

CAUSE NO. \_\_\_\_\_

<b>TEXAS ASSOCIATION OF PSYCHOLOGICAL ASSOCIATES</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
	§	
<b>v.</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
	§	
<b>TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS,</b>	§	
<b>Defendant.</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Texas Association of Psychological Associates (TAPA), Plaintiff, and files this Original Petition for Declaratory Judgment against the Texas State Board of Examiners of Psychologist (“the Board”) defendant, and as grounds for this lawsuit would respectfully show the Court as follows:

**Nature of the Case & Discovery**

1. This is a simple rule challenge under Texas Government Code section 2001.038. This lawsuit is governed by Level 2 Discovery as set forth in Texas Rule of Civil Procedure 190.3.

**Parties**

2. Plaintiff, TAPA, is a not for profit professional association representing more than 1100 psychological associates who are licensed to practice psychology in the State of Texas. TAPA seeks a declaration regarding Board rules that directly affect the ability of its members to practice without supervision. As a result, TAPA members would have standing to sue in their own names. In addition, the interests that TAPA seeks to protect

are germane to TAPA's purposes. Because the issues in the case involve questions of law applicable to the Board's rules, neither the claims asserted nor the relief requested requires the participation of TAPA's individual members. TAPA may be served in this case through its attorneys of record.

3. Defendant, the Texas State Board of Examiners of Psychologists, is the state regulatory agency that oversees the examination, registration, and professional regulation of psychological associates in Texas. The agency's offices are located at the Hobby Building, 333 Guadalupe, Suite 2-450, Austin Texas 78701. Defendant may be served through its Executive Director Sherry L. Lee, at its main office.

#### **Jurisdiction**

4. This suit for a declaratory judgment is brought pursuant to Texas Government Code section 2001.038 as a challenge to the validity of certain Board rules which, as described below, interfere with or impair a legal right and privilege of TAPA members.

#### **Venue**

5. Venue is proper in Travis County District Court, pursuant to Texas Government Code section 2001.038(b).

#### **Purpose of Suit**

6. This suit is a challenge to the ability of the Board to adopt and/or maintain "supervision rules" for psychological associates.

## **Standing**

7. Psychological associates are licensed to practice psychology in Texas so long as they comply with the requirements and regulations of the Psychologists' Licensing Act, Texas Occupations Code chapter 501 ("the Act"). The Act does not provide for a supervision requirement for psychological associates. However, the supervision rules that are challenged below impose an ongoing supervision requirement upon psychological associates.

8. The interests that TAPA seeks to protect through this lawsuit are germane to its organizational purpose. Licensed Psychological Associates are psychology practitioners educated at the masters or doctorate level. Licensed Psychological Associates provide the full range of psychological services, including assessment, consultation, and therapy. One of TAPA's core missions is to protect its members' ability to provide mental health services to the full extent allowed by the Texas Legislature.

9. Neither the claims asserted in this lawsuit nor the relief requested requires the participation of TAPA's individual members in this lawsuit. The grounds on which the provisions of the supervision rules are challenged, i.e. that the Board has no statutory authority to impose supervision requirements on psychological associates, is a question of law; and, the relief sought is a declaratory judgment that would apply uniformly to all psychological associates.

10. Attached to this petition is the affidavit of Ms. Betty Dawson, Licensed Psychological Associate, providing evidence of the interests of TAPA in this litigation

and the reasons why it is entitled to represent its members in this lawsuit. The attached affidavit, marked as exhibit P-1, is incorporated at this point as if fully set forth herein.

11. For all of the reasons set forth in paragraphs 7 through 10, TAPA has standing to bring this lawsuit. *See generally Texas Ass'n of Business v. Texas Air Control Board*, 852 S.W.2d 440, 443 (Tex. 1993); *Hunt v. Washington State Advertising Commission*, 432 U.S. 333, 343 (1977).

### **Challenge to Board Rules**

12. Board Rules 463.1 and 471.2 (the “supervision rules”) limit the manner in which psychological associates may practice because the rules require supervision of psychological associates by licensed psychologists at all times. Therefore, the rules prohibit psychological associates from engaging in independent practice. Those rules are attached to this petition and marked as exhibit P-2.

13. The practice of psychology is regulated by the Board pursuant to the Act. TEX. OCC. CODE ANN. § 501.001 *et seq.* The plain language of the Act does not provide the Board with authority to promulgate or maintain a rule requiring supervision of psychological associates in the practice of psychology.

14. The Act allows the Board to set standards for the *issuance* of a psychological associate license. In contrast, the supervision rules limit *the manner* in which psychological associates may practice by requiring the supervision by a licensed psychologist. The Act does not permit the Board to regulate, much less prohibit, independent practice by psychological associates.

15. The standards for the licensing of psychological associates are expressly set out in section 501.259 of the Act; the standards for licensing of psychologists is set out in sections 501.252-.255 of the Act. The Act does not require provisional licensure or supervision for psychological associates; the Act requires both provisional licensure and supervision (for a limited time) of newly licensed psychologists. 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.

16. Texas Occupations Code section 501.151(a) gives the Board the authority to adopt rules necessary to perform its duties and regulate its proceedings. However, that section does not give the Board the authority to create a rule that prevents independent practice for a subset of its licensees. That section also does not allow the Board to set a never-ending supervision requirement for psychological associates. To the extent that the Board relies on section 501.151(a) as a general basis for the challenged rules, the Board's interpretation of its authority is unreasonable and contrary to the plain language of the statute. *See generally Southwestern Bell Telephone Co. v. Public Utility Com'n of Texas*, 79 S.W.3d 226, 229-30 (Tex.App.—Austin 2002, no pet.) (After reviewing the plain language of PURA, court found no legislative intent for the Public Utility Commission's statutory construction.)

17. By requiring ongoing supervision by psychologists, the supervision rules diminish the value of the license held by TAPA members. Because the supervision rules prohibit independent practice by psychological associates, the circumstances under which TAPA

members may provide mental health services is restricted. This constitutes an irreparable injury as a matter of law.

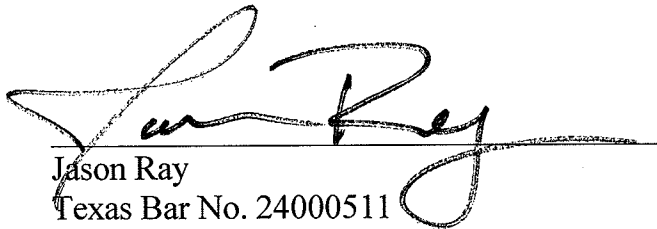
**Request for Declaratory Judgment**

18. After a final trial, TAPA asks the Court for a declaratory judgment that the supervision rules set forth above exceed the statutory authority of the Board and are therefore invalid.

**Prayer**

For these reasons, Plaintiff TAPA prays that this court enter a judgment that the Act does not permit the Board to promulgate rules requiring supervision of psychological associates, and Board Rules 463.1 and 471.2 are invalid.

Respectfully submitted,



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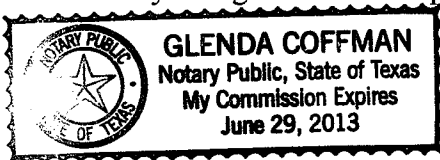
STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§ AFFIDAVIT  
§

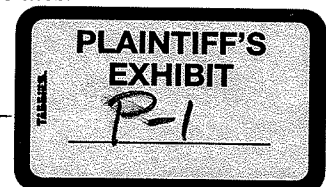
BEFORE ME, the undersigned authority, on this day appeared Frances E. "Betty" Dawson, who after having been by me duly cautioned and sworn did state to me upon her oath as follows:

My name is Frances E. "Betty" Dawson. I am over the age of eighteen, a licensed psychological associate, and Secretary of Texas Association of Psychological Associates ("TAPA"). The statements made in this affidavit are within my personal knowledge and true and correct.

1. The TAPA was organized by psychological associates in 1992 to serve the people of Texas by working to improve the availability of high quality, culturally sensitive mental health services to all segments of the population without regard to socio-economic status and in diverse and non-traditional settings. TAPA represents the interests of over 1100 licensed psychological associates. As the current Secretary of TAPA, I am authorized to speak for the association.
2. Psychological associates who are licensed to practice psychology in Texas must comply with the Psychologists' Licensing Act. TAPA recognizes that the practice of psychology is a licensed privilege and is regulated by the State, through the Texas State Board of Examiners of Psychologists.
3. It is my understanding that licensed psychologists and licensed psychological associates have always had the same scope of practice in the Psychologists' Licensing Act.
4. Texas State Board of Examiners of Psychologists has adopted rules requiring psychological associates to be supervised by a psychologist at all times. Those rules prevent licensed psychological associates from engaging in independent practice because they cannot exercise independent judgment regarding the proper services to provide to their patients.
5. The interests that TAPA seeks to protect through this lawsuit are germane to its organizational purpose. One mission of TAPA is to improve the availability of mental health care for all Texans by being an advocate for licensed psychological associates' ability to engage in unsupervised practice of psychology. In this lawsuit, TAPA is seeking to protect the value of its members' right and privilege to practice psychology and the integrity of their licenses. The question of who has the right to independently practice psychology directly affects the availability of high-quality, affordable mental health care for Texans.
6. Neither the claims asserted in this lawsuit nor the relief requested requires the participation of TAPA's individual members in this lawsuit. The primary ground on which the provisions of the rule in question is challenged, *i.e.* that the rule's provisions exceed the Board's statutory authority, is a question of law; and, the relief sought is a declaratory ruling that would be applied uniformly to all licensed psychological associates.



*Frances E. "Betty" Dawson*  
\_\_\_\_\_  
Frances E. "Betty" Dawson



Sworn to and subscribed before by Frances E. "Betty" Dawson on September 24, 2010.

*Glenda Coffman*  
\_\_\_\_\_  
Notary Public in and for the State of Texas

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# Texas Administrative Code

**TITLE 22**

**EXAMINING BOARDS**

**PART 21**

**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

**CHAPTER 463**

**APPLICATIONS AND EXAMINATIONS**

**RULE §463.1**

**Types of Licensure**

The Board accepts applications for four types of licenses to practice psychology in the state of Texas:

(1) Licensed Psychological Associate. This is a subdoctoral license for qualified individuals to practice psychology under the supervision of a licensed psychologist. Requirements for the psychological associate license are found in §463.8 of this title (relating to Licensure as a Psychological Associate) and §463.14 of this title (relating to Written Examinations).

(2) Licensed Specialist in School Psychology. This license is required by law for the practice of school psychology in the public schools of Texas. Requirements for the specialist in school psychology license are found in §463.9 of this title (relating to Licensure as a Specialist in School Psychology) and §463.14 of this title.

(3) Provisionally Licensed Psychologist. This is a doctoral level license to practice psychology under the supervision of a licensed psychologist. This license is a prerequisite for licensure as a psychologist. Requirements for provisionally licensed psychologist are found in §463.10 of this title (relating to Provisionally Licensed Psychologist) and §463.14 of this title. An individual who is provisionally licensed in accordance with §463.10(c) of this title and who is currently licensed to independently practice psychology in another state may practice without supervision after submission of an application for licensure as a psychologist to the Board. Upon notification from the Board that such an applicant has not met the qualifications for licensure as a psychologist, the provisionally licensed psychologist must obtain supervision within 30 days in order to continue to practice.

(4) Licensed Psychologist. This is a doctoral level license for the independent practice of psychology. It is obtained by two means:

(A) Obtaining provisional licensure as a psychologist, completing the required two years of supervised experience and taking and passing the required oral exam. Requirements for licensure as a psychologist are found in §463.11 of this title (relating to Licensed Psychologist), §463.14 of this title, and §463.15 of this title (relating to Oral Exam).

(B) Applying from a jurisdiction which holds a reciprocity agreement with Texas, meeting the Board's requirements for licensure by reciprocity, and passing the Board's Jurisprudence Exam. Criteria for reciprocity jurisdictions are listed in §463.29 of this title (relating to Reciprocity Requirements). Requirements for licensure as a psychologist by means of reciprocity are found in §463.12 of this title (relating to Licensed Psychologist by Reciprocity) and §463.14 of this title.

**Source Note:** The provisions of this §463.1 adopted to be effective October 3, 1999, 24 TexReg 8169; amended to be effective August 25, 2005, 30 TexReg 4833

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# Texas Administrative Code

**TITLE 22**

EXAMINING BOARDS

**PART 21**

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

**CHAPTER 471**

RENEWALS

**RULE §471.2**

**Renewal Forms**

Licensed psychological associates and provisionally licensed psychologists who do not practice in an exempt setting must include the name and license number of their supervisor on renewal forms. Licensed psychologists and licensed specialists in school psychology must list their supervisees on their renewal forms. Licensed psychologists must indicate on their renewal forms that they have updated their online profile information. All licensees should indicate their current employment setting on their renewal forms.

**Source Note:** The provisions of this §471.2 adopted to be effective December 9, 2003, 28 TexReg 10945

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