

# MAINE STATE LEGISLATURE

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26 September 1977

Arnold Fuchs, Ph.D.  
Chairman  
Board of Examiners of Psychologists  
415 Congress Street  
Portland, Maine 04111

Dear Doctor Fuchs:

This opinion is in response to your July 29, 1977, letter in which you pose several questions. Essentially, however, you ask: Do the provisions of 32 M.R.S.A. Chapter 56 prohibit teachers and others not licensed as psychologists or psychological examiners from engaging in psychological practice as defined in Chapter 56?

Maine law recognizes two levels of psychological practice, "psychological examiner" and "psychologist". The former is defined as anyone who "holds himself out to be a psychological examiner, or renders to individuals or to the public for remuneration services involving the application of recognized principles, methods and procedures of the science and profession of psychology, but limited (sic) to interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement." 32 M.R.S.A. §3811(1). The latter is defined as a person who "holds himself out to be a psychologist, or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement, or for such purposes as overall personality appraisal or classification, personality counseling, psychotherapy or personality readjustment." 32 M.R.S.A. §3811(2).

Section 3814 makes it a misdemeanor, punishable by a fine of \$100 to \$500 or by imprisonment for 3 months, or both, for any person to hold himself out as a psychological examiner or psychologist or to engage in psychological practice, as defined, without having first obtained a license under Chapter 56. See also, the prohibition in section 3812.

An important limitation on the effects of Chapter 56 is found in section 3813, in relevant part: "Nothing in this chapter shall be construed to limit the professional pursuits of teachers and counselors in recognized public and private schools." We find no statutory definition of the duties or "professional pursuits" of teachers or counselors, however, we note that 20 M.R.S.A. Chapter 404, requires each administrative (school) unit to "identify all children within its jurisdiction who require special education and supportive assistance. Each such administrative unit shall provide educational diagnosis and evaluation as may be necessary for the planning and implementation of a special education program for each exceptional child." §3124. "Exceptional children" are defined as persons "who require special services in the area of mental development or maturation . . ." §3123(1). "Special education" means "instruction; educational diagnosis and evaluation; . . .and other supportive assistance, services, activities or programs . . ." Such diagnosis and evaluation as well as the provision of special education may properly be included within the "professional pursuits" of teachers and counselors. See also, 20 M.R.S.A. §806, wherein, for the purpose of establishing privileged communications, the Legislature specifically recognizes that school counselors do receive in the course of their employment, information from school-age clients so personal in nature that it is deemed privileged.

It seems clear that the Legislature has recognized that teachers and school counselors will have to engage in personality appraisal and counseling as administrative units carry out responsibilities placed upon them by the above-noted exceptional children legislation. Even absent this legislation, it appears reasonable that teachers and school counselors would engage in these activities as they attend to the educational, moral, emotional and physical well being of the child in the school setting. The above-noted exception for teachers and school counselors from the prohibitions of Chapter 56 appears very broad indeed, and absent a specific factual setting, we are not prepared to say that Chapter 56 makes any inroads on the ability of teachers and school counselors to engage in such activities as administering and interpreting tests of mental aptitudes for such purposes as educational or vocational guidance, or personality appraisal or counseling. (Note, Chapter 56 does prohibit teachers and school

counselors from holding themselves out as "psychologists" or "psychological examiners". See, Opinion of this office, dated September 20, 1976).

Several other professions and occupations appear to have been authorized by law to provide services which could be included within the definition of psychological practice. Clearly, medical doctors are not prohibited from treating mental illness or providing psychotherapy. See 32 M.R.S.A. §3270. Chapter 56 appears to acknowledge this, albeit indirectly, "Nothing in this chapter shall be construed as permitting the practice of medicine . . . by psychological examiners or psychologists." 32 M.R.S.A. §3811(3).

Chapter 62-A of Title 32 provides for the licensing of social workers. Section 4183(3) provides that the purpose of social work, as defined, "is to help individuals, families, groups and communities to present or resolve problems caused by social or emotional stress." To further confound the matter, section 4185 provides, "Nothing in (chapter 62-A) prevents any person from engaging in the practice of social work so long as he does not represent himself as or use the titles of "registered social worker" or "associate social worker"." By enactment of Chapter 62-A, the Legislature has recognized that persons who engage in social work may attempt to help individuals resolve problems caused by emotional stress, a province Chapter 56 standing alone, would appear to restrict to psychologists. Investigation confirms that social workers routinely counsel individuals in an attempt to help resolve emotional problems. In light of this practice and the above discussed legislation, we cannot say that social workers, whether licensed or unlicensed, are precluded from helping others resolve social or emotional stress.

Chapter 36 of Title 32 deals with the licensure and certification of osteopathic physicians. Osteopathic physicians are granted "the privilege to practice osteopathic medicine in any county in this State . . . with the right to use such drugs as are necessary in the practice of osteopathic medicine." 32 M.R.S.A. §2581. While osteopathic medicine is not defined within Chapter 36, we note that for the purpose of the hospitalization of the mentally ill, osteopathic physicians, along with medical doctors, are permitted to examine and certify their opinion of the mental condition of a person suspected to be mentally ill. Such certification can result in a person being admitted involuntarily to a hospital for treatment of mental illness. See, 34 M.R.S.A. Chapter 191. In the hearing held in District Court to determine whether a person will be ordered committed to a hospital, the Court is required to appoint two examiners to examine the proposed patient and advise the Court. Such an examiner must be a medical doctor, a licensed psychologist who practices clinical psychology, or an osteopathic physician. 34 M.R.S.A. §2334. We conclude that the Legislature, by enactment of Chapter 56, did not intend to preclude osteopathic physicians from treating mental illness.

Arnold Fuchs, Ph.D.  
26 September 1977

Page 4

We can think of at least two additional professions recognized by the Legislature whose members might engage in counseling of individuals for correction of emotional problems or other activities defined as "psychological practice" by Chapter 56. See, 32 M.R.S.A. Chapter 31 (Nurses and Nursing); 32 M.R.S.A. Chapter 79, enacted by P.L. 1977, c. 466, effective October 24, 1977, (Substance Abuse Counselors). Additionally, priests, ministers and other clerics have traditionally provided counseling to troubled members of their congregations. We find no intent by the Legislature to enter into a constitutionally suspect restriction on this practice through the enactment of Chapter 56.

This review of professions whose members may lawfully engage in activities constituting "psychological practice" in addition to persons licensed pursuant to Chapter 56, is not intended to be exhaustive. From it we conclude, however, that the Legislature did intend to restrict those activities contained within the definition of "psychological practice" found in 32 M.R.S.A. §3811, to licensed psychologists, psychological examiners and certain other professions recognized by law. We have noted the major professions so recognized. We prefer to await specific factual situations before offering our opinion whether a particular activity by a person not licensed as a psychologist or psychological examiner is in violation of Maine law.

Sincerely,



WILLIAM J. KELLEHER  
ASSISTANT ATTORNEY GENERAL

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