

MAINE STATE LEGISLATURE

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**Final Report
of the Commissioner of Professional and Financial Regulation**

**to the Joint Standing Committee
on Education and Cultural Affairs**

Sunrise Review of L.D. 2345

**“Resolve, to Enhance the Availability of
Neuropsychological Assessment to Maine’s Children”**

January 31, 2001

*Angus S. King, Jr.
Governor*

*S. Catherine Longley
Commissioner*

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Introduction

Under 5 M.R.S.A. § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated. The sunrise review process consists of applying the evaluation criteria established by statute, 32 M.R.S.A. § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated

The sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant’s answers to the evaluation criteria and report those findings back to the Committee; or
3. The Committee may request that the Commissioner establish a technical review committee to assess the applicants' answers and report its findings to the Commissioner.

Copies of 5 M.R.S.A. § 12015(3) and a summary of the Sunrise Review process as enacted by P.L. 1995, c. 686 are included in Appendix A to this report.

Charge from Committee

In a letter dated March 16, 2000, the Joint Standing Committee on Education and Cultural Affairs of the 119th Legislature requested that the Commissioner of Professional and Financial Regulation conduct an independent assessment of L.D. 2345, “Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine’s Children” in accordance with the Sunrise Review Procedures of 32 M.R.S.A., Chapter 1-A, sub-chapter II. A copy of the Committee’s request is attached as Appendix B.

Independent Assessment by Commissioner

The requirements for an independent assessment by the Commissioner are set forth in 32 M.R.S.A. § 60-K. In conducting an independent assessment, the Commissioner is required to apply the specified evaluation criteria (set forth in 32 M.R.S.A. § 60-J) to all answers and information submitted to, or collected by, the Commissioner. After conducting the independent assessment, the Commissioner must submit a final report setting forth the Commissioner’s recommendations, including any draft legislation necessary to implement those recommendations.

If the Commissioner finds that some form of regulation is appropriate, the Commissioner must recommend the level of regulation and a responsible agency. Pursuant to 32 M.R.S.A. §

60-K(3), the recommendation “must reflect the least restrictive method of regulation consistent with the public interest.” Copies of 32 M.R.S.A. §§ 60-J and 60-K are included in Appendix A.

Summary of Proposed Legislation

L.D. 2345, “Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine’s Children” directs the Department of Education to adopt rules permitting the use of a neuropsychological technician, under the supervision of a licensed psychologist, to administer and score neuropsychological tests of school children in Maine. The Resolve further directs the Department of Education to collaborate with the Board of Examiners of Psychologists, within the Department of Professional and Financial Regulation, to create a licensure category for neuropsychological technicians under Title 32, chapter 56 of the Maine Revised Statutes. A copy of L.D. 2345 is attached as Appendix C.

Evaluation Criteria

Ordinarily, an independent assessment by the Commissioner involves reviewing the responses to the evaluation criteria provided by the applicant groups to the Committee. In this instance, however, there was no “applicant group” but the Committee felt that an assessment and recommendation was necessary for its deliberations and requested that the Commissioner conduct an independent assessment. Since no applicant group existed, the Department collected information from interested parties through the use of the questionnaire included in Appendix D.

The following individuals and organizations responded to the Department’s request for information:

Francine Blattner, M.D., P.A.
222 St. John
Portland, ME 04102

Sheila Comerford, Executive Director
Joseph Schenkel, Ph.D.
Maine Psychological Association
P.O. Box 5435
Augusta 04332

Richard G. Doiron, Ph.D.
Neuropsychology Associates
86 Dartmouth Street
Portland, ME 04103

Anne Hess, Ph.D.
Neuropsychology Service, P.A.
700 Mount Hope Avenue, Suite 480
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Rep. Thomas J. Kane, House Chair
Joint Standing Committee on Health & Human
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2 State House Station
Augusta, Maine 04333-0002

Claire LaBrie, Director of Special Education
Cape Elizabeth School Department
P.O. Box 6267
Cape Elizabeth, ME 04107

Ann M. Nunery, Executive Director
MADSEC
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885 Union Street, Suite 235
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Bennett Slotnick, Ph.D.
P.O. Box 595
West Kennebunk, Maine 04094

Margaret M. Zellinger, Ph.D.
74 Winthrop Street
Augusta, Me 04330

The evaluation criteria set forth in 32 M.R.S.A. § 60-J shall be presented in this report as follows:

- 1. The evaluation criteria, as set forth in the statute;**
- 2. A summary of the responses received from persons responding to the Department's request for information (the complete responses are included in Appendix D); and**
- 3. The Department's independent assessment of the responses to the evaluation criteria.**

1. Data on group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group.

Information Provided by Respondents:

Respondents to the Department's survey questionnaire estimated that 8 organizations provide neuropsychological testing services and that from 8—12 to 15—20 individuals or entities would be subject to the proposed regulation, with 15—20 being the most common estimate.

The Maine Psychological Association (P.O. Box 5435, Augusta, Maine, 04332); the American Psychological Association (750 First Street NE, Washington, D.C., 20002-4242) and its Division 40 (Neuropsychology); the National Academy of Neuropsychology (221 South Oneida Street, Suite 550, Denver, Colorado, 80224-2594; and the International Neuropsychological Society (700 Ackerman Road, Suite 550, Columbus, Ohio, 43202) represent psychologists and/or neuropsychologists. No known group or organization represents neuropsychological technicians.

Department Assessment:

L.D. 2345 proposes to create a licensure category for neuropsychological technicians. The Department found no information to contradict the estimates of the respondents and therefore estimates the potential pool of licensees to be between 15—20 individuals.

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Information Provided by Respondents:

Neuropsychological technicians or assistants usually possess a Bachelor's or a Master's degree in psychology or a closely related field and work under the direct and immediate supervision of a licensed psychologist. The technician or assistant has narrowly defined role consisting of the following:

- Administration and scoring of psychological/neuropsychological tests under the supervision of the psychologist
- Documenting behavioral observations of the patient/client during the exam

The supervising psychologist is responsible for the following:

- Selection of tests
- Interpretation of test data
- Interpretation of the observational information obtained during testing
- Interviewing of patient and family
- Communication of test results to patient/client, family, staff and other parties legally authorized to receive the information.
- Testing procedures

Neuropsychological technicians work under direct supervision of supervising psychologist and provide an extension of those skills; however, the licensed psychologist ultimately bears total responsibility for the care of patient.

Department Assessment:

There are no established guidelines for training of neuropsychological technicians. Although most neuropsychological technicians possess a degree in psychology or a related field, training is largely "on the job" under the supervision of the employing psychologist and no national standards or qualifications for licensure exist.

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Information Provided by Respondents:

Loss of neuropsychological technicians would decrease accessibility to a highly needed specialized service.

No potential harm to public is presented— the services performed by neuropsychological technicians are not dangerous to the client, they are not performed outside of the employing doctor’s office, and the procedures are not invasive or dangerous

No known complaints to law enforcement authorities, courts, boards, state agencies or associations were reported by any respondents.

Department Assessment:

The services of neuropsychological technicians are limited to administering and scoring tests used in assessing educational needs. The technicians do not evaluate the results or treat the patient, nor do they practice independently. Therefore, there appears to be little threat to public health, safety, or welfare.

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Information Provided by Respondents:

Voluntary efforts to protect the current practice are threatened and need to be protected through statute or regulation.

Each neuropsychologist is responsible for credentialing and training neuropsychological technicians in his or her employ and for the performance of the neuropsychological technicians supervised

The American Psychological Association (APA) Code of Ethics for Psychologists, adopted by the Maine Board of Examiners of Psychologists, requires that employees be trained and under the supervision of the psychologist. If this is not done, the Board of Examiners of Psychologists may discipline the psychologist for ethics violations. In addition, the Board of Examiners of Psychologists has distributed information concerning the Board’s opinion concerning the use of unlicensed assistants. Supervising psychologists must conduct their practices in accordance with state law and the APA Ethics Code (1992) and the Association of State and Provincial Psychology Boards Code of Conduct (1991).

APA Division 40 establishes standards of practice regarding the use of neuropsychological technicians.

Department Assessment:

Neuropsychological technicians do not practice independently, nor would L.D. 2345 authorize them to do so. The licensed psychologist who hires and supervises the neuropsychological technician remains responsible for the actions of that technician. The Department feels that the public is adequately protected under the existing regulatory structure.

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Information Provided by Respondents:

Respondents believe that regulation of neuropsychological technicians is likely to be expensive with no added benefit and that it will limit the availability of services.

Department Assessment:

Generally, establishing requirements for licensure of a previously unregulated profession tends to reduce the pool of available practitioners and increase the expenses and overhead costs of the practitioner, thus increasing the cost of services provided.

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Information Provided by Respondents:

Respondents expressed concern that regulation would decrease the availability of qualified technicians, thereby decreasing the accessibility of the service.

Department Assessment:

The number of neuropsychological technicians is fairly small and regulation typically does reduce the pool of practitioners; therefore, the Department concurs that formal regulation may reduce the number of neuropsychological technicians.

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from

nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Information Provided by Respondents:

Respondents felt that the existing law governing psychologists is adequate since the licensed psychologist is fully responsible for patient care and is responsible for the actions of his or her employees, both legally and ethically.

Department Assessment:

Technicians function as an extension of the services provided by the licensed psychologist. The technician's role is limited to the administration and scoring of tests, and he or she is not involved in diagnosis and treatment. The Department believes that existing regulations governing psychologists and the guidelines concerning the use of unlicensed assistants are sufficient.

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Information Provided by Respondents:

Respondents feel that regulation is not necessary—no standard degree or formal training programs exist for these technicians, they are trained and supervised by the doctor and do not practice independently. Respondents were opposed to efforts to portray technicians as providing independent services as they provide no treatment. If any type of regulation is deemed necessary, registration is the only feasible form.

Department Assessment:

Regulation was proposed primarily to address reimbursement issues associated with requirements imposed on the states through rules adopted by the U.S. Department of Education, which prohibit reimbursement for services provided by individuals who do not meet the definition of "qualified personnel." In order to be considered "qualified personnel," the individuals must have met certification, licensing, registration, or comparable requirements approved or recognized by the State Educational Agency (Maine's Department of Education). Representatives from the Maine's Department of Education have indicated that voluntary regulation, such as registration of personnel who have certain minimum qualifications would suffice. Therefore, the Department feels that system of self-regulation is more appropriate than state mandated licensure or registration.

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of

the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Information Provided by Respondents:

Some states, including Maine, license examiners, which are not the same as neuropsychological technicians. The laws of 32 states are silent on service extenders in psychology. Service Extenders are mentioned in the laws of 18 states but only 8 states require registration and only 2 states specifically regulate psychological testing. Generally, when regulated, it is for independent practice in some form, which is not appropriate for technicians with respect to neuropsychological testing

Department Assessment:

While a small number of states regulate service extenders (Maine does not), no states appear to have singled out neuropsychological technicians for licensure.

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation.

Information Provided by Respondents:

None known.

Department Assessment:

The Department is not aware of any previous attempts to regulate neuropsychological technicians.

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits.

Information Provided by Respondents:

Respondents were not aware of any plans to seek mandated benefits and the proposal does not seek authorize independent practice by neuropsychological technicians.

Department Assessment:

The reimbursement issue is limited to reimbursement of the employing psychologist by the school district. Therefore, mandated benefits are not at issue.

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Information Provided by Respondents:

Most respondents did not specify any minimum qualifications in addressing the sunrise review criteria. However, one respondent did indicate that a bachelor's degree or master's degree in psychology or a closely related field from a regionally accredited college or university. The sponsor of L.D. 2345 also expressed concern that requiring a master's degree would increase the cost of services and reduce the availability of qualified personnel.

Department Assessment:

No national standards exist for qualifications of neuropsychological technicians and information provided by respondents with respect to other aspects of the sunrise review criteria indicate that the majority of personnel serving as neuropsychological technicians possess a bachelor's degree. Furthermore, most training is performed by the supervising psychologist, who remains responsible for the conduct of the technician. Therefore, the Department believes that a bachelor's degree in psychology or a closely related field would be the appropriate standard for minimal competence.

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Information Provided by Respondents:

Respondents did not address methods of financing the proposed regulation.

Department Assessment:

Under the laws governing the operations of the Office of Licensing Regulation, each regulatory program must be self-sustaining. 10 M.R.S.A. § 8003-F. L.D. 2345 proposes that a neuropsychological technician's license be established as a licensure category under the Board of Examiners of Psychologists. A psychologist's license is subject to an application fee of \$150 and a biennial renewal fee of \$300. Conditional and temporary licenses for psychologists are subject to a \$150 fee. Since the potential licensee pool for neuropsychological technicians is quite small, it is likely that the fees for licensure would consist of a \$150.00 application fee and \$300.00 biennial license fee. Fees for registration with the Board of Examiners of Psychologists may be slightly less, depending upon the requirements for registration.

V. Recommendations of the Commissioner

Generally under the independent assessment method of sunrise review, the Commissioner must not only evaluate the information by the applicant group, but must also recommend to the Committee whether action should be taken on a proposal. If the Commissioner's recommendation supports regulation, the report must include any legislation required to implement that recommendation. The recommendations must reflect the least restrictive method of regulation consistent with the public interest.

In assessing the sunrise review criteria, the Department believes that formal regulation of neuropsychological technicians is not appropriate at this time and feels that the purposes of L.D. 2345 can be accomplished through self regulation and therefore does not recommend that the legislature proceed with the proposal set forth in L.D. 2345.

Maine does not currently require licensure of other assistive personnel employed by licensed psychologists. The Department feels that it would be inappropriate to single out a particular class of employee for regulation and the Board of Examiners of Psychologists has indicated that it does not feel that licensure of neuropsychological technicians is appropriate at the present time.

Furthermore, the issue that L.D. 2345 sought to resolve is primarily a reimbursement issue, resulting from certain federal education regulations. (34 C.F.R. § 300.115). Under the federal regulations, in order for a licensed psychologist in this State to be reimbursed for a neuropsychological assessment, the person administering the assessment must be administered by personnel who have met certification, licensing, registration, or other comparable requirements approved or recognized by the State Educational Agency (in this case, the State of Maine's Department of Education). (34 C.F.R. §300.23). (Copies of the applicable regulations are included in Appendix F.) Representatives of Maine's Department of Education have indicated to the Department and to the Board of Examiners of Psychologists that program of self regulation, such as a registration program administered by a private organization such as the Maine Psychological Association would satisfy and the federal requirements, so long as minimum qualifications for registration are established met by the registrants.

The Maine Psychological Association has indicated a willingness to undertake such a registration; therefore, the Department feels that the objectives of the proponents of the legislation can be accomplished through self-regulation, which is far less restrictive than a formal state licensure program. Based upon information received through conducting the sunrise review process, however, the Department would recommend that any form of self-regulation should address the following issues:

- Minimum qualifications of a bachelor's degree in psychology or a related field.
- Recognition that the licensed psychologist is remains fully responsible and liable for the conduct of the technician.

- The use of the term “neuropsychological technician” creates issues of concern for both the Board of Examiners of Psychologists and the state Department of Education. 32 M.R.S.A. § 3812 prohibits the use of the terms “psychological,” “psychologist” or “psychology,” unless licensed accordingly and the Department of Education has restrictions applicable to the use of the term “technician.” Therefore, it will be necessary to develop another term that may be used to refer to registrants under any program of self-regulation.

The Department feels that a program of self-regulation will serve to address the concerns of the proponents of L.D. 2345 and the Department of Education through the least restrictive and most cost effective means possible; therefore, it is the recommendation of the Commissioner of Professional and Financial Regulation that no further action be taken with respect to L.D. 2345.

Appendix A

Statutory Provisions Governing the Independent Assessment form of Sunrise Review

1995 Public Law Chapter 686

An Act to Revise the Sunrise Review Process for Occupational and Professional Regulation

What is “sunrise review?” - It is a systematic review of new or expanded regulation to insure that the purpose of the regulation is to protect the health, safety and welfare of the public.

When is sunrise review required? - Title 5 MRSA §12015, sub-§3 requires sunrise review when any committee considers proposed legislation to:

1. Establish a board to license or otherwise regulate an occupation or profession not previously regulated, or

2. Substantially expand regulation of a profession or occupation currently regulated. Substantially expand means to add a new license category or expand the scope of practice.

e.g. Allowing optometrists to treat glaucoma is an expansion of their scope of practice.

What is the new process? - The new process requires the committee to hold an informal meeting (without a public hearing) to review the legislation and the proposing party’s answers to certain “review criteria.” The committee then has three choices:

1. Hold a public hearing, assess the review criteria and move the bill;

2. Ask the Commissioner of Professional and Financial Regulation to conduct an independent assessment; or

3. Ask the commissioner to establish a technical committee to conduct an assessment.

What are the criteria the proposed regulation is judged by? -

1. **Data on group.** A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

2. **Specialized skill.** Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

3. **Public health; safety; welfare.** The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's

health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners;

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate;

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis;

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation;

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits;

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

***4694 5 M.R.S.A. § 12015**

**MAINE REVISED STATUTES
ANNOTATED
TITLE 5. ADMINISTRATIVE
PROCEDURES AND SERVICES
PART 18. ADMINISTRATIVE
PROCEDURES
CHAPTER 379. BOARDS,
COMMISSIONS, COMMITTEES
AND SIMILAR ORGANIZATIONS
SUBCHAPTER II.
ORGANIZATION AND
OPERATION**

*Current through 1999 1st Reg. Sess. of 119th
Legislature*

§ 12015. New boards

Any boards established on or after July 25, 1984 shall conform to the following provisions.

1. Membership; terms; vacancies. Each board shall have no fewer than 3 members. Law establishing the board shall provide for appointments, terms of office, qualifications and removal of its members. In the event of the death, resignation or removal of any member, the vacancy for his unexpired term shall be filled in the same manner as his original appointment.

2. Sunset. If, within 2 years of the effective date of its establishment, a board has not been assigned a date for review under the Maine Sunset Act, Title 3, chapter 23, [FN1] it shall terminate, subject to the grace period provided in that chapter.

3. Sunrise review required. Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation"

means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by Title 32, section 60-J. Following this informal review, the committee shall:

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation;

*4695 B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II [FN2] and report its findings to the commissioner within 6 months of establishment of the committee.

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation.

CREDIT(S)

1989 Main Volume

1983, c. 814; 1985, c. 748, § 13.

1999 Electronic Pocket Part Update

1995, c. 686, § 1; R.R.1997, c. 2, § 16.

[FN1] 3 M.R.S.A. § 501 et seq.

[FN2] 32 M.R.S.A. § 60-J et seq.

<General Materials (GM) - References,
Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

Amendments

1995 Amendment. Laws 1995, c. 686, § 1, repealed and replaced subsec. 3, which prior thereto read:

"3. Occupational or professional licensing boards; preauthorization review. Any joint standing committee of the Legislature which considers legislation to establish a board to license or otherwise regulate an occupational profession not previously regulated or to substantially expand the scope of the functions or practices regulated by an existing occupational or professional licensing board shall evaluate whether the occupation should be regulated or further regulated. Any recommendation to the full Legislature for the establishment or expansion of jurisdiction of such a board shall include a concise written report addressing:

"A. The nature of the potential harm to the public if the

occupation or activity is not regulated and the extent to which there is a threat to the public health or safety;

"B. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation;

"C. The extent to which the public is guided in selecting competent practitioners by private certifications, membership in professional or occupational associations or academic credentials;

*4696 "D. The extent to which the occupation or profession has made efforts to regulate itself by adoption of standards of performance, a code of ethics or methods of resolving disputes with consumers of their services;

"E. The nature of the standards proposed for granting a license, as compared with the standards adopted in other jurisdictions, and the authority of the proposed regulatory board to amend those standards or establish new standards;

"F. The qualifications of members of the proposed regulatory board; and

"G. The extent to which the harms expected to result from continued nonregulation may reasonably be expected to be reduced by the program of regulation proposed."

1997 Legislation

Revisor's Report 1997, c. 2, § 16, in the first paragraph, substituted "July 25, 1984" for "the effective date of this chapter".

1989 Main Volume

Amendments

1985 Amendment. Laws 1985, c. 748, § 13, added subsec. 3.

Transition

For transition provisions of Laws 1985, c. 748, see the Historical Note under § 10051 of this title.

***51789 32 M.R.S.A. § 60-J**

MAINE REVISED STATUTES
ANNOTATED
TITLE 32. PROFESSIONS AND
OCCUPATIONS
CHAPTER 1-A. GENERAL
PROVISIONS
SUBCHAPTER II. SUNRISE
REVIEW PROCEDURES

*Current through 1999 1st Reg. Sess. of 119th
 Legislature*

§ 60-J. Evaluation criteria

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are:

1. Data on group. A description of the professional or occupational group proposed for

regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

*51790 4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or

decrease the availability of services to the public;

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners;

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate;

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis;

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation;

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits;

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

CREDIT(S)

1998 Main Volume

1995, c. 686, § 2.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

LIBRARY REFERENCES

1998 Main Volume

Licenses ↻1-42(7).
WESTLAW Topic No. 238.
C.J.S. Agriculture § 4.5.
C.J.S. Architects §§ 2-5, 7-15, 68.
*51791 Licenses §§ 2-87.
Trading Stamps and Coupons §§ 5, 9.

***51792 32 M.R.S.A. § 60-K**

**MAINE REVISED STATUTES
ANNOTATED
TITLE 32. PROFESSIONS AND
OCCUPATIONS
CHAPTER 1-A. GENERAL
PROVISIONS
SUBCHAPTER II. SUNRISE
REVIEW PROCEDURES**

*Current through 1999 1st Reg. Sess. of 119th
Legislature*

**§ 60-K. Commissioner's independent
assessment**

1. Fees. Any applicant group whose regulatory proposal has been directed to the commissioner for independent assessment shall pay an administrative fee determined by the commissioner, which may not exceed \$500. The commissioner may waive the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

A. The applicant group is an agency of the State; or

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group.

2. Criteria. In conducting the independent assessment, the commissioner shall apply the evaluation criteria established in section 60-J to

all of the answers and information submitted to the commissioner or otherwise collected by the commissioner pursuant to section 60-J.

3. Recommendations. The commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the evaluation, that includes any legislation required to implement the commissioner's recommendation. The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner finds that final answers to the evaluation criteria are sufficient to support some form of regulation, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest.

CREDIT(S)

1998 Main Volume


1995, c. 686, § 2.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

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- C.J.S. Agriculture § 4.5.
- Architects §§ 2-5, 7-15, 68.
- Licenses §§ 2-87.
- Trading Stamps and Coupons §§ 5, 9.

***51793 32 M.R.S.A. § 60-L**

**MAINE REVISED STATUTES
ANNOTATED
TITLE 32. PROFESSIONS AND
OCCUPATIONS
CHAPTER 1-A. GENERAL
PROVISIONS
SUBCHAPTER II. SUNRISE
REVIEW PROCEDURES**

*Current through 1999 1st Reg. Sess. of 119th
Legislature*

**§ 60-L. Technical committee; fees;
membership; duties; commissioner's
recommendation**

1. Fees. Any applicant group whose regulatory proposal has been directed to the commissioner for review by a technical committee shall pay a fee determined by the commissioner as required to administer the technical committee, which fee may not exceed \$1,000. The administrative fee is not refundable, but the commissioner may waive all or part of the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

A. The applicant group is an agency of the State; or

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group.

2. Technical committee membership. The commissioner shall appoint a technical committee consisting of 7 members to examine and investigate each proposal.

A. Two members must be from the profession or occupation being proposed for regulation or expansion of regulation.

B. Two members must be from professions or occupations with a scope of practice that

overlaps that of the profession or occupation being proposed for regulation or expansion of regulation. If there is more than one overlapping profession or occupation, representatives of the 2 with the greatest number of practitioners must be appointed.

C. One member must be the commissioner or the commissioner's designee.

D. Two members must be public members. These persons and their spouses, parents or children may not be or ever have been members of, and may not have or ever have had a material financial interest in, the profession or occupation being proposed for regulation or expansion of regulation or another profession or occupation with a scope of practice that may overlap that of the profession or occupation being proposed for regulation.

The professional and public members serve without compensation. The chair of the committee must be the commissioner, the commissioner's designee or a public member. The commissioner shall ensure that the total composition of the committee is fair and equitable.

***51794 3. Meetings.** As soon as possible after appointment, a technical committee shall meet and review the proposal assigned to it. Each committee shall investigate the proposed regulation and, on its own motion, may solicit public input. Notice of all meetings must be printed in the legislative calendar at an appropriate time preceding the meeting.

4. Procedure for review. Applicant groups are responsible for furnishing evidence upon which a technical committee makes its findings. The technical committee may also utilize information received through public input or through its own research or investigation. The committee shall make a report of its findings and file the report with the commissioner. The committee shall evaluate the application presented to it based on the information provided as required by section 60-J. If the committee finds that additional

information is required to assist in developing its recommendations, it may require that the applicant group provide this information or may otherwise solicit information for this purpose. If the committee finds that final answers to the evaluation criteria are sufficient to support regulation of a profession or occupation not currently regulated, the committee must also recommend the least restrictive method of regulation to be implemented, consistent with the public interest. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

5. Commissioner report. After receiving and considering reports from the technical committee, the commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the review, that includes any legislation required to implement the commissioner's recommendation. The final report must include copies of the committee report, but the commissioner is not bound by the findings and recommendations of the report. In compiling the report, the commissioner shall apply the criteria established in section 60-J and may consult with the technical committee. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest. The final report must be submitted to the joint standing

committee of the Legislature having jurisdiction over occupational and professional regulation matters no later than 9 months after the proposal is submitted to the technical committee and must be made available to all other members of the Legislature upon request.

The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner recommends that a proposal of an applicant group be approved, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. *51795

CREDIT(S)

1998 Main Volume

1995, c. 686, § 2.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

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WESTLAW Topic No. 238.
C.J.S. Agriculture § 4.5
C.J.S. Architects §§ 2-5, 7-15, 68.
C.J.S. Licenses §§ 2-87.
C.J.S. Trading Stamps and Coupons §§ 5, 9.

Appendix B

Request of the Committee for Sunrise Review

SENATE

GEORGETTE B. BERUBE, DISTRICT 21, CHAIR
ROBERT E. MURRAY, JR., DISTRICT 9
MARY E. SMALL, DISTRICT 19

PHILLIP MCCARTHY, LEGISLATIVE ANALYST
DAVID ELLIOTT, LEGISLATIVE ANALYST
SUZANNE ARMSTRONG, COMMITTEE CLERK



STATE OF MAINE

HOUSE

MICHAEL F. BRENNAN, PORTLAND, CHAIR
SHIRLEY K. RICHARD, MADISON
MABEL J. DESMOND, MAPLETON
JAMES G. SKOGLUND, ST. GEORGE
ELIZABETH WATSON, FARMINGDALE
CHRISTINA L. BAKER, BANGOR
VAUGHN A. STEDMAN, HARTLAND
IRVIN G. BELANGER CARIBOU
MARY BLACK ANDREWS, YORK
CAROL WESTON, MONTVILLE

ONE HUNDRED AND NINETEENTH LEGISLATURE

COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

March 16, 2000

S. Catherine Longley
Commissioner
Dept. of Professional & Financial Regulation
#35 SHS
Augusta, Me 04333

RECEIVED

APR 19 2000

Department of Professional
& Financial Regulation

Dear Commissioner Longley:

This session the Education Committee has been considering LD 2345, "An Act to Enhance the Availability of Neuropsychological Assessment to Maine's Children". The bill raises the issue of whether neuropsychological technicians operating under the supervision of licensed psychologists ought to be licensed (or otherwise regulated) in order to administer and score neurological assessments as part of the identification process for students with disabilities. Department of Education special education rules currently prohibit any type of "technician" from administering and scoring tests unless licensed or certified.

The Department of Education has agreed to temporarily suspend operation of that part of its rules, amend its State Special Education Plan and establish interim minimum standards to allow neuropsychological technicians to administer and score the tests until July 1, 2001. In the meantime, the committee requests that you conduct an independent assessment of the need to regulate neuropsychological technicians under the Sunrise Review Procedures of 32 MRSA chapter 1-A, subchapter II.

The committee recognizes that our request is somewhat different from the typical request for an independent assessment under the Sunrise Law in that there is no official "applicant group" seeking regulation and available to provide information on the statutory evaluation criteria. Nevertheless, we feel your assessment and recommendation are necessary to our deliberations. We believe that the information gathered by the Department of Education from the Advisory Committee on School Psychological Service Providers, the Maine Psychological Association, special education directors and the public in developing interim standards for neuropsychological technicians may substitute

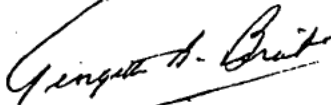
Katherine Longley
Commissioner
March 16, 2000

Page Two

partially for the evaluation criteria required under the law. Information from the Board of Examiners of Psychologists, under your department, may also assist in your assessment.

Please submit your assessment and recommendations by January 31, 2001 in order to permit consideration of the issue during the First Regular Session of the 120th Legislature. Thank you for your attention to this request and please contact us if you have any questions.

Sincerely,



Sen. Georgette Berube

Sincerely,



Rep. Michael Brennan

Appendix C

L.D. 2345

**“Resolve, to Enhance the Availability of
Neuropsychological Assessment to Maine’s Children”**



119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2345

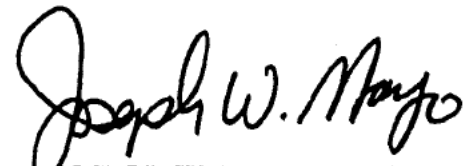
H.P. 1679

House of Representatives, January 5, 2000

**Resolve, to Enhance the Availability of Neuropsychological Assessment
to Maine's Children.**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative KANE of Saco.
Cosponsored by Representatives: BRENNAN of Portland, FULLER of Manchester,
GAGNON of Waterville, Senators: BERUBE of Androscoggin, CATHCART of Penobscot,
PARADIS of Aroostook.

2 **Sec. 1. Department of Education to adopt rules allowing the use of**
3 **neuropsychological technicians in neuropsychological testing of school**
4 **children. Resolved:** That the Department of Education shall adopt
5 routine technical rules pursuant to the Maine Revised Statutes,
6 Title 5, chapter 375, subchapter II-A allowing and governing a
7 neuropsychological technician, under the supervision of a
8 licensed psychologist, to administer and score neuropsychological
9 tests of school children in the State; and be it further

10 **Sec. 2. Department of Education to collaborate with State Board of**
11 **Examiners of Psychologists to create a licensure category for**
12 **neuropsychological technicians. Resolved:** That the Department of
13 Education shall collaborate with the State Board of Examiners of
14 Psychologists to create a licensure category for
15 neuropsychological technicians under the Maine Revised Statutes,
16 Title 32, chapter 56; and be it further

17 **Sec. 3. Reporting date; established. Resolved:** That the
18 Department of Education shall report the adopted rules concerning
19 the use of neuropsychological technicians in the testing of
20 school children and recommended legislation concerning the
21 licensure of neuropsychological technicians to the joint standing
22 committee of the Legislature having jurisdiction over education
23 matters by December 1, 2000.

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SUMMARY

29 This resolve directs the Department of Education to adopt
30 rules allowing and governing the use of neuropsychological
31 technicians for the administration and scoring of
32 neuropsychological tests of school children and to collaborate
33 with the State Board of Examiners of Psychologists to create a
34 licensure category for neuropsychological technicians.

Appendix D

Sunrise Review Evaluation Questionnaire and Responses

**L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to
Maine's Children"**

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented:

2. Position on legislation. Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians?

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;
- (b) the names and addresses of associations, organizations and other groups representing the practitioners; and
- (c) An estimate of the number of practitioners in each group.

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

3. Threat to public health, safety, or welfare. Please describe:

(a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

(b) The extent to which there is a threat to the public's health, safety or welfare (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years*).

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Date: _____, 2000

Completed by:

Name:

Title:

L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to

Maine's Children"

Sunrise Review Evaluation Survey

A. General Information

Group or Organization Represented:

Richard G. Doiron, Ph.D., ABPP
Neuropsychology Associates
86 Dartmouth Street
Portland, ME 04103

1. **Position on legislation.** Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians?

I would favor guidelines for the use of non-licensed assistants as recently as recently promulgated by the Maine State Board of Psychological Examiners or possibly a registration process in which a licensed psychologist could report the credentials and practice parameters of assistants over whom they hold jurisdiction.

I would be against certification or licensure for "neuropsychological technicians" or other assistants fulfilling similar roles for a number of reasons, the foremost of which is that there are no formal academic degree or certificate-granting programs in Maine and in the US for persons who perform this role. Until such exist it there would be no standardized measures to determine who should be certified or licensed.

B. Evaluation Criteria (32 M.R.S.A. 4 60-J)

1. **Data on group proposed for regulation.** Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

Narrowly defined this group would ostensibly be the "neuropsychological technicians" who assist a licensed (neuro)psychologist in conducting neuropsychological assessments of school-aged students under a contract with a School Administrative District.

Broadly defined it includes all assistants who work under the license of a psychologist.

- (a) The number of individuals or business entities that would be subject to regulation;

I would estimate the number of technicians/assistants who currently work under the license of a (neuro)psychologist in providing services to School Administrative Districts to be in the range of 8-12 individuals.

- (b) the names and addresses of associations, organizations and other groups representing the practitioners; and

The primary organizations that provide these services to school-age children to my knowledge are :

Bayside Neurorehabilitation Services - Portland
Eastern Maine Medical Center -Bangor
Maine Medical Center -Portland
New England Rehabilitation Hospital/Neurobehavioral Services of New England-Portland
Neuropsychology Associates-Portland
Neuropsychology Service, P.A.-Bangor
Westside Rehabilitation Services - Lewiston
Sweetser Children's Services-Saco

(c) An estimate of the number of practitioners in each group. -

Each organization likely employs one to three (neuro)psychologists and a similar number of technician/assistants

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

"Neuropsychological technicians"/assistants/psychometrists possess a Bachelors or Masters Degree in psychology or a closely allied field from a regionally accredited college or university. Under the direct and immediate supervision of a (neuro)psychologist that have a narrowly defined role consisting of the following:

1. Administration and scoring of psychological/neuropsychological tests under the supervision of the (neuro)psychologist and as described in the Tests Makers Manuals and while adhering to the principles set forth in the Standards for Educational and Psychological Testing (APA, 1985)
2. Carefully documenting behavioral observations of the patient/client during the examination

The responsibility for the following are the sole province of the supervising (neuro)psychologist:

1. The selection of tests
2. Interpretation of test data
3. Clinical interpretation of the observational information obtained during testing
4. Clinical interviewing of patients/clients and their families
5. Communication of test results and their implications to patient/clients, families, staff and other parties who have legal authorization to receive the information
6. Responsibility for testing procedures and training of "neuropsychological technician"/assistant
7. The professional relation is between the (neuro)psychologist and patient/client/family/other professionals/payors and other parties who have legal authorization to receive the information

3. Threat to public health, safety, or welfare. Please describe:

(a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

"Neuropsychological technicians" have and continue to be regulated through the license of the supervising (neuro)psychologist who is bound to conduct their practice in accordance with State Statutes governing the practice of psychology and as promulgated by such publications as the American Psychological Association's (APA) Ethics Code (1992) and the Association of State and Provincial Psychology Board's (ASPPB) Code of Conduct (1991)

(b) The extent to which there is a threat to the public's health, safety or welfare

(Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years).

I am not personally aware of any complaint filed with the above named agencies relating to the performance of a "neuropsychological technician"/assistant working for a licensed (neuro)psychologist

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

The American Psychological Association (APA) and its Division on Neuropsychology (Division 40) and The National Academy of Neuropsychology (NAN) have sought to develop and maintain vigorous standards of clinical practice, ones that ensure patients/client rights and welfare while optimizing models of service-delivery that are cost-effective.

A Division 40 Task Force on Education, Accreditation and Credentialing has promulgated guidelines for the education, training and use of nondoctoral personnel in clinical neuropsychological assessment. The National Academy of Neuropsychology endorses these guidelines.

The Chair of the State of Maine Board of Examiners of Psychologists, Thomas Collins, Ed.D. disseminated The Board's opinion concerning the use of assistants to all licensees. Licensees who are supervising (neuro)psychologist are reminded that they must conduct their practices in accordance with State Statutes governing the practice of psychology and as promulgated by such publications as the American Psychological Association's (APA) Ethics Code (1992) and the Association of State and Provincial Psychology Board's (ASPPB) Code of Conduct (1991) Particular reference is made to such areas as identification of personnel, delegation to and supervision of subordinates, costs, fees, financial arrangements, and accuracy in reporting information related to these matters to patients/clients, families, professionals and those are purchasing their services.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

The expansion of regulation cost, of recruiting, training, supervising and employing a "neuropsychological technician" /assistant will likely increase costs both directly and indirectly. The direct costs will be ones involved in the registration/credentialing process for both the "neuropsychological technician" /assistant and supervising (neuro)psychologist. Such costs figures may be best estimated by researching fees that are currently in place for the credentialing of similar occupational groups.

Indirect costs may include the availability of qualified personnel and consequent availability of services if the timeliness of the credentialing process proves to be a problem.

Certainly, the financial cost/benefit ratio will be closely monitored by those who provide this service to determine whether it makes sense for them to continue the service generally and for particular patient/client groups.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

The expansion of regulation could decrease availability if costs are significantly increased and timeliness of credentialing is a factor. At present it is the responsibility of the (neuropsychologist) to determine when particular tasks can be performed competently by "neuropsychological technician" /assistant. As such, training to competency is done in phases with neuropsychological technician" /assistant being able to do certain tests/batteries independently and be in a training role for other tests instruments. Would expanded regulation require that registration or other regulations require that training be completed for all functions before the person is deployed to practice. If so, this would also increase costs and potentially decrease availability of the service.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

In my opinion, a mechanism could be developed that would satisfy the concerns expressed about the use of "neuropsychological technicians"/assistants if the Department of Education and the Board of Examiners of Psychologists developed mutually agreeable guidelines about this type of practice. Such an agreement would incorporate the issues discussed by the Chair of the Board of Examiners, Dr. Collins, in his letter of guidance to licensees who employ subordinates.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

I would recommend that, if any changes are recommended, that Title 32 Chapter 56 and its Subchapters not be amended but that the Board of Examiners of Psychologists Rules be, instead, expanded to formally define the responsibilities of the licensed (neuro)psychologists who employs "neuropsychological technicians' assistants. A number of states have language in their laws that govern the use of 'service extenders'".

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Separate searches conducted by the Chair of the Board of Examiners, Dr. Collins and by the APAPractice Directorate at the behest of the Executive Director of the Maine Psychological Association, Ms. Sheila Comerford yielded different information concerning the number of States or Governmental Entities that have Statutory or Regulatory language covering individuals who work under the license of a psychologist.

Please refer to the survey information of Dr. Collins and Ms. Comerford.

No before and after analysis data was made available in these surveys.

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

There have not been any previous efforts in Maine to regulate the occupation of "neuropsychological technicians' assistants. It is my understanding that the issue of this form of practice has been brought to the attention of one or two other State Boards of Examiners who considered the matter and ruled as did the Maine Board that a Licensed Psychologist can delegate certain limited responsibilities to employees and subordinates contingent on the adherence to standards of practice and ethical principles outlined by Dr. Collins in his role as Chair of Maine's Board of Examiners of Psychologists.

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

There would not, in my opinion, be any changes on the matter of mandated benefits were there to be changes governing the practice "neuropsychological technicians' /assistants. Federal and State Insurance Laws as well as Indemnity and Managed Care Contracts and practice patterns reimburse (neuro)psychologists under the procedure codes 96115 or 96117. HCFA and the American Psychological Association are conducting high level meetings to determine a Resource-based Relative Value Scale (RBRVS) for psychological work. A key issue, using medicine as an example is what is the professional and what is the technical component of the work. The cardiologist bills for the professional service component provided with the work of their technician who conducts the electrocardiogram being billed under the technical component. We have been informed that the earliest that HCFA will assign work values to neuropsychological assessments is late 2001.

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

1. A "Neuropsychological technicians"/assistants/psychometrist must possess a Bachelors or Masters Degree in psychology or a closely allied field from a regionally accredited college or university.
2. Works under the direct and immediate supervision of a (neuro)psychologist that have a narrowly defined role consisting of the following:

a. *Administering and scoring psychological/neuropsychological tests under the supervision of the (neuro)psychologist*

b. *Adheres to the principles set forth the Tests Makers Manuals and the Standards for Educational and Psychological Testing (APA, 1985)*

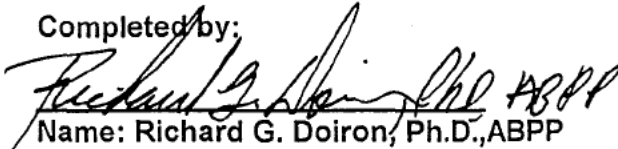
c. *Carefully documents behavioral observations of the patient/client during the examination*

"Neuropsychological technicians" have and continue to be regulated through the license of the supervising (neuro)psychologist who is bound to conduct their practice in accordance with State Statutes governing the practice of psychology and as promulgated by such publications as the American Psychological Association's (APA) Ethics Code (1992) and the Association of State and Provincial Psychology Board's (ASPPB) Code of Conduct (1991)

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

I would defer to the Department of Professional Regulation to do a financial analysis relative to how much any proposed new regulations might cost and how these costs would be financed.

Completed by:

 ABPP

Name: Richard G. Doiron, Ph.D., ABPP

Title: (Neuro)Psychologist

Date: August 18 2000

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

We believe they do exceed the standards of minimal competence for the reasons listed previously.

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

not sure

Date: 8/18/00, 2000

Completed by: Bennett Slotnick Ph.D.
Name: Bennett Slotnick, Ph.D.
Title: clinical psychologist

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

not sure

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

not sure

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

we do not

7. **Existing laws and regulations.** Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

We do not believe that existing legal remedies are inadequate. We feel there are regulations now in effect to redress any type of harm since the P.N.D. is fully responsible for patient care.

8. **Method of regulation.** Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

N/A

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public. Psych techs have a minimum of a bachelors degree (most have master degrees) and are fully trained to administer a variety of test protocols. They receive regular and on-going training & supervision by the Ph.D. who is fully responsible for choosing the tests, scoring the test, interpreting the tests, gathering all pertinent information, meeting with the pt. & family and providing feedback to pt & family.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers. Regulating techs could seriously increase the cost of services to the public. The current model allows the Ph.D. to bill a reasonable fee for his services. However, if techs were licensed, a probable higher fee would be necessary.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public. This would most likely decrease availability of services to the public. The model of utilizing techs is a well-accepted model that has been utilized for years is accepted by most insurance carriers (including Medicare) and is also used extensively in hospitals.

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

We do not believe that the practice of the profession proposed for regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met. The Ph.D. neuropsychologist is totally responsible for the care of the patient.

3. Threat to public health, safety, or welfare. Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

no threat

- (b) The extent to which there is a threat to the public's health, safety or welfare (Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in *this State* within the past 5 years).

None

L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to
Maine's Children"

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented: *Neurobehavioral Services of N.C.
PC*

2. Position on legislation. Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians? *We oppose the creation of a licensure category for neuropsych. techs. Technicians work directly under the supervision of the Ph.D. and are trained by the Ph.D. The Ph.D. chooses the tests, is responsible for them interpreting the test results meeting with the Pt. and family and confering with the referral source. The tech's role is analogous to that of an X-Ray tech who works with an M.D. Psych. techs only administer the tests themselves.*

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

(a) The number of individuals or business entities that would be subject to regulation;
Unclear - needs to be discussed in legislative hearings.

(b) the names and addresses of associations, organizations and other groups representing the practitioners; and

not sure

(c) An estimate of the number of practitioners in each group.

not sure

12. Minimal competence

The proposed regulations support current national standards.

4. Voluntary and past regulatory efforts.

Voluntary efforts to protect the current practice is threatened and needs to be protected by statute or regulation.

5. Cost and benefits of regulation.

To retain technicians that have master's degrees and to require personal on site supervision for the administration of the tests would significantly increase the cost of the service for all users. Protecting existing practice is both safe and cost effective.

6. Service availability under regulation

Requiring master's degrees would significantly reduce availability of qualified technicians and thereby decrease the accessibility of service. The proposed regulation would protect accessibility.

7. Existing laws and regulation.

Existing practices are adequate and need to be protected in statute or regulations.

8. Method of regulation

The existing laws regulating psychological practice are adequate because the neuropsychologist is professionally liable for the practice of the technician.

The proposed legislation to protect the current practice was submitted after voluntary efforts to persuade the Department of Education to protect the practice failed.

9. Other states

Forty-two other states have a similar standard.

10. Previous efforts to regulate

This is the first time an effort has been made to circumvent existing regulation of practice of psychologists and to significantly circumscribe their supervisory authority for practice.

11. Mandated benefits

No

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented:

Neuropsychologists in private practice who need technicians.

2. Position on legislation.

Support

B. Evaluation Criteria

1. Data on group proposed for regulation.

(a) **The number of individuals or business entities that would be subject to regulation:**
Potentially all clinical psychologists who provide testing

(b) **The names and addresses of associations, organizations and other groups representing the practitioners; and** N/A

(c) **An estimate of the number of practitioners in each group.** N/A

2. Specialized Skill - Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

It is state of the art standard practice endorsed by the American ^{Psychological} Medical Association.

3. Threat to public health, safety, or welfare. Please describe:

(a) **the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and**

The loss of neuropsychology technicians would decrease accessibility to a highly needed specialized service.

(b) **The extent to which there is a threat to the public's health, safety or welfare.**

None, in my judgment

**L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to
Maine's Children"**

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented: *Psychologists; specifically, neuropsychologists*

2. Position on legislation. Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians? *We oppose this legislation. It is not being requested by those that would be regulated, but is being forced on psychology by another small group of professionals. Neuropsychological technicians do not offer independent services to the public, nor is there any intent whatsoever for them to do so, ever.*

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;
No more than 15 business entities; 15-20 individuals
- (b) the names and addresses of associations, organizations and other groups representing the practitioners;
Representing psychology: Maine Psychological Association (MePA), American Psychological Association (APA) and its Division 40 (neuropsychology), National Academy of Neuropsychology (NAN), International Neuropsychological Society (INS).
- (c) An estimate of the number of practitioners in each group. *See (a) above.*

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

The public does not now select a technician; they only select the psychologist/neuropsychologist (doctoral level, licensed professional) to conduct the evaluation. The technician is employed and closely supervised by the psychologist, and the technician serves

exclusively as a service extender. There are specialized skills, but these are taught and supervised by the psychologist. This technician function is a long tradition in psychology, and is already regulated by existing laws and rules of the licensing board.

3. Threat to public health, safety, or welfare. Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated;

*There is **no** potential of harm to the public. These paraprofessionals are already covered by law, rules of the licensing board, and by professional practice standards. They do not provide any service outside the office of the employing doctor. The procedures are not invasive, and are not dangerous in any way to the patient/pupil.*

- (b) The extent to which there is a threat to the public's health, safety or welfare (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years*).

I have never encountered any complaints whatsoever about the use of or performance by a technician. I have employed a neuropsychology technician for many years, and known of this practice throughout the US by other professionals. It is so common-place that it is "generally regarded as safe," well within practice guidelines.

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

The APA Code of Ethics (adopted by the Maine licensing board) requires that all employees be trained and supervised by the psychologist, and that the employee not be asked or allowed to perform functions for which there is not adequate training. National Academy of Neuropsychology, INS and APA/Division 40 have all issued statements regarding the use of such technicians, clearly stating that this is standard, acceptable practice.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

This proposed regulation will have no benefit, and is likely to have a high cost. If the process of obtaining neuropsychological evaluations is made more cumbersome (e.g., by

requiring all the standardized, routine testing to be administered by the doctor personally), it will pose an undue burden on the doctor (psychologist, neuropsychologist) for expense as well as time. It will therefore limit the availability of these services which are much needed in schools as well as health care agencies and outpatient clinics. Any additional requirements for documentation or regulation will force fees to go up.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

The proposed regulation will decrease availability (see comments under #5, above), but it is impossible to estimate by how much.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

The existing regulations affecting psychological practice are quite sufficient. The psychologist/neuropsychologist is now recognized by professional organizations as being able to hire and supervise employees. The doctor is completely responsible for the actions of these employees, and they are covered by ethics as well as malpractice insurance policies.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

*No regulation is necessary. There is not a standard degree or formal training program for these technicians, as they have baccalaureate degrees in several fields. They are carefully selected, trained and supervised by the doctor. We are opposed to any efforts to perceive these employees as providing any independent services, as their training is totally inadequate for making decisions about evaluations, interpreting any results, writing any report or rendering diagnoses; and they provide absolutely no treatment whatsoever. If any type of regulation is deemed necessary by the Department or legislature, **registration** is the only feasible type. A list of technicians and their employers or settings might be helpful although quite unnecessary.*

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

*Gathering this information has been difficult. Several state's statutes refer to Master's level practitioners, or to various titles involving "assistants," "associates," "examiners," etc., but it is very confusing as to what specific qualifications or functions they are meant to regulate. It appears that fewer than 6 states actually regulate technicians, and only 2 states specifically regulate psychological testing. When they are regulated, it is for **independent** practice in some form; this is in no way the function of technicians as adjuncts to neuropsychological/psychological testing.*

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

There have been none in the state of Maine

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

There is no proposal to establish an independent profession/occupation of neuropsychological or psychological technician. Thus this is a moot point.

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

No standards of competence are proposed.

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

No methods are proposed.

Date: August 15, 2000

Completed by:

Anne L. Hess, Ph.D., ABPP-CN
Name

Board-certified Clinical Neuropsychologist
Title

L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to
Maine's Children"

Sunrise Review Evaluation Survey

RECEIVED

AUG 17 2000

Department of Professional
& Financial Regulation

A. General Information

1. Group or Organization Represented:

I am writing as an individual in private practice. I am a Psychologist licensed to practice in the state of Maine, and I am Board certified in neuropsychology by the American Board of Professional Psychology. Although I do not currently use a neuropsychology technician in my private practice, I used a technician throughout my neuropsychology training and through my 10 years as the neuropsychologist at the VA. I fully expect to hire a neuropsychology technician for my practice in the future.

2. Position on legislation. Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians?

I oppose this legislation. This proposition is not coming at the request of those who would be regulated; as far as I am aware, neither neuropsychology technicians nor neuropsychologists are asking for this regulation. It appears that there is another group that is trying to force regulation on neuropsychology technicians.

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;
I do not have firm numbers, but I believe there are approximately 15-20 neuropsychology technicians in Maine, and about 15 neuropsychologists. Not all of these provide services to the schools or to children.
- (b) the names and addresses of associations, organizations and other groups representing the practitioners; and
Organizations representing psychologists are:
Maine Psychological Association
American Psychological Association
Organizations representing neuropsychologists are:

Americal Psychological Association, Division
40 (Neuropsychology)
National Academy of Neuropsychology
International Neuropsychological Society

- (c) An estimate of the number of practitioners in each group.

(See (a) above).

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

The public is not in a position to select a neuropsychology technician, because a neuropsychology technician does not function independently: The neuropsychologist determines which tests the technician will administer, and the neuropsychologist interprets the results of the tests. The technician does not have any skills that are not an extension of the neuropsychologist's practice. The neuropsychologist teaches these skills to the neuropsychology technician, and supervises the technician to ensure that the procedures continue to be carried out correctly.

This is not a new practice: The use of neuropsychology technicians in the supervised administration and scoring of neuropsychological tests has been an established standard of practice in the field of clinical neuropsychology for over 30 years (DeLuca, J.W., 1989; The Clinical Neuropsychologist, Vol 3(1), 2-21.)

3. Threat to public health, safety, or welfare. Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

There is none; furthermore, the profession of psychology is already regulated under Chapter 32, MRSA, Chapter 56.

- (b) The extent to which there is a threat to the public's health, safety or welfare (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years*).

I have worked with a neuropsychology technician for over 10 years at the Togus VA hospital, and I have not encountered any complaints related to the technician or my use of a technician. In

speaking with my colleagues, this reflects their experience as well.

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Each neuropsychologist is responsible for the credentialing, training, and performance of the technician(s) s/he supervises. As noted in the APA Division 40 Task Force which set standards of practice for selection, training, supervision and use of neuropsychology technicians [and restated in the official statement of the national Academy of Neuropsychology ("The use of neuropsychology test technicians in clinical practice." Archives of Clinical Neuropsychology, 2000, Vol 15 (5), pp381-382)], "technician training and supervision, ... are the sole responsibility of the neuropsychologist who is licensed to practice psychology or neuropsychology. The professional relationship in clinical neuropsychology is between the patient and the ... neuropsychologist."

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Regulation is likely to be expensive, with no added benefit.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

There is no way to know, but my expectation is that it would decrease availability.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Existing laws are adequate: Chapter 32, MRSA, Ch. 36, Section 3812 allows for the use of non-licensed practitioners, including the need for supervision by the psychologist who is licensed.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

I do not believe regulation is necessary: Neuropsychologists are competent to train and evaluate the performance of the technicians they supervise, and they have a vested interest (because the validity of the neuropsychologist's conclusions depends on accurate data collection) in assuring that the work is of high quality, without the need of an additional certification by a regulatory agency.

It is not clear to me why formal regulation is being proposed at all. However, if any type of regulation is desired, simple registration should be sufficient, under the Board of Examiners of Psychologists, since the neuropsychology technicians work under the supervision of licensed psychologists. The Psychology Board should define and direct the practice of psychologists.

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

All states regulate psychologists.

Some states (including Maine) license Examiners as independent practitioners, but this is not the same as a neuropsychology technician (who does not practice independently).

According to the American Psychological Association, use of "service extenders" (psychological assistant, psychological examiner, psychological associate— different terms are used in different states, and it is not clear what the actual service is for each of these) is "mentioned" in the statutes of 18 states, and 8 states require some type of registration; none of these 8 specifically mention testing. However, to obtain meaningful numbers, it would be important to find out exactly what service is provided by those service extenders; the titles mean different things in different states. Furthermore, a licensed Master's level practitioner is different from a neuropsychology technician.

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

I do not believe there have been previous efforts to regulate neuropsychology technicians.

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

I am not aware of any plans to apply for mandated benefits, because there are no neuropsychology technicians currently seeking licensure.

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

There are no proposed requirements.

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

No methods are proposed.

Date: August 15, 2000

Completed by:



Name: Margaret M. Zellinger, Ph.D.

Title: Psychologist (Lic. #500)
Board Certified in Clinical
Neuropsychology, American Board of
Professional Psychology

**L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to
Maine's Children"**

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented:

The Maine Psychological Association

2. Position on legislation. Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians?

At this point, the Maine Psychological Association believes that the creation of a licensure category for psychological technicians is not necessary.

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;
Approximately 15 technicians
Approximately 500 psychologists
- (b) the names and addresses of associations, organizations and other groups representing the practitioners; and

We are unaware of any state group representing the technicians.

The Maine Psychological Association (MePA), the American Psychological Association (APA), and Division 40 of the APA represent psychologists.

- (c) An estimate of the number of practitioners in each group.

See B1.(a)

2. **Specialized skill.** Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Technicians work under the license and the direct supervision of a licensed psychologist, therefore the public cannot, even if they wished to, select their own technician.

3. **Threat to public health, safety, or welfare.** Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

There is no potential harm to the public, if technicians are regulated. The services technicians perform are not dangerous to the client.

- (b) The extent to which there is a threat to the public's health, safety or welfare (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years*).

We are unaware of any complaints to law enforcement authorities, courts, boards, state agencies or associations.

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

The APA Code of Ethics for Psychologists requires that employees be trained and under the supervision of psychologists. If this is not done, the practitioner may be brought before the Board of Examiners of Psychologists on an ethics violation.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

While the extent is unclear, we would expect some increase in cost with added regulation.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Again this is unclear. Requiring technicians to be regulated may discourage some from initiating the process, thus decreasing the availability of technicians, which subsequently would delay services.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

The current statute and regulations governing psychologists is adequate.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

We do not seek regulation of technicians. However if the Department of Professional and Financial Regulation determines that regulation is advisable, we would urge the least restrictive option of registration.

9. **Other states.** Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

We asked APA to provide us with information on statutes governing technicians in other states. Unfortunately the information provided is less than clear because the services provided are varied, as are what these "service extenders" are called. According to the APA, 32 states are silent in statute on service extenders in psychology. 18 contain some language, but it is unclear which of these are strictly technicians.

10. **Previous efforts to regulate.** Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

To our knowledge there have been none.

11. **Mandated benefits.** Please indicate whether the profession or occupation plans to apply for mandated benefits.

As far as we know the technicians are not seeking to be regulated, thus there are no plans for mandated benefits.

**L.D. 2345, "Resolve to Enhance the Availability of Neuropsychological Assessment to
Maine's Children"**

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented:

Licensed Psychologists in the State of Maine

2. Position on legislation. Does this group or organization support or oppose the creation of a licensure category for neuropsychological technicians?

The request for licensure is **not** coming from licensed psychologists in the State of Maine and is being supported by a handful of people within the Department of Education. I **oppose** the creation of a licensure category for neuropsychology technicians or psychometrists. This piece of legislation is unnecessary, redundant, and an attempt by some in the Department of Education to regulate the practice of a very small group of psychologists who use psychometricians as part of their private practice or in an institutional setting. Psychologists in the State of Maine have the right to define and direct its own practice. Licensed Psychologists are regulated under Title 32 Chapter 56 of State of Maine Statues and are bound by the American Psychological Association Ethical Principles and Code of Ethics (APA, 1992). There is a very long, well-established tradition of using specially trained psychometricians or neuropsychological technicians working under the direct and immediate supervision of the psychologist who is qualified to practice the specialty of neuropsychology. The licensed psychologist has complete responsibility for the entire assessment, but test administration and scoring may be performed by non-doctoral level personnel. The technician, assistant, trainee, or psychometricians thus functions in a way analogous to the medical laboratory or radiology technician; he/she is responsible for the acquisition of data upon which the licensed doctoral level professional bases his/her evaluation and opinions. All individuals who are referred for neuropsychological evaluation are always informed in advance that a psychometrician is involved in the evaluation process. Besides, any changes that are proposed the existing statues are typically performed in the least intrusive manner in order to achieve the goal of protecting the public. It is my understanding is that the usual course for changing existing statues is to establish guidelines, then possibly registration, with certification, or licensure being the most restrictive categories of action.

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;

All neuropsychologists/psychologists in the State of Maine. Psychologists in the State of Maine are already regulated by 32 MRSA Chapter 56 which includes the American Psychology Association Ethical Principles of Psychologists and Code of Ethics under 32 MRSA Chapter 56 Section 32 3815.

- (b) the names and addresses of associations, organizations and other groups representing the practitioners; and

All psychologists in the State of Maine who belong to the Maine Psychological Association, American Psychological Association, International Neuropsychological Society, and National Academy of Neuropsychology, Inc.

- (c) An estimate of the number of practitioners in each group.

There are perhaps 15 neuropsychologists in the state of Maine who use psychometricians or non-doctoral level assistants. It is estimated that there are 15 psychometrists in the State of Maine.

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

This is no new practice or specialized skill. The psychometrist or technician works under the direct supervision and training of the neuropsychologist and provides an extension of those skills.

3. Threat to public health, safety, or welfare. Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

The profession of psychology is already regulated by the State of Maine as per 32 MRSA Chapter 56 which includes the American Psychology Association Ethical Principles of Psychologists and Code of Ethics under 32 MRSA Chapter 56 Section 32 3815.

- (b) The extent to which there is a threat to the public's health, safety or welfare (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental*

agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in *this State* within the past 5 years).

To my knowledge there has never been a complaint made against a psychometrist working under a neuropsychologist in the State of Maine. The profession of psychology is already regulated by the State of Maine as per 32 MRSA Chapter 56 which includes the American Psychology Association Ethical Principles of Psychologists and Code of Ethics under 32 MRSA Chapter 56 Section 32 3815.

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

This question assumes that neuropsychologists in the State of Maine want to regulate this group of service extenders. This is not the case. APA Code of Ethics, National Academy of Neuropsychology, and APA Division 40 have all provided position papers on the use of non-doctoral level personnel in conducting neuropsychological evaluations. I will provide these statements in the 8/29/00 meeting.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

In this era of governmental deregulation, there is likely to be a significant time and cost incurred to the State of Maine for establishing and maintaining a regulatory entity for such a small group of psychometrists. There are only about 10 to 15 such individuals operating under the license of psychologists in this state. There is also likely to be significant time and expense to service providers in the State of Maine to provide documentation of this entity. The cost of regulation is also likely to increase the cost of services that the psychologist or neuropsychologist provides to the public.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

It is likely to decrease the availability of services available to the public.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from.

nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

This question implies that existing legal remedies are inadequate. They are adequate. The profession of psychology is already regulated by the State of Maine as per 32 MRSA Chapter 56 which includes the American Psychology Association Ethical Principles of Psychologists and Code of Ethics under 32 MRSA Chapter 56 Section 32 3815.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

This question assumes that psychologists are interested in pursuing registration, certification or licensure of psychometricians or service extenders. They are not. Registration, certification or licensure of service extenders is not necessary. The profession of psychology is already regulated by the State of Maine as per 32 MRSA Chapter 56 which includes the American Psychology Association Ethical Principles of Psychologists and Code of Ethics under 32 MRSA Chapter 56 Section 32 3815.

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

According to APA records, only 18 of 50 states specifically mention the supervision of service extenders in state statutes. Only eight of the 18 states specifically require that service extenders be registered. Only two of the 18 states specifically mention that that services extenders receive supervision for testing. If this is the case, Maine would be one of maybe three states that has bothered to regulate an industry of maybe 15 people. This seems to smack of excessive governmental regulation.

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

I am not aware of any plan to regulate psychometrists who practice under the direct supervision of a psychologist/neuropsychologist. Psychometrists have not sought regulation.

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

I am not aware of any plan to regulate psychometrists who practice under the direct supervision of a psychologist/neuropsychologist. This question is not applicable.

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

I would not propose requirements; therefore one cannot exceed standards of minimal competence. The psychometrist works under the direct supervision of the psychologist. As such, the State of Maine Board of Psychological Examiners already establishes minimal standards of competence for psychologists.

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

No methods are proposed.

Date: August 18, 2000

Completed by:



Anthony M. Podrzza, Ph.D.

Title: Director
Maine Rehabilitation Neuropsychology Service
885 Union Street, Suite 235
Bangor, Maine 04401



MADSEC

Maine Administrators of Services for Children with Disabilities

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DOE/FirstClass: MADSEC • Web: www.madsec.org • E-Mail: madsec@mint.net anunery@mint.net

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Jacy K. Wilson

Part Time Support Staff
Marilyn White

August 4, 2000

Kristine M. Ossenfort, Esq.
Assistant to the Commissioner
State of Maine
Department of Professional and Financial Regulation
35 State House Station
Augusta, ME 04333-0035

RE: Sunrise Review of L.D. 2345 "Resolve to Enhance the Availability of Neuropsychological Assessment to Maine's Children"

Dear Ms. Ossenfort:

As per our conversation this week, MADSEC does not appear to be the appropriate organization to complete this survey. However, enclosed is a copy of the testimony MADSEC provided on L.D. #2345.

I will attend the meeting on August 29, 2000 and appreciate the invitation.

Sincerely,

Ann M. Nunery
Executive Director

AMN:pm

Enclosure

c:\old hard drive\apenny\legcmt\ossenfort 8-4-00

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AUG 07 2000

Department of Professional
& Financial Regulation





MADSEC

Maine Administrators of Services for Children with Disabilities

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Tracy K. Wilson

Part Time Support Staff
Marilyn White

TO: Honorable Georgette B. Berube, Senate Chair
Honorable Michael F. Brennan, House Chair
Members of the Joint Legislative Committee on Educational
And Cultural Affairs

FROM: Ann M. Nunery, Exec. Dir.

RE: L.D. #2345 – Resolve, to Enhance the Availability of
Neuropsychological Assessment to Maine's Children

DATE: January 25, 2000

Maine Administrators of Services for Children with Disabilities (MADSEC) opposes
L.D. 2345.

The reasons are as follows:

Maine Special Education Regulations (MSER) limit the provisions of psychological services (including evaluations) to certified school psychological providers and licensed psychologists. The MSER prohibit aides, assistants and technicians from administering, scoring or interpreting evaluations unless they hold appropriate certifications or licensure.

When school districts contract with a neuropsychologist, additional expertise is needed that is not available in the school district. With that level of expertise, comes the expectation that the neuropsychologist administering the evaluations has the credentials to administer, interpret and observe student behavior during testing in order to make educational recommendations to assist the Pupil Evaluation Team in developing an appropriate program to meet the unique needs of children with disabilities.

Although the DOE recognizes the paraprofessional licensures for speech – language pathology aides, occupational therapy assistants, and physical therapy aides, it does not permit those paraprofessionals to evaluate students. They are permitted to provide therapy under the supervision of a licensed speech pathologist, occupational therapist or physical therapist.

The Department of Education has found a school administrative unit in non-compliance when evaluations including classroom observations were provided by educational technicians who were not otherwise certified to administer evaluations.

We recommend the committee reaffirm the current standards and practices of the Department of Education as articulated in the Maine Special Education Regulations.

OFFICE OF THE SUPERINTENDENT OF SCHOOLS

320 OCEAN HOUSE ROAD • P. O. BOX 6267 • CAPE ELIZABETH, MAINE 04107-0067
(207) 799-2217 • Fax: (207) 799-2914

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AUG 10 2000

Department of Professional
& Financial Regulation

August 9, 2000

Krisine M. Ossenfort, Esq.
Department of Professional and Financial Regulations
35 State House Station
Augusta, Maine 04333-0035

Dear Ms. Ossenfort:

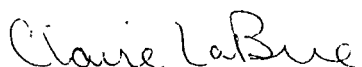
I have received your letter dated July 28, 2000 RE: Sunrise Review of L.D. 2345, "Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine's Children." I did review the attached Evaluation Survey, and I am unable to answer the questions; it is not applicable to me as an individual.

I had written a statement that was read during an educational hearing. I am attaching a copy of this for your record. My position has not changed on this subject, and I would urge all of you to consider the consequences that could result if changes were to be made. I would hate to see schools sending students for neuropsychological assessments where other less qualified individuals would give evaluations.

Why should any schools be misled when paying for services? As individuals, would we be willing to pay to consult with a cancer specialist and later be told by another agency that we saw a physician assistant? This type of practice is not appropriate and is misleading for parents, schools and more so to the individual being evaluated.


I am sorry that I can not attend the meeting on Tuesday, August 29. Our professional staff is returning to work for the 2000 – 2001 school year. We have a lot of professional development activities planned, and I am unable to leave the district. It is my hope that my points will be considered. I would be willing to speak with any of you directly if you need more information.

Sincerely,



Claire LaBrie
Director of Special Education

TO: Honorable Georgette B. Berube, Senate Chair
Honorable Michael F. Brennan, House Chair
Members of the Joint Legislative Committee on Educational
And Cultural Affairs

FROM: Claire LaBrie, Director of Special Education, Cape Elizabeth 

RE: L.D. #2345 – Resolve, to Enhance the Availability of Neuropsychological Assessment to
Maine's Children

DATE: January 25, 2000

I have asked one of my colleagues to read this testimony since I am unable to attend due to a previous commitment in my district. Claire LaBrie who is the Special Education Director in the Cape Elizabeth School Department is preparing this testimony.

The system sought a neuropsychological evaluation for a student as a result of school personnel having questions regarding observations of a child's behavior. The behavior observed raised many questions of whether the educational program was meeting the student's educational needs. The school psychologist, speech/language pathologist, occupational therapist and social worker all requested additional evaluations to provide the Pupil Evaluation Team with information on how best appropriately to meet the educational needs of this child.

Our team met with the parents to discuss our reasons for requesting information from a team of experts. We stressed with the parents we believed all available district resources had been exhausted and explained why additional evaluations for this child were being requested.

Parents agreed and an evaluation date was arranged and the child assessed. The report was sent to the system and a date scheduled for the PET meeting. Upon reading the report, more questions were generated by the staff. One of the major concerns involved the cognitive measure obtained during the assessment. The new measure was very discrepant from previous cognitive measures and did not portray an accurate picture of what was being seen by parents and school staff.

When the social worker spoke with the student's parents, it was clear the parents were extremely upset, concerned and discouraged. They also thought the information in the report portrayed a much different child than they saw and showed a child with more limited ability than the academic performance indicated. As questions and discussion continued, it came to the attention of school staff the tests had not been administered by the neuropsychologist the school had contracted with for the evaluation.

At the Pupil Evaluation Meeting, questions regarding the child's performance were raised. The neuropsychologist at the meeting voiced an inability to answer the questions because the individual had not administered the assessment tools. The report the school received never made any mention that other individuals had been involved in the administration of battery of tests.

The end result of this action was that the school district paid \$1500.00 for an evaluation that did not address what had been requested. Parents were confused, disappointed and felt betrayed by school personnel. The school staff questioned the validity of the data provided. Most importantly, a child was put through another battery of tests that would not have been necessary and would not have been ordered if the school staff had known ahead of time how these tests were to be administered.

I am willing to be contacted by any committee member who wants more information regarding this issue.

In order to ensure that evaluations available in the State of Maine are of the highest quality possible, I recommend L.D. #2345 ought not to pass.

From: Francine F. Blattner <ffb@maine.rr.com>
To: Kristine M. Ossenfort <Kristine.M.Ossenfort@State.Me.Us>
Date: Wednesday, August 16, 2000 1:39 AM
Subject: LD 2345

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AUG 17 2000

Department of Professional
& Financial Regulation

Thank you for your letter of July 28th regarding the Sunrise Review of LD 2345. Unfortunately I will not be able to attend the meeting on August 29th, but I would like to take this opportunity to share some thoughts, as requested by the Sunrise Review Evaluation Survey.

I am in favor of the creation of a licensure category for neuropsychological technicians if such a licensure would assure that appropriate educational and experiential training has been successfully met by the technician. As a child psychiatrist who frequently requests and relies on neuropsychological testing for further diagnostic and treatment clarification/confirmation as well as for appropriate educational planning and parent support and guidance, the "unknown" quality/competence of the technician is of concern. Since the interpretation of the findings by the neuropsychologist is dependent on the findings themselves, the validity of the data, reflective of the many details of actually giving/recording the tests, is of major significance. As a mother of two children who have had neuropsychologic assessments, it was my experience that the technician's role appeared substantial, particularly with respect to time investment, but yet the technician was not the individual whose services I sought out, nor was the technician part of the intake process. Again, the technician felt like an "unknown" aspect of the assessment.

I would like to point out that at this time I have no information as to the actual educational backgrounds and experiences of technicians within the state and to what degree licensure would negatively impact the availability of neuropsychological testing for individuals within the state of Maine. Indeed, it is not my intention to negatively impact such availability, but rather to make such assessments more available and reliably competent. If you have any questions, please feel free to call or email me.

Francine F. Blattner, M.D., P.A.

TEL: 207-761-5876

FAX: 207-799-8156

email: ffb@maine.rr.com

Appendix E

Standards of Practice Governing the Use of Subordinates by Psychologists

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

415 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Chapter 4. STANDARDS OF PRACTICE

SUMMARY: This chapter outlines the code of ethics and conduct used by psychologists and psychological examiners.

Section 1. Code of Ethics and Conduct

- A. The Board adopts the Ethical Principles of Psychologists of the American Psychological Association (1992), the Principles for Professional Ethics of the National Association of School Psychologists (1984) and the Rules of Conduct of the Association of State and Provincial Psychology Boards (1992). In interpreting and applying these Principles, the Board may rely upon the APA Specialty Guidelines (1981) in clinical, counseling, industrial/organizational psychology, and school psychology. The Board may modify or augment these guidelines in keeping with current accepted standards of the profession adopted by the appropriate national body (APA, NASP or ASPPB) . The Board further adopts the following guidelines:

A psychologist or psychological examiner whether holding a permanent, temporary or conditional license will be referred to in this section. as a psychological provider. All such providers shall conduct their professional activities in conformity with ethical and professional standards promulgated by the Board under its rules.

The Board shall have the power and duty to suspend, place on probation, or require remediation for any psychological provider for a specified time, - to be determined at the discretion of the Board or to take any other action specified in the rules whenever the Board shall find by a preponderance of the evidence that the psychological provider has engaged in any of the following acts or offenses including but not limited to:

1. fraud in applying for or procuring a license to practice psychology;
2. immoral, unprofessional, or dishonorable conduct as defined in the rules promulgated by the Board;
3. practicing psychology in such a manner as to endanger the welfare of clients or patients;

4. conviction of a felony (a copy of the record of conviction, certified by the clerk of the court entering the conviction shall be conclusive evidence);
5. conviction of any crime or offense that reflects the inability of the practitioner to practice psychology with due regard for the health and safety of clients or patients;
6. harassment, intimidation, or abuse, sexual or otherwise, of a client or patient;
7. engaging in a prohibitive dual relationship including sexual contact with a client or patient or former client or patient as defined in the ASPPB Rules of Conduct;
8. use of repeated untruthful or deceptive or improbable statements concerning the licensee's qualifications or the effects or results of proposed treatment, including functioning outside of one's professional competence established by education, training and experience;
9. gross malpractice or repeated malpractice or gross negligence in the practice of psychology;
10. aiding or abetting someone practicing as a psychologist or a psychological examiner when that person is not licensed by the Board.
11. conviction of fraud in filing medicare or medicaid claims or in filing claims to any third party payor (a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence);
12. exercising undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;
13. the suspension or revocation by another state of a license to practice psychology (a certified copy of the record of suspension or revocation of the state making such at suspension 'or revocation shall be conclusive evidence thereof);
14. refusal to appear before the Board after having been ordered to do so in writing by the executive officer or chair of the Board.
15. making any fraudulent or untrue statement to the Board;

16. violation of the code of ethics adopted in the rules of the Board;
and
17. inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition. If a psychological provider is believed to be physically or mentally incapable of practicing psychology with reasonable skill and safety to patients or clients, and engages in practice while impaired, the Board may, upon a showing of probable cause to the Board, order the psychological provider in question to submit to a psychological evaluation by a licensed psychologist or a physical examination by a physician, either to be selected by the Board with the expense of the evaluation to be borne by the psychological provider. The evaluation shall be completed to determine psychological status and/or a physical examination by a physician to determine physical condition. When the psychological provider raises the issue of mental or physical competence or appeals a decision regarding his or her mental or physical competence, the psychological provider shall be permitted to obtain his or her own evaluation at the provider's expense. If the objectivity or adequacy of the examination is suspect, the Board may complete an examination by its designated practitioners at its own expense. When mental or physical capacity to practice is at issue, every psychologist licensed to practice psychology in the State shall be deemed to have given consent to submit to a mental or physical examination or to any combination of such examinations.
18. A temporary or conditional licensee not receiving adequate supervision from a licensed psychologist approved by the Board.

B. Scope of Practice

1. Unless additional training is obtained subsequent to licensure, a licensee shall limit his or her practice to the specific privileges noted on the application and to, the specific areas of competency stated to the Board at the oral examination.

AUTHORITY: 32 M.R.S.A. Chapter 56

EFFECTIVE DATE: September 10, 1979

AMENDED: April 30, 1984

REPEALED & REPLACED: March 30, 1986

AMENDED: July 28, 1992

December 26, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION): November 13, 1996

(a) When a psychologist agrees to provide services to a person or entity at the request of a third party, the psychologist clarifies to the extent feasible, at the outset of the service, the nature of the relationship with each party. This clarification includes the role of the psychologist (such as therapist, organizational consultant, diagnostician, or expert witness), the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

(b) If there is a foreseeable risk of the psychologist's being called upon to perform conflicting roles because of the involvement of a third party, the psychologist clarifies the nature and direction of his or her responsibilities, keeps all parties appropriately informed as matters develop, and resolves the situation in accordance with this Ethics Code.

1.22 Delegation to and Supervision of Subordinates.

(a) Psychologists delegate to their employees, supervisees, and research assistants only those responsibilities that such persons can reasonably be expected to perform competently, on the basis of their education, training, or experience, either independently or with the level of supervision being provided.

(b) Psychologists provide proper training and supervision to their employees or supervisees and take reasonable steps to see that such persons perform services responsibly, competently, and ethically.

(c) If institutional policies, procedures, or practices prevent fulfillment of this obligation, psychologists attempt to modify their role or to correct the situation to the extent feasible.

1.23 Documentation of Professional and Scientific Work.

(a) Psychologists appropriately document their professional and scientific work in order to facilitate provision of services later by them or by other professionals, to ensure accountability, and to meet other requirements of institutions or the law.

(b) When psychologists have reason to believe that records of their professional services will be used in legal proceedings involving recipients of or participants in their work, they have a responsibility to create and maintain documentation in the kind of detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum. (See also Standard 7.01, Professionalism, under Forensic Activities.)

1.24 Records and Data.

Psychologists create, maintain, disseminate, store, retain, and dispose of records and data relating to their research, practice, and other work in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code. (See also Standard 5.04, Maintenance of Records.)



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

ANGUS S. KING, JR.
GOVERNOR

ANNE L. HEAD
DIRECTOR

To: All Psychology Licensees
From: Thomas Collins Ed.D., Chair
Board of Examiners of Psychologists
Re: Psychology technicians
Date: 5/8/2000

Dear Colleague:

The Board wishes to be more informative/more of assistance to you, the practitioner. In this vein, this correspondence serves several purposes.

First, please find attached an opinion from the Board of Examiners to Dr. Michael Opuda, subsequent to his request for same. This opinion concerned the use of psychology "technicians". This issue was raised by several neuropsychologists within the state, and concerned "neuropsychology technicians" originally. However during the Board deliberations note was made that ours is a generalist license, therefore one does not speak to "neuro" or "clinical" technicians. In brief, the Board opted to disseminate this opinion in order to keep you more fully informed.

Second, the Board wishes to initiate a regularly scheduled newsletter for distribution. Its purpose would be to keep you more informed of Board actions, concerns etc. Subject matter might include the following:

1. Recent policy decisions of the Board
2. Disciplinary actions taken by the Board
3. Vacancies / Board members
4. Pending actions
5. Oral examination candidates

We wish to know if you are interested in such a project. Specifically, would you like to be informed of such matters on a regular basis? Are there specific topics that you would like to have covered? Please let us know. Kindly send your thoughts/suggestions to Dr. Thomas Collins at the address above. Thank you!

Thomas Collins (Ed)
Thomas Collins Ed.D., Chair
Board of Examiners of Psychologists

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(207) 624-8563 (HEARING IMPAIRED ONLY)

PHONE: (207)624-8600 (OFFICE)

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OFFICES LOCATED AT: 122 NORTHERN AVENUE, GARDINER, MAINE



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

ANGUS S. KING, JR.

GOVERNOR

ANNE L. HEAD

DIRECTOR

February 22, 2000

Michael Opuda, Ph.D.
Department of Education
State House Station #23
Augusta, ME 04333

Dear Dr. Opuda:

As you know, the Board of Examiners of Psychologists has discussed the employment of neuropsychological technicians by licensed psychologists. Discussion took place at our regularly scheduled meeting of February 1, 2000. This discussion was initiated in part by your inquiries to the Board in a correspondence dated November 1, 1999. Your input, as well as that of Anne Head, was most appreciated. I hereby summarize the Board's position regarding this topic, and in so doing expect to address the questions which you asked of the Board in your correspondence of November 1, 1999.

An opening commentary must be addressed as to the nature of licensure in Maine. Ours is a generalist license to practice Psychology. As such, no "specialty license" is assigned. Therefore, this Board addresses the issue of "Psychology technician" as a general topic rather than "neuropsychological technician" or "school psychology technician" or any other specialty area.

Synopsis of Board Discussion

1. The Board does not have the statutory authority to develop a certification or registration process for other forms of certification. As explained by Ms. Head, a "Sunrise Procedure" exists for proposed registrations. As stated in the Sunrise Procedures (Title 32, Subchapter 1):

"Any professional or occupational group or organization, any individual or any interested party, referred to in this section as the "applicant group", that proposes regulation of any unregistered professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the legislature."

(32 - 60- J)



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OFFICES LOCATED AT: 122 NORTHERN AVENUE, GARDINER, MAINE

Therefore, the Board's understanding is that any parties who intend to register an occupational class of technicians must do so via this procedure. I expect that this opinion answers your question #4.

2. Psychological practice in Maine adheres to "Standards of Practice" as outlined in State regulation, the Ethical Principles and Code of Conduct of the American Psychological Association (APA) and the Model Code of Conduct of the Association of State and Provincial Psychology Boards (ASPPB). These documents address the responsibilities of licensed psychologists with respect to employee training, delegation of responsibilities, supervision and ultimate liability, among other factors. During our deliberations, the Board outlined specific APA ethics principles and ASPPB standards which bear directly upon the responsibilities of licensed psychologists toward employees. A listing follows:

APA Ethics Code: (1992)

1.14 Avoiding Harm

Psychologists take reasonable steps to avoid harming clients...and to minimize harm where it is foreseeable and unavoidable.

1.22 Delegation to & Supervision of Subordinates

- A. Psychologists delegate to their employees...only those responsibilities that such persons can reasonably be expected to perform competently, on the basis of their education, training or experience, either independently or with the level of supervision being provided; and
- B. Psychologists provide proper training and supervision to their employees or supervisees and take reasonable steps to see that such persons perform services responsibly, competently and ethically.

1.25 Fees and Financial Arrangements

- C. Psychologists' fee practices are consistent with law; and
- D. Psychologists do not misrepresent their fees.

1.26 Accuracy in Reports to Payors and Funding Sources

...psychologists accurately state the nature of the research or service provided, the fees or charges, and where applicable, the identity of the provider...

2.06 Unqualified Persons

Psychologists do not promote the use of psychological assessment techniques by unqualified persons.

ASPPB Code of Conduct

III(G)1: Disclosure of Cost Service

The Psychologist shall not mislead or withhold from the client, a prospective client or third party payor, information about the cost of his/her professional services.

III(G)2: Reasonableness of Fee

The Psychologist shall not exploit the client or responsible payor by charging a fee that is excessive for the services performed...

III(J)2 Delegating Professional Responsibility

The psychologist shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide such services.

These principles clearly indicate that Psychologists (not solely neuropsychologists) may ethically employ subordinates to perform certain duties relevant to the licensed psychologist's professional practice. In so doing, the licensee must adhere to the above principles specifically and to the entire ethics codes in general, and to accept full responsibility for their employees' professional actions.

I do believe that the above answers your question #1, and outlines the parameters of your question #3.

Finally, your question #2 has been addressed previously, in that I served as Board representative to the committee in question, with a meeting having been held in December 1999.

If I may be of further assistance, please do not hesitate to contact me.

Respectfully,

Thomas Collins (Ed)

Thomas Collins, Ed.D.
Chair, Board of Examiners of Psychologists

Enc. (2) APA Code
ASPPB standards

Cc: Anne Head, Director, Licensing & Enforcement
Sheila Comeford, Maine Psychological Association

Appendix F

Applicable Federal Department of Education Regulations

[Code of Federal Regulations]
[Title 34, Volume 2, Parts 300 to 399]
[Revised as of July 1, 2000]
From the U.S. Government Printing Office via GPO Access
[CITE: 34CFR300.136]

[Page 24-26]

TITLE 34--EDUCATION

CHAPTER III--OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

PART 300--ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES--Tabl

Subpart B--State and Local Eligibility

Sec. 300.136 Personnel standards.

(a) Definitions. As used in this part--

(1) Appropriate professional requirements in the State means entry level requirements that--

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are served by State, local, and private agencies (see Sec. 300.2);

(2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) Profession or discipline means a specific occupational category that--

(i) Provides special education and related services to children with disabilities under Part B of the Act;

(ii) Has been established or designated by the State;

(iii) Has a required scope of responsibility and degree of supervision; and

(iv) Is not limited to traditional occupational categories; and

(4) State-approved or -recognized certification, licensing, registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) Policies and procedures. (1) (i) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

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(ii) The policies and procedures required in paragraph (b) (1) (i) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(2) Each State may--

(i) Determine the specific occupational categories required to provide special education and related services within the State; and

(ii) Revise or expand those categories as needed.

(3) Nothing in this part requires a State to establish a specified

training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section.

(c) Steps for retraining or hiring personnel. To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d) Status of personnel standards in the State. (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA and available to the public.

(e) Applicability of State statutes and agency rules. In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities must be considered.

(f) Use of paraprofessionals and assistants. A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act.

(g) Policy to address shortage of personnel. (1) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section, within three years.

(2) If a State has reached its established date under paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.

(3)(i) Each State must have a mechanism for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the

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State for a specific profession or discipline.

(ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under Sec. 300.135.

(Authority: 20 U.S.C. 1412(a)(15))

[Code of Federal Regulations]
[Title 34, Volume 2, Parts 300 to 399]
[Revised as of July 1, 2000]
From the U.S. Government Printing Office via GPO Access
[CITE: 34CFR300.110]

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TITLE 34--EDUCATION

CHAPTER III--OFFICE OF SPECIAL EDUCATION AND
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PART 300--ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES--Tabl

Subpart B--State and Local Eligibility

Sec. 300.110 Condition of assistance.

State Eligibility--General

(a) A State is eligible for assistance under Part B of the Act for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the conditions in Secs. 300.121-300.156.

(b) To meet the requirement of paragraph (a) of this section, the State must have on file with the Secretary--

(1) The information specified in Secs. 300.121-300.156 that the State uses to implement the requirements of this part; and

(2) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information.

(Authority: 20 U.S.C. 1412(a))

[Code of Federal Regulations]
[Title 34, Volume 2, Parts 300 to 399]
[Revised as of July 1, 2000]
From the U.S. Government Printing Office via GPO Access
[CITE: 34CFR300.23]

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Subpart A--General

Sec. 300.23 Qualified personnel.

As used in this part, the term qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

(Authority: 20 U.S.C. 1221e-3)