the recommendations by February 12, and notified them that we would transmit to the Legislature copies of any response received. A copy of the letter to the board is included as Attachment 1 of this appendix. A similar letter was sent to the Director of Regulatory Agencies.

By letter dated February 10, the chairman of the board responded to our report. The response is included as Attachment 2.

No matters of substance are discussed in the response which require our comment.

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813
(808) 548-2450



CLINTON T. TANIMURA
AUDITOR
RALPH W. KONDO
DEPUTY AUDITOR

February 2, 1981

C O P Y

Mr. Jack Annon, Chairman
Board of Certification for
Practicing Psychologists
Department of Regulatory Agencies
State of Hawaii
Honolulu, Hawaii

Dear Mr. Annon:

Enclosed are seven copies of our *Sunset Evaluation Report – Psychologists*. We invite your response to the recommendations contained in the report. The Acting Director of the Department of Regulatory Agencies has also been invited to respond to the recommendations.

The report has been submitted on this date to the Governor, the Director of Finance, and the State Legislature. Should you decide to respond to the recommendations, we ask for your cooperation in doing so by February 12, 1981. We will then transmit to the Legislature copies of any response received.

Thank you for your assistance and cooperation.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures



GEORGE R. ARIYOSHI
GOVERNOR

Mary Bitterman
~~XXXXXXXXXX~~
DIRECTOR

DICK H. OKAJI
LICENSING ADMINISTRATOR

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES
P. O. BOX 3469
HONOLULU, HAWAII 96801

February 10, 1981

RECEIVED
FEB 11 10 43 AM '81
OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
State of Hawaii
456 South King Street, Room 500
Honolulu, HI 96813

RE: Sunset Evaluation Report
of Board of Certification
of Practicing Psychologist

Dear Mr. Tanimura:

The Board of Certifications of Practicing Psychologist had been eagerly anticipating the Sunset Evaluation Report for several months. We had initially been informed that we would receive a rough copy of the report before the end of November, 1980, so that we could respond to the report prior to its delivery to the legislature by the end of December, 1980.

The Board and its Sunset Committee had also fully cooperated with the auditor's office by voluntarily supplying the auditor's office with numerous reports, audio tapes, test results, and other information relevant to issues that were raised by the auditor's office as well as issues initiated by the Board that had been causing us problems. We assumed that we would receive helpful advice and clear cut recommendations to assist us in resolving these issues so as to better protect the health, safety, and welfare of the public. Obviously, we were naive in our expectations on all counts.

First, despite numerous queries and promises, we did not receive the report until February 2, 1981.

Mr. Clinton T. Tanimura
Page 2

Second, the report was in its final form and had already been delivered to the legislature and other parties prior to our having any opportunity to respond to it (in fact, the majority of the board members read about the report in the newspapers before receiving their copy).

Third, after our months of waiting, we were given only ten days to respond to the many diffuse and inconclusive issues that were raised in the report.

Finally, and most importantly, the report itself contains inaccurate and misinformed statements that reflects a naive and oversimplified view of psychology as a profession and as an applied science, and which suggests a lack of understanding of the principles and practice of psychology and its potential affect in regard to the public.

While we recognize that the auditor's office has limited time and personnel and that our board is only one of many that it must evaluate, we feel that the report does not fulfill its purpose in offering a clearly defined recommendation to the legislature, or in offering conclusive direction and guidance to the board in resolving its problem areas. In sum, the board unanimously feels that the report is naive and ambiguous and reflects a clear lack of awareness of the existance of a 20 to 30 year accumulative body of scientific knowledge that relates psychological theory and technique to behavioral outcomes. Therefore, in order to fully inform the legislature and the public, the board intends to respond directly to the parties involved. To that end, the board has appointed a number of additional members to its Sunset committee, drawn from the professional community and who are experts in their particular field and in the issues raised by the report.

In order to assist the Board and the Sunset Committee in preparing for its presentation to the parties involved, we would appreciate the return of all the materials that have been passed on to the auditor's office over the past few months as soon as is feasible.

Sincerely,

Jack S. Annon, Ph.D.
Jack S. Annon, Ph.D.

JSA:ntp

cc: Governor George R. Ariyoshi
Mr. Richard S. H. Wong
President of the Senate
Mr. Henry H. Peters
Speaker of the House of Representative
Mr. Jensen S. L. Hee
Director, Department of Budget and Finance

Mr. Clinton T. Tanimura
Page 3

Ms. Mary Bitterman
Director, Department of Regulatory Agencies
Mr. Dick H. Okaji
Licensing Administrator, Department of Regulatory Agencies
Mr. Morris Comer
Executive Secretary of the Board
All Board Members
All Members of the Sunset Committee

C

C

C