



For attention: Director: Public Entities Governance

Director-General of Health

Private Bag X828

Pretoria

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11 December 2018

Dear Director-General,

**RE: COMMENT ON GOVERNMENT GAZETTE 41900; BOARD NOTICE 101 OF 2018; REGULATIONS
DEFINING THE SCOPE OF THE PROFESSION OF PSYCHOLOGY**

The submissions below represent the feedback from the Association of Test Publishers of South Africa (hereafter referred to as ATP), a non-profit organisation that represents the interests of test providers in the country. Information regarding the Association and its member organisations is provided in Appendix A.

We are extremely concerned regarding the potential unforeseen consequences of publishing these regulations. While we appreciate that there is an attempt to simplify the rules and regulations for the psychological community, we feel that insufficient thought and consultation have gone into the development of these regulations.

Formulation of the Regulations

There is a fundamental problem with the way in which these regulations are presented. The Scope of Practice for each of the categories presents the allowable activities for each category of registration of psychology professionals. The problem with listing these allowable activities as prohibited for individuals who are not registered as a psychology professional is that some of the allowable activities should also be conducted by individuals who are not registered psychology professionals as part of their everyday work.

For example, under the Counselling Psychologist category 'promoting the well-being of individuals' would then be exclusively limited to people with a Counselling Psychologist registration. According to the wording in 3(1) and 3(2) of the regulations, it becomes a criminal offence for anyone who is not registered as a Counselling Psychologist to promote the well-being of individuals. This is not reasonable or rational, and it makes the Act susceptible to potential court cases challenging the appropriateness of the acts specified in the Regulations.

There are a number of examples of this formulation being problematic, and just a few are listed here to highlight the extent:

- Educational Psychologists: 'promoting the academic performance of learners of all ages' (don't teachers do this?)

- Industrial Psychologist: 'to facilitate organisational flourishing'; 'intervening in [...] career development, [...] coaching, recruitment and selection, training, [...] organisational ethics, performance [...]' (many of these are HR functions)
- Research Psychologist: 'Conducting scientific psychological research'; 'Development of psychological policy' (none of the other categories may do this – it now becomes illegal to do so as a clinical psychologist).

The scope of an Industrial Psychologist is in particularly problematic. All headhunters, recruiting agents and hiring managers are busy with recruitment and selection activities on a daily basis. These activities can never be viewed as the exclusive domain of a *Registered Individual* at the Health Professions Council of South Africa (HPCSA). Skills training of employees in, for example, negotiating skills is another example where training departments and practitioners will present management training courses on a daily basis.

It will not be possible to claim these activities as *Psychological Acts* only reserved for psychologists. Even if the Regulations are successful in restricting these activities only to psychologists, it will not only put thousands of HR Practitioners out of work, but it will also impact skills development and South African competitiveness on a macro level.

Limits to the Scope of Practice

The formulation of the Scope of Practice does not allow for activities that are common to all categories, such as:

- psychological test development
- administering, scoring, interpreting, and reporting on psychological tests
- developing, evaluating and monitoring theory, policy, and practice
- training and supervising students and interns in psychology
- research in the domain of professional activities (all registration categories should be doing research as a Master's level qualification is based on independent research – which should continue as part of continued professional activities as professional scientist practitioners)

Omissions

The definition of a psychological act, and thereby also a psychological test, is missing from these regulations. In addition, the terminology used is inconsistent across categories, referring in some cases to assessment, others to psychological tests, and also psychometric tests. Activities regarding the 'use' of tests include selection of tests, compiling a test battery, administration, scoring, interpretation, report writing, feedback, etc. Which functions could be considered more administrative and which require professional competence and registration? The interchangeable use of these terms already creates confusion among human resources practitioners and psychologists. Both use tests that have psychometric properties but psychologists use tests that measures psychological constructs while HR practitioners typically use competency-based tests such as skills tests (e.g. typing tests, simulation activities, etc.).

The HPCSA and ATP use the definitions provided by law in order to determine whether a test is a psychological test or not. Psychological tests are referred to in other legislation (e.g. Employment Equity Act), and by removing the definition, this creates uncertainty for test users and the industry as a whole. Without a clear and agreed understanding of the definition of a psychological test it will not

be possible for the HPCSA to claim the act of psychological testing as an activity reserved for the profession of psychologists.

Suggestions

Upon reviewing international law governing the practice of psychology in various countries, such as USA, UK, Australia, and Canada (chosen because the laws are available in English), in every case, the acts prohibited for non-registered persons are described in the relevant legislation, and the Scope of Practice for the various categories (where they exist) are provided as a Standard or separate legal document. In addition, most of these Acts include a list of protected titles, which are titles that may only be used by persons registered with the Board. Please refer to Appendix B for a summary of the laws in these countries.

We suggest that the Regulations include the following elements:

1. Prohibition of acts considered to be psychological acts by non-registered persons
2. A list of titles protected for use by registered psychology professionals only
3. Reference to the Scope of Practice as a published Board Notice

We suggest that the Scope of Practice specifies the following:

1. Activities permitted for all categories (i.e. test development, use and control of tests, teaching, research, contributions to theory, methods, and practice)
2. Activities particular to the category (i.e. only people registered in that category may do that activity)
3. Activities prohibited for any category (if any) or limitations (e.g. psychometrists may not interpret projective tests)

We would appreciate another opportunity to comment on the final regulations after the changes to the proposed regulations have been implemented. We appreciate your due consideration of these suggested changes.

Yours sincerely,

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Appendix A: Overview of the Association of Test Publishers of South Africa

ATP SA is a non-profit association organised to represent providers of tests and assessment tools and/or services related to education, employment, certification/licensing or clinical use.

At a meeting on 8 April 2005, the Psychometrics Committee of the HPCSA requested the coordination of test publishers as a stakeholder group. The ATP was formed to represent the interests of test developers and publishers in South Africa and to with the aim of establishing a single entity for better collaboration and ease of communication with the HPCSA. Mr William Shisana described the meeting as “the beginning of a journey of cooperation and consultation”.

The ATP was formed at a meeting which took place at Thomas International’s Offices in Brooklyn, Pretoria on 11 May 2005. A formal constitution was created and accepted, establishing the ATP as a legal body. The vision and mission of the ATP SA are described below.

Vision

The Association has adopted the mission statement of the Association of Test Publishers International, which reads as follows:

“It is the mission of this Association to promote the ethical and effective use of assessment instruments.”

Mission

ATP SA strives to promote and advance the role of quality assessment in the workplace and wherever else assessments are used, advancing the profession of testing as a whole. To achieve this, ATP SA focuses on two primary approaches:

- **Advocacy for the industry:** Similar to ATP International, ATP SA monitors legislative, legal and regulatory bodies that commonly deal with testing issues. This reflects ATP SA’s mission to promote the ethical and effective use of assessment instruments through informing the public and governmental bodies about the contributions professionally developed tests can make.
- **Education for its members and the broader public:** ATP SA strives to promote the dissemination of information to interested parties within South Africa, informing best practice principles in line with international practices and contributing to the public’s right to be informed about testing and good testing practice.

Appendix B: Summary of International Legislation

Canada

The following is a list of the relevant documents referenced for Canadian law:

Canadian Psychological Association. (2016). *Psychologists Practicing to Scope: The Role of Psychologists in Canada's Public Institutions*. Retrieved from https://cpa.ca/docs/File/Position/PracticingtoScopePaper_June2016_Final.pdf

The College of Psychologists of Ontario. (2015). *Appendix C – Definition of Practice Areas. Registration Guidelines: Psychological Associate – Supervised Practice*.

Regulated Health Professions Act. (1991). Retrieved from: <https://www.ontario.ca/laws/statute/91r18>

Psychology Act. (1991). Retrieved from: <https://www.ontario.ca/laws/statute/91p38>

Legislation

The regulations differ slightly across territory, so we have picked Ontario as an example. Here there is a general set of regulations defining restricted acts in health professions, as well as a specific Psychology Act that defines the scope of the profession (authorised acts).

Regulated Health Professions Act

Controlled acts restricted

'27(1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

(a) the person is a member authorized by a health profession Act to perform the controlled act; or

(b) the performance of the controlled act has been delegated to the person by a member.'

Controlled acts specifically relating to psychology (this is just in the general list of controlled acts):

'27(2) A "controlled act" is any one of the following done with respect to an individual:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis. [...]
14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.'

Psychology Act

'3 The practice of psychology is the assessment of behavioral and mental conditions, the diagnosis of neuropsychological disorders and dysfunctions and psychotic, neurotic and personality disorders and dysfunctions and the prevention and treatment of behavioral and mental disorders and dysfunctions and the maintenance and enhancement of physical, intellectual, emotional, social and interpersonal functioning. '

Authorized acts

'4 In the course of engaging in the practice of psychology, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

1. To communicate a diagnosis identifying, as the cause of a person's symptoms, a neuropsychological disorder or psychologically based psychotic, neurotic or personality disorder.
2. To treat, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning. '

Scope of practice

This is used to define the knowledge, competencies and skills required to practice in each category. In order to maintain registration, the professional needs to be signed off as competent in the relevant areas.

Definition of Practice Areas

'In the practice of psychology, in order to formulate and communicate a diagnosis, a member must have the following knowledge, skills and training directly relevant to the area(s) of practice and client groups indicated on the Declaration of Competence in order to treat the client and evaluate the effectiveness of the treatment. Therefore, the ability to communicate a differential diagnosis must apply to every psychologist or psychological associate, with the exception of those practising exclusively within the area of industrial/organizational psychology.'

Britain

The following is a list of the relevant documents referenced for British law:

Law Commission, Scottish Law Commission, & Northern Ireland Law Commission. (2014).

Regulation of Health Care Professionals – Regulation of Social Care Professionals in England.

Retrieved from:

http://www.lawcom.gov.uk/app/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf

Health & Care Professions Council. (2018). Information on scope of practice. Retrieved from:

<https://www.hcpc-uk.org/registration/meeting-our-standards/information-on-scope-of-practice>

Legislation

Health and Social Work Professions Order 2001

Article 39(1) of the Health and Social Work Professions Order 2001 makes it a criminal offence for a person, with intent to deceive (whether clearly or by implication) to:

- say that they are on the HCPC Register;
- use a designated title to which they are not entitled; or
- say falsely that they have qualifications in a profession we regulate.

The words ‘by implication’ mean that an unregistered person may be committing an offence even if they do not use the designated title directly (for example, if they describe the service they provide as ‘chiropractic’ or ‘physiotherapy’).

List of protected titles

The following titles are protected by law, so only people who meet the required registration criteria and are licensed to practice in these categories may use these titles to describe their profession.

- Arts therapists
- Biomedical scientists
- Chiropractors / podiatrists
- Clinical scientists
- Dietitians
- Hearing aid dispensers
- Occupational therapists
- Operating department practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Practitioner psychologists
- Prosthetists / orthotists
- Radiographers
- Social workers in England
- Speech and language therapists

Scope of practice

The Health & Care Professions Council (HCPC) in the UK publishes a scope of practice for psychologists. They inform psychologists that they need to self-regulate, and operate responsibly within their scope of practice. However, if they develop skills that allow them to operate outside of their scope, they may act outside of their scope as long as they can demonstrate the required competence.

Australia

The following is a list of the relevant documents referenced for Australian law:

Psychology Board of Australia. (2012). When is it necessary to be registered as a psychologist? Retrieved from

<https://www.psychologyboard.gov.au/documents/default.aspx>

Psychology Board of Australia. (2016). Registration Standard: General Registration. Retrieved from <https://www.psychologyboard.gov.au/Standards-and-Guidelines/Registration-Standards.aspx>

Legislation

Under the National Law, a person must be a registered health practitioner if they:

1. use the title 'registered health practitioner' with or without any other words
2. take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate, that the person is a health practitioner or is authorised or qualified to practise in a health profession
3. claim to be registered under the National Law or hold themselves out registered under the National Law
4. claim to be qualified to practise as a health practitioner
5. undertake a restricted act (which are specific dental acts, prescription of optical appliances and manipulation of the cervical spine).

Psychologists are registered under the National Law. The National Law limits the use of certain titles. The protected title for the psychology profession is 'psychologist'.

Examples of when the Psychology Board considers that practitioners should be registered include:

1. they have direct client contact and/or
2. their work impacts on safe, effective delivery of health services to individuals and/or
3. they are directing or supervising or advising other psychologists about the provision of psychological services and/or
4. their employer and their employer's professional indemnity insurer requires a person in that role to be registered and/or
5. the practitioner's professional peers and the community would expect a person in that role to comply with the relevant Board's registration standards for professional indemnity insurance (PII),
6. continuing professional development (CPD) and recency of practice and/or
7. the person is required to be registered under a law to undertake a specific activity
8. the person wishes to use a protected title which is reserved for registered health practitioners
9. the person wishes to be eligible for certain Medicare Benefit payments.

Australia have a general registration category and specialist registration.

USA

The following is a list of the relevant documents referenced for USA law:

American Psychological Association. (2010). Model Act for State Licensure of Psychologists. Retrieved from: <https://www.apa.org/about/policy/model-act-2010.pdf>

American Psychological Association. (2018). Clinical Psychology. Retrieved from <https://www.apa.org/ed/graduate/specialize/clinical.aspx>

Legislation

Legislation in the USA differs by state. In many states, people are referred to the APA for guidance according to their model Act (an Act they would propose in the development of legislation). The legislation mostly deals with the powers given to a psychologist to discharge patients and to act independently in providing diagnoses. The regulation of access to psychological tests is mostly done through the test publishers.

Model Act for State Licensure of Psychologists (2010)

2. 'Practice of psychology' is defined as the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, for the purposes of (a) preventing, eliminating, evaluating, assessing, or predicting symptomatic, maladaptive, or undesired behavior; (b) evaluating, assessing, and/or facilitating the enhancement of individual, group, and/or organizational effectiveness – including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group, and/or organizational performance, or (c) assisting in legal decision-making. The practice of psychology includes, but is not limited to, (a) psychological testing and the evaluation or assessment of personal characteristics, such as intelligence; personality; cognitive, physical, and/or emotional abilities; skills; interests; aptitudes; and neuropsychological functioning; (b) counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; (c) diagnosis, treatment, and management of mental and emotional disorder or disability, substance use disorders, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability; (d) psychoeducational evaluation, therapy, and remediation; (e) consultation with physicians, other health care professionals, and patients regarding all available treatment options, including medication, with respect to provision of care for a specific patient or client; (f) provision of direct services to individuals and/or groups for the purpose of enhancing individual and thereby organizational effectiveness, using psychological principles, methods, and/or procedures to assess and evaluate individuals on personal characteristics for individual development and/or behavior change or for making decisions about the individual, such as selection; and (g) the supervision of any of the above. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

Scope of practice

The APA publishes scope of practice information, some of which is legislated in some states, and used by others as guidelines.