

Texas State Board of Examiners of Psychologists

February 2019 Newsletter

COURT CASES, MARKET FORCES RESHAPING PSYCHOLOGY

By **Tim F. Branaman,**
Ph.D.

I write from my experience as chair of Texas State Board of Examiners of Psychologists (TSBEP), but what I've seen has broad implications for professional practice nationwide.

For nearly 50 years the Federal Trade Commission (FTC) has focused on increased competition to facilitate a "free market" in the professions and has closely watched activities of professional associations and state regulatory boards. Market forces and court decisions also have "chipped away" at the practice of psychology.

Regulations limiting the use of the title "psychologist" were the basis of *Serafine v Branaman*, a federal suit filed in 2011 by Mary Louis Serafine, a lawyer and political candidate. She alleged her First Amendment rights were violated by a "cease and desist" letter from the TSBEP for representing herself as a psychologist.

Serafine, a licensed lawyer with a Ph.D. in education, objected that she could not call herself a "psychologist" just because she had neither been trained as one nor ever been licensed to practice. She considered her post-doctoral fellowship in psychology qualified her to do so. Before a decision was rendered, another federal case, *Rosemond v Kentucky*, was filed in 2013 and decided in 2015.

The essence of *Rosemond v Kentucky* was the connection between speech, the practice of psychology and limitations of state regulation of such speech. The court held that merely representing oneself as a psychologist and offering advice in a newspaper column did not constitute the practice of psychology, as no "client-patient" relationship existed.

The decision indicated that speech, as it relates to professional practice, is limited and cannot be based on concern for harm that is not demonstrable.

In this context, the U.S. 5th Circuit Court of Appeals in 2016 ruled that Serafine could describe herself as a psychologist for political purposes.

However, the court went further. It determined that the Texas psychology practice act was overly broad. The practical effect was to nullify the act. The TSBEP engaged in an intensive research effort to develop a restructured practice act that would meet the court's requirements.

What we learned was that most if not all state psychology practice acts appear vulnerable to the legal challenge that befell the Texas act. While the Serafine opinion was specific to the 5th U.S. Circuit Court of Appeals, it could have nationwide implications.

On another front, a free-market ruling with direct implications for all U.S. regulatory agencies was rendered by the U.S. Supreme court in *North Carolina State Board of Dental Examiners, Petitioner v Federal Trade Commission* (2015).

In that case, the dental board, mostly comprised of professional stakeholders, issued a "cease and desist" order to prevent teeth whitening services from offering services in local malls. The FTC filed a complaint that the board's order was obstructive to consumer access to service and an unlawful restriction of trade. The board argued it was immune from antitrust law, but the Supreme Court ruled that a regulatory board was not immune unless "actively supervised" by the state.

Regulatory boards without necessary oversight are at risk for an FTC complaint or federal suit. Not only the state agency but individual board members may have extensive liability if found in violation of antitrust laws.

Following the *North Carolina Dental Board v FTC* decision, the exposure of professional regulatory boards was demonstrated in another Texas case, *Teladoc Inc. v Texas Medical Board*. In that case, the Texas Medical Board attempted to restrict telemedicine practice by requiring initial patient evaluation be by direct contact. The FTC intervened and the case was resolved in favor of Teladoc by

statutory changes in the Texas Medical Act.

In Texas, the independent practice of “psychology” had been reserved for doctoral level professionals despite numerous efforts by the Texas Association of Psychological Associates representing licensed psychological associates (LPAs) to obtain that right through the state legislature.

All this changed in 2010 when their association sued the TSBEP. While TSBEP prevailed at trial and subsequent appeal in 2014, the *North Carolina v FTC* ruling followed in 2015. At that point, the potential risk of another suit was too great that the board, due to being comprised of a stake-holder majority without state oversight, would be found in violation of FTC requirements.

This resulted in the TSBEP providing a pathway to independent practice for Texas LPAs.

In July 2018, APA released a statement noting that “changes in the field led to a decision by the council of representatives to direct APA to develop an accreditation system for master’s programs in health service areas of psychology” and they appointed a task force to develop recommendations for accreditation standards.

APA continues to assert that it considers a doctoral degree to be the minimum entry level degree for the practice of psychology, yet their recognition of “changes in the field” suggests that they are well-aware of the changing market forces and regulatory requirements I noted above. An additional driver of these changes may have been internal pressure from university training programs that offer terminal master’s degrees in psychology.

I believe professional psychology is best practiced by those who are trained at the doctoral level, but it now seems that licensing of individuals with master’s level training in psychology is inevitable. What then are the possible consequences of these trends?

First, there will be increasingly sharp scrutiny of regulatory boards by the public, state legislatures and federal regulations. There may be individual or class action suits.

Second, stakeholders appointed to regulatory boards must be sensitive to the potential for implicit bias influencing regulatory rules. The least restriction necessary for regulatory oversight of licensees and protection of the public is paramount.

Third, the degree to which regulations are created to protect the public must be based on more than “speculative harm.”

Finally, the practice of psychology, much like the practice of law and much of psychiatry, is a service comprised of language; it is a service by words that makes definition of practice parameters difficult. While requiring a specialized knowledge base, the definition of what constitutes the “practice of psychology” is open to challenge.

I expect greater challenges may come. Where we go from here remains to be seen.

Tim F. Branaman, Ph.D., ABPP (forensic), a Texas licensed psychologist, has delivered clinical and forensic services in a practice group he established in the mid-80s. He also serves on the Texas State Board of Examiners of Psychologists to which he was appointed in 2008 and subsequently appointed as chairman in 2010. He may be contacted by email at: drtimbranaman@gmail.com.

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Instructions for Changing Your Mailing or Email Address in the Online System

If you need to change your mailing or email address, or order replacement renewal permits, you may now do so via the Board's Online Licensing System.

Licensees may use the same registered account they use when renewing their license to change their mailing and email addresses or order a replacement renewal permit.

When changing your email address via the Online Licensing System, please note that you are only changing your email address on file with the Board – you are not changing your User ID or the email address utilized by the Online Licensing System. To change your email address or User ID used in the Board's Online Licensing System you will need to login to the online system and click on the link entitled "Update Profile." From there you can change your User ID and email address used by the online system.

Licensees who are not registered users of the Board's Online Licensing System must first register an account with the online system before they will be eligible to change their mailing and email addresses or order replacement renewal permits. The registration is a one-time only process.

To register for the online system, you will need an email address which will become your User ID.

If you have an email address, [click here](#) and select "Begin Here for Sign-up" as shown below to register for the online system.

Welcome to the Online Licensing System

Returning User
* * are required.

*User ID:
*Password:

[Forgot password?](#)
[Forgot user ID?](#)

New User
[Begin Here For Sign-up](#)

! New Users (those who have not applied or renewed online since June 2011) must create an online account to use the Online Licensing System. Opening a second account will not delete the first account.

Once you have completed the user registration a temporary password will be sent to your email address, and you will be asked to select a new password when you first attempt to login.

Once you have registered an account, and logged into the system, you may add your license(s) to your registered account. The screenshots below will help guide you through this process.

There are two license types to choose from:

- a. Psychology - LP, PLP, LPA (licensed psychologist, provisionally licensed psychologist, licensed psychological associate), or
- b. Psychology – LSSP (licensed specialist in school psychology).

You will need the following information to correctly associate your user account registration with your license in the online system:

- a. Social Security Number (no dashes)
- b. Birthdate (mm/dd/yyyy), and
- c. Zip code (from address of record).

If any of the information you enter does not match the data currently in the system, you will not be able to establish an account and will need to contact the Board office during normal business hours. The zip code you enter must match exactly the one the Board has on file as your address of record. If it includes a 4-digit extension, then it must be entered as such. If it does not include a 4-digit extension, then it cannot be entered with one.

If your current address of record does not have a zip code, e.g. foreign address, you will need to contact the Board and request that agency staff manually register you for an online user account.

Once you have registered an account and added your license(s) to this registration, you may begin the process wherein you can change your address of record.

Once you become licensed, your license number will be added to this account and you can renew and order additional renewal permits, in addition to changing your address and/or email.



Texas Board of Professional Land Surveying
Texas Funeral Service Commission
Texas Optometry Board
Texas State Board of Dental Examiners
Texas State Board of Examiners of Psychologists
Texas State Board of Pharmacy
Texas State Board of Plumbing Examiners

Logged in as **Noack, Jennifer**

[Update Profile](#) | [Logoff](#) | [Contact Us](#)

Step1: Have You Done Business with Us?

Step2: Provide Identifying Information

Step3: Confirm Information

Welcome to OnlineQuickStart

By answering a few simple questions we'll help you to get started

Step 1

Have you ever held a license or registration with our Board?

- If this is the *first time* you are adding your existing or previous held license to this online account then please select "Yes" so you can walk through the steps of adding your license to your online account.
- If you are applying for a *brand new license* for the first time, select "No" and you will be taken to the Quick Start menu where you can see your initial licensing options under the "Start a New Application" heading.
- If you have *renewed or applied on-line previously* (since 2011), select "No" as you only need to add your license to your online account once. You will be taken to the Quick Start menu where you should see your license and your licensing options.
- If you have an *email change* since the last time you logged in please [contact us](#) with your old email address and your new email address and we can update your account for you as your license can only be associated with one account.

Select "Yes"

Yes How do I know?

No

Next

Cancel

What kind of a license did you hold, or did you apply for the past?

Step 1

Which board manages your license type? Selecting from this list narrows the available License Type drop-down list.

* Board: [How do I know?](#)

* License Type [How do I know?](#)

Step 2

Please provide your credentials

*Required Information

License Type:

Psychology - LP, PLP, LPA

*SSN:

Full digits of SSN

SSN must be 9 numeric characters long

*Date Of Birth:

(mm/dd/yyyy)

*Zip Code:

Security Measures (This helps to prevent automated registrations.)

*Type the characters from the picture below (without spaces):

cbvqkv

Refresh

If you are unable to read the above image please refresh it for another word.

Next

Cancel

Step 3

Please confirm your license credentials

Indiv / Org Number: **919758**

This is the entity number assigned to you by the Board.

Name: **PSYCHOLOGY, TSBEP**

License Type	License Number
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Your name should appear here.

*Select One:

I confirm this is my information

No this is not my License information

Quick Start Menu

If you see your license on the right hand of the screen under the "License Information" section please **DO NOT** click on the "Add License to Registration" link at the bottom as your license is already associated with this online account. You should see your license options listed below.

If you are trying to apply for a license please choose the appropriate option under the "Start a New Application" section.

If you need to add your license to your online account please click on the "Add Licenses To Registration" option below.

■ Applicant Activities

Psychology - LP, PLP, LPA #14920 **Change of Address**

Change of Address - Contact Information

Main Address

Street

Number:

*Address:

*Zip Code:

*City:

*State:

County:

Country:

Phone Number: (999) 999-9999

Extension:

E-mail:

Contact #:

Web Address:

Back

Next

Cancel App

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**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS DISCIPLINARY SANCTIONS RATIFIED AT THE
FEBRUARY 14, 2019 BOARD MEETING**

NAME	CITY	NATURE/INFRACTION	DISCIPLINARY ACTION
Mary Zoila Ponce, Psy.D.	San Antonio	The licensee failed to timely respond to a patient's request for records.	Administrative penalty.
Brian E. Pope, Ph.D.	Arlington	The licensee failed to provide psychological services in a competent manner, misrepresented and overcharged fees that were not agreed to prior to initiating services, and failed cooperate with a Board investigation.	Probated suspension, administrative penalty, and professional development.