

MAINE STATE LEGISLATURE

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*file
Psychologists*

May 27, 1975

Richard G. Doiron, Ph.D.
Secretary-Treasurer
Board of Examiners of Psychologists
415 Congress Street
Portland, Maine 04111

Dear Dr. Doiron:

I am writing in response to your letter to me of April 18, wherein you ask for an opinion from this office concerning what you say is "a policy presently in effect" whereby a person who is licensed as a Psychological Examiner is permitted to practice psychotherapy and behavior change under the supervision of a licensed psychologist. From our telephone conversation last week, I understand that no notice was given to the public prior to the adoption of this policy, no public hearing was held by the Board prior to the adoption of this policy, the policy has never been presented to the Attorney General's office for approval as to form and legality, and a copy of the policy has not been filed with the Secretary of State; rather, the policy was adopted at a meeting of the Board and is reflected in the Board's minutes.

As we discussed, 5 M.R.S.A. § 2301(3) states:

"Rule," as applied to a rule adopted, amended or repealed by an agency, includes every regulation, standard, statement of policy or interpretation of general application and future effect, which implements or makes specific the law enforced or administered by the agency or governs its organization or procedure. It does not include regulations concerning only the internal management of the agency not directly affecting the rights or procedures available to the public, and does not include rules already in effect on September 16, 1961."

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R.S.A. § 2351(3) and (4) states:

"(3) Prior to the adoption, amendment or repeal of any rule, the agency shall, so far as practicable, publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit suggestions orally or in writing.

"(4) Prior to the adoption, amendment or repeal of any rule authorized by law, the agency shall submit the proposal to the Attorney General for approval as to form and legality."

5 M.R.S.A. § 2352 states:

"Each agency shall file forthwith with the Secretary of State a certified copy of each rule hereafter adopted by it and each rule in effect on September 16, 1961. The Secretary of State shall keep a permanent register of such rules open to public inspection.

"1. Approval. The adoption, amendment or repeal of a rule by an agency shall not hereafter become effective until approved as to form and legality by the Attorney General. Approval shall be presumed if the Attorney General takes no action within a period of 30 days after the proposal is submitted.

"2. Effective date. Except as set forth in subsection 1, the adoption, amendment or repeal of a rule by an agency shall become effective upon filing with the Secretary of State, unless a later date is required by statute or specified in the rule."

efore, because the procedures required by the statutes have not *been*
followed, the policy to which you refer is not effective and is *of*
o force and effect.

When I meet with the Board in Waterville on June 6, we can discuss *in*
ore detail this particular policy, and the procedure for adopting *rules*
§ and regulations.

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I look forward to meeting again with you and the other Board members at that time.

Very truly yours,

DAVID ROSEMAN
Assistant Attorney General

DR:mfe