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**VIA FACSIMILE 512 305-7701**

Mr. Tim F. Branaman, Ph.D., Chairman  
Texas State Board of Examiners of Psychologists  
333 Guadalupe, Tower 2, Room 450  
Austin, Texas 78701

Re: Repeal of rules requiring the supervision of psychological associates

Dear Chairman Branaman:

This firm has been retained by the Texas Association of Psychological Associates (hereinafter “TAPA”) to address TAPA’s concerns regarding certain Texas State Board of Examiners of Psychologists (hereinafter “Board”) rules. We respectfully request that the Board immediately announce its intent to repeal Board Rules 463.1, 465.2(i), and 471.2, which require supervision of psychological associates, and begin taking steps to repeal those rules. Please consider this a petition for rulemaking as stated in Texas Government Code § 2001.021.

This letter should not come as a surprise to the Board. For over five years, TAPA and its members have attempted to communicate the following concerns to the Board. In summary, those concerns are:

- 1) The Board has no statutory authority to promulgate or maintain a rule requiring supervision of psychological associates in the practice of psychology.
- 2) The Psychologists’ Licensing Act allows the Board to set standards for the *issuance* of a psychological associate license. However, Board rules 463.1, 465.2(i), and 471.2 limit the manner in which psychological associates may *practice* by requiring the supervision of a licensed psychologist. The Psychologists’ Licensing Act does not permit the Board to regulate or prohibit independent practice by psychological associates.
- 3) The standards for the licensing of psychological associates are expressly set out in Psychologists’ Licensing Act § 501.259. Unlike the standards for a psychologist license in §501.252-.255, the legislature did not require provisional licensure or supervision for psychological associates. The sharp contrast between the licensing requirements for psychologists and psychological associates indicates that the legislature clearly knew how to impose provisional or supervision mandates when it believed such requirements were necessary.

- 4) TAPA understands that the Legislature, in 1993, created the Psychological Associate Advisory Committee in Subsection H of the Psychologists' Licensing Act. Section 501.357 mandated that the advisory committee develop rules establishing guidelines for the supervision of psychological associates. However, the Board's authority for any rules it promulgated under § 501.357 was lost when subsection H was repealed in 2005. The Legislature's express abolition of the Psychological Associate Advisory Committee revoked the Board's authority to require the supervision of psychological associates by licensed psychologists. Stated differently, once the statute was repealed, the Board's authority to impose regulations based on that statute also was repealed.
- 5) The Board certainly should be aware of numerous letters and inquiries from state legislators since 2005 indicating that the Board should take steps to remove the supervision requirement for psychological associates.

Given the lack of statutory authority for Board Rules 463.1, 465.2(i), and 471.2, and the clear legislative intent to repeal the previous supervision requirement, TAPA believes that the Board must immediately move to align its rules with its lack of statutory authority to impose such supervision requirements. TAPA is serious about resolving this problem, which has prevented independent practice by psychological associates for far too long.

This letter could delve into case law and court precedent outlining an agency's limited ability to promulgate regulations and well-settled law about exceeding statutory authority. However, the truth is that TAPA has attempted diplomatically to have the Board fix this problem for over five years. Previous TSBEP Boards have consistently ignored TAPA's legal and equitable arguments, and TAPA's patience has run out. **If, within the next 45 days, the Board fails to take some action to repeal Board rules 463.1, 465.2(i), and 471.2, TAPA will file a lawsuit in Travis County District Court to have those rules declared invalid. TAPA will also seek recovery of attorney fees, if applicable.**

This firm does not represent individual TAPA members. However, you should be aware that the Board's continued failure to allow independent practice by licensed psychological associates could subject the Board to lawsuits from those individuals for lost wages and damages under 43 USC § 1983. Damages in such a case could be easily calculated because it is common practice for licensed psychologists to require that psychological associates under their supervision pay a "kick back" percentage of the psychological associates' independent earnings. In addition, the Board's insistence in requiring supervision of psychological associates inures only to the direct benefit of licensed psychologists, who enjoy independent practice. This raises possible anti-trust concerns, because this anti-competitive conduct prohibits market competition without any legal or legislative justification.

In the interest of avoiding unnecessary legal expenses, I encourage you to consult with your general counsel, Diane Izzo, as well as your representatives at the Office of the Attorney

Texas State Board of Examiners of Psychologists  
August 10, 2010  
Page 3 of 3

General, regarding your authority to maintain those rules that prohibit independent practice by licensed psychological associates. If you have questions about TAPA's claims and the legal justification for TAPA's position, please do not hesitate to contact me.

Sincerely,

Jason Ray  
Attorney for the Texas Association of Psychological Associates

Cc: Ms. Jo Ann Jordan Campbell, M.S., Board Member  
Mr. Carlos Chacón, Board Member  
Ms. Angela A. Downes, J.D., Board Member  
Mr. Narciso Escareno, Board Member  
Ms. Lou Ann Todd Mock, Ph.D., Board Member  
Ms. Leslie D. Rosenstein, Board Member  
Ms. Donna Lord Black, M.A., Board Member  
Ms. Dianne Izzo, General Counsel  
Texas Association of Psychological Associates