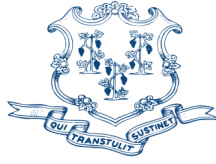


STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Manisha Juthani, MD
Commissioner



Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

PUBLIC HEALTH HEARING OFFICE

**RE: DECLARATORY RULING CONCERNING PROPOSED PRACTICE MODEL OF
NORTHEAST NEUROPSYCHOLOGY**

FINAL DECLARATORY RULING

On May 23, 2024, Dr. David Lovejoy and Dr. Jim Pier petitioned the Connecticut Board of Examiners of Psychologists ("CBEP") on behalf of Northeast Neuropsychology ("Requestor") to issue a declaratory ruling pursuant to § 4-176 of the Connecticut General Statutes ("General Statutes") ("Request").

On May 31, 2024, pursuant to General Statutes 19a-14 (f) (2), the Department of Public Health notified the CBEP that their decision in this matter would be a proposed decision and that the final decision would be issued by the Commissioner of Public Health.

On September 9, 2024, a duly noticed hearing was held before the CBEP to consider the Request. During that hearing, the Requestors and other interested parties were invited to submit testimony, evidence, and argument.

On November 6, 2024, the CBEP notified the Requestor that the attached Proposed Declaratory Ruling would be considered at its meeting on December 9, 2024. That notification invited the Requestor to file exceptions and present oral argument regarding the Proposed Declaratory Ruling pursuant to General Statutes §§ 4-197 and 19a-14 (f) (2). Exceptions were due by December 2, 2024. No exceptions were filed.

On December 9, 2024, the CBEP approved the attached Proposed Declaratory Ruling.

I have reviewed the Proposed Declaratory Ruling in this matter and issue this final determination.



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In accordance with General Statutes §19a-14(f)(2), I hereby adopt the attached Proposed Declaratory Ruling of the Connecticut Board of Examiners of Psychologists, rendered on December 9, 2024, as the Final Decision in this matter.

Dated at Hartford, Connecticut this 20th day of December, 2024.

A handwritten signature in black ink, appearing to read 'Manisha Juthani', is written over a horizontal line.

Manisha Juthani, MD
Commissioner

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS OF PSYCHOLOGISTS**

In re: DECLARATORY RULING REGARDING PROPOSED PRACTICE MODEL OF
NORTHEAST NEUROPSYCHOLOGY

PROPOSED DECLARATORY RULING

Procedural Background

On May 23, 2024, Northeast Neuropsychology (“Petitioner”) petitioned the Connecticut Board of Examiners of Psychologists (“the Board”) to issue a declaratory ruling pursuant to § 4-176 of the Connecticut General Statutes (“General Statutes”) regarding whether the following proposed practice model is permissible under Connecticut law:

1. A state of Connecticut licensed neuropsychologist from Petitioner’s facility utilizes a telehealth platform to conduct a clinical interview with a patient, after obtaining informed consent, to complete a telehealth-enabled neuropsychological evaluation.
2. Then, the neuropsychologist uses a telehealth platform to consult with a psychometrician¹ who is physically on-site in a testing office at Petitioner’s facility to assemble a battery of tests to be administered to the patient during the evaluation.
3. Next, the psychometrician tests the patient in a testing office at Petitioner’s facility with a licensed neuropsychologist present via telehealth platform to provide oversight, control and direction for the psychometrician. The neuropsychologist can communicate with the patient and the psychometrician during the testing by the psychometrician.
4. In addition, a psychologist who is on-site at Petitioner’s facility will be aware of the evaluation and serve as an on-site backup resource for the psychology technology and the telehealth-enabled neuropsychologist for on-site issues, questions, oversight, and direction.

¹ Psychometrician is not a term used in the General Statutes. Section 19a-195aaa uses the term psychology technician, which includes individuals who hold a bachelor or graduate degree in psychometrics or another field of mental health. The Petitioner uses the term “psychometrician” interchangeably with the term “psychology technician” as provided in the General Statutes. Transcript pages (“Tr., p.”) 14.

5. After completing the face-to-face testing, the psychology technician completes the scoring for the tests and provides the data to the neuropsychologist for completion of the evaluation report.
6. Then, the neuropsychologist reviews the results of the evaluation with the patient. Board Exhibit (“Bd. Ex.”) 1.

On July 12, 2024, a Notice of the Declaratory Ruling Proceeding was issued indicating the Board’s intention to issue a declaratory ruling.² The Notice further indicated that all persons seeking status to participate were required to petition the Board by August 9, 2024, and that a hearing would convene on September 9, 2024. Bd. Ex. 2.

An evidentiary hearing was held on September 9, 2024, and was conducted in accordance with Chapter 54 of the Statutes, and §§19a-9-1 through 19a-9-29 of the Regulations of Connecticut State Agencies (“the Regulations”). Bd. Ex. 3. Dr. David Lovejoy and Dr. James Pier testified on behalf of Petitioner.

This Declaratory Ruling is based entirely on the record and sets forth findings of fact and conclusions of law, and a ruling. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985). In addition, as permitted under the Uniform Administrative Procedures Act, the Board relied on “its experience, technical competence and specialized knowledge in” evaluating the evidence and reaching conclusions. *Idlibi v. Conn. State Dental Comm’n*, 212 Conn. App. 501, 520 *cert. denied* 345 Conn. 905 (2022).

Discussion

General Statutes § 4-176 authorizes an agency, such as the Board, to issue a declaratory ruling regarding, among other things, the applicability of the statutes or regulations to specified circumstances on matters within the agency’s jurisdiction. By law, a declaratory ruling constitutes a statement by the Board concerning application of its own statutes or regulations and

² Pursuant to § 19a-14(f)(2) of the Connecticut General Statutes (“Statutes”), the Board’s declaratory ruling will be a proposed decision, and the Commissioner of the Department of Public Health shall render the final determination of the matter. Bd. Ex. 2.

may be used by the Board, on a case-by-case basis, in future proceedings before the Board concerning the practice of psychology.

Section 20-195aaa (c) of the General Statutes provides that:

A psychology technician may provide objective psychological or neuropsychological testing services under the supervision and direction of a psychologist licensed pursuant to chapter 383, provided: (1) The psychologist is satisfied as to the ability and competency of the psychology technician; (2) services provided are consistent with the health and welfare of the patient and in keeping with the practice of psychology; and (3) such services are provided under the oversight, control and direction of the psychologist, who shall remain in the facility where the psychology technician provides such services and be available to the psychology technician during the provision of such services.

Use of the word “and” denotes that Petitioners’ proposed practice model must satisfy all three criteria in Section 20-195aaa(c). As pertains here, the supervising psychologist must be on-site at the facility and be able to ensure that the services provided by the technician are consistent with the health and welfare of the patient and in keeping with the practice of psychology.

Petitioner’s proposed practice model does not satisfy these criteria.

Under Petitioner’s proposed practice model, the psychologist who is statutorily required to be on-site at Petitioner’s facility – who in Petitioner’s words is the “backup” supervisor (Tr. 16) - cannot ensure that services provided are consistent with the health and welfare of the patient and in keeping with the practice of psychology. Indeed, as discussed below, the on-site psychologist lacks sufficient knowledge about the patient to provide any assurance that the services provided are consistent with the health and welfare of the patient and in keeping with the practice of psychology and thus cannot properly supervise the psychology technician.

Dr. Lovejoy, a representative of the Petitioner, testified that under the Petitioner’s proposal, the psychologist within the facility who supervises the psychology technician will not have interviewed the patient, nor will they have engaged in evaluation of the patient. Tr., p. 15. In addition, Dr. Lovejoy testified that it was unlikely that the psychologist at Petitioner’s facility would review the patient’s medical record relevant to the testing such psychologist would be supervising. *Id.* Under these facts, the on-site psychologist providing the statutorily required supervision and direction will not have a complete clinical understanding of the patient undergoing the testing. And without that understanding, the on-site supervisor cannot ensure that

services provided are “consistent with the health and welfare of the patient” and the practice of psychology as required by General Statutes § 20-195aaa (c) (2). Accordingly, this approach does not afford the oversight, control and direction contemplated by General Statutes § 20-195aaa (c) (3).

The Petitioner asserts that the virtual presence of the patient’s treating neuropsychologist that uses a telehealth platform to consult with a psychometrician would be sufficient to satisfy the requirements of General Statutes § 20-195aaa (c). Tr., pp. 16, 20-21. But the treating neuropsychologist’s virtual presence is insufficient because although that presence could satisfy the second criterion – ensuring services provided are consistent with the health and welfare of the patient and in keeping with the practice of psychology – that presence does not satisfy the third criterion. General Statutes § 20-195aaa (c) (3) requires that a psychologist supervising a psychology technician “remain in the facility where the psychology technician provides such services and is available to the psychology technician during the provision of such services.” General Statutes § 1-2z requires the Board to ascertain the meaning of a statute from the text of the statute itself if “such text is plain and unambiguous and does not yield absurd or unworkable results.” In this case, by ascribing the plain and ordinary meaning to the phrase “remain in the facility,” the Board is obligated to conclude that a neuropsychologist located outside the facility using a telehealth platform to consult with a psychometrician is not “in the facility” where the psychology technician is conducting the testing as described in the instant proposal.³

Dr. Piers, another representative of Petitioner, asserts that it is currently acceptable to do an entire evaluation virtually and that Petitioner’s services, as proposed, are consistent with § 20-195aaa (c) (2) of the General Statutes because in addition to the neuropsychologist who is located off-site and is responsible for the evaluation, the on-site psychologist will serve as a back-up in case a problem emerges or a patient is in distress. Tr., p. 16. But this assertion misses the mark because the issue here is not whether the virtual technology can be used for neuropsychological assessments but whether Petitioner’s hybrid virtual/in-facility supervision model satisfies the statutory requirements for supervision of a psychology technician. As Dr.

³ Even if this language were ambiguous, which it is not, the legislative history supports this conclusion. See P.A. 17-128 § 1 which added the “remain in the facility” language to require the licensed psychologist to “remain present in the facility and be available to the technician during testing sessions.” Public Testimony, Conn. Psychological Assoc., Dr. Timothy Belliveau.

Lovejoy testified it is unlikely that the onsite psychologist will have reviewed the patient's medical record that is relevant to the testing or treatment that is being offered or interviewed or evaluated the patient. Tr., p. 15. So the virtual neuropsychologist with intimate knowledge of the patient's medical history – who is therefore equipped to provide the statutorily required oversight, control, and direction of the on-site psychology technician – is not at the facility. Instead, a psychologist without that knowledge and ability – the so-called backup supervisor – is the one at the facility to satisfy the third criterion.

Essentially, Petitioner is seeking to divide the statutory supervision and direction requirements among two people. But dividing these responsibilities is not permissible under the statute. General Statutes § 20-195aaa (c) details the authority of a psychology technician to perform testing services under the supervision of “*a* psychologist.” (emphasis added). But Subsections (1) and (3) of General Statutes § 20-195aaa (c) refer to “*the* psychologist” when describing the supervisory relationship between the psychologist and the psychology technician. (emphasis added). Again, ascribing the plain meaning of the text to the statute, pursuant to General Statutes § 1-2z, General Statutes § 20-195aaa (c) requires that all the supervising psychologist's responsibilities concerning psychology technician testing be unified in a single individual who is present in the facility and available to the technician during testing sessions. Under Petitioner's proposal, neither psychologist satisfies all three requirements.


Accordingly, the practice model proposed by Petitioner is not permissible as it fails to satisfy the requirement of General Statutes §20-195aaa (c).

Ruling

Based on the foregoing, the Board concludes that the practice model proposed by Petitioner is not permissible in accordance with §20-195aaa (c) of the General Statutes.

December 9, 2024

Date


Howard J. Oakes, Jr., PsyD, Chairperson