



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 15, 2011

Tim F. Branaman, Ph.D.
Chair, Texas State Board of Examiners
of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

Opinion No. GA-0897

Re: Whether the use of the term “Nationally Certified School Psychologist” by a Licensed Specialist in School Psychology is a violation of the Psychologists’ Licensing Act (RQ-0947-GA)

Dear Dr. Branaman:

On behalf of the Texas State Board of Examiners of Psychologists (the “Board”), you ask whether a Licensed Specialist in School Psychology who uses the term “Nationally Certified School Psychologist” violates the Psychologists’ Licensing Act (the “Act”) because the term includes the word “psychologist,”¹ which Texas law defines as being limited to persons holding a doctorate in that field. *See* TEX. OCC. CODE ANN. §§ 501.002(5), .252(b)(2) (West 2004).

The Act, chapter 501 of the Occupations Code, governs the practice of psychology. *Id.* §§ 501.001 (short title), .251 (generally prohibiting an unlicensed person from engaging in or representing that the person is engaged in the practice of psychology). *See generally id.* §§ 501.001–.505 (West 2004 & Supp. 2011) (chapter 501). The Act defines “psychologist” as “a person who holds a license to engage in the practice of psychology issued under Section 501.252,” and section 501.252 requires a candidate for such a licensee to obtain a doctoral degree. *Id.* §§ 501.002(5), .252(b)(2) (West 2004). The Act defines a “Licensed Specialist in School Psychology” (“LSSP”) as “a person who holds a license to engage in the practice of psychology under Section 501.260.” *Id.* § 501.002(2). Section 501.260 requires the Board to establish, among other things, the graduate degree requirements that must be satisfied to obtain an LSSP license. *Id.* § 501.260(b). An LSSP license “constitutes the appropriate credential for a person who provides psychological services as required by Section 21.003(b), Education Code.” *Id.* § 501.260(a). The referenced section of the Education Code provides that a person must be appropriately licensed to “be employed by a school district as [a] . . . school psychologist[.]” TEX. EDUC. CODE ANN. § 21.003(b) (West Supp. 2011).

¹*See* Letter from Tim F. Branaman, Ph.D, Chair, Tex. State Bd. of Exam’rs of Psychologists, to Honorable Greg Abbott, Attorney General of Texas at 1 (Feb. 18, 2011), https://www.oag.state.tx.us/opin/index_rq.shtml (“Request Letter”).

The National Association of School Psychologists bestows on persons who have met the association's educational and professional practice standards a "Nationally Certified School Psychologist" ("NCSP") credential.² Texas Board rules for licensing a candidate as an LSSP provide that a currently valid NCSP certification satisfies the rule's training and internship requirements, and the rules require a candidate to "obtain at least the current cut-off [examination] score for the NCSP before applying for the licensed specialist in school psychology." 22 TEX. ADMIN. CODE § 463.9(b), (e) (2011) (Tex. State Bd. Of Exam'rs of Psychologists, Licensed Specialist in School Psychology).³ Nevertheless, because the NCSP credential contains the word "psychologist," you wish to know whether a board rule promulgated to allow "the use of the professional descriptor 'Nationally Certified School Psychologist' by a person who holds the LSSP license [would violate] the Act's provision for use of the term "psychologist" under [section] 501.002(5)." Request Letter at 2.⁴

Section 501.002(5) defines the word "psychologist," but does not address its use by licensees. TEX. OCC. CODE ANN. § 501.002(5) (West 2004). Consequently, we examine other pertinent statutes to determine if the Act prohibits an LSSP from using NCSP as a "professional descriptor." Under the Act, representations "to the public by a title or description of services that includes the word 'psychological,' 'psychologist,' or 'psychology'" constitute the practice of psychology, and the Act prohibits a person from "engag[ing] in or represent[ing] that the person is engaged in the practice of psychology unless the person is licensed *under this chapter* or exempt." *Id.* §§ 501.003(b)(1), .251 (emphasis added). Neither statute addresses the use of credentials by an LSSP who, by definition, is licensed to engage in the practice of school psychology under the chapter. *Id.* § 501.002(2) (citing section 501.260).

The grounds for disciplinary action stated in section 501.401 include a licensee's violation of the chapter or a board rule, "fraud or deceit in connection with services provided as a psychologist," and representations that a person is licensed to engage in psychology when that is not the case. *Id.* § 501.401(1), (4)–(5). The statute does not specifically address a licensee's use of credentials.

The Board is authorized to restrict advertising and competitive bidding, limited to rules that "prohibit false, misleading, or deceptive practices" by a person regulated by the Board. *Id.* § 501.156(a). However, in light of the statutes' own use of the term "school psychologist" and the prominent role that NCSP credentialing plays in board requirements for licensing a person as an

²See National Association of School Psychologists, "Standards for the Credentialing of School Psychologists" (2010), http://www.nasonline.org/standards/2010standards/2_Credentialing_Standards.pfd.

³The Board is required to establish licensing standards for an LSSP, which must include "rules of practice for an [LSSP that] comply with nationally recognized standards for the practice of school psychology." TEX. OCC. CODE ANN. § 501.260(c) (West 2004).

⁴Although you inform us that a particular rule has been proposed, the question you pose is general, and accordingly, we do not address the specific terms of the proposed rule.

LSSP, a court would likely find that an LSSP's use of a valid NCSP credential is neither false nor inherently misleading or deceptive—provided the credentialed professional's practice is limited to the field authorized by law, school psychology. *Cf. Ibanez v. Fla. Dep't of Bus. & Prof'l Regulation*, 512 U.S. 136, 145–46 (1994) (attorney's truthful use of designation "Certified Financial Planner," as authorized by a private professional organization, was neither false nor inherently deceptive); *Peel v. Attorney Registration & Disciplinary Comm'n of Ill.*, 496 U.S. 91, 110–11 (1990) (Stevens, J., plurality) (concluding that letterhead statement that attorney was certified as a civil trial specialist by the National Board of Trial Advocacy was neither actually nor inherently misleading); *Abramson v. Gonzalez*, 949 F.2d 1567, 1577 (11th Cir. 1992) (truthful statement that person is a psychologist is not inherently misleading).⁵

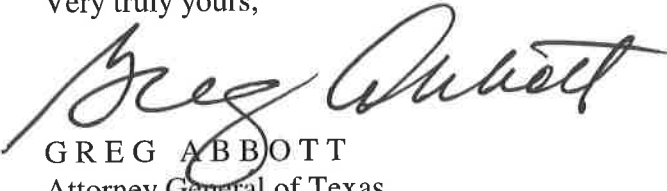
In sum, no provision of the Act prohibits an LSSP from truthfully using the NCSP certification as a professional descriptor. Consequently, a Board rule that allows such use would not, by virtue of that fact, violate the Act.

⁵Moreover, if chapter 501 were construed as flatly prohibiting the truthful use of the NCSP certification, such a construction could pose First Amendment issues. *Abramson*, 949 F.2d at 1577 (statements about a person's occupation that are neither false nor inherently misleading may be regulated but not prohibited entirely). If possible, a court will give a statute a construction that will "avoid raising doubts of its constitutionality." *St. Martin Evangelical Lutheran Church v. S. D.*, 451 U.S. 772, 780 (1981).

S U M M A R Y

The Psychologists' Licensing Act does not prohibit a Licensed Specialist in School Psychology who has obtained the necessary credentials from the appropriate accrediting organization from using the term "Nationally Certified School Psychologist" as a professional descriptor. A rule by the Board of Examiners of Psychologists that would allow such use would not by virtue of that fact violate the Act.

Very truly yours,



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