ALABAMA BOARD OF EXAMINERS IN PSYCHOLOGY
ADMINISTRATIVE CODE

CHAPTER 750-X-5
BOARD'S FUNCTION AS A PUBLIC REGULATORY BODY

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750-X-5-.01 Release Of Information From Files.

(1) The Alabama Attorney General's Office has ruled that the Board has a right to release information in the files of applicants or licensees. In addition to standard inquiries about individual applicants or licensees for professional reasons, such information is often sought for demographic or statistical purposes. A roster of all licensees in Alabama will be compiled and will be made available to the public at a nominal charge.

(2) The fact that a particular individual is either licensed or not by this Board is public knowledge and will be released upon request.

Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-1, et seq.
History: Rule entitled "Relationship to Alabama Psychological Association Ethics Committee" filed September 21, 1982. Repealed and new rule (same title) filed November 5, 1987. Repealed and new rule entitled "Release of Information from Files" filed April 5, 1990. **Amended:** Filed November 25, 1997; effective December 30, 1997.

750-X-5-.02 Liability Of Board Members.

As Section 34-26-21 of the law states, "No member of the Board shall be liable to civil action for any act performed in good faith in the performance of his or her duty pursuant to this chapter."

Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-21.
History: Rule entitled "Release of Information from Files" filed September 21, 1982. Repealed and new rule (same title) filed November 5, 1987. Repealed and new rule entitled "Liability of Board Members" filed April 5, 1990. **Amended:** Filed November 25, 1997; effective December 30, 1997.

750-X-5-.03 Disciplinary Actions Against Licensed Psychologists And Licensed Psychological Technicians.

(1) The Board shall suspend, place on probation, or require remediation, or any combination thereof, for any psychologist or psychological technician for a specified time, to be determined at the discretion of the Board, or to revoke any license to practice as a psychologist or psychological technician or take any other action specified in the rules and regulations whenever the Board finds by a preponderance of the evidence that the psychologist or psychological technician has engaged in any of the following acts or offenses:

(a) Fraud or deception in applying for or procuring a license to practice as a psychologist or psychological technician; or in passing the examination provided for in this chapter.

(b) Practice as a psychologist or psychological technician under a false or assumed name or the impersonation of another practitioner of a like or different name.

(c) Immoral unprofessional, or dishonorable conduct, defined by the Board as conduct inconsistent with the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct.

(d) Practicing as a psychologist or psychological technician in such a manner as to endanger the welfare of clients or patients.

(e) Conviction of a felony (a copy of the record of conviction, certified to by the clerk of the court entering the conviction shall be conclusive evidence).

(f) Conviction of any crime or offense that reflects the inability of the practitioner to practice as a psychologist or psychological technician with due regard for the health and safety of clients or patients.

(g) Harassment, intimidation, or abuse, sexual or otherwise, of a client or patient.

(h) Engaging in sexual intercourse or other sexual contact with a client or patient or other prohibited multiple relationships as defined at 750-X-5-.03(2) with a client or former client.

(i) Use of repeated untruthful or deceptive or improbable statements concerning the licensee's qualifications or the effects or results of proposed treatment, including functioning outside of one's professional competence or area of specialization established by education, training, and experience as recognized by the Board.

(j) Gross malpractice or repeated malpractice or gross negligence in practice as a psychologist or psychological technician.

(k) Aiding or abetting practice as a psychologist or psychological technician by any person not licensed by the Board.

(l) Conviction of fraud in filing Medicare or Medicaid claims or in filing claims to any third party payor (a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence).

(m) Exercising undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or third party.

(n) The suspension or revocation by another state or province of a license to practice as a psychologist or psychological technician for cause other than failure to renew the license (a certified copy of the record of suspension or revocation of the licensing or disciplinary authority in the state or province making such a suspension or revocation shall be conclusive evidence thereof).

(o) Refusal to appear before the Board after having been ordered to do so in writing by the executive office or chair of the Board.

(p) Making any fraudulent or untrue statement to the Board.

(q) Failing to cooperate with or to respond promptly, completely, and honestly to the Board.

(r) Violation of the code of ethics adopted in the rules and regulations of the Board.

(s) Inability to practice with reasonable skill and safety to patients or clients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

(t) Engaging in practice as a psychologist or psychological technician before a license is issued;

(u) Practice of a level of psychology inappropriate or beyond the scope of the particular license held by the licensee.

(v) Failure to comply with any of the respective responsibilities of a supervisor or supervisee as provided in this chapter.

(2) Prohibited Multiple Relationships:

(a) The licensee shall not undertake or continue a professional relationship with a client when the objectivity or competency of the licensee is, or could reasonably be expected by the Board to be, impaired because of the licensee's present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationship with the client or a relevant person associated with or related to the client.

(b) The licensee in interacting with a client or former client to whom the licensee has at anytime within the previous 24 months rendered any professional psychological services, shall not:

(i) engage in any verbal or physical behavior toward him/her which is sexually seductive, demeaning, or harassing; or

(ii) engage in sexual intercourse or other sexual intimacies with him/her; or

(iii) enter into a financial or other potentially exploitive relationship with him/her.

(c) The prohibitions set out in (b) above shall not be limited to a period of twenty-four (24) months but shall continue indefinitely if the client is determined by the Board to be vulnerable, by reason of emotional or cognitive disorder, to exploitive influence by the licensee.

(3) The Board of Examiners in Psychology may refuse to grant a certificate, or may recommend suspension of any such license for a definite period not to exceed three years. Said Board may, upon satisfactory proof that any applicant or licensee has been guilty of any of the above offenses, refuse to grant a certificate to said applicant or may recommend revocation of a license of said licensee upon a vote of the majority of the Board. After three years from the date of a revocation, an application for reinstatement may be made to the Board, and it may, upon favorable action by a majority of the Board, recommend such reinstatement.

(4) All proceedings on revocations, suspensions, or other hearings affecting licensees shall be conducted in accordance with the applicable provisions of the Alabama Administrative Procedure Act.

(5) The following procedures further specify the course of action whenever a complaint is made to the Board concerning an individual licensed by the Board:

(a) The complaint shall be presented to the executive officer of the Board.

(b) The executive officer shall ascertain whether or not the individual named in the complaint is currently licensed by the Board. Upon ascertaining such, the executive officer shall appoint a Board member or members to serve on an investigative committee with the executive officer and legal counsel regarding the charge(s) made against the licensee. The executive officer and legal counsel are non-voting members of the committee. The Board may also hire or use investigators to investigate complaints against licensees. Complaints against licensees are considered privileged and confidential unless there is a “probable cause” finding by the investigative committee.

(c) Upon the completion of the investigation, the investigating committee shall either find "probable cause" and proceed with a formal hearing to present evidence to the Board regarding the complaint, or the case file shall be closed and marked "no probable cause found." The Board may settle the case by agreement at any time.

(6) If a formal hearing is to be conducted, the following procedures will be observed.

(a) The complaint, including the grounds for consideration of suspension or revocation of license, and the notice of a hearing shall be in writing to the last known address of the licensed individual. Said complaint shall be transmitted by certified mail, return receipt requested.

(b) The licensed individual shall be given a minimum of thirty (30) days notice for hearing to consider suspension or revocation of license.

(c) The licensed individual may at all times be represented by counsel of his/her choosing or may waive this right.

(d) At a hearing, either the full Board shall sit or the Board shall appoint a hearing officer to hear the case in their stead; however, the individual Board members who has assisted with the investigation of the complaint shall not vote on the disciplinary action to be taken. At least one member of the Board shall be present at all times during a hearing,

deliberation, and action thereon. An Administrative Law Judge (ALJ) shall act as the hearing officer for the purpose of rulings on motions, evidence, and the like.

(e) The hearing shall proceed in accordance with the rules of evidence for a nonjury civil case. The burden of proof required to substantiate the charge is a preponderance of the evidence.

(f) After hearing all of the evidence and/or receipt of a recommendation from the hearing officer, the Board shall vote to determine what disciplinary action, if any, shall be taken. The Board will issue the final findings of fact and conclusion of law.

(g) Any disciplinary action adjudged appropriate by the Board shall be transmitted forthwith to the licensed individual within thirty (30) days following the Board's final order in the case.

(h) The Board may, at its discretion, after suspending or revoking a license, require in writing that the licensed individual obtain further education, training, personal counseling, psychotherapy or such treatment as is necessary to the satisfaction of the Board to remediate any personal or professional deficiencies that contributed to said suspension or revocation before a license may be reinstated.

(i) When the issue is whether or not a psychologist or psychological technician is physically or mentally capable of practicing as a psychologist or psychological technician with reasonable skill and safety to patients or clients, then, upon a showing of probable cause to the Board that the psychologist or psychological technician is not capable of practicing psychology with reasonable skill and safety to patients, the Board may petition a court of competent jurisdiction to order the psychologist or psychological technician in question to submit to a psychological examination by a psychologist to determine psychological status and/or a physical examination by a physician to determine physical condition. The psychologist and/or physician is to be designated by the court. The expense of the examination shall be borne by the Board. Where the psychologist or psychological technician raises the issue of mental or physical competence or appeals a decision regarding his or her mental or physical competence, the psychologist or psychological technician shall be permitted to obtain his or her own evaluation at his or her own expense. If the objectivity or adequacy of the examination is suspect, the Board may complete an examination by its designated practitioners at its own expense. When mental or physical capacity to practice is at issue, every psychologist or psychological technician licensed to practice in the state shall be deemed to have given consent to submit to a mental or

physical examination or to any combination of such examinations and to waive all objections to the admissibility of the examination, or to previously adjudicated evidence of mental incompetence.

(j) Appeals of the decision of the Board shall be made in accordance with the Alabama Administrative Procedure Act governing appeals in contested cases.

(k) Board members must abstain from voting in or otherwise participating in disciplinary investigations or hearings if the licensee is in their employ or under their supervision, or if there is a legal, ethical, or moral question vis-à-vis the Board member and the applicant.

(7) In addition to any penalties levied, the Board may assess the cost of any investigation, legal service, legal proceeding, or disciplinary action against any applicant or licensee found to be in violation of this chapter.

(8) In determining the amount of any penalty, the Board shall consider the seriousness of the violation, including any threat to the health, safety, or welfare of the public, the unlawful gain or economic benefit gained from the violation, the history of previous violations by the person, and the efforts of the person to mitigate and comply with this chapter.

(a) Penalties may not exceed one thousand dollars ($1,000) per violation, or a total of five thousand dollars ($5,000) per disciplinary action.

(9) Judicial review of an order entered by the Board shall be conducted in accordance with those provisions providing for the judicial review of contested cases of the Alabama Administrative Procedures Act.

(10) The Board shall exercise its jurisdiction for disciplinary oversight of licensees for any psychological services, regardless of how or where those services are rendered, even if those services are rendered in another state, federal facility, or foreign country during the licensure period.

(a) The Board may not accept the voluntary surrender of a license on the part of a psychologist or psychological technician to avoid a possible disciplinary action by the Board.

(b) If a licensee, a former licensee, or a licensee on inactive status is found to be in violation of a state law or administrative rule, the Board shall maintain a public file. The public file is available upon request.

(c) The Board shall make a report of disciplinary actions to the National Practitioner Data Bank, or its successor organization, and to the Association of State and Provincial Psychology Boards, or its successor organization.

(d) The Board shall publish disciplinary actions in its annual Newsletter.

Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-1, et seq; 41-22-1 et seq.
History: Rule entitled "Liability of Board Members" filed September 21, 1982. Repealed and New Rule (same title) filed November 5, 1987. Repealed and New Rule entitled "Disciplinary Actions Against Licensed Psychologists" filed April 5, 1990. Filed October 5, 1992. **Amended:** Filed September 21, 1994; effective October 26, 1994. **Amended:** Filed November 25, 1997; effective December 30, 1997. **Amended:** Filed May 14, 1998; effective June 18, 1998. **Amended:** Filed September 22, 1999; effective October 27, 1999. **Amended:** Filed March 17, 2004; effective April 21, 2004. **Amended:** Filed September 16, 2008; effective October 21, 2008. **Amended:** Filed November 27, 2013; effective February 1, 2014 pursuant to Act No. 2013-386. **Amended:** Filed July 11, 2016; effective August 25, 2016. **Amended:** Filed March 17, 2017; effective May 1, 2017.

750-X-5-.04 Inquiries About Unlicensed Individuals.

(1) If an unlicensed individual holds him/herself out to the public as a psychologist or psychological technician or he/she engages in the practice of psychology, he or she will be considered to be engaging in illegal activity and may be prosecuted by the attorney general's office or district attorney's office.

(2) Inquiries into the practice of psychology by unlicensed individuals are initiated upon receipt of a complaint. The Board may refer to the appropriate agency for prosecution or elect to seek further information.

(3) When the Board has evidence that any person has engaged in any act or practice constituting a violation of this chapter, or any rule or order promulgated pursuant to this chapter, the Board may bring action in the Circuit Court of Montgomery County, Alabama, to enjoin the act or practice and to enforce compliance with this chapter or any rule or order promulgated pursuant to this chapter, regardless of whether criminal proceedings have been or may be initiated. Upon a proper showing, the court may order a permanent or temporary injunction, restraining order, or a writ of mandamus.
Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-1, et seq.

History: Rule entitled "Privileged Communication" filed September 21, 1982. Repealed and new rule entitled "Disciplinary Actions Against Licensed Psychologists" filed November 5, 1987. Repealed and new rule entitled "Inquiries about Unlicensed Individuals" filed April 5, 1990. **Amended:** Filed November 25, 1997; effective December 30, 1997. **Amended:** Filed November 27, 2013; effective February 1, 2014 pursuant to Act No. 2013-386.

750-X-5-.05 Psychologists' Accountability For Technical And Support Staff.

(1) The Board has authority to regulate the practice of psychology. Therefore the Board construes the actions of technical and support staff in providing functions associated with psychological assessments for which they are under supervision by a licensed psychologist to be actions for which the licensed psychologist is responsible. A licensed psychologist is fully accountable for any professional, ethical or legal issue which may arise as the result of acts committed by his or her technical and support staff while under his or her supervision.

(2) Services by technical and support staff associated with psychological assessments are limited to the following:

(a) Typing psychological report.

(b) Inputting and/or transferring patient or client test responses or scores.

(c) Administering and scoring standardized objective tests under the direct supervision of a licensed psychologist who is immediately available in the same physical location.

Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-1, et seq.
History: New Rule: Filed May 14, 1998; effective June 18, 1998.
Amended: Filed January 14, 2003; effective February 21, 2003.

750-X-5-.06 Annual Report To The Governor.

An annual report concerning the Board's functioning for the previous fiscal year (October through September) will be sent to the Governor in July of each year.

Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-1, et seq.
History: Repealed: Filed April 5, 1990. New rule entitled "Registration of Assistants" filed May 8, 1990. **Repealed:** Filed December 6, 1991. Rule 750-X-5-.05 "Psychologists' And Psychological Technicians' Accountability For Unlicensed Individuals In Their Practices' was repealed Rule 750-X-5-.06

became 750-X-5-.05. **Amended:** Filed November 25, 1997; effective December 30, 1997. **Amended:** Filed May 14, 1998; effective June 18, 1998 (renumbered to 750-X-5-.05 - was 750-X-5-.05).

750-X-5-.07 Declaratory Rulings.

(1) The Board may issue declaratory rulings with respect to the validity of a rule; or with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Board; or with respect to the meaning and scope of any order of the Board. Such rulings shall be issued provided:

(a) The petitioner shows that he/she is substantially affected by the rule in question;

(b) Sufficient facts are supplied in the request to permit the Board to make a valid determination;

(c) The request arises from an actual question or controversy; and

(d) The request does not involve continuing education requirements.

(2) A petition for a declaratory ruling shall, at a minimum contain the following information, and be submitted in a form substantially similar to the following:

Petition For Declaratory Ruling

On Rule No. _____

1. Petitioner

Name: _____
Address: _____
Telephone: _____

2. All rules or statutes that may be involved in the petition, if known:

_____
_____

3. Clear and concise statement of the precise factual situation involved:

_____
_____

4. The exact question to which an answer is desired:

_____
_____

5. The reason for submitting the petition:

_____
_____

6. Full disclosure of the petitioner's interest:

_____
_____

7. Statement as to whether the petitioner's case is presently under consideration by the Alabama Board of Examiners in Psychology or in any pending proceeding:

_____
_____

8. Affidavit certification: Signature of Petitioner
_____ Sworn to and Subscribed before me this the _____ day of_____, 19_____.
_____ Notary Public

(3) All declaratory rulings will be made in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §41-22-11.
Author: Alabama Board of Examiners in Psychology
Statutory Authority: Code of Ala. 1975, §§34-26-22, 41-22-11(a)
History: New Rule: Filed September 21, 1994; effective October 26, 1994. **Amended:** Filed November 25, 1997; effective December 30, 1997. **Amended:** Filed May 14, 1998; effective June 18, 1998 (renumbered to 750-X-5-.06 - was 750-X-5-.07).

Ed. Note: When Rule 750-X-5-.05 "Psychologists' And Psychological Technicians' Accountability For Unlicensed Individuals In Their Practices" was repealed, this rule became 750-X-5-.06.