

BEFORE THE IOWA BOARD OF PSYCHOLOGY

Re:)
)
) **ORDER DENYING PETITION**
) **FOR RULE MAKING**
Petition by Timothy Foley, Aditi Rao,)
Alex Bare et al for the adoption of rules)
Relating to Sexual Orientation Change)
Practices)

PROCEDURAL FRAMEWORK AND HISTORY

Iowa Code section 17A.7(1) allows an interested person to “petition an agency requesting the adoption, amendment, or repeal of a rule.” The Board’s rules regarding petitions for rule making are found in 645 IAC chapter 6. The Board has the ability to either deny a petition in writing on the merits, stating its reasons for the denial, or initiate rule making proceedings.

A Petition for Rule Making regarding sexual orientation conversion efforts (SOCE) was received by the Board on February 23, 2016. The Petition was filed by several individuals and is captioned in the names of Timothy Foley, Aditi Rao, Alex Bare, et al. The Petition substantially complies with the requirements for a rule making petition as described in 645 IAC chapter 6. Petitioners agreed to allow the Board additional time (beyond 60 days) to respond to the Petition, in accordance with 645 IAC 6.4(2). Initially, Petitioners agreed to allow the Board to consider the Petition at its regularly scheduled meeting on May 6, 2016. Petitioners presented information regarding the Petition to the Board at the May 6, 2016 meeting. At the meeting, Petitioners agreed to another extension to allow additional time for information to be submitted and considered by the Board at its regularly scheduled meeting on August 12, 2016. The Board indicated it would make its decision at the August 12, 2016, meeting, with a written decision to follow shortly thereafter.

The Petition requested a new subrule under 645 IAC 242.2, which contains the laundry list of items for which a licensee can be disciplined by the Board. The Petition asked that the following be added to the list of disciplinary grounds:

645 IAC 242.2(33). A licensed mental health provider shall not engage in sexual orientation change efforts for any patient under the age of eighteen. Sexual orientation change efforts are defined as any practice by a mental health provider that seeks to change an individual’s sexual orientation, including but not limited to efforts to change behaviors or gender expressions or gender identity, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex. “Sexual orientation change efforts” do not include any of the following:

- a. Counseling or therapy that provides acceptance, support, and understanding of the individual or the facilitation of an individual's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices.
- b. Psychotherapies that do not seek to change sexual orientation.
- c. Counseling for an individual seeking to transition from one gender to another.

Additional information and comments were submitted to the Board regarding SOCE, which are considered part of the record in this case. The Board received public comment and deliberated the Petition during open session at its August 12, 2016, quarterly Board meeting. After much discussion, the Board voted unanimously (5-0) to deny the Petition. The following is the Order Denying the Petition for Rule Making, which becomes effective on the date of issuance.

STATUTES AND RULES GOVERNING THE PRACTICE OF PSYCHOLOGY

Iowa Code chapter 154B is the enabling act for the Board. Iowa Code section 154B.1 defines the practice of psychology to mean:

The application of established principles of learning, motivation, perception, thinking, and emotional relations to problems of behavior adjustment, group relations, and behavior modification, by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to: Counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills; and the teaching of such subject matter, and the conducting of research on the problems relating to human behavior.

Chapter 154B gives the Board jurisdiction over Iowa-licensed psychologists. Iowa Code section 154B.5 limits the scope of chapter 154B, stating:

Nothing in this chapter shall be construed to prevent qualified members of other professional groups such as physicians, osteopathic physicians, optometrists, chiropractors, members of the clergy, authorized Christian Science practitioners, attorneys at law, social workers, or guidance counselors from performing functions of a psychological nature consistent with the accepted standards of their respective professions, if they do not use any title or description stating or implying that they are psychologists or are certified to practice psychology.

Pursuant to its authority in Iowa Code chapters 147, 154B, and 272C, the Board has

promulgated administrative rules comprising three chapters pertaining to licensure, continuing education, and discipline. The Board does not have a practice chapter. The Petition seeks to add a subrule within the discipline chapter, 645 IAC chapter 242. Currently, none of the Board's rules explicitly authorize or prohibit any particular modality. In fact, no modalities are explicitly mentioned in any of the Board's rules.

ANALYSIS

Attempts to ban SOCE have been unsuccessful at the Iowa legislature. Senate File 334, which would have banned SOCE by a number of licensed individuals, including psychologists, was passed by the Iowa Senate in 2015, but failed to make it through the Iowa House. The language of the proposed rule mirrors the language of SF 334. The proposed rule uses the term "mental health provider", which aligns with the terminology of SF 334, even though this Board only has the authority to regulate licensed psychologists. This Board lacks the authority to promulgate a rule affecting all mental health providers.

None of the information submitted indicates that any licensed psychologists are engaging in SOCE in the state of Iowa. This Board has never received a complaint regarding an Iowa licensed psychologist engaging in SOCE. This Board only has jurisdiction over licensed psychologists.

The information submitted regarding SOCE demonstrates that certain practices that fall under the definition of SOCE may be unethical and harmful and detrimental to the public. The information also suggests that certain SOCE may not be based on the application of established principles—meaning such practices may fall outside of the definition of the practice of psychology altogether. Psychologists should not utilize modalities that are not considered the practice of psychology under the guise of their psychology license. Licensed psychologists engaging in certain SOCE may be subject to disciplinary action as described below.

Any person may file a complaint against a licensed psychologist if there are concerns about the practice of the psychologist or if there is reason to believe a patient is being harmed by the practice of the psychologist. We have general authority to discipline licensed psychologists who are: engaging in practice harmful or detrimental to the public, pursuant to Iowa Code § 147.55(3) and 645 IAC 242.2(4); practicing outside of the scope of the profession, pursuant to Iowa Code § 147.55(9) and 645 IAC 242.2(5); and practicing incompetently, pursuant to Iowa Code § 147.55(2) and 645 IAC 242.2(3). In addition, we have adopted the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association and 645 IAC 242.2(1) gives us the authority to discipline licensed psychologists for violating it. Specifically, principles 3.01—Unfair Discrimination, 3.02—Sexual Harassment, 3.03—Other Harassment, and 3.04—Avoiding Harm are a non-exhaustive list of the ethical principles potentially implicated if a licensed psychologist engages in certain SOCE.

This Board is not in the business of regulating specific psychotherapy modalities through explicit approvals and disapprovals. A licensed psychologist has an obligation to

ensure their practice does not violate the APA's Ethical Principles/Code of Conduct and does not fall within any of the Board's grounds for discipline. Any complaint regarding SOCE employed by a licensed psychologist will be investigated and reviewed on a case-by-case basis. The Board believes that we already have sufficient disciplinary grounds to impose discipline on a licensed psychologist engaged in the types of problematic SOCE that have been documented and submitted as part of the record. Licensed psychologists should be on notice that, despite the Board's denial of the rule making petition, we will not tolerate licensed psychologists engaged in SOCE that are harmful or unethical. We are concerned that explicitly approving or disapproving of particular modalities may unintentionally prohibit beneficial psychotherapies and may unintentionally authorize harmful psychotherapies.

The Board intends to deal with any instances of SOCE by licensed psychologists on a case-by-case basis through the complaint and disciplinary process, recognizing that licensed psychologists should be on notice that certain SOCE may be unethical or harmful to the public. The Board will ensure that any complaints submitted regarding licensed psychologists' use of SOCE will be investigated and the Board will determine whether disciplinary action is appropriate based on the particular facts and circumstances of the complaint. Handling this issue on a case-by-case basis, as opposed to a ban, will ensure that beneficial therapies are not unintentionally discontinued in Iowa, while ensuring that problematic psychologists can be disciplined for inappropriately using SOCE.

ORDER

For all of the reasons described above, the Petition for Rule Making is hereby **DENIED** on the 26th day of August, 2016.



Chairperson
Iowa Board of Psychology

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PETITIONER