

CAUSE NO. _____

TEXAS ASSOCIATION OF
PSYCHOLOGICAL ASSOCIATES
Plaintiff,

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IN THE DISTRICT COURT

v.

TRAVIS COUNTY, TEXAS

TEXAS STATE BOARD OF
EXAMINERS OF PSYCHOLOGISTS, and
SHERRY L. LEE, Executive Director,
Defendants.

_____ JUDICIAL DISTRICT

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”) and its executive director, Sherry L. Lee, defendants, and as grounds for this lawsuit would respectfully show the Court as follows:

Nature of the Case & Discovery

1. 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. Defendants, the Texas State Board of Examiners of Psychologists and its Executive Director Sherry L. Lee, constitute 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. It 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 is 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. Claudia Ghio, 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 a licensed psychologist 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 of 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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