

May 28, 1996

OPINION NO. 96-029

Beth Farnsworth, Executive Director
Counselor and Social Worker Board
77 South High Street, 16th Floor
Columbus, Ohio 43266-0340

Dear Executive Director Farnsworth:

You have requested my opinion regarding the use of certain language by qualified licensees of the Counselor and Social Worker Board. Specifically, you have asked whether a licensed professional counselor or a licensed professional clinical counselor may use the term "psychological" to describe various tests or evaluations that the counselor administers in his counseling practice. In your letter you note that the State Board of Psychology refuses to recognize the authority of licensed counselors to use that term in that manner. You also state that your opinion request "is made with the understanding that the Counselor and Social Worker Board is not proposing that its licensees be allowed to practice professional psychology [or] hold themselves out as licensed psychologists under [R.C. Chapter 4732]."

Your question requires that I first examine those provisions of the Revised Code and the Ohio Administrative Code that authorize and regulate the practice of professional counseling in Ohio. R.C. 4757.02(A) states that, except as provided in R.C. 4757.16,¹ "no person shall engage in or hold himself out as engaging in the practice of professional counseling under the title of _professional counselor_ or _counselor assistant_ or any other title or description incorporating the word _counselor_ for a fee, salary, or other consideration" unless he is currently licensed as a professional counselor or registered as a counselor assistant under R.C. Chapter 4757 and rules

¹ R.C. 4757.16 excepts from the application of R.C. Chapter 4757's provisions certain categories of individuals, including psychologists or school psychologists, members of other professions licensed, certified, or registered by the state of Ohio while performing services within the recognized scope, standards, and ethics of their respective professions, and members of the professions of alcoholism counseling, drug abuse counseling, and chemical dependency counseling who have certification or credentials accepted by the Department of Alcohol and Drug Addiction Services.

adopted under that chapter. R.C. 4757.03 establishes the Counselor and Social Worker Board as the state agency responsible for ensuring compliance with the licensure mandate of R.C. 4757.02.

A person who wishes to engage in the practice of professional counseling must file a written application with the Counselor and Social Worker Board, which refers the application to its counselors professional standards committee for review of the applicant's qualifications. R.C. 4757.06(A), (B). If the Counselor and Social Worker Board is satisfied after its review of the committee's report that an applicant meets the appropriate educational and experience requirements, *see* R.C. 4757.07(A)(3), (5), and (6); 11 Ohio Admin. Code 4757-7-02, and if the applicant successfully passes the examination prescribed by the Board, *see* R.C. 4757.07(A)(4), then the Board shall issue to that person "a license as a professional counselor." R.C. 4757.07(A). Such person is designated a "[l]icensed [p]rofessional [c]ounselor." 11 Ohio Admin. Code 4757-3-01(Q)(2).

R.C. 4757.07(B) further provides that any person who has applied for a license under R.C. 4757.07(A) may apply to the Board "to obtain an endorsement authorizing him to include the diagnosis and treatment of mental and emotional disorders within his scope of practice." If that person satisfies the educational, experience, and examination requirements set forth in R.C. 4757.07(B)(1)-(7) and 11 Ohio Admin. Code 4757-7-03, the Counselor and Social Worker Board "shall include on his license an endorsement stating that the person is qualified to diagnose and treat mental and emotional disorders." R.C. 4757.07(B)(7). A person who receives that endorsement is designated a "[l]icensed [p]rofessional [c]linical [c]ounselor." 11 Ohio Admin. Code 4757-3-01(Q)(1).²

R.C. 4757.01(A) provides that, as used in R.C. Chapter 4757, the "[p]ractice of professional counseling" means rendering or offering to render to individuals, groups, organizations, or the general public "a counseling service involving the application of *clinical counseling principles, methods, or procedures* to assist individuals in achieving more effective personal, social, educational, or career development and adjustment," but does not include "the diagnosis and treatment of mental and emotional disorders unless a professional counselor has received from the counselor and social worker board created in [R.C. 4757.03] the endorsement provided for under [R.C. 4757.07(B)] or unless a professional counselor is supervised by another professional counselor who has that endorsement, a licensed psychologist, a psychiatrist, or a licensed independent social worker." (Emphasis added.) R.C. 4757.01(B) further provides that "[c]linical counseling principles, methods, or procedures" means "an approach to counseling that emphasizes the counselor's role in systematically assisting clients through all of the following: assessing and analyzing background and current information, *diagnosing mental and emotional conditions*, exploring possible solutions, and

² A professional counselor who has not received such an endorsement from the Counselor and Social Worker Board "may diagnose and treat mental and emotional disorders only under the supervision of a professional counselor who has received the endorsement provided for under [R.C. 4757.07(B)], a licensed psychologist, a psychiatrist, or a licensed independent social worker." R.C. 4757.07(B)(7).

developing and providing a treatment plan for mental and emotional adjustment or development," and includes at least counseling, appraisal, consulting, and referral. (Emphasis added.) A licensed professional clinical counselor is further authorized by R.C. 4757.07(B) to "diagnose and treat mental and emotional *disorders*." (Emphasis added.)

One reasonably may infer that in diagnosing mental and emotional conditions, and thereafter developing and providing a treatment plan for mental and emotional adjustment or development, a licensed professional counselor or a licensed professional clinical counselor is authorized by R.C. 4757.01(B) to administer tests or evaluations that will enable the counselor to make an accurate diagnosis and formulate an appropriate treatment plan. It similarly follows that in diagnosing and treating mental and emotional disorders, a licensed professional clinical counselor is authorized by R.C. 4757.07(B) to administer tests or evaluations that will enable him to accurately diagnose such disorders and develop a treatment regimen for their amelioration.

You wish to know whether a licensed professional counselor or a licensed professional clinical counselor may use the term "psychological" to describe or refer to the foregoing tests or evaluations that he administers in his practice. It is my opinion that a counselor may use that term whenever it accurately and appropriately is descriptive of those tests or evaluations. The noun "psychology" is defined as the "science of *mind* or of *mental* phenomena and activities : systematic knowledge about *mental* processes : a method of obtaining knowledge about *mental* processes ... : the science of behavior : the study of the interactions between the biological organism (as man) and its physical and social environment; *also* : systematic knowledge gained through such study." (Emphasis added). *Webster's Third New International Dictionary, Unabridged* 1833 (1993). The adjective "psychological" is defined as "relating to, characteristic of, directed toward, influencing, arising in, or acting through the *mind* esp. in its affective or cognitive functions"; "directed toward the will or toward the *mind* specif. in its conative function"; "relating to, concerned with, deriving from, or used in psychology"; and "dealing with *mental* phenomena esp. as interpreted or elucidated by the application of principles of psychology." *Id.* (Emphasis added.)

R.C. 4757.01(B) authorizes a licensed professional counselor to administer tests or evaluations for the purpose of diagnosing and treating mental conditions. R.C. 4757.07(B) authorizes a licensed professional clinical counselor to administer tests or evaluations for the purpose of diagnosing and treating mental disorders. Insofar as the dictionary definitions demonstrate that the term "psychological" is used to refer to the mind and its mental functions and phenomena, it seems logical that a licensed professional counselor should use that term to describe or refer to tests or evaluations that he uses to diagnose and treat mental conditions. It

also follows that a licensed professional clinical counselor should use that term to describe or refer to tests or evaluations that he uses to diagnose and treat mental disorders.

You note in your letter that the State Board of Psychology objects to the use of the term "psychological" by licensed professional counselors and licensed professional clinical counselors in that manner. It has expressed the view that the use of that term by a licensed professional counselor or a licensed professional clinical counselor implicates those provisions of R.C. Chapter 4732 that

prohibit the unlicensed practice of psychology. *See, e.g.*, R.C. 4757.17 (except as otherwise expressly provided in R.C. Chapter 4757, nothing in that chapter shall be construed as authorizing any person to engage in the practice of psychology as defined in R.C. 4732.01(B)). Accordingly, I shall examine those provisions and address their application in the case of persons duly licensed by the Counselor and Social Worker Board to practice professional counseling in Ohio.

R.C. 4732.21(A) sets forth the following prohibition against the unlicensed practice of psychology: "On and after December 1, 1972, no person who is not a licensed psychologist shall offer or render services as a psychologist or otherwise engage in the practice of psychology for a compensation or other personal gain." *See also* R.C. 4732.21(B) (same prohibition regarding the practice of school psychology); R.C. 4732.99 (penalty for a violation of R.C. 4732.21). Definitions of "[p]sychologist," "[t]he practice of psychology," and "[l]icensed psychologist," as used in R.C. 4732.01-.25, appear in R.C. 4732.01. R.C. 4732.01(A) states that "[p]sychologist" means "any person who holds himself out to the public by any title or description of services incorporating the words _psychologic, _psychological, _psychologist, _psychology, or any other terms that imply he is trained, experienced, or an expert in the field of psychology." R.C. 4732.01(B) states that "[t]he practice of psychology" means rendering or offering to render to individuals, groups, organizations, or the public any service involving the "application of psychological procedures to assessment, diagnosis, prevention, treatment, or amelioration of psychological problems or emotional or mental disorders of individuals or groups; or to the assessment or improvement of psychological adjustment or functioning of individuals or groups, whether or not there is a diagnosable pre-existing psychological problem." R.C. 4732.01(F) provides that "[l]icensed psychologist" means "an individual holding a current, valid license to practice psychology issued under [R.C. 4732.12] or [R.C. 4732.15]." *See also* R.C. 4732.01(C)-(E); R.C. 4732.01(G), (H) (defining "[p]sychological procedures," "[s]chool psychologist," "[p]ractice of school psychology," "[l]icensed school psychologist," and "[c]ertificated school psychologist," as used in R.C. 4732.01-.25); 11 Ohio Admin. Code 4732-3-01 (definitions).

R.C. 4732.21(A) thus prohibits a person who is not a licensed psychologist from offering or rendering services "as a psychologist" or engaging in "the practice of psychology." A person who is not a licensed psychologist offers or renders services as a psychologist by holding himself out to the public by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," or any other terms that imply he is trained, experienced, or an expert in the field of psychology. R.C. 4732.01(A). A person who is not a licensed psychologist engages in the practice of psychology by rendering or offering to render to individuals, groups, organizations, or the public any service involving the application of psychological procedures to assessment, diagnosis, prevention, treatment, or amelioration of psychological problems or emotional or mental disorders of individuals or groups, or to the assessment or improvement of psychological adjustment or functioning of individuals or groups, whether or not there is a diagnosable pre-existing psychological problem. R.C. 4732.01(B). In each instance the services must be offered or rendered for compensation or other personal gain for a violation of R.C. 4732.21(A) to occur.

In the case of certain categories of individuals, R.C. 4732.23(A)-(D) qualify whatever limitations or restrictions are imposed by the other provisions of R.C. Chapter 4732. As pertains to

your inquiry, R.C. 4732.23(B) states that nothing in R.C. Chapter 4732 shall "[r]estrict persons licensed, certified, or registered under any other provision of the Revised Code from practicing those arts and utilizing psychological procedures³ that are allowed and within the standards and ethics of

³ As used in R.C. 4732.01-.25, R.C. 4732.01(C) defines "[p]sychological procedures" as follows:

"Psychological procedures" include but are not restricted to application of principles, methods, or procedures of understanding, predicting, or influencing behavior, such as the principles pertaining to learning, conditioning, perception, motivation, thinking, emotions, or interpersonal relationships; the methods or procedures of verbal

interaction, interviewing, counseling, behavior modification, environmental manipulation, group process, psychological psychotherapy, or hypnosis; and the *methods or procedures of administering or interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, or motivation.* (Emphasis added.)

Pursuant to R.C. 4732.23(C), the State Board of Psychology has promulgated 11 Ohio Admin. Code 4732-5-01(B) for the purpose of enumerating those psychological procedures that the Board considers a serious hazard to mental health and that require professional expertise in psychology. Division (A) of rule 4732-5-01 also provides that, "[c]onsistent with [R.C. 4732.23(B)], persons regulated under other sections of the Revised Code can use hazardous psychological procedures when consistent with their professions, provided they do not hold themselves out to the public by the title _psychologist._" The rule then states that, as defined in R.C. 4732.01(A), "using the terms _psychologic,_ _psychological,_ or _psychology_ in describing the services offered constitutes holding oneself out to the public as a psychologist even though use of the procedures under other names may be permitted, as provided by law." See 11 Ohio Admin.

their profession or within new areas of practice that represent appropriate extensions of their profession, provided they do not hold themselves out to the public by the title of psychologist." (Footnote added.)

One important effect of R.C. 4732.23(B) is to create an exception to the specific prohibitions set forth in R.C. 4732.21(A). *See* 1977 Op. Att'y Gen. No. 77-026 at 2-97. This means that a person who is not licensed as a psychologist under R.C. Chapter 4732, but who is licensed, certified, or registered under any other provision of the Revised Code, may practice those arts and utilize psychological procedures that are allowed by and within the standards and ethics of his profession or within new areas of practice that represent appropriate extensions of his profession, when to do so might otherwise be prohibited by the specific terms of R.C. 4732.21(A), so long as that person does not hold himself out to the public by the title of psychologist.

It is my opinion that the language of R.C. 4732.23(B) excepts from R.C. 4732.21(A)'s prohibitions the use of the term "psychological" by a licensed professional counselor or a licensed professional clinical counselor to describe or refer to tests or evaluations that the counselor administers in his practice. The relevant inquiry in that regard is whether a counselor's use of psychological tests or evaluations is allowed by and within the standards and ethics of the counseling profession or within new areas of counseling practice that represent appropriate extensions of the counseling profession.

Pursuant to administrative rule, the Counselor and Social Worker Board has imposed upon all counselors licensed in accordance with R.C. Chapter 4757 an obligation to abide by certain well-established standards of ethical conduct. *See* 11 Ohio Admin. Code Chapter 4757-21. The Board currently requires that its counselor licensees conform their professional conduct and behavior to the American Counseling Association Code of Ethics and Standards of Practice (1995). The provisions of the Code of Ethics and Standards of Practice recognize that it is often appropriate for a properly

Code 4732-5-02(A) and (B) (declaring that rules 4732-5-01 and 4732-5-02 apply to those persons who do not hold a license granted by the State Board of Psychology and who are not exempt from the licensure requirements of R.C. Chapter 4732, and listing the exemptions from those licensure requirements). *See also* R.C. 4732.22 (listing those persons exempted from the licensure requirements of R.C. Chapter 4732; R.C. 4732.22 does not exempt licensed professional counselors or licensed professional clinical counselors from the licensure requirements of R.C. Chapter 4732).

licensed counselor to use various psychological tests or evaluations in a professional counseling practice. Those provisions further approve the counselor's use of such tests and evaluations in accordance with specific guidelines and cautionary statements. Section E of the Code of Ethics addresses the evaluation, assessment, and interpretation function and provides as follows in its two introductory paragraphs:

The primary purpose of educational and *psychological* assessment is to provide measures that are objective and interpretable in either comparative or absolute terms. Counselors recognize the need to interpret the statements in this section as applying to the whole range of appraisal techniques including test and nontest data.

....

Counselors promote the welfare and best interests of the client in the development, publication, and utilization of educational and *psychological* assessment techniques. They do not misuse assessment results and interpretations and take reasonable steps to prevent others from misusing the information these techniques provide. They respect the client's right to know the results, the interpretations made, and the bases for their conclusions and recommendations. (Emphasis added.)

Twenty-three additional paragraphs then provide detailed advice and guidance for the counselor regarding specific aspects of testing and assessment services, including those that are psychological in nature. The subjects thus addressed include the validity, reliability, and appropriateness of a particular assessment instrument for a particular client; the counselor's competence with respect to the administration, scoring, and interpretation of a specific test or assessment protocol; ensuring that a test is administered under the same conditions as were established for the test's standardization; test security; communicating to an examinee the purpose of an assessment and the use that will be made of the assessment results; an understanding of educational and psychological measurement, validation criteria, and research on the part of a counselor who intends to make a treatment decision based upon test results; and the recognition that the results of any assessment or test may become obsolete, and thus unsuitable for diagnostic or evaluative purposes.

The provisions of the American Counseling Association Code of Ethics and Standards of Practice thus demonstrate that the use of psychological tests or evaluations are allowed by and within the standards and ethics of the counseling profession. This means that R.C. 4732.23(B) permits a counselor licensed in accordance with the terms of R.C. Chapter 4757 to administer such tests or evaluations in his practice, when to do so might otherwise be prohibited by the specific terms of R.C. 4732.21(A). It also means that a licensed counselor may use the term "psychological" to describe or refer to those tests or evaluations. The only limitation that R.C. 4732.23(B) explicitly imposes in that regard is a prohibition against holding oneself out to the public by the title of "psychologist." It follows, therefore, that a licensed professional counselor or a licensed professional clinical counselor who administers psychological tests or evaluations also may use the term "psychological" to describe or refer to those tests.

I am aware that the State Board of Psychology has declared in 11 Ohio Admin. Code 4732-

5-01(A) that use of the terms "psychologic," "psychological," or "psychology" to describe the services a person offers "constitutes holding oneself out to the public as a psychologist even though use of the procedures under other names may be permitted, as provided by law." See note three, *supra*. A state department or other administrative agency that is authorized to adopt rules implementing statutory provisions also has the authority to interpret those provisions in any manner that reasonably carries out the statutory purpose. See, e.g., *Carroll v. Department of Administrative Services*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704, 706 (Franklin County 1983) ("[t]he purpose of administrative rulemaking is to facilitate the administrative agency's placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency"). A court will accord deference to rules adopted by an administrative agency, provided the rules are reasonable and not in direct conflict with statutory provisions. *State ex rel. DeBoe v. Industrial Commission*, 161 Ohio St. 67, 67, 117 N.E.2d 925, 926 (1954) (syllabus, paragraph one) ("[w]here by statutory authority an administrative agency ... promulgates rules and regulations governing its activities and procedure, such rules are valid and enforceable unless they are unreasonable or in conflict with statutory enactments covering the same subject matter").

I express no opinion regarding application of the provisions of rule 4732-5-01(A) to a person who is neither a psychologist licensed under R.C. Chapter 4732, nor licensed, certified, or registered under any other provision of the Revised Code. However, with respect to a counselor licensed in accordance with the provisions of R.C. Chapter 4757, it is my opinion that rule 4732-5-01(A) may not be invoked to prevent the counselor from using the term "psychological" to describe tests or evaluations that R.C. Chapter 4757 authorizes him to administer in his practice. As I have concluded above, R.C. 4732.23(B) excepts a licensed counselor's use of that term from the prohibitions in R.C. 4732.21(A). Accordingly, to the extent that rule 4732-5-01(A) might be applied to prohibit that use, it must yield to the provisions of R.C. 4732.23(B) and Chapter 4757. *Williams v. Morris*, 62 Ohio St. 3d 463, 468, 584 N.E.2d 671, 675 (1992) ("when a statute is in conflict with a rule, the rule must yield"); *McAninch v. Crumbley*, 65 Ohio St. 2d 31, 34, 417 N.E.2d 1252, 1255 (1981) (same).

Finally, I find that the conclusion I have reached in this opinion is consistent with the intent of the General Assembly as reflected in the language of R.C. 4757.17. The first sentence of R.C. 4757.17 states that, "[e]xcept as otherwise expressly provided in [R.C. Chapter 4757], nothing in [R.C. Chapter 4757] shall be construed as authorizing any person to engage in the practice of psychology as defined in [R.C. 4732.01(B)]." The second sentence then provides that R.C. 4757.17 "shall not be construed as contravening [R.C. 4732.23]." The language of R.C. 4757.17 thus indicates that the General Assembly was aware of the potential overlap between the counseling and psychology professions in their respective practice areas, and affirms that R.C. 4732.23(B) enables a licensed professional counselor or a licensed professional clinical counselor to engage in activities that might otherwise constitute the practice of psychology, provided those activities are allowed by and within the standards and ethics of the counseling profession.

It is, therefore, my opinion, and you are advised that a licensed professional counselor or a licensed professional clinical counselor who is authorized pursuant to R.C. Chapter 4757 to administer tests or evaluations in his counseling practice may use the term "psychological" to describe or refer to tests or evaluations that pertain to mental functioning or mental status.

Respectfully,

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Attorney General

May 28, 1996

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