

HEALTH PROFESSIONS LEGISLATION REVIEW:

As part of the review process two workshops were organized by the Review Team for the health professions. The purpose of the first workshop, held in May, was to provide the professions with an outline of procedural issues requiring further consideration, and a timetable for further submissions. The second workshop, held in late June, included presentations by representatives of the Colleges presently regulated under the *Health Disciplines Act* on selected legal and procedural issues, including continuing competence, discipline, examinations, and standards and conduct.

For the information of psychologists, the Board's response to the assigned topics is reproduced below.

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Submission to the Health Professions Legislation Review Legal and Procedural Issues

As a supplement to our submission of September, 1985, the Board has the following three points to make under legal and procedural issues in professional regulation.

OPEN PARTICIPATION IN DISCIPLINARY HEARINGS

As stated in our earlier submission, the Board is not in favour of open participation in a disciplinary hearing. We submit the following points as amplification of our original position.

To allow open participation would unduly lengthen the proceedings as well as greatly increase the cost and complexity of a hearing. However, our main objection is that the participation, as a party to the proceedings, of all interested persons is unnecessary and would be redundant. Open participation would result in two or more parties attempting to prove the same case, i.e. that the professional is guilty of professional misconduct.

It appears to the Board that to advocate open participation is to confuse the functions of a professional regulatory body with those of a civil or a criminal court. The function of a regulatory body is to protect the public interest. In a case of professional misconduct the tribunal has the power to revoke, suspend or impose restrictions on a member's licence, or to reprimand. The tribunal does not have the power to award any benefit personally to the complainant or to any interested party. In short, it is the general welfare of the public that is the concern of the tribunal in sentencing the professional, and not the interests of any one individual.

The disciplinary hearing is not the appropriate forum for an interested party to seek compensation or retribution. If an interested party wishes to recover damages for pain and suffering or for losses incurred, he or she could institute a lawsuit that would be dealt with by a civil court. If the misconduct of which the professional has been accused also constitutes a crime, such as sexual assault, then the com-

plainant could lay charges that would be dealt with by a criminal court.

The Board's final objection to the contention that it is necessary to have another party attempting to prove the same case is to the implication that professional regulatory bodies cannot be relied upon. In other words, we interpret this position to be a rejection of the concept of professional self-regulation that, in the case of the profession of psychology, we believe is not supportable.

As stated in our earlier submission, in the Board's view, open hearings and the presence of lay members on governing bodies would serve to protect the public interest.

THE DEFINITION OF A COMPLAINT

The Board believes that a distinction should be made between the authority to investigate a complaint and the obligation to do so.

As stated in our earlier submission the Board is of the opinion that a complaints committee should have the prerogative to investigate any information that comes to its attention, whether directly or indirectly, and whether it is phrased as a complaint, a concern or a question. Apparently, this authority presently exists for the College of Optometry. According to the Registrar of the College, if the Registrar has "reasonable and probable grounds" that misconduct may be involved, an investigation may be carried out.

However, the obligation to investigate a complaint should be required only if it is set out in writing and signed. We believe this is necessary in order to protect the subject of the complaint from anonymous or malicious complaints, and the regulatory body from expensive and fruitless investigations.

EXAMINATIONS FOR CERTIFICATION OR LICENSURE

The topic of examinations for registration was

presented to the workshop on legal and procedural issues by Mr. Wensley of the College of Pharmacy.

In this connection, it may be useful to indicate that the candidate for licensure is also a member of the public whose interests professional regulation is intended to protect. Therefore, the Board believes that licensing bodies must pay particular attention to the fairness with which examinations are used. Fair testing practices include the selection of measures that are relevant to known content domains in practising the profession, are reliable, and are valid for the purpose intended; they also include a process whereby the candidate is fully informed of the intent of the examination and of his or her own performance. Furthermore, a rational approach must be taken to setting appropriate pass-points, particularly in instances where only a subgroup of candidates is required to submit to a given examination. For example, in requiring foreign graduates to take a test of English comprehension, it must be demonstrable that the required level of performance is no higher than the minimum level exhibited by those who are not required to submit to examination.

We include these points because of psychologists' particular professional concern with the proper use of tests for selection or classification. Useful guidelines are provided in the *Standards for Educational and Psychological Testing* published by the American Psychological Association and, in particular, the chapter on Professional and Occupational Licensure and Certification.

CONTINUING COMPETENCE

Although problems exist in assessing entry-level competence to practice, it may be conceded that they are dealt with more or less satisfactorily through the accreditation of training institutions and internship programs and through the expenditure of research funds on job analyses and the development of valid and reliable examination procedures. The assessment of competence over the span of a professional's career, on the other hand, continues to be a perplexing problem.

Representatives of the College of Physicians and Surgeons presented a description of their program to audit a small, randomly selected sample of practices each year for the last eight years. However, they also indicated that this procedure was useful mainly to assess charting and office procedures and less useful in assessing knowledge, problem solving or human skills. Similarly, other techniques, including patient surveys, patient simulations, simulated

problems and recertification examinations were described as suitable for assessing only some aspects of a professional's competence. In some jurisdictions in the United States an attempt to assure competence is made by requiring professionals to accumulate a given number of hours of continuing education credits.

In the Board's view there is, first of all, insufficient evidence that the maintenance of professional competence is a significant problem. In reviewing complaints against psychologists, the competence of the psychologist appears to be less often a contributing factor than poor judgment or indifference to the welfare or interests of the client. The Board, moreover, recommends that particular steps not be taken to institute particular examinations, practice audits or other measures until data is collected to demonstrate that given techniques are useful. The assessment of continuing competence is an interesting research question, but at present we believe there is no empirical basis for a rational decision.

We are not aware of the cost of the program presently being implemented by the College of Physicians and Surgeons but understand that in eight years it has been possible to audit by this method fewer than five percent of physicians' practices.

Our recommendation would be that provision be made for the Colleges to draft regulations in this area, but that the Minister reserve approval of such regulations pending provision of evidence that the methods proposed are justified by empirical findings.

SCOPE OF PRACTICE

In approaching the task of proposing a definition of the scope of practice of psychologists the Ontario Board of Examiners in Psychology and the Ontario Psychological Association decided that in this instance it would be desirable and legitimate to work together. For regardless of our differing responsibilities we could see no impediment to collaboration on the definition of the field. The definition given below incorporates suggestions made by the Association. We have, in addition, studied definitions produced in other jurisdictions and by the American Psychological Association.

In defining the scope of practice of psychologists we wish to take into account the practice of neuropsychology, experimental, developmental, educational, child, engineering, social, community, clinical, counselling, rehabilitation, health, industrial, organizational, and school psychology. Most of these fields are described in detail in the *Canadian Classification and Dictionary of Occupations*, (1971) and also in the *Dictionary of Occupational Titles*.

SCOPE OF PRACTICE

The following definition of the practice of psy-

chology is presented in three parts, as suggested in the Health Professions Legislation Review workshop of May 21, 1986 (p. 31):

WHAT

The practice of psychology is the collection, interpretation and application of scientifically derived data, as well as the application of psychological principles, theories and techniques, relating to behaviour and mental processes

WHY

for the purposes of: evaluating, assessing, understanding and diagnosing such behaviours and mental processes; eliminating symptomatic, maladaptive or undesired behaviour; and promoting, maintaining and enhancing the mental, physical, emotional, intellectual, social and interpersonal functioning of individuals and groups by

HOW

- i) developing tests, surveys and other instruments to measure behaviour, intelligence, abilities, aptitudes, interests, attitudes, learning, perceptual processes, neuropsychological functioning, personality, psychopathology, morale, motivation, group processes, environmental factors, values, human information processing and ergonomic capabilities;
- ii) applying such tests, surveys and other instruments to evaluate and assess behaviour, intelligence, abilities, aptitudes, interests, attitudes, learning, perceptual processes, neuropsychological functioning, personality, psychopathology, morale, motivation, group processes, environmental factors, values, human information processing and ergonomic capabilities;
- iii) planning, directing and carrying out treatments and interventions for psychological, physiological and behavioural conditions, as well as for the enhancement of well-being by counselling, psychotherapy, biofeedback, behaviour therapy, psychoanalysis and hypnotherapy;
- iv) planning, carrying out and evaluating programs, procedures, workshops and systems for enhancing human performance and facilitating the psychological, interpersonal and productive functioning of individuals and groups;
- v) training, teaching, or consulting on the theory and practice of psychology; and
- vi) conducting, evaluating or supervising research using methods derived from psychological knowledge and principles.

PROPOSED EXEMPTION

Nothing in this Act prevents the use of the title by salaried members of departments of psychology in Ontario universities

- (a) in the course of fulfilling the teaching and research duties for which they were hired, and
- (b) provided such persons do not offer their services to the public for a fee, monetary or otherwise.

LICENSED ACTS

No person shall perform the acts specified [below] unless registered under this or another statute (p. 34)

Licensed acts in the practice of psychology are:

- interpreting tests of personality;
- interpreting neuropsychological test batteries;
- interpreting measures designed to diagnose psychopathology;
- interpreting tests of perceptual disorders;
- interpreting individual tests of intelligence;
- performing psychotherapy;
- performing behaviour therapy;
- performing hypnotherapy,
- and
- applying biofeedback.

NOTE: With respect to our inclusion of the interpretation of various psychological tests among licensed acts it should be noted that the profession of psychology is the only regulated profession with education and training in the principles of measurement, and it is the only profession that has developed and published standards for educational and psychological testing.

JURISDICTION

The situation described by Mrs. Margaret Risk for the profession of nursing is similar to our own: the professional standards of psychologists are not set out in regulations. The Board in its 1982 proposal for a new Act produced a list of thirty distinct acts it considered to be instances of professional misconduct and recommended that these be included in a Regulation under the Act.

The Board also recommended, perhaps for reasons similar to those given by Mrs. Risk, that "Failure by a member to maintain the standards of practice of the profession" should be included as part of the definition. This permits use of additional standards for competent as well as ethical practice which, in a developing code, possibly should not be fixed within a relatively unchanging regulation . . . In the definition of professional misconduct [proposed in 1982], emphasis tends to be placed on proper business practices in billing, record keeping, and honoring commitments as well as respecting the privacy of the client, and avoiding misleading advertising.

Some of these strictures are obviously important for the protection of the public and require no justification for their inclusion. Others have distinct, though indirect, bearing on the client's welfare.

Neither these statements nor the *Standards of Professional Conduct*, adopted by the Board in 1978, contain any prohibition on advertising by psychologists. For this reason the Board does not consider that any of its proposed standards offend the letter or spirit of the *Combines Investigation Act* discussed in the submission from the Bureau of Competition Policy and circulated by the Review. Similarly, the Board has avoided adopting fee schedules or encouraging their adoption by others. Instead, the *Standards of Professional Conduct* address such issues as the organization of a practice and the supervision of assistants in a

manner that will best serve the client; the responsibility to practise within the limits of competence, to avoid practising if impaired, to advertise in a factual manner, to respect the rights of the client, to be informed about the services to be provided, and to know the fees and charges; the responsibility to set reasonable fees, and to collect these with consideration for the client's welfare; the responsibility to keep accurate records, to respect the privacy of the client, and to obtain informed consent.

As a supplement to these standards the Board refers psychologists and the public to the following standards and guidelines, devel-

oped by the profession in North America over several decades:

ETHICAL STANDARDS OF PSYCHOLOGISTS, American Psychological Association, 1977 Revision.

ETHICAL PRINCIPLES IN THE CONDUCT OF RESEARCH WITH HUMAN PARTICIPANTS, American Psychological Association, 1973.

STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTS, American Psychological Association, 1974. ■

CHALLENGES FACING THE BOARD

As the Board enters a new fiscal year, it faces unprecedented demands on the time and resources of its members and staff. Since 1978 the Board has sought, without success, needed revisions to the administrative parts of its legislation. Although its proposal for a new act received favourable review by the Ministry of Health in 1982, action was postponed indefinitely with the introduction of the Health Professions Legislation Review in 1983 by former Minister of Health, Mr. Larry Grossman. The Review continues and the Board is presently preparing what it has been informed will be its last submission to the Review team. At the request of the team, the Board is developing a definition of the practice of psychology, listing certain "acts" in the practice of psychology that should be licensed; stating its position on professional misconduct; providing an addendum to its comments on legal and procedural issues; and providing further comment on questions around the advisability of being clustered with other professional groups for regulatory or administrative purposes. In view of the importance of these questions to all psychologists, portions of the Board's submission are reproduced in this issue of *The Bulletin*.

While applications for registration in Ontario are being received at a fairly constant rate, the nature of an increasing number of applications places added strain on the resources of the Board. Applicants presenting degrees that are not clearly psychological, either in name or in content, are more frequent. It may be that registration as a psychologist is now more widely perceived as a desirable credential than in earlier years. Such applications must receive careful review and, in some cases, may require review for a second or even third time.

Psychologists continue to show their versatility by entering new areas of practice. For example, they are in increasing demand as expert witnesses in court on matters ranging from questions of child custody, or child abuse, to fitness to stand trial. Occasionally, engage-

ment in these activities or entry into new practice areas occurs without adequate preparation, either in terms of awareness of the ethical issues involved, or in terms of academic or technical preparation for competent provision of services. As a result, the year of supervised post-doctoral experience and the oral examination of candidates for registration have assumed even greater importance in the registration process than was originally contemplated. In instances where the oral examining committee is not unanimously prepared to recommend registration the candidate is given a second examination by a quorum of the Board. The Board now devotes about two full days each year to these additional oral examinations.

Complaints against psychologists reached 36 in the past year, an increase of fifty percent over previous years. For each complaint one Board member, the Registrar and/or the Assistant Registrar, and the Board's solicitor participate in investigating the complaint. Some complaints can be resolved without incident. Some require a formal "Invitation" to the psychologist to meet with representatives of the Board to discuss conduct that is a source of concern, and possibly to sign an agreement to correct this conduct - for example, to change methods of record keeping or billing. Still other complaints require the preparation of charges of professional misconduct followed by a formal hearing. Three formal hearings and three "Invitations" are presently scheduled for the fiscal year now beginning. The Invitations are conducted by two members of the Board, or by one member and the Registrar. A tribunal, consisting of three members of the Board, presides over a formal hearing.

Considerable time and effort is devoted by the staff in responding to questions raised by psychologists, or to requests for advice on the application of professional standards in particular circumstances. Some of the issues raised are of general significance to the profession, become the subject of Board discussion and

receive eventual publication in *The Bulletin*. During the past year, the Board has also been asked to provide opinions in labour-management disputes concerning, variously, the classification of psychologists, the wording of a collective agreement, and the propriety of professional supervision of a psychologist by members of another occupational group. Although it is not the role of the regulatory body to resolve these disputes, or to become directly involved, its general statements on certain legal and professional principles have been considered useful to the psychologists concerned.

Similar activities in the regulation of psychology can be observed in all the provinces of Canada. Newfoundland now has a psychology Act for the first time; Alberta has a new Act. The other provincial regulatory bodies are involved in expanding their activities, dealing with new challenges to their legislation, or reorganizing their administrative structures. To the extent it has been able, the Ontario Board has tried to be responsive to requests from the regulatory bodies across Canada for information or comment.

The Registrar and staff brief the Board as carefully as they can; however, the decision-making power resides with the five-member Board. It is not clear how the members, who volunteer their time but who all are employed elsewhere, can meet the requirements placed on them by the increasing demands of regulation. Presently, the five members attend regular monthly meetings, investigate complaints, meet to prepare briefs, represent the Board on the Council of Provincial Associations of Psychologists, the Canadian Register of Health Service Providers in Psychology and in meetings with other agencies and organizations, and face twelve days of hearings now scheduled for this fiscal year, as well as additional days of oral examinations. An enlarged Board and a formal committee structure was requested in the Board's legislative proposal of 1982; an enlarged Board is still badly needed. ■

DISCIPLINARY HEARING

On December 9, 1985 a tribunal of the Ontario Board of Examiners in Psychology heard evidence into a charge of professional misconduct against Dr. Frances Cherry.

The charge read as follows: "it is being alleged that you are guilty of professional misconduct in that during the period between October 27, 1983 to June 1, 1985 you did represent yourself to be a psychologist at a time that you did not hold a certificate of registration as defined by the Psychologists Registration Act, R.S.O. 1980, Chapter 404, Section 1(b), 1(c)."

Dr. Cherry entered a plea of guilty as charged.

Evidence presented in the hearing established that, although Dr. Cherry had received a notice informing her that her fees were due on June 30, 1983, her fees had not been received as of that date. Dr. Cherry subsequently received two reminders. A final warning letter was sent on October 27, 1983, indicating to Dr. Cherry that her name had been removed from the register and that as of that date she should

not represent herself as a psychologist in any capacity other than that involved in her university position.

Dr. Cherry testified that she continued to see X after her registration lapsed and she did not inform X that she was no longer a psychologist. After her registration had lapsed she began seeing Y, who was X's sister, on a crisis intervention basis. She did not inform Y that she was not a registered psychologist. Dr. Cherry testified that during the period that she was not registered she did not see any other clinical patients and that as far as she is aware she did not represent herself directly as being a psychologist outside of her university position. In May of 1985, as a result of a complaint by Y, Dr. Cherry paid the fees necessary to reinstate her registration for the 1984-85 period.

In extenuation of allowing her registration to lapse Dr. Cherry informed the Board of her financial hardship during the year of 1983. She did admit however that at no time did she consult the Board about her financial problems

or attempt to find a way of remaining on the register.

The penalty awarded to Dr. Cherry was a reprimand to be published in *The Bulletin*. The tribunal was of the opinion that, as a responsible professional and in addition a professional involved in the teaching of psychology students, Dr. Cherry should have explored alternatives that would have allowed her to maintain her professional status during the period in question.

The tribunal found that there was no evidence to indicate that Dr. Cherry had acted in an unprofessional manner with her clients in any other respect than that she did not inform them of her status. The fact that she has reinstated herself and has become acutely aware of the necessity to adhere to standards in fact as well as in spirit reassured the tribunal that no further penalty other than the reprimand was required.

NEW PERMANENT REGISTRANTS SINCE JANUARY, 1986

Neil Applebaum	Nicholas Kuiper
Lynda Archer	Bruce Linder
Kathryn Belicki	Michael MacDonald
Hans Breiter	Philip Miller
Joan Brewster	Robert Morton
Clarissa Bush	Gerald Munt
Andy Cancelliere	Vincent Murphy
Phyllis Chee	Christopher Newton
Joy Elder Davey	Mark Olioff
Jennifer Dunn Geier	Jenny Rajput
Darlene Elliott-Faust	Miroslav Richter
Sandra Elwood	Candice Schroter
Roland Engelhart	Scott Sellick
Lawrence Freedman	Ian Shields
Gary Gerber	Sheila Stober
Patricia Gervaise	Harvey Thornburg
Ricardo Harris	Tom Tombaugh
Karen Katchen	Lawrence Williams
Krystyna Kinowski	

The BULLETIN

The Bulletin is a publication of the Ontario Board of Examiners in Psychology.

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ORAL EXAMINATIONS

The oral examinations were held in Toronto on May 27 and 28. Assisting the Board in conducting these examinations were the following psychologists:

ESTER COLE, Ph.D., Senior Psychologist, Toronto Board of Education;

NEVILLE DOXEY, Ph.D., Chief Psychologist, Workers' Compensation Board Rehabilitation Centre, Downsview;

BRUCE FERGUSON, Ph.D., Professor, Carleton University, Ottawa;

KINGSLEY G. FERGUSON, Ph.D., Retired, former Psychologist-in-Chief, Clarke Institute of Psychiatry, Toronto;

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IRIS JACKSON-WHALEY, Ph.D., Private practice, Ottawa;

I. FRANCES MACDONALD, Ph.D., Chief Psychologist, York Region Roman Catholic Separate School Board;

ANDREW MOLINO, Ph.D., Area Manager, Ministry of Community and Social Services, Ottawa;

BRIAN RIDGLEY, Ph.D., Head, Department of Psychology, Sunnybrook Medical Centre, Toronto.

ORAL EXAMINATION DATES

The fall oral examinations will be held on Wednesday, November 26 and Thursday, November 27, 1986. While the Board staff tries to accommodate special requests for specific dates and times, it is often impossible to fulfill such requests. Therefore, we ask those who are eligible for their oral examinations to plan accordingly. A timetable will be issued in early November to those concerned.

THE BULLETIN

The Bulletin is published quarterly. Subscriptions for Ontario psychologists are included in their registration fee. Others may subscribe at \$10.00 per year, or \$2.50 per single issue. We will also attempt to satisfy requests for back issues of *The Bulletin* at the same price.