

OPINION AND DECLARATORY RULING REGARDING W-2 VERSUS 1099 EMPLOYMENT STATUS FOR LICENSED PSYCHOLOGICAL ASSOCIATES

The Board has been asked to interpret KRS 319.064 (5) regarding whether psychological associates who perform work under the psychology practice of their supervising psychologist may practice psychology under the relationship characterized between the psychological associate and supervising psychologist as a Contractor (“1099”) relationship versus a statutory employee for which an employer issues a “W-2” to such employee for purposes of the Internal Revenue Service.

“1099” status reflects, according to the IRS, an independent contractor relationship in which the employer defines the job outcome but does not have control over the actual, day-to-day or moment-to-moment tasks and functions of the employee; nor is there any ongoing supervision of the matter.

Not only does a supervising psychologist direct and become accountable for single outcomes of the psychological associate (such as completion of a psychological report, performance of psychological testing, etc.), the supervisor is also charged with the responsibility for the entire practice of psychology of the psychological associate, and all the processes the psychological associate uses to perform a task constituting the practice of psychology. This necessarily involves control over all the tasks and functions of the psychological associate.

KRS 319.064 (5) allows a psychological associate to “perform certain functions within the practice of psychology only under the supervision of a licensed psychologist approved by the Board.” Moreover, this same statute prohibits the “independent practice” of the psychological associate, except while “under the employment and supervision of the Board-approved licensed psychologist.” The Board interprets its law regarding “employment and supervision” to extend not only to the final work product of the psychological associate, but also to all the tasks and functions of the psychological associate, which must be under the “employment and supervision of” the licensed psychologist. Therefore, the status of a psychological associate as a “1099” employee does not reflect the employment and supervision as intended in KRS 319.064 (5) and is not allowed under KRS Chapter 319.

Furthermore, the Code of Conduct, delineated in KRS 319.032 (1)(c), prohibits a potentially exploitative relationship between a supervisor and supervisee (201 KAR 26:155 (6)). In addition to the independent practice nature of a Contractor (“1099”) relationship, in such a relationship, the supervisor has no responsibility for the tax liability or unemployment expenses of the supervisee. In a “W-2” relationship, the supervisor is responsible for withholdings (social security, FICA, local taxes, etc.), workers’ compensation, and unemployment fees. Thus, a Contractor (“1099”) relationship could, under these circumstances, be construed as inherently exploitative and, therefore, as a violation of the Code of Conduct.