

Is the term “Psychological Nature” a term that incorporates the word “Psychological”?

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Seemingly Circular Law:

I began practice as a forensic evaluator in 2003. Since that time I have appeared in court testifying regarding sexually violent predators well over 130 times. Somewhat recently it occurred to opposing counsel, in a trend that suggested a collaborative effort, that I could not use the word “psychological” in any way within my testimony. Because my Ph.D. is in Mental Health Counseling they assumed that I was legally prevented from referring to my reports “psychological evaluations” or from even stating that I had given a “psychological test” or made a “psychological diagnosis”. The idea seemed absurd to me, as I had taken graduate courses titled “psychological testing” and others with titles having the word “psychology” in them, such as “Psychology of Adjustment” or “Developmental Psychology”. I am authorized to purchase and administer restricted psychological tests, and I have post-doctoral training in many of those tests. Also, I thought of the word “psychology” as being in the general parlance of our language. “The psychology of war” or the “psychology of love” are terms used by non-degreed persons. Are such uses of the word really a violation of some law?

Before I recount my journey in ambiguity let me clarify that I am not seeking nor have I ever sought to describe myself as a psychologist. I am addressing the word “psychological”. However, every time I ask “can I describe my report or my diagnosis as psychological?” the answer is invariably “you cannot describe yourself as a psychologist”. Now, that is an absurd answer that does not respond to the question, yet as you will read in this description of my quest for clarification both the Mental Health Counseling Board and the Board of Psychology found it repeatedly necessary to clarify this for me. As we know, saying that I gave the client a psychological test is not the same as swearing under oath that I am a psychologist, and it adds to the confusion when licensing boards aren’t clear on the difference.

In searching for what it is that might prohibit me from using a particular word (psychological) I found that my Florida license allows me to use:

“methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse.”

This suggests, to a non-attorney like me at least, that we as counselors can use methods, tools and approaches of a “psychological nature”. So, can I describe a report as “psychological” in nature? Well, looking a little further down it is noted that

“In addition, this definition shall not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as “psychological,” except to relate specifically to the definition of practice authorized in this subsection.”

Now that’s confusing. The first section indicated that I am qualified to use approaches of a psychological nature evaluate, assess, diagnose, treat and prevent emotional and mental disorders. The second section offers a caution that, at first, seems to disallow me to use the word “psychological” but then adds “except within those parameters already described”. Well...the description already provided encompasses the entire spectrum of mental health services and practices. So within that broad spectrum of being counselors, counselors are allowed to describe their work, their testing, their reports and their procedures as psychological in nature. Except in those areas not covered. Got it?

Apparently Conflicting Rules:

Next I looked at the rules for psychologists, a different profession (and not one by which I am governed) and noted that the rule the attorney’s are throwing at me comes from a rule under that professional license. Here we find that:

“No person shall hold herself or himself out by any title or description incorporating the words, or permutations of them, “psychology,” “psychological,” or “psychodiagnostic,” or describe any test or report as psychological, unless such person holds a valid, active license under this chapter or is exempt from the provisions of this chapter.”

Really? So, even though I am trained and licensed to administer tests of a “psychological nature” and to describe my work as psychological according to my own license, their license prohibits me from describing my work or my tests as “psychological”? So, even if I clarify to a jury that my Ph.D. is in Mental Health Counseling I cannot say I conducted a “psychological battery” or that the client shows a “psychological profile associated with...”?

“Permutations” seems like a broad term. However, after reading it a time or two I decided two things. First, I’m not licensed under this law, so I really only care about my LMHC license. Second, since I am licensed in Florida, I must be exempt from this warning. Oh, by the way, violating this rule results in a criminal charge of a first degree misdemeanor.

Seeking clarification on these matters I wrote to both boards. I reiterated the apparent conflict regarding the laws of the two licenses. While the mental health counselor can conduct evaluations of a “psychological nature” and describe tests, reports, or procedures as “psychological” the Psychology Board prohibits anyone, regardless of training, education or experience from even using the word “psychological” or any permutation of that or any similar sounding word.

As a side note, it is interesting to notice that the Board of Mental Health Counseling, by indicating that counselors may use ““methods of a psychological nature”, is actually in direct violation of the Board of Psychology’s rule that no one except a psychologist may use any “description incorporating the words, or permutations of them, “psychology,” “psychological...”

Psychology Board – Round 1:

The Psychology Board initially wrote back and restated to me what I already knew. That is, we cannot pass ourselves off as being licensed or degreed in a field in which we are not licensed or degreed. Good advice for every professional. They then stated that since I am licensed as a Mental Health Counselor I should turn to my own board for clarification beyond this insight. They were already aware of the fact that I had written to my own board and suggested I follow their direction.

My Board:

My own licensing board also repeated what I already knew (don’t say you’re licensed in a profession you are not licensed in), and they also clarified that I can “provide testing, treatment and a diagnosis of a psychological nature.” This didn’t really clarify anything, as the answer to my question was the same as the question I asked. They further stated that they had no jurisdiction over the Board of Psychology.

Board of Psychology – Round 2:

So I wrote back to the Board of Psychology and stated that my own licensing board indicated I can, in fact, conduct a practice of a psychological nature. The Board of Psychology had advised me to seek clarification from my own Board, and my own Board said that I may label any test, report, or procedure as psychological within the parameters of my training. Therefore, it is my conclusion that I could entitle my written reports “Psychological Assessments”. I requested a written exemption from their rules clarifying that they agreed with my licensing board.

Board of Psychology – Round 3:

Three months later The Psychology Board, under the direction of Attorney General of the State of Florida, wrote back and stated that I did not have reason to inquire into their licensing rules, as I am not a Psychologist and therefore not covered under those rules. Since I am not covered under the rules I am not “substantially effected”. I wrote back and pointed out that this was absurd. Only persons who are **not** licensed would ever inquire about this rule and only they, in fact, would ever be substantially affected. If the Board of Psychology is threatening legal recourse against anyone using the word or permutations of the word “Psychological” then those persons are the persons who are affected by the first degree misdemeanor charge. Those persons are those without a license in psychology.

The Board of Psychology took this under advisement in January 2011.

Board of Psychology – Final Decision:

Three months later that the Board decided I did have standing. They then restated the rules of mental health counseling as well as the rules of psychology both of which I included in my first, second and third letter to them. They reiterated the finding of the Board of Mental Health Counseling, stating that I may conduct work of a “psychological nature” but that I cannot use the word “psychological” to describe the nature of that work.

Finally, after repeating the very same statements that were the source of my confusion in the first place, they concluded that they would not issue any finding as “the statutes are clear as written. Even if the Board thought it should clarify the meaning of the statute, and it does not, such interpretation would have broad applicability and would be more appropriate for rulemaking.”

“Clear as written”?

Lessons Learned:

Anyway, the outcome seems to be this: The Board of Psychology made an effort to create some rule which is far, far too broad and not at all enforceable. Several different professions would seemingly be effected by this effort to usurp the very word “Psychology” and “Psychological” from the English language. However, when asked to clarify that attempt to pirate a word out of the language or to explain how it applies to other fully-licensed mental health practitioners they could not or would not define or clarify the rule. So when some Psychologist in Florida tells you that you can’t describe your report as a Psychological Evaluation tell him or her that your board says you can, and that their board has never clarified the meaning or the intent of that rule. And besides, you’re not licensed by their board; you’re licensed by your own board...and proud of it.

The part that disturbs me most is that the Board of Mental Health Counseling, Family Therapy or Social Work even allowed this failed effort to happen. It is no secret that psychologists have long tried to hold down other mental health professions; trying to keep them out of the courtrooms, out of custody and competency evaluations. Much as Psychiatrists did to Psychologists, so now Psychologists do to all other mental health professions. But how did this attempt at a rule go through without any pushback from the other professions? As long as we allow the profession of Psychology to define the profession of Mental Health Counseling we will always be limited in our practice. That is why it is so difficult for us to get into court as an expert. We have allowed the competition to limit us and to limit our very vocabulary. Never allow your competitor to define your playing field.