SUNSET EVALUATION UPDATE

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
Honolulu, Hawaii

Report No. 87–22
December 1987

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 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 These programs are repealed unless they are specifically reestablished by the Legislature.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 updates our sunset evaluation of the practice of psychology under Chapter 465, Hawaii Revised Statutes, which was conducted in 1981. 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 It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Board of Psychology, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

December 1987

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Sunset Evaluation Update

PSYCHOLOGISTS

This report evaluates the regulation of the practice of psychology under Chapter 465, Hawaii Revised Statutes, to determine whether the health, safety, and welfare of the public is best served by reenactment, modification, or repeal of the statute. An evaluation of the practice of psychology was conducted previously by this office and our findings and recommendations were reported in February 1981 in the *Sunset Evaluation Report, Psychologists, Chapter 465, Hawaii Revised Statutes.* This update summarizes the information presented in the 1981 evaluation, reports on developments since then, and presents our current findings and recommendations.

Background on the Practice of Psychology

The field of psychology covers a wide spectrum of activities. Psychologists study the physical, emotional, and social aspects of behavior through a number of different specialties. For example, experimental psychologists conduct research with humans or lower animals to study motivation, learning, sensory and cognitive processes, and other factors underlying behavior. Social psychologists examine human interactions with others and interpersonal relationships. Clinical psychologists treat individuals who are mentally or emotionally disturbed. They interview patients; give diagnostic tests; provide individual, family, and group psychotherapy; and design and carry out treatment programs. They may work together with physicians and other specialists in treating a patient. Industrial and organizational psychologists apply principles of psychology to personnel

administration, management, and marketing. They are involved in policy development, training, testing, counseling, and organizational analysis and development.[1]

Psychologists work as clinicians or as researchers, educators, administrators, industrial psychologists, marketing specialists, health service providers, and as forensic psychologists in the criminal and civil justice system. They may be in independent private practice, or they may be employed by government or private industry.

The American Psychological Association (APA) is the national professional association for psychologists. Its purpose is to advance psychology as a science, a profession, and a means of promoting human welfare. It is the officially recognized accrediting agency for doctoral education and training for professional psychology, specifically in the professional specialties of clinical psychology, counseling psychology, school psychology, and combined professional–scientific psychology programs.

The American Board of Professional Psychology was founded in 1947 to recognize specialties in psychology. The certification board conducts oral examinations and awards diplomas to advanced specialists in six professional areas: clinical psychology, industrial/organizational psychology, forensic psychology, counseling psychology, clinical neuropsychology, and school psychology. Candidates must have five years of qualifying experience in psychological practice.[2]

Generally, the services provided by clinical psychologists are covered by insurance. Medicare, Medicaid, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), the Hawaii Medical Service Association (HMSA),

and Kaiser Foundation Health Plan provide reimbursements for psychological services. Usually, psychologists must be licensed by the appropriate state to be eligible for insurance reimbursements.

CHAMPUS requires psychologists to have a doctoral degree in clinical psychology and 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 to be listed on the National Register of Health Service Providers in Psychology maintained by the Council for the National Register of Health Service Providers in Psychology, an independent organization. The criteria for listing on the register are (1) license or certification by a state board; (2) doctoral degree in psychology from a regionally accredited institution of higher education; and (3) two years of supervised experience, one of which is an internship or in an organized health training program and one of which is postdoctoral training.

Regulation of Psychology

After the end of World War II, the use of counseling and psychotherapy increased. By the late 1940s, some states had established regulatory programs for psychological services. State licensing programs were enacted by Connecticut in 1945, Virginia in 1946, and Kentucky in 1948.

In 1967, the APA adopted a model licensing law to establish guidelines for the practice of psychology and to promote the legitimacy of the profession. The model law required those using the title of psychologist or those practicing psychology to be licensed and to comply with the APA's ethical standards. Qualifications for licensure included a doctoral degree and at least one year of supervised experience.

With the support of its affiliated state associations, the APA was successful in expanding state licensure programs.

Today, all 50 states and 3 other U.S. jurisdictions have licensing laws for psychologists.[3] However, the scope of regulation and the qualifications for licensure vary among the states. A majority of the states require a doctoral degree with an emphasis in psychology and at least one year of supervised experience. Some states will license those with a master's degree in psychology who have several years of experience.[4]

Several sunset reviews of state psychology regulatory programs were conducted in the late 1970s. South Dakota and Florida sunsetted their regulation of psychologists as a result of their reviews. However, both reestablished their licensure programs. Since 1980, eight states (besides Hawaii) have conducted sunset reviews of their psychology licensing programs. They are Indiana, Montana, Texas, North Carolina, Wisconsin, Oklahoma, Washington, and New Hampshire. All the programs were continued.[5]

Regulation in Hawaii

The practice of psychology has been regulated in Hawaii since 1967. Impetus for regulation came from the Hawaii Psychological Association, an affiliate of the APA. A major difficulty in establishing regulation was defining the practice of psychology since it covers such a broad range of activities. Social scientists who were not psychologists objected to the use of certain terms which would bring them under regulation. A compromise was reached in 1967 by licensing the use of the title but not the practice.

Only those who were licensed could use the title "certified psychologist." Certified psychologists provided psychodiagnostic or psychotherapeutic services gratuitously or for pay, either publicly or privately. Others were allowed to carry out psychological services without a license provided they did not represent themselves as certified psychologists.

In 1971, the law was amended extensively by broadening the definition. However, exemptions were granted to those working as college and university professors, government workers, physicians and surgeons, or any person offering psychological services as activities "incidental" to that person's "lawful occupational purpose."

Current regulation covers two main specialty areas, clinical psychology and industrial/organizational psychology. The practice of psychology is defined as ". . . the performance of any professional service which consists of and requires the application of psychological principles, theories, techniques, and instruments for the purpose of assessment, diagnosis, and treatment of behavioral, emotional, mental, or behavioral health problems or disorders as defined by a diagnostic manual acceptable to the board and defined in its rules; and for the purpose of the assessment, diagnosis, and rehabilitation of organic brain syndromes."

The law continues to exempt certain persons, including college and university professors; employees of local, state, and federal governments; physicians and surgeons; students of psychology; interns and residents in psychology; and persons who perform any of the enumerated activities incidental to their lawful occupational purpose.

The use of the title of industrial/organizational psychologist is restricted to those who have registered with the board and who have doctoral degrees and training in industrial/organizational psychology.

The law establishes a seven-member Board of Psychology with five members representing specialties from the profession and two lay members from the community at large.

The board is authorized to: (1) examine the qualifications of applicants for licensing; (2) prepare, administer, and grade examinations given to applicants; (3) keep a record of all actions taken on applicants for licensure; (4) promulgate, amend, and repeal rules; and (5) deny, suspend, and revoke a license or place licensees on conditional probation for cause.

To qualify for licensure, an applicant must meet the following statutory requirements:

- Is professionally competent and has demonstrated knowledge in the practice of psychology.
- Hold a doctoral degree from a training program approved by the American Psychological Association or hold a doctoral degree from a regionally accredited institution of higher education and also meet the experiential requirements for inclusion in the National Register of Health Service Providers in Psychology;* or hold a diplomate certificate in good standing granted by the American Board of Professional Psychology.+
- Has passed an examination as may be prescribed by the board.

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* Act 285, SLH 1987, allows certain applicants who received doctoral degrees and filed applications in 1985 to meet the regional accreditation requirement by providing evidence to the satisfaction of the board that their education is equivalent to a doctoral degree in psychology granted from a regionally accredited institution. In making the determination, the board is required to consider the certification of the graduate division of the University of Hawaii that the applicant's degree is equivalent to a doctoral degree granted from a regionally accredited institution.

+ Section 465-7 refers to this organization as the American Board of Examiners in Professional Psychology.

The examinations applicants must pass for licensure is the Examination for Professional Practice in Psychology (EPPP) and a state jurisprudence examination. The EPPP is a standardized examination developed by the American Association of State Psychology Boards in conjunction with the Professional Examination Service. Applicants must also appear before the board for the board to judge the applicant's qualifications for the practice of psychology, integrity and standards, resourcefulness and initiative, and general attitude and approach to the practice of pscyhology.

Applicants currently licensed in another state are eligible for licensure by reciprocity provided they meet requirements comparable to those imposed in Hawaii.

In 1981, there were 184 persons licensed to practice psychology in Hawaii. Today, there are 278 licensees, an increase of more than 50 percent in six years.[6]

Findings and Recommendations in

the 1981 Sunset Evaluation Report

Our 1981 evaluation resulted in the following findings:

"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 found no clear evidence that the practice of psychology poses potential harm to public health, safety, or welfare, although there is a perception that it could harm the mental or emotional state of an individual or result in physical abuse. It was not possible to determine the validity of the perceived harm because of the difficulty of linking behavioral outcomes with therapy and uncertainties about the nature of the therapeutic process itself. However, the nature of the therapeutic process does place power in the hands of the therapist and provides opportunities for abuse or unethical conduct. We concluded that it was for the Legislature to decide whether the perception of harm was sufficient justification for continued regulation.

Scope of regulation. We found the definition of the practice of psychology to be vague and ambiguous. Terms such as "personal growth," "optimal work," and "family, school and interpersonal relationships," were used in describing the practice of psychology.

It was not clear who was exempt from regulation. The definition could encompass nearly every helping occupation including social workers, school guidance and counseling personnel, special education teachers, marriage counselors, adult day care workers, foster parents, other behavioral scientists, encounter groups, lawyers, clergy, and other religious persons. We recommended that the practice of psychology be redefined to exclude occupational practices that pose little danger to public health, safety, and welfare.

Questionable licensing requirements. The education and examination requirements appeared to bear little relationship to protecting the public from

harm. There was no evidence that a doctoral degree was essential to ensure competence in applying psychological principles. The written examination was flawed in not assessing the interpersonal skills and qualities needed to handle conflict and to create genuine therapeutic relationships, and the oral examination was found to be without standardization with heavy reliance on subjective judgment. We recommended that these requirements be reviewed by the board for the purpose of making the requirements relevant to protecting the public.

Lack of enforcement. We found that the board did not aggressively investigate and pursue complaints against psychologists. Cases of nonaction, lack of effort, and absence of records on the disposition of cases were cited. We recommended that this be corrected.

Advertising restrictions. The restrictions on advertising imposed by the board were constitutionally questionable. Board rules limited phone book advertising, public announcements of practice, and the advertising of comparable rates. These were part of ethical standards issued by the APA which had been incorporated into the board's rules. These restrictions had been challenged by the U.S. Federal Trade Commission which contended that the restrictions fostered monopolistic conditions and a lack of competition instead of protecting the public. We recommended that the board review these restrictions.

Subsequent Developments

A 1981 amendment defined psychology more precisely and removed much of the overly broad and vague language, such as "personal growth," "optimal work," and "family, school, and interpersonal relationships."

In 1983, Act 95 added the regulation of the use of the title "industrial/organizational psychologist" to Chapter 465. Applicants must register with the board and hold a doctoral degree from an accredited institution of higher education with training and education in industrial/organizational psychology.

Educational requirements were made more stringent in 1985 by Act 115 which replaced the requirement that applicants have a doctoral degree from an accredited institution of higher education with the requirement that the doctoral degree be from a training program approved by the APA or from a regionally accredited institution of higher education. Those graduating from a regionally accredited institution of higher education must also meet the experiential requirements for listing on the National Register of Health Service Providers in Psychology.

In the same 1985 legislation, exemptions from regulation were clarified for university personnel, others providing psychological services under the direction of a qualified person, and psychology trainees provided that they do not present themselves as psychologists or imply that they are licensed to practice psychology.

In 1986, the definition of the practice of psychology was further refined. In the more recent 1987 amendments, the grounds for denial, suspension, and revocation of licenses or for placing licensees on probation were broadened to include such practices as breaches of confidentiality, sexual relations with a client, conviction of fraud in filing Medicaid or insurance claims, and exploitation of patients for financial or other personal advantage.

Current Findings and Recommendations

We find the following:

1. Although complaints have increased, these relate to business practices rather than problems with professional competency. However, the potential for harm remains a concern and justifies the Legislature's previous determination that the practice of psychology should continue to be regulated.

2. Licensing requirements have been strengthened. However, some aspects of the board's rules require attention, particularly those pertaining to advertising and practice which continue to be restrictive and anticompetitive.

The need for regulation. As noted in our 1981 sunset report, the exact nature of the potential harm or danger to public health, safety, or welfare from the practice of psychology is unclear. Dangers usually identified with the practice are based on perceptions about the nature of the practice, the improper application of psychological procedures and techniques such as hypnotic suggestions, inappropriate physical contact, and drug use.

Psychology is viewed as dealing with the minds and emotions of people who are in particularly vulnerable circumstances. Uncertainties about appropriate psychotherapeutic practices and the lack of clear linkages between techniques and behavioral outcomes contribute to the perception of potential harm. The Legislature considered these to be sufficient reason to continue regulation of the practice in 1981. This view of potential harm has not been altered by developments since then.

Our current review finds a significant increase in the number of complaints filed with RICO. Between 1976 and 1980, when we conducted the first sunset

evaluation of psychology, there were 17 complaints. Between 1981 and the first half of 1987, there have been 46 complaints.

Complaints have been evenly distributed between those relating to unlicensed activity and those relating to unprofessional conduct. The cases relating to unlicensed activity involved advertising by such persons as marriage and family counselors under the listing for psychologists in the telephone yellow pages. In all cases but one, no violations were found and advisory letters were sent by RICO. The one case resulted in court fines after a consent judgment was issued enjoining and restraining an unlicensed person from advertising in the yellow pages as a psychologist.

In the cases relating to unprofessional conduct, allegations ranged from billing problems, patient disagreement with a practitioner's assessment of the problem, breach of confidence, to lack of courtesy. In all but one case, no violation was found.

The one instance involved a patient's claim that an evaluation report was not provided as part of the scope of services. The case resulted in a settlement agreement, a fine, and restitution for failure on the part of the practitioner to provide a written report to the patient as part of the agreed scope of services.

The increase in consumer complaints in recent years reflects, among other aspects, the increasing number of psychology practitioners and clients. As the number of practitioners and clients increase, so does the potential for harm. The Legislature determined that regulation should be continued in 1981, and there is no new evidence that would change that determination.

Current procedures and practices. As related earlier, there have been numerous amendments to the statute which have served to clarify the regulation of

the practice of psychology. However, some aspects of the board's rules require attention. These include the requirement for oral interviews with applicants, the absence of rules to cover those holding diplomate certificates in good standing from the American Board of Professional Psychology, and overly restrictive provisions relating to advertising and practice.

Oral interview The board no longer requires an oral examination, but it still requires applicants to appear for a personal interview. According to the board's rules, applicants must appear before the board to be judged for such characteristics as the applicant's qualifications for the practice of psychology, integrity and ethical standards, resourcefulness and initiative, and general attitude and approach to the practice of psychology. The operational manual for the Board of Psychology states: "Until such time the board is able to decide on the issue of an oral examination, the board shall require an applicant to appear before the board for a personal interview, such interview of which should not be used as a basis for denial of licensure."[7]

The objectives of the interview, such as establishing an applicant's resourcefulness and initiative, are unrelated to the purposes of state regulation which are to protect consumers. There is even less reason to require such an interview if it is not to be used as a basis for denial of licensure. Since the interview is subjective and serves no legitimate purpose, the requirement should be removed.

Diplomate holders. The statute states that those who have a diplomate certificate in good standing from the American Board of Professional Psychology and who pass the prescribed examinations qualify for licensure. However, the board has no rules on this matter.

So far, the absence of rules governing diplomate holders has not created any problems for the board since most diplomate holders have licenses from another jurisdiction and can be licensed by reciprocity. However, this category should be recognized in the rules, and procedures should be established for the information of those who hold diplomate certificates.

Restrictions on advertising and practice. We had questioned the board's rules restricting advertising and practice in our previous report. We recommended that the board, in consultation with the Department of the Attorney General, review these restrictions. Unfortunately, the board's rules continue to include a number of overly restrictive provisions.

Subchapter 6 of the board's rules on Standards of Practice, taken largely from the APA's statement on "Ethical Principles of Psychologists," contains an extensive list of prohibitions and limitations, including some that have little to do with protecting consumers, that are unenforceable, and that are restrictive and anticompetitive.[8]

Recently, the Bureau of Competition of the Federal Trade Commission (FTC) analyzed the regulations of South Carolina's Board of Psychological Examiners.[9] We review the FTC's analysis here because several of Hawaii's restrictive provisions are similar to those of South Carolina.

On the issue of whether a state or state board should adopt a profession's code of ethics, the FTC made this general observation: "There are significant risks of anticompetitive effects when a code of ethics of a private organization is adopted by a state or state board. Provisions contained in the ethical codes developed by a private group of professionals composed of competitors may restrict competition

among members of the group and be inconsistent with the best interests of consumers."

As to specifics, the FTC takes issue with such restrictions as (1) prohibitions on the use of testimonials in advertising, (2) prohibitions on the direct solicitation of clients, and (3) restrictions on fee-splitting. These restrictions, and others, currently apply in Hawaii through their inclusion in the board's rules:

Testimonials. The board's rules state that "the use in a brochure of 'testimonials from satisfied users' is prohibited." On the use of testimonials, the FTC states:

> "Testimonials can be a means to disseminate useful and truthful information that consumers may use in selecting a provider. Testimonials pertaining to quality or efficiency can inform consumers about such attributes as a professional's training or method of practice. Such testimonials can be a highly effective means of attracting and informing clients and fostering competition. Although testimonials, like all advertising, have the potential to be deceptive, there is no inherent deception in use of testimonials as to the quality of a professional's services. Testimonials as to short waiting time before appointments or expressing general consumer satisfaction, for example, are not inherently deceptive and can provide useful information. Prohibiting all such advertising is overbroad."

Direct solicitation of clients. The board's rules specify that "a psychologist shall not directly solicit clients for individual diagnosis or therapy." The FTC's position is the following:

> "Restrictions on direct solicitation of clients can also be anticompetitive. . . . Such restrictions prohibit what can be a valuable technique for informing consumers about the availability of a professional's services. Solicitation, in and of itself, is not inherently deceptive . . . ."

Fee-splitting. The board's rules include an admonishment that "no commission or rebate or any other form of remuneration shall be given or received for referral of clients for professional services." Of this type of restriction, the FTC states:

"Finally, restrictions on fee-splitting arrangements may, depending on how they are interpreted, interfere with the operation of alternative health care delivery systems that may have incentive arrangements with health care professionals in which fees are divided between the medical plan and the professional. Such restrictions can impede legitimate cost containment measures implemented by such organizations as HMOs.

"Restrictions on fee-splitting may also prevent professionals from paying an independent referral service that matches clients with an appropriate practitioner. As a result, it may be more difficult for consumers to identify practitioners with whom they would like to deal. It is not clear that any regulation of referral fees is necessary. If, however, such regulation is considered to be necessary in order to prevent deception, the less restrictive alternative of requiring disclosure to the consumer of the referral fee arrangement might be imposed."

The FTC then concluded:

"For the reasons expressed above, we urge the [South Carolina Legislative Audit] Council to recommend the repeal of the statutory requirement that the Board adopt the APA's Code of Ethics and recommend that the Board delete the APA's Code of Ethics from its regulations."

We would recommend a similar approach for Hawaii. Noting that Hawaii's current rules continue to have some of the same questionable restrictions identified in our 1981 evaluation and that there is now further confirmation by the FTC on the undesirableness of the restrictions, we believe that the Legislature should repeal the provision which authorizes the board to revoke or suspend licenses on the basis of "any unethical practice of psychology as defined by the board in accordance with its own rules." If (in addition to those grounds already specified in the statute) there are any other grounds which should affect the granting or holding of licenses or practices or prohibitions and limitations which should be specified because they are necessary to protect consumers, they should be effected through amendments to Chapter 465 rather than through the board's rules.

Recommendations

We recommend that:

1. Chapter 465 be reenacted. In reenacting the statute, we recommend that the Legislature repeal item (3) of Section 465–13(a) which refers to "unethical practice of psychology as defined by the board in accordance with its own rules." In lieu of unethical practices being defined and proscribed by rule, we recommend that such provisions as the Legislature may determine to be essential for the protection of consumers be enacted by statute.

2. The Board of Psychologists amend its rules to accomplish the following:

- *remove the requirement for applicants to appear for a personal interview;*
- *adopt rules governing licensure for those with diplomates from the American Board of Professional Psychology;*
- *repeal Subchapter 6 on Standards of Conduct.*

NOTES

1. U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook, 1984–85 Edition*, Government Printing Office, Washington, D.C., 1984, p. 82.

2. *Encyclopedia of Associations, 1988, 22nd Edition*, Vol. 1, Pt. 1, Gale Research, Detroit, Mich., p. 617.

3. Letter from Randolph P. Reaves, Executive Officer and General Counsel, American Association of State Psychology Boards, to Millicent Y. H. Kim, April 24, 1987.

4. American Association of State Psychology Boards, *Handbook of Licensing and Certification, Requirements for Psychologists in North America*, Montgomery, Ala., August 1985.

5. Letter from Randolph P. Reaves.

6. Hawaii, Department of Commerce and Consumer Affairs, "Summary/Geographic Report," Honolulu, June 16, 1987.

7. Hawaii, Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, *Operational Manual for the Board of Psychology*, June 1986, p. I–D–2.

8. "Ethical Principles of Psychologist," *American Psychologist*, Vol. 36, No. 6, June 1981, pp. 633–638.

9. Letter from Jeffrey I. Zuckerman, Director, Bureau of Competition, U.S. Federal Trade Commission, to George L. Schroeder, Director, Legislative Audit Council, State of South Carolina, April 23, 1987.

APPENDICES

APPENDIX A

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on November 2, 1987, to the Board of Psychology and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The response from the board is included as Attachment 2. Since the report had no recommendations for the department, it did not respond to the report.

The board responded that it agreed with our recommendation that Chapter 465, Hawaii Revised Statutes, be reenacted. However, the board did not agree with our recommendations to repeal the statutory provision allowing the board to define the "unethical practice of psychology," and to repeal Subchapter 6 of its rules containing standards of conduct. It acknowledges that our report raises legitimate concerns about some of the provisions on unethical practices, but it says that other provisions are necessary to protect the consumer. The board intends to seek the advice of the attorney general's office and repeal only those rules that are overly restrictive. We emphasize that the report from the Federal Trade Commission found serious risks of anticompetitive effects when a state board adopts the code of ethics of a private organization and that this is inconsistent with the best interests of consumers.

The board also does not agree with our recommendation to remove the requirement for applicants to appear for a personal interview. The board says that this offers an opportunity for applicants to ask board members questions about

practice in this community. Another reason the board wants to retain the interview is that the interview is related to its goal of eventually having an oral examination. A subcommittee of the board is currently working on such an examination. We have generally found oral examinations to be invalid, unreliable, and subject to bias. Until such time as the board can demonstrate that it has developed an oral examination that would meet accepted standards of validity, we recommend that the oral interview be eliminated.

The board will be studying how best to handle our third recommendation to adopt rules governing licensure for those with diplomates from the American Board of Professional Psychology.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

CLINTON T. TANIMURA
AUDITOR

November 2, 1987

COPY

Dr. Craig Robinson, Chairperson
Board of Psychology
Department of Commerce and Consumer Affairs
1010 Richards Street
State of Hawaii
Honolulu, Hawaii 96813

Dear Dr. Robinson:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Update, Psychologists*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of psychologists. If you have any comments on our recommendations, we would appreciate receiving them by December 3, 1987. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF PSYCHOLOGY

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

December 2, 1987

RECEIVED
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OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

Dear Mr. Tanimura:

On behalf of the Board of Psychology, thank you for the opportunity to review and comment on the Sunset Evaluation Update, Psychologist Report. The board would like to commend the Auditor for what appears to be a very thorough and comprehensive review of both the history and present status of the State Board of Psychology.

The board would like to address the recommendations contained at the end of your report as follows:

We agree with recommendation number 1 that Chapter 465, Hawaii Revised Statutes (HRS), be reenacted. However, we disagree that Section 465-13, (a), (4) should be repealed. (It should be noted that the Auditor erroneously refers to item 4, but the correct cite should be Section 465-13, (a), (3) , HRS.) The board believes that the Auditor raises legitimate concerns about <u>some</u> of the provisions of unethical practices in its rules; however, there are many other provisions relating to unethical practices that the board believes to be valid and necessary to retain for the protection of the consumer (emphasis added).

Therefore, the board proposes that Section 465-13, (a), (3), HRS, not be repealed. Instead, the board proposes to seek advice from the Attorney General's Office regarding the provisions of concern to the Auditor, and, per their advise, repeal only those overly restrictive provisions of the <u>rules</u> (emphasis added).

In recommendation number 2, the Board would like to specifically address the Auditor's concern about the requirement for an applicant to appear for a personal interview. The Auditor is certainly correct in saying that the interview in its present

form is such that it is not, nor could not, be used as a basis for disqualifying an applicant. The interview does, however, provide a first hand opportunity for applicants to meet directly with each member of the board and to ask the board members any questions they might have about the practice of psychology in this community. Also, for years the Board has very much wanted to implement a reliable and valid oral examination. There are numerous models for oral examination throughout the country at present, which tend to be a much better indicator of an applicant's competance than the written general examination. The written examination largely measures a fund of knowledge assumed to be important for all licensed psychologists. The Board currently has a subcommittee actively working on an oral examination and maintaining the present oral interview procedure would simply seem to be related to this goal.

Moreover, the Auditor's recommendation to adopt rules governing licensure for those with diplomates from the American Board of Professional Psychology is well taken and will be studied further as the Board is unsure whether to best handle this matter through statutory or rules amendment.

Furthermore, the recommendation to repeal Subchapter 6 on Standards of Conduct was addressed earlier in that the Board proposes, after consultation with the Attorney General's Office, deleting only those provisions that are considered as overly restrictive.

We wish to express our appreciation for the comments and recommendations contained in your report. We did note a few inaccuracies, but they appear to be nonsubstantive to the recommendations and does not appear to warrant additional comments. It was encouraging to read a report which offered reasonable recommendations for further improvement.

Very truly yours,

BOARD OF PSYCHOLOGY

Craig H. Robinson, Ph. D.
Chairman

CHR/JK:dc

APPENDIX B

DIGEST

A BILL FOR AN ACT
RELATING TO PSYCHOLOGY

Extends the repeal date of the board of psychology from December 31, 1988 to December 31, 1994. Repeals unethical practices of psychology as defined by the rules of the board of psychology as a ground for the denial, suspension, revocation of a license to practice psychology, or for placing a license holder on conditional probation.

FOURTEENTH LEGISLATURE, 1988
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO PSYCHOLOGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates. (a) The following chapters are hereby repealed effective December 31, 1988:

[(1) Chapter 465 (Board of Psychology)

(2)] (1) Chapter 468E (Board of Speech Pathology and Audiology)

[(3)] (2) Chapter 468K (Travel Agencies)

[(4)] (3) Chapter 373 (Commercial Employment Agencies)

[(5)] (4) Chapter 442 (Board of Chiropractic Examiners)

[(6)] (5) Chapter 448 (Board of Dental Examiners)

[(7)] (6) Chapter 436E (Board of Acupuncture)

(b) The following chapters are hereby repealed effective December 31, 1989:

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

(6) Chapter 439 (Board of Cosmetology)

(7) Chapter 454 (Mortgage Brokers and Solicitors)

(8) Chapter 454D (Mortgage and Collection Servicing Agents)

(c) The following chapters are hereby repealed effective December 31, 1990:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(4) Chapter 458 (Board of Dispensing Opticians)

(5) Chapter 460J (Pest Control Board)

(6) Chapter 462A (Pilotage)

(7) Chapter 438 (Board of Barbers)

(d) The following chapters are hereby repealed effective December 31, 1991:

(1) Chapter 448H (Elevator Mechanics Licensing Board)

(2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(3) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(4) Chapter 460 (Board of Osteopathic Examiners)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 461J (Board of Physical Therapy)

(7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1992:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(f) The following chapters are hereby repealed effective December 31, 1993:

(1) Chapter 441 (Cemetery and Funeral Trusts)

(2) Chapter 443B (Collection Agencies)

(3) Chapter 452 (Board of Massage)

(4) Chapter 455 (Board of Examiners in Naturopathy)

(5) Chapter 459 (Board of Examiners in Optometry)

(g) The following chapter is hereby repealed effective December 31, 1994:

(1) Chapter 465 (Board of Psychology)

[(g)] (h) The following chapters are hereby repealed

effective December 31, 1997:

(1) Chapter 463 (Board of Private Detectives and Guards)

(2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Section 465-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board shall refuse to grant a license to any applicant and may revoke or suspend any license, or may place a license, or may put a license holder on conditional probation, upon any of the following grounds:

(1) Professional misconduct, gross carelessness, manifest incapacity, or incompetency in the practice of psychology;

(2) Violation of this chapter by the applicant within one year of the application, or violation of this chapter by a license holder any time the license is valid;

[(3) Any unethical practice of psychology as defined by the board in accordance with its own rules;

(4)] <u>(3)</u> Fraud or deception in applying for or procuring a license to practice psychology as defined in section 465-1;

[(5)] <u>(4)</u> Conviction of a crime substantially related to

the qualifications, functions, or duties of psychologists;

[(6)] (5) Wilful unauthorized communication of information received in professional confidence;

[(7)] (6) The suspension, revocation, or imposition of probationary conditions by another state of a license or certificate to practice psychology issued by that state if the act for which the disciplinary action was taken constitutes a violation of this chapter;

[(8)] (7) The commission of any dishonest, corrupt, or fraudulent act or any act of sexual abuse, or sexual relations with a client, or sexual misconduct which is substantially related to the qualifications, functions, or duties of a psychologist;

[(9)] (8) Harassment, intimidation, or abuse, sexual or otherwise, of a client or patient;

[(10)] (9) Exercising undue influence in the manner as to exploit the client or patient for financial or other personal advantage to the practitioner or a third party;

[(11)] (10) Conviction of fraud in filing medicaid claims or conviction of fraud in filing claims to any third

party payor, for which a copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence;

[(12)] (11) Aiding or abetting any unlicensed person to engage in the practice of psychology;

[(13)] (12) Repeated acts of excessive treatment or use of diagnostic procedures as determined by the standard of the local community of licensees; or

[(14)] (13) Inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, inebriation, or excessive use of any substance, or as a result of any mental or physical condition."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:_____