



KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY

Andy Beshear
Governor

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MEMORANDUM

To: All Licensees and Applicants for Licensure
From: Kentucky Board of Examiners of Psychology
Date: May 3, 2021
RE: Senate Bill 49

As many of you know, Senate Bill 49 ("SB 49") was passed by the legislature in the 2021 legislative session and becomes effective June 29, 2021. The Kentucky Board of Examiners of Psychology ("KBEP") was not asked to review, nor consulted about SB 49 prior its passage. Although the Governor vetoed the bill, the veto was overridden. It appears that some types of employees, namely Behavior Support Specialists, will be affected by the new law IF THEIR EMPLOYERS chose to change their employment to a contractual arrangement. Kentucky law requires that any licensee who is required to receive supervision while using a psychological license, *i.e.*, licensed psychological associates, MAY NOT be a contractual employee. KRS 319.064(5) and 201 KAR 26:250 Section 2. The Board has previously issued guidance on this topic entitled "Regarding W-2 versus 1099 Employment Status", which can be found on the Board's website, <https://psy.ky.gov>, under "Legal/Board Opinions and Declaratory Rulings". A copy is attached for your convenience.

As with all positions where human services are provided to the public, the KBEP strongly advises its licensees to closely consider the qualifications and skills in their job descriptions to determine if the key duties and responsibilities require a license to practice psychology. Licensees who are in jeopardy of transitioning to a contractual arrangement may benefit from discussing with their employer the regulatory language pertaining to the practice of psychology. More specifically, KRS 319.010(7) defines the practice of psychology as:

rendering to individuals, groups, organizations, or the public any psychological service involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and

psychotherapy; and psychological testing in constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The application of said principles in testing, evaluation, treatment, use of psychotherapeutic techniques, and other methods includes, but is not limited to: diagnosis, prevention, and amelioration of adjustment problems and emotional, mental, nervous, and addictive disorders and mental health conditions of individual and groups; educational and vocational counseling; the evaluation and planning for effective work and learning situations; and the resolution of interpersonal and social conflicts

While most employers are well informed about the regulatory nature of providing home and community based services, KBEP encourages licensees and their employers to seriously consider the benefits of employing a licensed psychological professional in human services positions to specifically help consumers address potentially damaging mental health issues. Licensees wishing to express any concerns or comments regarding SB 49, are encouraged to contact the Kentucky Psychological Association (<https://www.kpa.org>).

Sincerely,

A handwritten signature in cursive script that reads "Jean A. Deters, Psy. D.".

Jean Deters, Psy. D.

Chair, Kentucky Board of Examiners of Psychology

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.