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TITLE 868 STATE PSYCHOLOGY BOARD

LSA Document #03-60(F)

May 21, 2004

Sharon Bowman, Ph.D., Chairperson
Indiana State Psychology Board
402 West Washington Street, Room W066
Indianapolis, IN 46204

BY HAND DELIVERY

Re: *Restricted Psychology Tests and Instruments Rule, LSA #03-60(F)*

Dear Dr. Bowman:

For the reasons outlined in this letter, I have decided to disapprove the Restricted Psychology Tests and Instruments Rule developed by the Psychology Board. I am not sure the rule as drafted strikes the proper balance. I am asking the board to get additional information, and I will ask the General Assembly to provide more detailed guidance to the board.

I have reviewed this rule with my staff, and understand the difficult task you were given by the General Assembly in promulgating this rule. I fully appreciate the hard work you and the board have done in trying to fulfill your mandate. I also thank you and the board for delaying final adoption of the rule so that my staff could meet with interested parties and try to further the discussion. Because today is the last day of the time period imposed by Title 4, I could have allowed the rule to expire by simply failing to sign it today. Instead, out of respect for all of the groups and individuals involved in the rulemaking process, I am taking action on the rule.

The proposed rule lists 235 tests or instruments as "restricted psychology tests and instruments as provided by IC 25-33-1-3(g) and IC 25-33-1-14(e)." I understand that the board has tried to choose tests that generate information leading to a life-impacting diagnosis with legal, medical, educational or other long-term consequences. You have provided examples of people who were misdiagnosed by non-psychologists because of an over-reliance on test results. You stated that these tests are a useful tool in your profession but are only one factor in assessing a patient, and they can be misused or misinterpreted.

I believe state government must look carefully at all available information when regulating a business or profession. We must balance our duty to protect the public against an environment where people have choices and access to services. While many of the tests in the rule may be a danger to the public if misused, they may also generate useful information that helps people, even when administered by non-psychologists.

Many of the public comments and discussions during this rulemaking concerned potential danger to the public that could arise if too many tests – or too few – were included in the rule. If too few tests are included, there is a danger of misuse of the tests by non-psychologists. If too many are included, the danger is over-restricting use of the tests so that people may not receive the mental health services they need.

I have concluded that the proposed rule with 235 tests is too broad. We need to consider more information, including how other states deal with this issue. There is also much confusion over whether and how speech pathologists, physical therapists, and educators can use tests within their practices and within our schools.

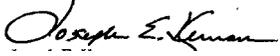
I will urge the General Assembly to take another look at IC 25-33-1-3, to provide more guidance on the kind of psychological tests that should be restricted and to consider possible mandatory disclosures to the public so that

informed consumers can choose the mental health services they need for themselves or their loved ones.

This rulemaking has taken a long time, and delay has frustrated the intent of the statute. Approving this rule will not remove the frustration, as both sides have become entrenched in their positions over the last year. Misinformation and misunderstanding about the rule and the statute have created confusion. I think it is better to spend the additional time, now, clearing up the misunderstandings, clarifying the facts, and reducing the confusion. If we don't resolve this in the rulemaking process, we are likely to face even greater delay in the courts.

I believe the rule can be improved and can achieve a better balance. I trust that all parties will assist the board in a constructive way. We must work toward consensus. The goal of all parties should be the same: helping the public to obtain safe, effective mental health services. Pursuant to IC 4-22-2-34, I am therefore disapproving this rule and returning it to you.

Sincerely,


Joseph E. Kernan