STATE REGULATION OF PSYCHOLOGISTS

Following a trend initiated by Connecticut in 1946,[1] Missouri recently became the fiftieth state to enact legislation regulating the practice of psychology.[2] Like occupational licensing in general, the regulation of psychologists is an exercise of the state's police power to protect the public health and welfare.[3] Advocates of such regulation justify legislation regulating the practice of psychology as necessary to protect the consumer from unskilled and incompetent practitioners.[4] Critics challenge the effectiveness of occupational regulation,[5] however,

1. 1945 Conn. Pub. Acts 257. *See* Miles, *A Year of State Certification of Psychologists*, 1 AM. PSYCH. 393 (1946). Kentucky and Virginia soon followed Connecticut's lead in the enactment of legislation regulating psychologists. 1948 Ky. Acts 380; 1950 Va. Acts 990. *See The Certification of Clinical Psychologists in Virginia*, 1 AM. PSYCH. 395 (1946). *See generally* Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 COLUM. L. REV. 474 (1951).

2. 1977 Mo. Laws 527.

3. Pitts v. State Bd. of Examiners of Psychologists, 222 Md. 224, 226, 160 A.2d 200, 201 (1960). As an exercise of the state's police power, such legislation need only be reasonably related to the exercise of such power. National Psychological Ass'n for Psychoanalysis v. University of New York, 8 N.Y.2d 197, 168 N.E.2d 649, 203 N.Y.S.2d 821, *appeal dismissed*, 365 U.S. 298 (1960). *See also* Annot., 81 A.L.R.2d 791 (1962); Comment, *Regulating Medical Psychotherapists in Illinois: A Question of Balance*, 11 J. MAR. J. OF PRAC. & PROC. 601, 625-26 (1978). Courts have upheld the regulation of many other occupations on the basis of the state's police power. *See, e.g.*, Mann v. Board of Medical Examiners, 31 Cal. 2d 30, 187 P.2d 1 (1947) (physicians); Doyle v. Board of Barber Examiners, 291 Cal. App. 2d 504, 33 Cal. Rptr. 349 (1963) (barbers); Debruhe v. District of Colum. Hackers' License, 384 A.2d 421 (D.C. 1978) (hackers); Brooks v. State Bd. of Funeral Directors and Embalmers, 233 Md. 98, 195 A.2d 728 (1963) (funeral directors); Peterson v. University of New York, 14 N.Y.2d 432, 201 N.E.2d 27, 252 N.Y.S.2d 452 (1964) (landscape architects); Texas State Bd. of Pub. Accountancy v. Fulcher, 515 S.W.2d 950 (Tex. Civ. App. 1974) (accountants).

4. National Psychological Ass'n for Psychoanalysis v. University of New York, 8 N.Y.2d 197, 202, 168 N.E.2d 649, 651-52, 203 N.Y.S.2d 821, 825, *appeal dismissed*, 365 U.S. 298 (1960); Kayton, *Statutory Regulation of Psychologists: Its Scope and Constitutionality*, 33 ST. JOHN'S L. REV. 249, 249-50 (1959). The need to protect the public from unskilled or inadequately trained psychologists is greater than the need for consumer protection from, for example, unskilled barbers, because of the difficulty the consumer encounters in ascertaining the competence of those who pretend to be psychologists and the consumer's comparative inability to recognize when he or she has been injured by a psychologist. Cathcart & Graff, *Occupational Licensing: Factoring It Out*, 9 PAC. L.J. 147, 147 (1978). Further, the probability of a successful malpractice suit against a negligent or incompetent psychotherapist is slight. A plaintiff faces the problems of defining the psychotherapists' duty to the consumer, identifying the proximate cause of the injury, and assessing the degree of the injury and the appropriate amount of damages. *See* Comment, *Regulating Medical Psychotherapists in Illinois: A Question of Balance*, 11 J. MAR. J. OF PRAC. & PROC. 601, 616-24 (1978).

5. Frieberg, *The Song is Ended but the Malady Lingers On: Legal Regulation of Psychotherapy*, 22 ST. LOUIS U.L.J. 519, 533 (1978) (evidence lacking that regulatory statutes actually protect

and allege that members of the occupation benefit more from regulation than consumers.[6] Psychologists and members of the public thus

public from incompetent psychotherapists); Rogers, *Some New Challenges*, 28 AM. PSYCH. 379, 382 (1973) (as many certified charlatans exist as uncertified). Rogers also complains that an effect of certification is to freeze the profession in its past image. Applicants for certification are often required to pass an examination containing questions written ten to twenty years earlier and given by examiners who have ten to twenty years of experience. *Id.*

Another concern regarding the effectiveness of occupational regulatory statutes is that they contain standards for admission to the profession that are unrelated to an individual's ability to practice the profession with competence. The California legislature eliminated many requirements it considered to be arbitrary, such as citizenship, good moral character, and age above the age of majority. *See* Cathcart & Graff, *Occupational Licensing: Factoring It Out*, 9 PAC. L.J. 147, 154-55 (1978).

6. Members of a profession seek licensing "always on the purported ground that licensure protects the uninformed public against incompetence or dishonesty, but invariably with the consequence that members of the licensed group become protected against competition from newcomers." Gellhorn, *Abuse of Occupational Licensing*, 44 U. CHI. L. REV. 6, 11-12 (1976). The author observes further that:

> [O]ccupational licensing has typically brought higher status for the producer of services at the price of higher costs to the consumer; it has reduced competition; it has narrowed opportunity for aspiring youth by increasing the costs of entry into a desired occupational career; it has artificially segmented skills so that needed services, like health care, are increasingly difficult to supply economically; it has fostered the cynical view that unethical practices will prevail unless those entrenched in a profession are assured of high incomes; and it has caused a proliferation of official administrative bodies, most of them staffed by persons drawn from and devoted to furthering the interests of the licensed occupations themselves.

Id. at 16-18 (footnotes omitted). *See also* Gross, *The Myth of Professional Licensing*, 33 AM. PSYCH. 1009 (1978) (licensing analogous to craft guilds); Wallace, *Occupational Licensing and Certification: Remedies for Denial*, 14 WM. & MARY L. REV. 46 (1972) (motives for licensing include commercial advantage and enhanced professional status and prestige). *But see* Pfeffer, *Some Evidence on Occupational Licensing and Occupational Incomes*, 53 SOC. FORCES 102 (1974) (no evidence that licensing per se affects occupational income).

At a symposium in 1950 sponsored by the Conference of State Psychological Associations, psychologists maintained that their fundamental reason for seeking licensure was protection of the public, but admitted that self-protection was also an important consideration. This need for self-protection is evident in a 1948 episode in the New York state legislature. A senator introduced an amendment to the Medical Practices Act that would have required all persons to obtain a physician's license before they could diagnose or treat mental or nervous disorders. The amendment would have essentially prohibited most clinical psychologists from practicing. The proposed amendment died in committee, due largely to the active opposition of New York's state psychological committee. Pratment, *The Problem of Protecting the Public by Appropriate Legislation for the Practice of Psychology*, 5 AM. PSYCH. 102, 102-03 (1950).

Other motives behind the psychologists' "surge toward professionalization" include their desire to achieve eligibility for payment under any national health insurance program, and their need to meet current pressures placed on all health care specialties for increased accountability and upgrading of skills. Walsh, *Professional Psychologists Seek to Change Roles and Rules in the Field*, 203 SCIENCE 338, 340 (1979).

Critics of occupational licensing observe that the restriction on entry of newcomers into the profession raises antitrust concerns. *See* Wallace, *Occupational Licensing and Certification: Reme-*

experienced great difficulty in persuading state legislators to regulate the practice of psychology. Their task was made more difficult because psychology was a developing and largely undefined profession[7] with

dies for Denial, 14 WM. & MARY L. REV. 46, 89-108 (1972); Comment, *Occupational Licensing: An Antitrust Analysis*, 41 MO. L. REV. 66 (1976). *See also* Barron, *Business and Professional Licensing—California, A Representative Example*, 18 STAN. L. REV. 640 (1966), acknowledging that restriction of individual freedom to enter an occupation constitutes a monopolistic restriction on the operation of a free market and consequently increases consumer prices. Barron asserts, however, that "licensing is economically justified if the burden of higher prices is less than the social costs that would arise from damage to the public health, safety, welfare, or morals that would occur in the absence of licensing." *Id.* at 643. The author further maintains that occupations are licensed to insure that consumers can choose between competent sellers in the licensed profession, not to decrease the number of sellers. *Id.*

See generally Note, *Occupational Licensing: An Argument of Asserting State Control*, 44 NOTRE DAME LAW 104, 109 (1968) (summary of criticisms of state occupational licensing).

7. Because "psychology" could not be clearly defined, early proponents of psychologist regulation often disagreed about who should be regulated. Psychologists differed on whether states should require all psychologists, including "academic" or "experimental" psychologists, to obtain a license, or whether licensure only of "professional" or "clinical" psychologists would adequately protect the public. *See* Krech, *A Note on Fission*, 1 AM. PSYCH. 402, 402 (1946).

Psychologists also debated whether specialty licensing should exist for the various branches of applied psychology as distinguished, for example, from clinical, personnel, and counseling psychologists, or generic licensure of all psychologists. Proponents of specialty licensing argue that it offers maximum assurance against malpractice; opponents are concerned with the problems of enforcing specialty licensing, as well as the danger of splitting psychology into splintered groups. *See* Heiser, *The Need for Legislation and the Complexity of Problem*, 5 AM. PSYCH. 104, 104, 108 (1950); Wendt, *Legislation for the General Practice of Psychology Versus Legislation for Specialties within Psychology*, 5 AM. PSYCH. 107, 107-08 (1950). As an alternative to specialty licensing, some psychologists advocate uniform licensing for professional psychologists holding a doctorate in psychology, and separate licensure for "psychological technicians" possessing a masters degree. *See* Kelly, *Single Level Versus Legislation for Different Levels of Psychological Training and Experience*, 5 AM. PSYCH. 109, 109 & 111 (1950); Wolfe, *Legal Control of Psychological Practice*, 5 AM. PSYCH. 651, 652-53 (1950).

The divergence between academic and professional psychologists persists today. Professional psychologists have gained strength because job availability for clinical psychologists has grown while the marketplace for academic psychologists has dwindled. Academic psychologists no longer dominate the American Psychological Association; increasing numbers of clinical psychologists have become members and officers. The two groups continue to disagree about the scope of licensing laws. Academic psychologists argue against being required to obtain a license primarily designed for practitioners. Academic psychologists may have off-campus consultations, however, and professional psychologists insist they be required to meet licensing standards. *See* Walsh, *Professional Psychologists Seek to Change Rules in the Field*, 203 SCIENCE 338, 339-40 (1979). Evidence supports a trend toward regulation of private practitioners alone. The American Psychological Association Board of Directors recently proposed guidelines for state legislation that would apply only to psychologists providing "direct ameliorative services." Foltz, *Sun Sets on Psychology Licensing Boards in South Dakota and Florida*, APA MONITOR 3, 14 (Sept./Oct. 1979). For futher discussion of the scope of psychologist licensing laws, see notes 82-110 *infra* and accompanying text.

uncertain professional standards.[8] Eventually state legislatures adopted legislation to regulate the practice of psychology. This legislation assumes the form of either certification laws[9] or licensure laws.[10]

8. In 1953 the American Psychological Association Committee on a Directory of Psychological Service Centers and the American Board of Psychological Services issued guidelines for appropriate standards for psychologists that influenced states enacting licensing and certification laws in the 1950s and 1960s. The American Psychological Association continues to be active in this respect. In 1970 it established a Task Force on Standards for Psychologists, which recommends standards for psychological services in all settings, and in 1975 the American Psychological Association Council created a Standing Committee on Standards for Providers of Psychological Services and charged it with continually reviewing and revising standards. *See* W. VAN HOOSE & J. KOTTLER, ETHICAL AND LEGAL ISSUES IN COUNSELING AND PSYCHOTHERAPY 111-13 (1977).

Psychologists in New York encountered additional obstacles to obtaining a licensure statute. Psychiatrists, fearing encroachment on their professional territory, enlisted the support of the Medical Society of the State of New York, the American Psychiatric Association, and the American Medical Association to oppose proposed psychology licensing laws. In 1951 Governor Dewey vetoed the New York Psychologist licensing bill, in part because of the objections of the medical organizations. *See* Comment, *The American Medical Association: Power, Purpose, and Politics in Organized Medicine*, 63 YALE L.J. 938, 968-69 (1954). New York finally enacted a psychologist licensing law in 1956. 1956 N.Y. Laws 1626.

9. Certification laws simply restrict the use of a professional title to certified practitioners. *See* VAN HOOSE & KOTTLER, *supra* note 8, at 121. For examples of certification laws see MD. ANN. CODE art. 43, §§ 618-644 (1971); MINN. STAT. ANN. §§ 148.79-.86 (West 1970); N.Y. EDUC. LAW §§ 7600-7605 (McKinney 1972); WASH. REV. CODE §§ 18.83.010-.900 (1978). The Maryland psychologist certification statute survived judicial review in Pitts v. State Bd. of Examiners of Psychologists, 222 Md. 224, 160 A.2d 200 (1960). Plaintiffs alleged that the act, by merely restricting use of the words "psychological," "psychologists," and "psychology," failed to prevent incompetent persons from continuing their practice and inadequately protected the public. The act's restrictions, therefore, were arbitrary and unreasonable and violative of the due process clause of the fourteenth amendment. *Id.* at 226-27, 160 A.2d at 201. The court held that the act is constitutional on the basis that it is within the scope of the state's police power and is rationally related to a legitimate public interest. Because the act represents a step in the direction of public protection, the court refused to question the adequacy of the legislative scheme. *Id.* at 226-27, 160 A.2d at 201-02. The court further noted that certification statutes were validly employed in Maryland with regard to midwives, architects, registered nurses, licensed practical nurses, registered plumbers, and certified public accountants. *Id.* at 228, 160 A.2d at 202. The court in National Psychological Ass'n for Psychoanalysis v. University of New York accepted the same argument in upholding the New York psychologist certification act, reasoning that "if the act is a step in the direction of something which will enure to the public health and comfort, that it does not go as far as it might, is not a reason for invalidating it." 8 N.Y.2d 197, 202-03, 168 N.E.2d 649, 652, 203 N.Y.S.2d 821, 825, *appeal dismissed*, 365 U.S. 298 (1960) (quoting People ex rel. Nechamcus v. Warden of City Prison, 144 N.Y. 529, 538-39, 39 N.E. 686, 689 (1895)).

Commentators maintain that there is a third type of statute regulating psychotherapists called the conjunctive statute, which is a combination of certification and licensure statutes. Frieburg, *The Song is Ended but the Malady Lingers On: Legal Regulation of Psychotherapy*, 22 ST. LOUIS U.L.J. 519, 530 (1978). *See* Kayton, *Statutory Regulation of Psychologists: Its Scope and Constitutionality*, 33 ST. JOHN'S L. REV. 249, 251-52 (1959) (includes New York among states with conjunctive statutes). *But cf.* National Psychological Ass'n for Psychoanalysis v. University of New

Persons seeking to obtain or retain a license to practice psychology challenge psychologist licensing laws on several grounds.[11] Certain groups challenge the scope of licensing statutes.[12] Others question whether the statutes unlawfully delegate legislative power to administrative agencies.[13] Other challenges focus on due process concerns, such as specificity and clarity of statutory terms,[14] procedural fairness in licensing and license revocation,[15] and stringency of grandfather licensing requirements.[16]

This Note will examine Missouri's psychologist licensing act and compare it with laws regulating psychologists in other states. First, it examines the administration of the Missouri statute. The Note then focuses on issues arising from implementation of psychologist licensure or certification laws in Missouri and other states. Finally, the Note examines possible problems and issues that may confront state regulation of psychologists in the future.

I. ADMINISTRATION OF THE MISSOURI PSYCHOLOGIST LICENSING ACT

The Missouri psychologist licensing statute, enacted in 1977,[17] ap-

York, 8 N.Y.2d 197, 200, 168 N.E.2d 649, 651, 203 N.Y.S.2d 281, 284, *appeal dismissed*, 365 U.S. 298 (1960) (identifies New York's statute as a certification law).

10. Licensure laws prohibit the practice of an occupation by unlicensed persons. *See, e.g.*, ALA. CODE §§ 34-26-1 to -48 (1977); CAL. BUS. & PROF. CODE §§ 2900-2996 (Deering 1975); MO. REV. STAT. §§ 337.010-070 (1978); OKLA. STAT. ANN. tit. 59, §§ 1351-1375 (West 1971). An early concern with regulating psychologists through licensing laws was that "activities which the psychologist is carrying on in the practice of psychology have not . . . yet been defined to the point where a state law can be enacted saying that these activities may be carried on only by a person who has the license of a psychologist." Saffir, *Certification Versus Licensing Legislation*, 5 AM. PSYCH. 105, 106 (1950). For this reason commentators urged that licensing laws be kept flexible, avoiding a specific delineation of psychological activities. *See* Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 COLUM. L. REV. 474, 495 (1951).

11. *See* notes 46-119 *infra* and accompanying text.

12. *See* notes 80-108 *infra* and accompanying text.

13. *See* notes 109-119 *infra* and accompanying text.

14. *See* notes 46-61 *infra* and accompanying text.

15. *See* notes 62-79 *infra* and accompanying text.

16. A grandfather clause permits individuals engaged in the practice of a newly regulated profession at the time of regulation to obtain a license or certificate without fulfilling all of the statutory requirements placed on future licensees. Taylor v. Hayes, 131 Ill. App. 2d 305, 309, 264 N.E.2d 814, 816 (1970). *See* notes 144-69 *infra* and accompanying text.

17. 1977 Mo. Laws 527. The licensing bill was introduced in the House of Representatives on January 5, 1977. H.B. 255, 79th General Assembly, 1st Sess. (1977). The bill was described as "[a]n Act relating to a state committee of psychologist examiners to register and regulate the practice of psychology, with penalty provisions," and its stated purpose was to create a "State Commit-

plies to any individual who "holds himself out to the public by any title or description of services incorporating the words 'psychology', 'psychological', or 'psychologist', and offers to render or renders psychological services . . . for a fee. . . ."[18] The statute provides for the creation of a State Committee of Psychologists (the Committee) as an adjunct to the State Board of Registration of the Healing Arts[19] (the Board). The Board is assigned to the Division of Professional Registration[20] in the Department of Consumer Affairs, Regulation, and Licensing[21] (the De-

---

tee of Psychologist Examiners" that would function as an adjunct to the State Board of Registration for the Healing Arts. *Id.* The Senate Committee substitute for House Bill No. 255, passed by the House of Representatives on June 15, 1977, became Missouri's psychologist licensing law. S.C.S. for H.B. 255, 79th General Assembly, 1st Sess. (1977).

18. MO. REV. STAT. § 337.015(2) (1978). Psychological services involve:

> the application of principles, methods, and procedures of understanding, predicting, and influencing behavior such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, behavior modification, and psychotherapy; of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation; and of assessing public opinion.

Id. § 337.015(3). The statute further provides that:

> The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of adjustment problems and emotional and mental disturbances of individuals and groups; hypnosis; educational and vocational counseling; personnel selection and management; the evaluation and planning for effective work and learning situations; advertising and market research; and the resolution of interpersonal and social conflicts.

Id. § 337.015(4). This description of psychological activity is significantly more detailed than that found in most other state psychology statutes. *See, e.g.*, ARIZ. REV. STAT. ANN. § 32-2061 (Supp. 1979); MD. ANN. CODE art. 43, § 619(c) (1980); MINN. STAT. ANN. § 148.81 (West 1970); N.Y. EDUC. LAW § 7601 (McKinney 1972). Statutes that define the practice of psychology almost as extensively as Missouri's include CAL. BUS. & PROF. CODE § 2903 (Deering Supp. 1979); COLO. REV. STAT. § 12-43-102 (1978); GA. CODE ANN. § 84-3101 (1979); OKLA. STAT. ANN. tit. 59, § 1352 (West 1971).

19. MO. REV. STAT. § 337.050(1) (1978). The Board was established "for the purpose of registering, licensing, and supervising all physicians and surgeons, and midwives in this state." *Id.* § 334.120. The governor appoints the seven Board members; five must be graduates of accredited medical schools and two must be graduates of accredited schools of osteopathy. *Id.* House Bill No. 255 provided that the Committee chairman must be an *ex officio* member of the state Board of Registration of Healing Arts to participate in deliberations on all matters concerning psychology. H.B. 255 § 2(7), 79th General Assembly, 1st Sess. (1977). The statute does not include such a provision.

20. *See* Reorganization Act of 1974, § 4(15)-(16), app. B. at 4799 (1978).

21. The Missouri Constitution provides that:

> The department of consumer affairs, regulation and licensing, shall be in charge of a director appointed by the governor, by and with the advice and consent of the senate. The department shall administer all programs provided by law relating to the promotion of the economy of the state and its citizens and to the protection and improvement of the human rights, interests, and well-being of the people of the state.

MO. CONST. art. 4, § 36(a).

partment).

The Committee consists of five psychologists[22] appointed by the director of the Department.[23] In conjunction with the Board, the Committee guides, advises, and makes recommendations to the Department.[24] Committee members must represent diverse areas of psychology[25] and, except for members of the initial Committee, be licensed according to the Missouri licensing act.[26]

22. MO. REV. STAT. § 337.050(1) (1978). *Compare* ALA. CODE § 34-26-21 (1977) (five members of Board of Examiners in psychology, all psychologists) *and* GA. CODE ANN. § 84-102 (1979) (five members of State Board of Examiners of Psychologists, all psychologists) *and* ILL. ANN. STAT. ch. 111, § 5308 (Smith-Hurd 1978) (five members of Psychologists Examining Committee, all psychologists) *and* MD. ANN. CODE art. 43, § 621 (1980) (five members of State Board of Examiners of Psychologists, all psychologists) *and* N.Y. EDUC. LAW § 7602 (McKinney 1972) (eleven members of State Board of Psychologists, all psychologists) *and* OKLA. STAT. ANN. tit. 59, § 1354 (West Supp. 1979) (five members of State Board of Examiners of Psychologists, all psychologists) *with* CAL. BUS. & PROF. CODE §§ 2920-2922 (Deering Supp. 1980) (eight members of Psychology Examining Committee, three members of the public) *and* COLO. REV. STAT. § 12-43-103(3) (1973) (nine members of State Board of Psychologist Examiners, one a layman) *and* CONN. GEN. STAT. § 20-186 (1979) (five members of Board of Examiners of Psychologists, two members of the public) *and* KY. REV. STAT. ANN. § 319.020 (Baldwin 1979) (five members of State Board of Examiners of Psychologists, one a citizen at large). Members of the licensed profession serve on licensing boards because their expertise enables them to judge the competence of applicants for licensure. Critics, however, question the fairness and effectiveness of licensing boards composed exclusively of members of the licensed profession. Such boards are naturally inclined to serve their own, rather than the public, interests. Barron, *Business & Professional Licensing—California, A Representative Example*, 18 STAN. L. REV. 640, 649-50 (1966). Barron suggests that licensing boards be composed of nonmembers of the profession being licensed and members of the licensed profession who are employees of the state. *Id.* at 665. *See also* VAN HOOSE & KOTTLER *supra* note 8, at 101; Gross, *The Myth of Professional Licensing*, 33 AM. PSYCH. 1009, 1013 (1978). *See* text accompanying note 81 *infra*.

23. MO. REV. STAT. § 337.050(1) (1978). House Bill No. 255 provided that the governor would appoint Committee members. H.B. 255 § 2(1), 79th General Assembly, 1st Sess. (1977). There is wide variation among states as to which state official makes the appointments.

24. MO. REV. STAT. § 337.050(1) (1978).

25. *Id.* § 337.050(2). At least two members must be primarily engaged in teaching, training, or research in psychology; one employed full time as a teacher at a recognized college or university, and at least two members must be primarily engaged in rendering services in psychology for at least five years before appointment, one employed at least eighty percent of the time in private practice of counseling or psychotherapy.

The Missouri legislature was relatively specific in requiring that Committee members possess diverse psychological practices. Other state legislatures have evinced a similar interest in board member diversity. *See, e.g.*, ALA. CODE § 34-26-21 (1977); CAL. BUS. & PROF. CODE § 2922 (Deering Supp. 1980); COLO. REV. STAT. § 12-43-103(3) (1978); GA. CODE ANN. § 84-3102 (Supp. 1980); ILL. ANN. STAT. ch. 111, § 5308 (Smith-Hurd 1978); MD. ANN. CODE art. 43, § 622 (1980); VA. CODE § 54-937 (1978). *But see* ALASKA STAT. § 08.86.010 (1977); CONN. GEN. STAT. § 20-186 (1979); KY. REV. STAT. ANN. § 319.020 (Baldwin 1979); N.Y. EDUC. LAWS § 7602 (McKinney 1972); OKLA. STAT. ANN. tit. 59, §§ 1354-1355 (West Supp. 1979 & West 1971).

26. MO. REV. STAT. § 337.050(2) (1978). Members of the first Committee serve for staggered

The Department adopts rules governing the Committee's conduct and enables it to function and effectuate the purposes of the statute;[27] any rule, regulation, or advisory opinion issued by the Department or Committee expires two years after its promulgation.[28] Additional duties of the Department include offering a biannual examination for licensure applicants,[29] and licensing and initially registering as a psychologist any applicant who fulfills the statutory licensure requirements[30] and passes the examination.[31] The Department must license without examination applicants who fulfill the requirements of the grandfather clause.[32] The Department is also responsible for annual

terms of one, two, three, four, and five years; succeeding Committee members are appointed for terms of five years. The maximum length of time any member can serve on the Committee is ten years. *Id.* § 337.050(1). Committee members are not compensated for performance of their official duties, but they can be reimbursed for expenses incurred. *Id.* § 337.050(4). House Bill No. 225 provided Committee members with compensation of $25 for each day employed in performance of official duties, as well as reimbursement for expenses. H.B. 255 § 2(4), 79th General Assembly, 1st Sess. (1977). States vary in their compensation of committee or board members. Some states reimburse members only for expenses incurred while performing committee business. *See, e.g.,* ALA. CODE § 34-26-21 (1977); ILL. ANN. STAT. ch. 111, § 5308 (Smith-Hurd 1978); KY. REV. STAT. ANN. § 319.020 (Baldwin 1979); OKLA. STAT. ANN. tit. 59, §§ 1354-1355 (West Supp. 1979 & West 1971). Other states grant a per diem allowance in addition to expense reimbursement. *See, e.g.,* CAL. BUS. & PROF. CODE § 2935 (Deering 1975) ($25 per diem); COLO. REV. STAT. § 12-43-103(7) (1978) ($30 per diem); GA. CODE ANN. § 84-3105 (1979) ($15 per diem); MD. ANN. CODE art. 43, § 623 (1980) (per diem allowance as provided in budget). Finally, some statutes make no provision for committee member compensation. *See, e.g.,* CONN. GEN. STAT. §§ 20-186 to -195 (1979); N.Y. EDUC. LAW § 7602 (McKinney 1972); VA. CODE §§ 54-936 to -940 (1978).

27. MO. REV. STAT. § 337.050(5) (1978). The director of the Department, through the director of the Division of Professional Registration, will provide all staff for the Committee. *Id.* § 337.050(4). Further, the Department director may remove Committee members for misconduct, inefficiency, incompetency, or neglect of office. *Id.* § 337.050(6).

28. *Id.* § 337.050(7). Rules, regulations, advisory opinions, or amendments can be effective beyond their two year expiration date if both houses of the General Assembly and the governor approve them. *Id.* Authority to issue the same terminates on November 30, 1981. *Id.* § 337.050(8). These provisions did not exist in House Bill No. 255, and are unique to Missouri's psychologist licensing act.

29. *Id.* § 337.020(3). Part of the examination must be written; the Department may supplement this with an oral examination as it deems necessary. The examination must cover "areas of professional knowledge, techniques and applications, research and its interpretation and professional affairs and ethics." *Id.*

30. *Id.* § 337.020(2). For a discussion of statutory requirements for licensure, see notes 47-49 *infra* and accompanying text.

31. *Id.* § 337.020(3). All psychologist licensing laws require that licensure applicants pass an examination. Missouri applicants who fail the examination may take it again upon payment of a $75 nonrefundable fee. *Id.* § 337.020(4).

32. An applicant seeking grandfather licensure must apply within six months of the date the statute became effective, prove that he or she was actively practicing psychology for the past two

registration of licensed psychologists[33] and must discipline licensees who behave in an unethical or unprofessional manner.[34]

Missouri's first State Committee of Psychologists was formed in late 1977. Its initial task was to review applications from approximately 968 candidates for grandfather licensing.[35] To facilitate the Committee's determination of which applicants should be recommended for licensure, the Committee advised the Department to promulgate specific rules and regulations. The rules established Committee procedure,[36] clarified requirements for licensure under the grandfather clause,[37] and more precisely defined the educational[38] and professional

---

years, and otherwise meet the statutory requirements. *Id.* § 337.020(5). *See* notes 137-57 *infra* and accompanying text.

33. *Id.* § 337.030. Before July 1 of each year, licensed psychologists must register their home and business addresses with the Department, along with any other information relating to the practice of psychology required by the Department, and must pay a $40 annual registration fee. *Id.* § 337.030(1). The statute provides a penalty for late registration and a replacement fee for lost, mutilated, or destroyed certificates. *Id.* § 337.030(2)-(3).

34. *Id.* § 337.035. *See* notes 62-67 *infra* and accompanying text.

35. *See* St. Louis Post-Dispatch, April 1, 1979, at 4B, col. 2.

36. 4 C.S.R. 235-1.010 (1977), State Committee of Psychologists, provides for selection of the Committee chairperson and secretary, and for disclosure of Committee records and decisions to the Board of Registration for the Healing Arts and the Department. The purpose of the Rule was to comply with MO. REV. STAT. § 337.050(5) (1978) authorizing the Department to promulgate rules governing the Committee's conduct.

37. 4 C.S.R. 235-4.010 (1977), Requirements for Licensure Without Examination, provides that:

> Any person who on or prior to March 28, 1978 files with the Department evidence satisfactory to the department that for at least two years preceding his application he has been a resident of or principally employed in Missouri and has been engaged in the active profession of psychology and who fulfills the requirements of subsections 1 and 2 of section 337.020 RSMo . . . by means of such evidence as is required by 4 C.S.R. 235-2.010 and -3.010 shall be licensed and registered as a psychologist without an examination.

Id. The purpose of the Rule was to comply with MO. REV. STAT. § 337.020(5) directing the Department to license qualified applicants without examination under a grandfather provision.

38. 4 C.S.R. 235-3.010 (1977), Educational Requirements, describes a program of study which is "primarily psychological." Section one provides that the holder of a doctoral degree in psychology or in a program whose content was primarily psychological in nature must provide evidence that at least 50% of his or her course work was in psychology and that he or she had one year of internship training prior to receipt of the degree. The applicant must have completed 40 graduate semester hours or 60 graduate quarter hours of work in psychology, with at least 24 semester or 36 quarter hours in at least 15 areas of psychology (experimental, developmental, individual differences, psychological tests and measurements, social, statistics, history and systems, experimental design, personality theory, learning, physiological, abnormal, comparative, motivation, and perception). The applicant can supplement his or her transcript with catalogue descriptions and/or course syllabi. To aid in determining whether a course is psychological in nature, the Committee will examine the psychological content of the course and the psychological

experience[39] requirements for licensure. The Committee then examined each application to determine if the candidate fulfilled the statutory and regulatory requirements for licensure.[40]

---

qualifications of the instructor. The applicant has the burden of proving that his or her course work was the equivalent of course work in psychology; it is within the Department's discretion to make a final determination of the nature of the course work.

Section two specifies the educational requirements of a person holding a master's degree and is identical to section one, except that the master's degree applicant must have completed at least 30 graduate semester hours or 45 graduate quarter hours of work in psychology, and at least 24 semester or 36 quarter hours must have been in five basic areas of psychology, drawn from the 15 areas listed in section one. No internship is required of master's degree applicants.

The purpose of the Rule was to comply with MO. REV. STAT. § 337.020(2)(2)-(b) (1978) requiring that applicants for licensure have a graduate degree in a "program of studies whose content was primarily psychological." The Educational Requirements Rule was subsequently repealed. *See* notes 125-29 *infra* and accompanying text explaining the circumstances surrounding the repeal.

In promulgating this rule, the Committee was concerned with reflecting legislative intent to create a generic licensing law for psychologists, rather than licensing for particular psychology specialties. The Committee adopted the belief that there is a basic or core body of knowledge in psychology essential for competent professional practice as a psychologist. Like Missouri's Educational Requirements Rule, the American Association of State Psychology Board guidelines require psychologists to be educated in several areas of psychology to be eligible for licensure. The Association has recommended a graduate curriculum for a degree in professional psychology that includes courses in scientific and professional ethics and standards, history and systems, research design and methodology, and statistics and psychometrics, as well as at least six graduate hours or nine graduate quarter hours in each of the following four areas: (1) biological bases for behavior; (2) cognitive-affective bases of behavior; (3) social bases of behavior; and (4) individual differences. *See Toward a Definition of Training in Psychology*, guide lines adopted by the American Association of State Psychology Boards at its annual meeting (Aug. 25, 1977) (representing the Association's official position regarding criteria used to identify and designate education programs as psychology programs). *See also* AMERICAN ASSOCIATION OF STATE PSYCHOLOGY BOARDS, HANDBOOK FOR MEMBERS OF STATE PSYCHOLOGY BOARDS, G-1 to -38 (2d ed. 1976) (hereinafter cited as HANDBOOK).

39. 4 C.S.R. 235-2.010, Supervised Professional Experience, describes "satisfactory supervised professional experience in the general field of psychology," to entail post-graduate degree "training or practice of psychology obtained in an organized health service training program or its equivalent under the supervision of a licensed psychologist, psychiatrist, or one who, at the time of supervision, would have been eligible for licensure if such supervised experience took place prior to September 28, 1977." The rule specifies that the applicant's activities must have been performed under the supervisor's orders, control, and responsibility; the applicant's reports must have been cosigned by the supervisor; the supervisor must be a staff member or consultant to the organized health service training program . . . and must certify to the Department that the applicant complied with these requirements. The purpose of the rule was to comply with MO. REV. STAT. § 337.020(2) (1978) requiring the Department to determine what constitutes "satisfactory supervised professional experience in the general field of psychology . . . ." *Id.*

40. Much of the review by grandfather applicants centered on whether their programs of study fulfilled the educational requirements specified in the Rule. The Committee considered transcripts that indicated the department in which the applicant's courses were taught and often listed the instructor's names, as well as any supplementary information the applicant provided,

In general, the Committee concluded that an applicant possessing a counseling degree from a department of education failed to fulfill the requirements for licensure provided in the Educational Requirements Rule.[41] The Committee found that the content of counseling courses was not primarily psychological and that counselors had not received what the Committee deemed to be a sufficiently broad background in different areas of psychology.[42] In accordance with Committee recommendations, the Department granted approximately 670 licenses.[43]

The Committee notified each candidate by letter of the result of his or her application for licensure.[44] If the applicants desired further re-

---

such as course syllabi, catalogue descriptions of course content and purpose, and the text used. After thoroughly examining each applicant's program of study, the Committee tallied the total number of hours of course work that were primarily psychological and the number of hours in each of the core areas specified in the Educational Requirements Rule.

41. The Committee scrutinized applications from candidates holding counselor degrees in the same manner as all other applications, but also considered whether the applicant's counseling program was in fact a counseling psychology program, a program that is often housed in departments of education; whether the program was accredited by the American Psychological Association as a counseling psychology program; and whether the applicant studied in a psychology department, thereby receiving training in the core areas of psychology.

42. The Committee believed that, although counseling courses may involve the teaching of some psychological principles, they are substantially more related to counseling than to psychology *See* notes 96-108 *infra* and accompanying text for discussion of the counseling/psychology distinction.

43. St. Louis Post-Dispatch, April 1, 1979, at 4B, col. 2. The Committee's task in reviewing close to 1,000 applications was awesome, and several logistical obstacles impeded its progress. Not only did members need to become internally acquainted with each others' outlooks and backgrounds in order to establish comfortable working relationships, but the Committee as a whole needed to ascertain its position in the bureaucratic hierarchy, especially in terms of its relationship to the Department and the Board. Funding was a persistent problem. Further, the Committee's concern with fairness caused it to process each application with painstaking thoroughness; if an application was unclear and members disagreed on its meaning, the Committee requested more information from the applicant, which consumed additional time and money.

Many of the Committee's difficulties appear to be typical of new professional licensing boards. The new board member is accustomed to working in a professional or academic sphere, but his or her exposure to the legal/regulatory domain is usually limited, and he or she must learn to function properly and effectively in this foreign environment. *See* HANDBOOK, *supra* note 38, at A-1 to -2. The HANDBOOK provides guidelines for psychology licensing boards. It stresses the importance of promulgating rules and regulations that delineate criteria for licensure in terms of education and experience; such specificity is necessary in case the board faces a court challenge to its application-review procedures. *Id.* at G-10 to -20.

See generally Wolfe, *Legal Control of Psychological Practice*, 5 AM. PSYCH. 651, 653 (1950) (psychology boards should be fairly liberal in granting certificates to grandfather applications but must remember their primary responsibility is to protect the public, and must therefore scrutinize grandfather applicants to determine that they meet established standards for competence).

44. If the Committee found that an applicant failed to meet the threshhold educational requirements, the denial letter specified only this reason for nonlicensure and no other areas in

view of their application, the letter advised them to seek informal review through the Committee or formal review through the Administrative Hearing Commission within thirty days of receipt of the denial notice. The Administrative Hearing Commission was inundated with requests for review. Its treatment of requests for review is examined below.[45]

II. CHALLENGES TO PSYCHOLOGIST LICENSING ACTS

Psychologist licensing acts in many states describe the requirements for licensure in terms of "satisfactory professional experience" and "primarily psychological" courses of study.[46] Section 337.020 of the Missouri Statutes requires that all applicants complete "at least one year of satisfactory supervised professional experience in the general field of psychology, as determined by the department"[47] and possess either a doctoral or master's degree, "based on a program of studies whose content was primarily psychological, from a recognized educational institution."[48] In addition, applicants with master's degrees must

---

which the applicant was deficient. This practice contradicted the advice of the American Association of State Psychology Boards, which suggests that rejection letters include all reasons for license or certificate denial. It warns that the licensing board will not be permitted to introduce reasons for rejection not named in the denial letter, in the event of formal appeal. *See* HANDBOOK, *supra* note 38, at G-21.

45. *See* notes 128-36 *infra* and accompanying text.

46. *See, e.g.,* ALA. CODE § 34-26-41 (1975) (applicant may have doctoral degree in field closely allied to psychology if the training is "substantially similar" to training received in a psychology department); CAL. BUS. & PROF. CODE § 2914 (Deering Supp. 1980) (applicant's doctorate may be one "deemed equivalent" by the committee to a degree in psychology; his professional experience could have received "alternative supervision as determined by the committee"); COLO. REV. STAT. § 12-43-109 (1973) (applicant's doctoral degree may be in psychology or "equivalent to such major as determined by the board"; postdoctoral experience must be "under supervision approved by the board"); KAN. STAT. § 74-5310 (1972) (applicant must possess a doctorate "based on a program of studies in content primarily psychological"); OKLA. STAT. ANN. tit. 59, § 1362(a) (West 1971) (applicant's doctoral degree must be based on "program of studies with content that was primarily psychological . . . or its substantial equivalent in both subject matter and extent of training" and he or she must have "at least two years of satisfactory experience in rendering psychological services").

47. MO. REV. STAT. § 337.020(2) (1978).

48. *Id.* § 337.010(2)(a)-(b). Only three other states permit psychologists licensure with less than a doctoral degree. *See* IOWA CODE ANN. § 154B.6(1) (West Supp. 1980-81); PA. STAT. ANN. tit. 63, § 1206(2) (Purdon 1979-80); W. VA. CODE § 30-21-7(3) (1980). House Bill No. 255 required a doctoral degree plus one year of supervised professional experience in the general field of psychology. H.B. 255 § 3(2)(3), 79th General Assembly, 1st Sess. (1977). The Senate Committee Substitute for House Bill No. 255 liberalized the requirements to include a master's degree. S.C.S. for H.B. 255 § 3(2)(b), 79th General Assembly, 1st Sess. (1977).

have three years of "satisfactory" professional experience.[49]

Licensing statutes in several states have been challenged on the basis that licensing requirements are unconstitutionally vague and violate the applicants' due process of law.[50] A North Carolina court rejected a vagueness challenge to that state's psychologist licensing act.[51] The act required applicants to possess a "doctoral degree based on a program of studies the content of which was primarily psychological . . . and at least two years of acceptable and appropriate professional experience as a psychologist."[52] The court found that these requirements enabled the State Board of Examiners of Practicing Psychologists when reviewing applicants for licensure to apply objective standards rationally related to the act's purposes. The North Carolina court concluded that the psychologist licensing requirements were not vague and uncertain enough to deprive applicants of their due process rights.[53]

Similarly, in *Cohen v. State*[54] an Arizona court appeared unconcerned with potential vagueness in the provisions of the Arizona psychologist certification act that required applicants to possess a doctorate "based on a program of studies the content of which was primarily psychological, or the substantial equivalent thereof in both subject matter and extent of training" and pass a credentials examination.[55] The court's concern lay instead with the statutory provision permitting certification of applicants without examination if the applicants met certain educational requirements and possessed three years of

49. MO. REV. STAT. § 337.020(2)(b) (1978). All post-grandfather applicants must also pass the Department administered examination. *Id.* § 337.020(3). *See* note 29 *supra* and accompanying text. Applicants must also pay a nonrefundable $75 application fee, *id.* § 337.020(1), and must be at least 21 years of age and of good moral character. *Id.* § 337.020(2). The Missouri act also provides for licensure of psychologists licensed or certified by another state. The other state's licensing or certification requirements must be "substantially equal" to the Missouri requirements and the other state must extend privileges to psychologists like those granted in Missouri. *Id.* § 337.020(2)(c).

50. *See* Note, *Due Process Limitations on Occupational Licensing*, 59 VA. L. REV. 1097, 1103-04 (1973) (due process requires that standards used by licensing boards be intelligible and reasonably related to ability to practice competently).

51. *See In re* Partin, 37 N.C. App. 302, 246 S.E.2d 519 (1978).

52. N.C. GEN. STAT. § 90-270.11(a)(1)(c) (Supp. 1979).

53. *In re* Partin, 37 N.C. App. 302, 310, 246 S.E.2d 519, 524-25 (1978). The North Carolina legislature amended its psychologist licensing act in 1977. It now requires that applicants possess a "doctoral degree based on a planned and directed program of studies, the content of which was psychological in nature," and the two years of post-doctoral experience must be "germane to his area of practice as a psychologist." N.C. GEN. STAT. § 90-270.11(a)(1)(c) (Supp. 1979).

54. 121 Ariz. App. 20, 588 P.2d 313 (1977), *modified*, 121 Ariz. 6, 588 P.2d 299 (1978).

55. ARIZ. REV. STAT. ANN. § 32-2071(1)(c) & (3) (1976, amended 1978).

"professional experience satisfactory to the board."[56] The Arizona court found these academic requirements for certification unconstitutionally uncertain and ambiguous and ruled that the statute denied professionally experienced applicants due process of law.[57]

A New York court held that the New York psychologist certification act's failure to define "psychology" did not constitute a violation of due process.[58] The court noted that the legislature had tried and failed to define "psychology" in a way that sufficiently delineated the nature and scope of the profession.[59] The qualifications for certification, however, imbued the term "psychologist" with meaning.[60] Further, the statute's

56. *Id.* § 32-2072(D). The educational requirements for the applicant with three years' experience are possession of a doctorate "or equivalent thereof . . . based on a program of studies the content of which is primarily psychological, or the substantial equivalent thereof in both subject matter and extent of training . . . ." *Id.* Plaintiff possessed a master's degree in psychology and a doctorate in social science. He also had over 25 years of professional experience in psychology. Cohen v. State, 121 Ariz. App. 20, 22, 25 n.3, 588 P.2d 313, 315, 318 n.3 (1977), *modified*, 121 Ariz. 6, 588 P.2d 299 (1978).

57. Both the Arizona Court of Appeals and the State Supreme Court observed that the statute provided two avenues to certification: a purely academic one for inexperienced applicants, and one that is both academic and professional. The courts considered it unreasonable to require applicants with at least three years of experience to have the same academic credentials as those without experience. But the intent of the legislators was uncertain, and the statute appeared to require similarity of training. In this sense the provisions were deemed vague and ambiguous and made "certification uncertain and speculative for an applicant having three years of professional experience and, thus denie[d] him due process of law." Cohen v. State, 121 Ariz. App. 20, 25, 588 P.2d 313, 318 (1977) *modified*, 121 Ariz. 6, 588 P.2d 299 (1978). The court of appeals held that only the portions of the provisions concerning certification without examination and the credentials examination were unconstitutional. *Id.* at 26, 588 P.2d at 319. The supreme court held that entire sections (§ 32-2071 and § 32-2072) had to be declared unconstitutional because the constitutional portions could not be severed from the unconstitutional ones. 121 Ariz. at 9, 588 P.2d at 302. Because these sections had been amended after Cohen initially applied for certification, the court ordered Cohen to reapply in accordance with the amended statute. *Id.* at 10, 588 P.2d at 303. The statute now provides that applicants must possess a "doctoral degree, the content of which was primarily psychological . . . ." ARIZ. REV. STAT. ANN. § 32-2071(1)(b) (Supp. 1979-80). There is no longer a provision for waiver of the examination for applicants with professional experience. *Id.* § 32-2072.

58. *See* National Psychological Ass'n for Psychoanalysis v. University of New York, 8 N.Y.2d 197, 168 N.E.2d 649, 203 N.Y.S.2d 821, *appeal dismissed*, 365 U.S. 298 (1960).

59. *Id.* at 203, 168 N.E.2d at 652, 203 N.Y.S.2d at 826.

60. *Id.* at 203, 168 N.E.2d at 652-53, 203 N.Y.S.2d at 826. The statute provided that an applicant must be at least 21 years of age and of good moral character, pay a fee, pass an examination, possess a "doctoral degree based on a program of studies whose content was primarily psychological from an educational institution having a graduate program registered by the department, or its substantial equivalent in both subject matter and extent of training," and have "at least two years of satisfactory supervised experience in rendering psychological services." N.Y. EDUC. LAW § 7605 (Consol. 1956), *construed in* National Psychological Ass'n for Psychoa-

failure to define "psychology" was unimportant because enforcement of the statute did not depend on interpretations of the term. The requirement that a criminal statute be specific to give fair notice was satisfied because individuals could easily comply with the statute by avoiding the use of particular words. Uncertified persons can offer or render services of a psychological nature without violating the statute provided that they do not use the word "psychology" or its derivatives.[61]

In light of the findings of the North Carolina, Arizona, and New York courts, the Missouri statute's use of the terms "primarily psychological" and "satisfactory supervised professional experience" to describe requirements for psychologist licensure appear safe from successful due process and vagueness challenges. Rules by the licensing board clarifying the statutory licensing requirements make even more remote the possibility of future challenges to the Missouri statute on the basis of vagueness.

Occupational regulation in general and psychologist licensing acts in particular, present the additional due process concern of procedural fairness in granting and revoking licenses. The Missouri Department of Consumer Affairs, Regulation, and Licensing, in addition to its control over the issuance of licenses, has broad regulatory power over the conduct of licensed psychologists.[62] The Missouri statute provides the Department with authority to refuse, withhold, deny, suspend, or revoke a license upon proof that the applicant used narcotics or alcoholic beverages to such an extent that his ability to work was impaired; ob-

---

nalysis v. University of New York, 8 N.Y.2d 197, 201, 168 N.E.2d 649, 651, 203 N.Y.S.2d 821, 824, *appeal dismissed*, 365 U.S. 298 (1960).

The court characterized plaintiff's complaint as centered more on the qualifications the legislature adopted than on the absence of a formal definition of "psychology." The board refused to accept plaintiff's psychologist training program as satisfying the statute's academic requirements, and plaintiff was aggrieved by this. The court maintained that a disagreement with legislative judgment as to standards of fitness for certification cannot achieve the level of a constitutional argument merely by describing it in terms of due process. *Id.* at 205, 168 N.E.2d at 653-54, 203 N.Y.S.2d at 828.

61. *See* National Psychological Ass'n for Psychoanalysis v. University of New York, 8 N.Y.2d 197, 205, 168 N.E.2d 651, 652-53, 203 N.Y.S.2d 821, 827 (1960).

The New York act construed in *National Psychological Association for Psychoanalysis*, was repealed in 1971. The new certification act, which became effective September 1, 1971, has requirements for certification similar to those of its predecessor. The applicant must now possess a doctorate in psychology and the psychology program must be one registered with the department or the "substantial equivalent thereof." N.Y. EDUC. LAW § 7603(2) (McKinney 1972).

62. *See* notes 29-32 *supra* and accompanying text.

tained his license through fraud or deception; impersonated a licensee or permitted another person to use his license; or was guilty of unethical conduct as defined in "Ethical Standards for Psychologists," adopted and published by the Department.[63] In addition, the Department may revoke a license issued in error,[64] and has authority to enjoin violations of the act.[65]

Appeal of license revocation decisions normally results in judicial affirmation of the board's authority and decision to revoke the license.[66] Courts acknowledge that the authority of a licensing board

63. MO. REV. STAT. § 337.035(1) (1978).

64. *Id.* § 337.035(2). The Department may not withhold, deny, revoke, or suspend a license on the basis of race, national origin, or religious or political beliefs. *Id.* § 337.035(3). An applicant whose license was refused or revoked may reapply for licensure within one year of the denial or revocation. *Id.* § 337.035(4).

65. *Id.* § 337.065(2). Provisions similar to section 337.035 are commonly found in psychologist licensing acts. *See, e.g.,* ALA. CODE § 34-26-46 (1975) (board may refuse to grant or recommend suspension of license on such grounds as use of fraud or deception in obtaining license; conviction of felony; practice of psychology under pseudonym or impersonation of another practitioner; habitual intemperance in use of spirits, narcotics, or stimulants to extent of impairment of ability to work; or upon recommendation of ethics committee of Alabama Psychological Association or American Psychological Association); ALASKA STAT. § 08.86.220 (1977) (board may reprimand, censure, place on probation, restrict practice, require further education, or revoke or suspend a license upon finding problems of competence, experience, education, or health); CONN. GEN. STAT. § 20-192 (Supp. 1980) (board may revoke or suspend a license if licensee convicted of felony; used fraud or deceit in obtaining license; violated any statutory or regulatory provisions; practiced negligently or wrongfully or in area of psychology for which he or she was not qualified); OKLA. STAT. ANN. tit. 59, § 1370(a)-(b) (West Supp. 1979-80) (board may suspend or revoke license if licensee is convicted of a felony; is habitual drunkard or drug addict; uses fraud or deceit in connection with services rendered as psychologist; aids or abets unlicensed person in representing oneself as a psychologist in Oklahoma; or engages in unprofessional or unethical conduct as defined by the board). Several states provide the licensing agency with injunctive power. *See, e.g.,* COLO. REV. STAT. § 12-43-113 (1973); GA. CODE ANN. § 84-3120 (1979); ILL. ANN. STAT. ch. 111, § 5327 (Smith-Hurd 1978); KAN. STAT. ANN. § 74-5343 (1972); OKLA. STAT. ANN. tit. 59, § 1373 (West 1971).

66. In Packer v. Board of Medical Examiners, 37 Cal. App. 3d 63, 112 Cal. Rptr. 76 (1974), the court refused to command the board to set aside its decision revoking plaintiff's license to practice psychology. Plaintiff fraudulently represented his educational qualifications on his application for licensure in violation of a rule of the Psychology Examining Committee, prohibiting misrepresentation of professional qualifications. *Id.* at 71, 112 Cal. Rptr. at 81-82. The Committee's authority to issue such a rule is found in CAL. BUS. & PROF. CODE § 2936 (Deering Supp. 1980), which provides that "The committee shall by rule or regulation, establish standards of ethical conduct relating to the practice of psychology."

Plaintiff in Cooper v. Board of Medical Examiners, 49 Cal. App. 3d 931, 123 Cal. Rptr. 563 (1975), illegally prescribed and furnished dangerous drugs and engaged in sexual intimacies with three female patients. After hearings the Psychology Examining Committee proposed license revocation, the State Board of Medical Examiners adopted this proposal, the superior court denied plaintiff's petition for writ of administrative mandamus to review the board's decision, and the

necessarily extends beyond the mere issuance of licenses. Licensing boards have a continuing duty to establish and maintain standards of professional conduct and to discipline licensees who fail to meet board standards. The judiciary generally defers to board expertise in these matters.[67]

There is increasing concern, however, that the procedures employed by licensing boards in deciding whether to grant, revoke, deny, or suspend a license sometimes deprive an applicant of adequate due process protection.[68] This concern is greatest in states where a single licensing agency holds the powers of investigation, prosecution, and adjudication.[69] The combination of investigative, prosecutorial, and adjudicative functions enhances the agency's interests in public protection and administrative efficiency, and promotes the use of procedures designed to exercise and implement agency policies. These interests must be balanced against the individual's countervailing interests in receipt or retention of a professional license and the use of fair licensing and revocation procedures.[70] The administrative agency attains maximum effectiveness when it functions as both prosecutor and adjudicator,[71]

---

court of appeals affirmed. *Id.* at 937-38, 123 Cal. Rptr. at 575. Section 2960 of the California Business and Professions Code authorizes the committee to deny, suspend, revoke, or impose probationary conditions upon a license, or issue a license with terms and conditions, for several causes, including gross negligence of a licensee in the practice of his profession. CAL. BUS. & PROF. CODE § 2960(j) (Deering Supp. 1980). The board complies with committee orders after a hearing regarding a licensee's status. *Id.* § 2961.

67. In Morra v. State Bd. of Examiners of Psychologists, 212 Kan. 103, 510 P.2d 614 (1973), the board revoked the certificate of plaintiff who had engaged in sexual improprieties with two female patients. The revocation accorded with the Kansas certification of psychologists act which provides that the board of examiners of psychologists may revoke or suspend a certificate upon proof that a psychologist engaged in unprofessional conduct as defined by board rules or acted negligently or wrongfully in performance of his or her duties. KAN. STAT. ANN. § 74-5324(d)-(e) (1972). The court affirmed the board's order, maintaining that the board's action was based on substantial evidence; was not unreasonable, arbitrary, or oppressive; and was within the board's authority and competence. 212 Kan. 103, 106-10, 510 P.2d 614, 618-21 (1973). In response to plaintiff's argument that the term "wrongful actions" in the statute is unconstitutionally vague as grounds for license revocation or suspension, the court asserted that "a member of the profession to which the act applies would have no difficulty in comprehending what the term implies so far as his conduct as a psychologist is concerned." *Id.* at 111, 510 P.2d at 622.

68. Note, *Due Process Limitations on Occupational Licensing*, 59 VA. L. REV. 1097 (1973); Comment, *Procedural Due Process and the Separation of Functions in State Occupational Licensing Agencies*, 1978 WIS. L. REV. 833.

69. Comment, *Procedural Due Process and the Separation of Functions in State Occupational Licensing Agencies*, 1978 WIS. L. REV. 833.

70. *Id.* at 841.

71. The agency acts as prosecutor when it denies, suspends, or revokes licenses. This is, of

but the individual's protection against bias or prejudgment is enhanced when these functions are separated.[72]

Missouri's creation of the Administrative Hearing Commission (AHC)[73] is one example of a legislative attempt to achieve a degree of separation of agency functions by delegating adjudicative power to an entity independent of the licensing board.[74] The AHC conducts hearings on complaints by applicants or licensees aggrieved by certain agencies, including the Board of Healing Arts, and makes final decisions on issues of fact and law.[75] The AHC recommends appropriate disciplinary action, but the licensing agency may conduct a separate hearing to determine proper discipline.[76]

Many procedural concerns were resolved in 1975, when the United

course, a significant means of implementing agency policy. *Id.* at 847. The delegation of adjudicatory powers to the licensing board enables it to establish and apply general standards and policies and to follow a flexible case-by-case approach in the absence of general policy. *Id.*

72. *Id.* at 862.

73. *See* 1965 Mo. Laws 277. The Administrative Hearing Commission is assigned to the Department of Consumer Affairs, Registration, and Licensing. *See* MO. REV. STAT. § 161.252(1) (1978).

74. Other examples of legislative attempts to separate agency functions can be found in California and Alaska, where hearing examiners conduct hearings for licensing agencies but may only propose a decision and order; the agency retains authority to make the final decision on both the facts and the action to be taken. More complete separation of functions is achieved in Maine, where a hearing commissioner conducts license hearings and has power to make final decisions on questions of fact and appropriate disciplinary action. Comment, *Procedural Due Process and the Separation of Functions in State Occupational Licensing Agencies*, 1978 WIS. L. REV. 833, 857-58. Internal separation of functions, where duties are divided among agency members, provides an insufficient safeguard against bias due to the close contacts among board members and the ease with which ex parte communications occur. *Id.* at 862.

75. MO. REV. STAT. § 161.272(1) (1978). The grievance can include license revocation or suspension, placement of the licensee on probation, refusal to permit an applicant to take the examination, or refusal to license an applicant who passed the examination or who is qualified for licensure without examination.

76. *Id.* § 161.292. Prior to a disciplinary hearing, the licensing agency receives the record of the AHC proceedings and the findings of fact, conclusions of law, and recommendations of the AHC. This disciplinary hearing may be waived if the agency and licensee agree that the AHC recommended appropriate disciplinary action. The AHC's recommendations then become the agency's disciplinary order. *Id.*

Critics of the AHC allege usurpation of the Board's power to control licensees, but this loss of control must be slight, if it exists at all, because the Board retains powers of investigation, prosecution, and punishment. Special Project, *Fair Treatment for the Licensed Professional: The Missouri Administrative Hearing Commission*, 37 MO. L. REV. 410, 451-52 (1972). Other criticisms of the Missouri AHC include the charge that the Commissioner cannot be familiar with the laws and rules, as well as the problems of each agency and cannot, therefore, make informed, responsible decisions. A defense to this charge is that the expertise needed is simply that of statutory or regulatory interpretation, a skill which any attorney possesses. *Id.* at 452-54.

States Supreme Court held that due process is not violated when a licensing agency possesses both prosecutorial and adjudicative powers.[77] Concerns, however, with procedural fairness persist. There is, for example, increasing awareness of the inadequacies of the informal procedures characteristic of professional licensing boards,[78] and of the potential bias and unfairness inherent in licensing boards comprised exclusively of licensed professionals.[79] To assure that the individual applicant or licensee receives due process of law, states may choose to develop additional procedural safeguards by enacting formal procedures for licensing boards or appointing lay persons to serve on the boards.

A common problem confronting legislatures drafting psychologist licensing acts is the determination of the act's scope of application. The statute must be broad enough to prevent charlatans from practicing psychology, but at the same time be sufficiently narrow to avoid usurpation of the activities of professionals in related fields such as psychiatry, counseling, social work, and the ministry.[80]

Missouri and other states[81] attempted to delineate their licensing

77. *See* Winthrow v. Larkin, 421 U.S. 35 (1975). The Wisconsin State Examining Board attempted to suspend a physician's license finding that he engaged in proscribed conduct. The three judge district court enjoined the suspension, holding that it would be a denial of procedural due process to permit the board to suspend a license "at its own contested hearing on charges evolving from its own investigation." Larkin v. Winthrow, 368 F. Supp. 796, 797 (E.D. Wis. 1973), *rev'd*, 421 U.S. 35 (1975). The Supreme Court held in its reversal that the combination of investigative and adjudicative functions in an agency does not per se violate procedural due process. Courts may still examine the circumstances of each case to determine if there is an "intolerably high" risk of unfairness. 421 U.S. at 58. *See also* Cooper v. Board of Medical Examiners, 49 Cal. App. 3d 931, 940, 123 Cal. Rptr. 563, 569 (1975) (court summarily rejected appellant's contention that delegation of prosecutorial and adjudicative functions to a single licensing board constituted a denial of procedural due process); Morra v. State Bd. of Examiners of Psychologists, 212 Kan. 103, 108-09, 510 P.2d 614, 620 (1973) (court rejected plaintiff's complaint that the board acted as investigator, grand jury, prosecutor, judge, and jury, on grounds that no prejudice may be presumed from this combination of functions).

78. *See* The National Law Journal, Feb. 18, 1980, at 16, col. 4. Various attempts are being made to achieve procedural reform. The National Association of Attorneys General recently distributed to state governments a "Disciplinary Action Manual for Occupational Licensing Boards" to assist them in the codification of disciplinary board procedures. *Id. See also A Model Professional and Occupational Licensing Act*, 5 HARV. J. LEGIS. 67, 67-69 (1967) (proposes model act to provide uniform procedures for professional licensing).

79. *See* note 22 *supra*. *See also* HANDBOOK, note 38 *supra*, at A-3 to -4 (psychology boards must expect legislatures to appoint consumers as members in response to the needs of the public).

80. Wallace, *Occupational Licensing and Certification: Remedies for Denial*, 14 WM. & MARY L. REV. 46, 54 (1972).

81. *See, e.g.*, COLO. REV. STAT. § 12-43-114 (1978); GA. CODE ANN. § 84-3106 (1979); MD.

acts' scope of application by including a broad exemption clause in the psychologist licensing act. Qualified social psychologists in Missouri who file a statement with the Department indicating their qualifications can use the term "social psychologist" without licensure under the psychologist licensing act.[82] Furthermore, the statute does not prohibit members of certain named professions—such as attorneys, clergymen, social workers, and school, vocational, and vocational rehabilitation counselors—from performing work of a psychological nature, provided that they refrain from using the words "psychologist," "psychological," or "psychology" in their title.[83] The services of a psychology student or trainee are not limited if his title indicates his status;[84] nor are the activities, services, or use of an official title by an employee of a governmental agency, educational institution, or corporation primarily engaged in research restricted if the activities or services fall within the scope of his employment duties.[85] Finally, the statute distinguishes psychology

ANN. CODE art. 43, § 633 (1980); OHIO REV. CODE ANN. § 4732.22 (Page Supp. 1979); OKLA. STAT. ANN. tit. 59, § 1353 (West 1971). *See* Macfarlane, *Inter-Professional Relations and Collaboration with Medicine and Other Related Fields*, 5 AM. PSYCH. 112 (1950); Wendt, *Legislation for the General Practice of Psychology Versus Legislation for Specialties within Psychology*, 5 AM. PSYCH. 107 (1950); Wolfe, *Legal Control of Psychological Practice*, 5 AM. PSYCH. 551 (1950) (all recommended exempting certain professions from psychology licensing acts to avoid encroaching on their domains).

82. A social psychologist is qualified if he possesses a doctoral degree in sociology or social psychology, passed an examination in social psychology as part of the doctoral degree requirements, or has had "equivalent specialized training in social psychology." MO. REV. STAT. § 337.040 (1978). Provisions similar to this exist in Arizona, ARIZ. REV. STAT. ANN. § 32-2083(3) (Supp. 1979-80); Illinois, ILL. ANN. STAT. ch. 111, § 5305(e) (Smith-Hurd 1978); and Mississippi, MISS. CODE ANN. § 73-31-27(b) (1972).

83. MO. REV. STAT. § 337.045(1) (1978). For similar exemption provisions, see CAL. BUS. & PROF. CODE § 2908 (Deering Supp. 1980); CONN. GEN. STAT. § 20-195 (1979); D.C. CODE ANN. § 2-484(E) (1973); KY. REV. STAT. ANN. § 319.015(2) (Baldwin 1979); OKLA. STAT. ANN. tit. 59, § 1353(a) (West 1971).

84. *See* MO. REV. STAT. § 337.045(3) (1978). The majority of psychologist licensing or certification acts in other states contain a similar provision.

85. *See id.* § 337.045(2). Psychological techniques can be used by government institutions, commercial organizations, or individuals for such purposes as evaluating applicants for employment or employees for promotion. Employment agencies may also use psychological techniques in evaluation of clients for employment. Such psychological services cannot be sold for remuneration unless performed or supervised by a duly licensed psychologist. *Id.* § 337.045(4). The Missouri statute also exempts from licensure a practitioner who wishes temporarily to practice psychology in Missouri. He or she must not be a Missouri resident and must conduct the major part of his or her psychology practice outside Missouri. *Id.* § 337.045(5). Many states similarly exempt from licensure the activities of a person employed by a government agency or certain institutions. *See, e.g.*, ALA. CODE § 34-26-40 (1975); COLO. REV. STAT. § 12-43-114(1)-(3) (1973);

from medicine by prohibiting psychologists from practicing medicine.[86]

Various states have developed alternate solutions to clarify the scope of psychologist licensing acts. These solutions include the enactment of different stages of licensure for psychologists,[87] and separate licensure laws to cover occupations like counseling that are closely related to psychology.[88] The latter method of licensure aids the resolution of an issue that confronts courts, legislatures, and agencies in many states, including Missouri: should counselors, particularly those engaged in private practice, be licensed under the state's psychologist licensing act.[89] Counselors generally prefer separate licensure,[90] but in the ab-

ILL. ANN. STAT. ch. 111, § 5305(a)-(c) (Smith-Hurd 1978); KAN. STAT. § 74-5344(c), (e) (1972); MISS. CODE ANN. § 73-31-27(a)(1)-(2) (1972); OKLA. STAT. ANN. tit. 59, § 1353(b) (West 1971).

86. *See* MO. REV. STAT. § 337.060 (1978). This, too, is a very common provision in psychology licensing acts. *See, e.g.*, ALASKA STAT. §§ 08.86.180(c), .185(c) (1977); ARIZ. REV. STAT. ANN. § 32-2084 (Supp. 1978-80); ILL. ANN. STAT. ch. 111, § 5305(d) (Smith-Hurd 1978); MD. ANN. CODE art. 43, § 639 (1980). Legislatures have struggled with the distinction between psychologists and psychiatrists; the key issue is whether psychotherapy should be the exclusive responsibility of psychiatrists, and psychological counseling the duty of licensed clinical psychologists. Psychotherapy and psychological counseling are distinguished in that the former is designed to treat the maladjusted or ill person, while the latter is the treatment of a healthy person with an isolated, minor problem. *See* Menninger, *The Relationship of Clinical Psychology and Psychiatry*, 5 AM. PSYCH. 3, 5-11 (1950). Opinions on this issue range from absolute prohibition to unlimited authorization of the practice of psychotherapy by psychologists. *See* Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 COLUM. L. REV. 474, 491-94 (1951). The Missouri act includes the rendition of psychotherapy within its definition of the "practice of psychology." MO. REV. STAT. § 337.015(3) (1978). Several states permit psychologists to practice psychotherapy but only in conjunction with a physician, usually a psychiatrist. *See, e.g.*, ALA. CODE § 34-26-1(b) (1975) (psychologist practicing psychotherapy must initiate and maintain communication with physician); ILL. ANN. STAT. ch. 111, § 5305(d) (Smith-Hurd 1978) (psychologists who treat the mentally ill or individuals in need of mental treatment must establish and maintain collaboration with a physician); OHIO REV. CODE ANN. § 4732.20 (Page 1977) (psychologist who practices psychological psychotherapy must consult with physician).

87. *See, e.g.*, ALASKA STAT. §§ 08.86.010-.230 (1977) (psychologists must have doctorate in psychology; psychological associate must have master's degree with emphasis in counseling); MINN. STAT. ANN. § 148.91 (West Supp. 1980) (licensed consulting psychologist must possess doctorate in psychology; licensed psychologist must possess doctorate or master's degree in psychology); N.C. GEN. STAT. § 90-270.11(a)-(b) (Supp. 1979) (practicing psychologist must possess doctorate in psychology; psychological associate must possess master's degree in psychology); OHIO REV. CODE ANN. § 4732.10(B)-(C) (Page 1977) (licensed psychologist must have doctorate in psychology; licensed school psychologist must have master's degree in school psychology).

88. *See, e.g.*, ALA. CODE §§ 34-8A-1 to -23 (Supp. 1979) & §§ 34-26-1 to -48 (1975); CAL. BUS. & PROF. CODE §§ 2900-2918 (Deering 1975) & §§ 17800-17882 (Deering 1976); GA. CODE ANN. §§ 84-7001 to -7023 (1979); VA. CODE §§ 54-932 to -935, -941 to -943 (1978).

89. *See* notes 41-42 *supra* and accompanying text.

90. *See* Sweeney and Sturdevant, *Licensure in the Helping Professions: Anatomy of an Issue*, 52 PERSONNEL AND GUIDANCE J. 574, 580-81 (1974) (counselors should seek separate licensure

sence of a separate licensing law, they usually desire psychologist licensure to achieve professional status[91] and ensure the continuance of their practice.[92] Psychologists, however, generally oppose granting counselors a license to practice psychology.[93] Psychologists question whether counselor training is "primarily psychological," especially where training is conducted in an education department,[94] because training programs generally lack sufficient courses in core areas of psychology.[95]

Judicial review of the issue has been scanty. An Alabama court upheld the decision, by the State's Board of Examiners in Psychology, to deny psychologist licensure to an applicant who possessed a doctorate from a school of education, with a major in counseling, guidance, and educational psychology.[96] The court agreed with the Board that the applicant's education was deficient, despite his specialized training in counseling, because he lacked training in the core areas of psychology essential for a generic psychologist license.[97] In *In re Partin*[98] a North

from psychologists or, where counselor licensure is already subsumed under psychologist licensure laws, should seek representation on state boards).

91. One aspect of this "professional status" that counselors desire is for communications to them to be made privileged. *Id.* at 580. One court, however, expressly rejected a counselor/client privilege while granting the privilege to communications made to a licensed professional psychologist. The court reasoned that a psychologist, through his use of psychotherapeutic techniques, explored deeply into his patient's psychic processes; a counselor's treatment was more superficial. Hence, there was less need for a privilege to foster the relationship between counselor and client. Allred v. State, 554 P.2d 411, 419 (Alaska 1976).

92. If the definition of "psychology" in a psychologist licensing act includes the use of counseling techniques, counselors believe they must obtain psychologist licensure in order to practice. They fear, however, that they will be deprived of their constitutional right to practice their chosen profession, because state psychology boards, which are composed of psychologists, deny counselors licensure or permission to take the licensure examination. VAN HOOSE & KOTTLER *supra* note 8, at 123-24.

93. *Id.*

94. *Id.* at 122.

95. Traweek v. Alabama Bd. of Examiners in Psychology, No. 198-073 (Jefferson County, Ala., Cir. Ct., 1976), *cited in* Smith, *Psychology and the Courts: Some Implications of Recent Judicial Decisions for State Licensing Boards*, 9 PROFESSIONAL PSYCH. 489, 494 (1978).

Psychologists distinguish counselors from counseling psychologists in that only the latter meet psychologist licensure requirements. Counseling psychologists are graduates of an integrated doctoral program qualifying them for generic licensure or certification; the program can be in a department of psychology or education. Minutes of the Annual Meeting of the Delegates of the American Association of State Psychology Boards (Aug. 25, 1977).

96. Traweek v. Alabama Bd. of Examiners in Psychology, No. 198-073 (Jefferson County, Ala., Cir. Ct., 1976) *cited in* Smith, *Psychology and the Courts: Some Implications of Recent Judicial Decisions for State Licensing Boards*, 9 PROFESSIONAL PSYCH. 489, 494 (1978).

97. *Id.* Application of the basic core of knowledge standard to all candidates for generic licensure has occasionally caused licensing boards to find psychology specialists, for example in

Carolina appellate court sustained the board's denial of a license to a candidate for psychologist licensure who held a doctoral degree in Guidance and Counseling. The board based its denial of licensure on the applicant's failure to fulfill the board's educational requirements rule, which required applicants with a doctorate in a field other than psychology to prove they had completed at least sixty graduate semester hours in psychology courses or courses that were psychological in nature.[99] The board refused to consider the applicant's courses in vocational rehabilitation, guidance, and counseling when determining if he had enough credits to fulfill the rule's requirements.[100]

The Mississippi Supreme Court reached a different conclusion, however, in *State Board of Psychological Examiners v. Coxe*.[101] In *Coxe* the board insisted that an applicant's major area of graduate study have "psychology" in its title and was unwilling to examine the substance of an applicant's course of study.[102] The court held that the board acted in an arbitrary and discriminatory manner when it refused to grant a psychologist license solely because the applicant obtained his doctoral training in a department of guidance and counseling.

---

educational psychology, to be deficient in the educational requirements. Foltz, *Sun Sets on Psychology Licensing Boards in South Dakota and Florida*, APA MONITOR 14 (Sept./Oct. 1979).

98. 37 N.C. App. 302, 246 S.E.2d 519 (1978).

99. The Educational Requirements rule provided that an applicant who does not possess a doctorate in psychology may receive credit toward the sixty graduate semester hour requirement for courses in departments other than psychology if he or she supplies evidence "in a form specified by the board, that such courses are psychological in nature. This evidence shall consist of a description of the courses, text book used, name of professor and statement of professor's membership in national, regional and state psychological associations and his or her license or certification status." *Id.* at 309, 246 S.E.2d at 524.

100. The court maintained that the applicant had the burden of presenting evidence to the board that the content of his courses was primarily psychological in nature. The record showed that the applicant only presented "conclusory opinions" of himself and his instructor as to the nature of his courses, and the court agreed with the board that this evidence was inadequate. *Id.* at 312-15, 246 S.E.2d at 524-26.

101. 355 So. 2d 669 (Miss. 1978). The court held that the chancellor had not exceeded his powers by ordering licensure. Courts ordinarily defer to the judgment of an administrative agency except when the agency's decision is arbitrary and capricious and not based on substantial evidence. *Id.* at 671. For a discussion of the chancery court's findings and conclusions, see Smith, *Psychology and the Courts: Some Implications of Recent Judicial Decisions for State Licensing Boards*, 9 PROFESSIONAL PSYCH. 489, 493 (1978).

102. Another court approved board policy that did not absolutely require that the applicant's graduate degree be labeled as in "psychology" since there is a variety of possible names for an acceptable major. The court insisted that the board examine course substance and not merely consider in what department the university happened to place the course. Berl v. Board of Psychologist Examiners, 322 A.2d 274, 275-76 (D.C. 1974).

A California court distinguished counselors and psychologists in *Packer v. Board of Behavioral Science Examiners*,[103] and held that a licensed psychologist in California was precluded from obtaining a marriage, family, and child counseling license by the reciprocity provision of the California Marriage, Family, and Child Counselors Act.[104] The court maintained that the education and experience requirements for psychologist and counselor licensure were not substantially equivalent.[105] An Ohio court similarly distinguished between counselors and psychologists, holding that a counselor who possessed a doctoral degree in counseling could not be criminally charged with practicing psychology without a license.[106] In *Weldon v. Virginia State Board of Psychologist Examiners*[107] plaintiff engaged in a private counseling practice without seeking a license to practice psychology. The State Board of Psychologist Examiners obtained a court order enjoining him from further practice. On appeal, the court enforced the injunction and held that, although counseling and psychology are distinct professions, the Virginia psychologist licensing act applies to all practitioners who use psychological tools.[108]

Case law thus reveals that applicants for psychologist licensure who possess graduate degrees in counseling cannot predict whether they will receive a license. In view of this uncertainty, state legislatures should either enact separate licensing requirements for counselors and other behavioral science professions or explicitly state the occupational scope of the psychologist licensing act on its face.

Many psychologist licensing acts allow for potential violations of the nondelegation doctrine. The doctrine prohibits the legislature from

---

103. 52 Cal. App. 3d 190, 125 Cal. Rptr. 96 (1975).

104. *Id.* at 194, 125 Cal. Rptr. at 98-99. The reciprocity provision permits counseling licensure of individuals licensed by a "corresponding authority of any state" where the licensure requirements are "substantially the equivalent" of the California requirements for counselor licensure. CAL. BUS. & PROF. CODE § 17809 (Deering 1976).

105. 52 Cal. App. 3d 190, 194, 125 Cal. Rptr. 96, 98-99 (1975). The court further observed that the Board of Medical Examiners, which granted plaintiff's psychology license, is not a "corresponding authority of any state" because it differs significantly from the Board of Marriage Counselor Examiners and is not located in another state. *Id.*

106. City of Cleveland v. Cook, 75-CRB 11478 (Cleveland Mun. Ct. 1975), *cited in* VAN HOOSE & KOTTLER, *supra* note 8, at 123.

107. (Newport News, Va. Corporation Ct., Oct. 4, 1974), *cited in* VAN HOOSE & KOTTLER, *supra* note 8, at 122-23.

108. *Id.* The Virginia legislature resolved this conflict when it enacted a separate licensing law for counselors. *See* note 88 *supra* and accompanying text.

delegating its law-making powers to an administrative agency. Legislatures must be careful to guide the exercise of administrative discretion by supplying the agency with clearly defined standards.[109] The Missouri legislature potentially violated the nondelegation doctrine by authorizing the Department to license an applicant who has "satisfactory supervised experience" and a graduate degree in a "primarily psychological" area of study.[110] The courts are split on the issue of whether delegation of power to licensing boards violates the nondelegation doctrine. The plaintiff in *National Psychological Association for Psychoanalysis v. University of New York*[111] challenged the New York certification act as an unlawful delegation of legislative power.[112] Plaintiff was particularly concerned with the board's power to define the "substantial equivalent" of a doctoral degree in the context of "satisfactory supervised experience." The court held that assigning to the board the task of implementing the statute and defining its terms did not constitute an invalid delegation of legislative power. The court reasoned that there were clearly discernible standards to govern the board. Board expertise thus could be afforded deference.[113] The court in *In re Partin* similarly concluded that the legislature, in permitting the board to grant licenses to applicants possessing doctoral degrees based on a "primarily psychological" program of studies, provided the board with sufficiently clear standards to control its exercise of the delegated rulemaking and licensing functions."[114]

The court in *Cohen v. State*[115] held that the legislature lawfully delegated its power when it granted the licensing board authority to define the programs of study that are "primarily psychological" and the educational experiences that are "substantially equivalent" to a doctoral degree in psychology. The court concluded that clarification of these terms is a proper administrative function for which the board is peculiarly qualified. An administrative agency may have substantial au-

109. *See* National Psychological Ass'n for Psychoanalysis v. University of New York, 8 N.Y.2d 197, 203, 168 N.E.2d 649, 652, 203 N.Y.S.2d 821, 826, *appeal dismissed*, 365 U.S. 298 (1960).

110. MO. REV. STAT. § 337.020(2) (1978).

111. 8 N.Y.2d 197, 204, 168 N.E.2d 649, 652-53, 203 N.Y.S. 2d 821, 827, *appeal dismissed*, 365 U.S. 298 (1960).

112. *See* notes 58-61 *supra* and accompanying text.

113. *Id.*

114. *In re* Partin, 37 N.C. App. 302, 310, 246 S.E.2d 519, 524-25 (1978).

115. 121 Ariz. App. 20, 588 P.2d 313, *modified*, 121 Ariz. 6, 588 P.2d 299 (1978). *See* notes 109-14 *supra* and accompanying text.

thority in administration of a statute enacted pursuant to the state's police power. Standards for the agency need not be expressed if they can reasonably be inferred from the statutory scheme.[116]

The Supreme Court of Florida in *Husband v. Cassel*,[117] however, held that the Florida licensing act amounted to an unconstitutional delegation of legislative power to an administrative agency without adequate standards to guide the agency. The court found offensive statutory language in the Act authorizing the board of examiners of psychology to require that applicants possess a doctorate or equivalent degree in psychology from a board-approved university.[118] The offensive language enabled the board to exercise unbridled discretion in determining the nature and scope of the field covered by the examination, qualities of an acceptable university, and qualifications for a program to constitute the substantial equivalent of a doctorate in psychology. The legislature unlawfully delegated exclusive responsibility to the board to determine what qualifications were necessary for psychologist certification.[119]

---

116. *Id.* at 26-27, 588 P.2d at 319-20. A California court upheld a license revocation and rejected plaintiff's charges that the licensing act constituted an unlawful delegation of legislative power in Cooper v. Board of Medical Examiners, 49 Cal. App. 3d 931, 123 Cal. Rptr. 563 (1975). The court held that legislative delegation of power to the Psychology Examining Committee to promulgate rules of professional conduct is proper legislative deference to an agency's expertise. *Id.* at 939, 123 Cal. Rptr. at 568.

The American Association of State Psychology Boards maintains that legislatures should write broad licensing statutes and defer to agency expertise in the application and definition of the acts' terms. Boards have greater understanding of the requirements for the competent practice of psychology and changes to board rules can be made more easily than can statutory amendments. *See* HANDBOOK, *supra* note 38, at G-1.

117. 130 So. 2d 69 (Fla. 1961).

118. *See* FLA. STAT. § 490.04(1) (1959), *construed in* Husband v. Cassel, 130 So. 2d 69, 70-71 (Fla. 1961).

119. *Id.* at 71-72. Florida courts have tended to apply strictly the nondelegation doctrine. *See, e.g.*, Wasserman v. Florida State Bd. of Architecture, 361 So. 2d 792 (Fla. 1978) (statute permitting board to require that applicant for registration hold a professional degree from an approved school, or educational training equivalent to such a degree, constituted an unlawful delegation of legislative power); Harrington & Co. v. Tampa Port Auth., 358 So. 2d 168 (Fla. 1978) (statute permitting Port Authority to grant stevedore licenses to competent and trustworthy persons and to grant as many licenses as it deemed necessary amounted to abdication of lawmaking responsibility); Delta Truck Brokers, Inc. v. King, 142 So. 2d 273 (Fla. 1962) (legislature must provide adequate standards to guide agency in granting automobile transportation brokerage license).

In response to *Husband*, the Florida legislature amended the unconstitutional sections of its statute. FLA. STAT. ANN. § 490.041(1) (West 1965) required an applicant for certification to pass a board administered examination in psychology which must cover "those subjects relating to the practice of psychology as are taught by the universities approved by the American [P]sychological [A]ssociation." Further, the applicant must possess "a doctoral degree with a major in psychology

These cases indicate that a court challenge to psychologist licensing acts on the ground that they violate the nondelegation doctrine has only a minimal chance of success in Missouri and other states. Absent strict application of the nondelegation doctrine, delegations of power to administrative agencies will be upheld as a legitimate instance of legislative deference to administrative expertise.

Psychologist licensing agencies may, however, violate a second aspect of the nondelegation doctrine: the agency may act outside the limits of its delegated authority in promulgating rules and deciding licensing issues. The Missouri act authorizes the Department to promulgate rules governing the conduct of committee members and "enabling the committee to function and carry out the purposes of [the act]."[120] In collaboration with the Board of Healing Arts, the Committee is authorized to guide, advise, and make recommendations to the Department.[121] All rules, regulations, and advisory opinions expire two years after their promulgation.[122] Legislatures in other states similarly grant broad rulemaking power to the psychologist licensing agency.[123] In some states, however, the Board's power to promulgate

---

from a university whose program has been approved by the American [P]sychological [A]ssociation; or . . . from a university maintaining a standard of training comparable to those universities approved by the American [P]sychological [A]ssociation." *Id.* § 490.041(1)(c)(1)-(2). The statute did not specify who was to determine which universities are comparable to those bearing American Psychological Association approval and did not provide for certification of applicants possessing the "substantial equivalent" of a doctorate in psychology. The legislature enacted a new Florida Psychological Practice Act in 1970. FLA. STAT. ANN. § 490.19(1) (West Supp. 1979) provides for board examination of each applicant "under such rules and regulations as the board may prescribe." The educational requirements remained the same, *id.* § 490.19(1)(c), and were challenged in Carroll v. State, Div. of Professions, 355 So. 2d 495 (Fla. App. 1978). The board denied plaintiff the right to take the certification examination on the ground that her doctoral degree in pupil placement services was not obtained at a university that "maintained in such doctoral program a standard of training comparable to those universities having programs approved by the American Psychological Association for the granting of a doctoral degree in psychology." *Id.* at 496. The hearing officer upheld the board's order and the court affirmed, refusing to "substitute its judgment" for that of the board or hearing officer. *Id. See* note 168 *infra* for a discussion of the fate of the Florida Psychological Practice Act.

120. MO. REV. STAT. § 337.050(5) (1978).

121. *Id.* § 337.050(1).

122. *Id.* § 337.050(7).

123. *See, e.g.*, ALASKA STAT. § 08.86.080 (1977) (board must adopt regulations necessary to carry out purposes of statute); COLO. REV. STAT. § 12-43-104(3)(a) (1973) (board must adopt and revise rules and regulations necessary to effectuate statutory provisions); MD. ANN. CODE art. 43, § 625 (1980) (board may make rules and regulations necessary for it to perform duties properly); OHIO REV. CODE ANN. § 4732.06 (Page 1977) (board makes rules "necessary to conduct its busi-

rules concerning requirements for licensure is explicitly stated.[124]

In a case before Missouri's Administrative Hearing Commission, an applicant who was denied grandfather licensure challenged three of the Department's rules as beyond the scope of the Department's rulemaking authority and as an improper exercise of the legislative function.[125] The applicant argued that the licensing statute restricted the Department's rulemaking power to promulgation of rules governing the Committee's conduct and that the three rules at issue impermissibly established substantive standards that added to or contradicted the statutory requirements for licensure.[126] Respondent asserted that the rules

ness"); OKLA. STAT. ANN. tit. 59, § 1359 (West 1971) (board may make rules necessary for it to perform its duties properly and to regulate proceedings before it).

124. *See, e.g.,* ALA. CODE § 34-26-22 (Supp. 1979) (applicants for licensure must meet requirements stated in statute and in board rules and regulations); ARIZ. REV. STAT. ANN. § 32-2063(2) (Supp. 1979-80) (board will grant, deny, revoke, renew, and suspend certificates pursuant to state and board rules and regulations); CAL. BUS. & PROF. CODE § 2930(b)-(c) (Deering Supp. 1979) (applicant must have education and supervised experience as required by duly adopted committee regulations).

125. *See* Greensfelder v. Department of Consumer Affairs, Regulation & Licensing, No. 78154 (April 5, 1979) (Before the Administrative Hearing Commission). Petitioner held a master's degree with most of her graduate course work in educational counseling, and over ten years of professional experience at a counseling agency and in private practice. St. Louis Post-Dispatch, April 6, 1979, at 11A, col. 4. Many other cases before the AHC were from persons who possessed graduate degrees in counseling from departments of education and lacked sufficient course work that was "primarily psychological" and that covered the five core areas of psychology delineated in the Educational Requirements Rule. *See* notes 41-42 *supra* and accompanying text. Washington University, concerned that many of the applicants who were denied licensure held master's degrees in counseling from the Washington University Graduate Institute of Education, also brought an action against the Department and the Committee; the AHC granted the University's motion to consolidate with *Greensfelder. See* Washington Univ. v. Department of Consumer Affairs, Regulation & Licensing, No. DJ-79-001 (April 5, 1979) (Before the Administrative Hearing Commission).

126. Petitioner noted, for example, that the statute includes counseling in its definition of the practice of psychology and includes educational and vocational counseling within its scope of application, *see* MO. REV. STAT. § 337.015(3)-(4) (1978), but the Educational Requirements Rule fails to mention counseling as one of the core areas of psychology.

Petitioner further argued that the Educational Requirements Rule, 4 C.S.R. 235-3.010 (1977), unlawfully established substantive standards for educational requirements, such as a minimum number of hours of total course work in psychology taken in five out of fifteen basic areas in psychology; that the Requirements for Licensure without Examination Rule, 4 C.S.R. 235-4.010 (1977), unlawfully established a residency requirement for licensure without examination; and that the supervised Professional Experience Rule, 4 C.S.R. 235-2.010 (1977), unlawfully established substantive standards for supervision and training and for the supervisor's qualifications. *See* Greensfelder v. Department of Consumer Affairs, Regulation & Licensing, No. 78154 (April 5, 1979) (Motion for Summary Judgment, Before the Administrative Hearing Commission). *See also* Washington Univ. v. State Comm. of Psychologists and Greensfelder v. State Comm. of

provided the committee with standards that clarified the imprecise statutory language[127] and thereby enabled the committee to fulfill the legislative intent to permit only qualified persons to practice as psychologists.[128] The AHC declared the Educational Requirements Rule invalid, holding that it added to the statutory educational requirements for psychologist licensure in a way unauthorized by law and in effect altered statutory law.[129]

Psychologists (April 5, 1979) (Hearing Transcript, Before the Administrative Hearing Commission) [hereinafter cited as *Hearing Transcript*].

127. The statutory language includes amorphous phrases such as "satisfactory supervised professional experience in the general field of psychology," MO. REV. STAT. § 337.020(2) (1978), "program of studies whose content was primarily psychological," *id.* § 337.020(2)(a)-(b), and "engaged in the active profession of psychology," *id.* § 337.020(5).

128. *See Hearing Transcript*, *supra* note 126, at 17-22. Respondent further contended that the statute as a whole presumes the promulgation of rules and regulations. Section 337.050(7) of the Missouri Revised Statutes, which provides for the expiration of rules, regulations, advisory opinions or amendments within two years of promulgation, implies that such rules will not be concerned solely with the functioning of the Committee. Further, implied rulemaking power exists in Section 337.035(4) of the Missouri Revised Statutes, which directs the Department to publish "Ethical Standards for Psychologists."

129. *See* Greensfelder v. Department of Consumer Affairs, Regulation & Licensing, No. 78154 (April 5, 1979) and Washington Univ. v. Department of Consumer Affairs, Regulation & Licensing, No. DJ-79-001 (April 6, 1979) (Statement of the Case, Findings of Fact, Conclusions of Law and Decisions, Before the Administrative Hearing Commission). The Commissioner held that the Department's rulemaking authority is restricted to that set out in section 337.050(5) governing committee functions. MO. REV. STAT. § 337.050(5) (1978). The AHC did not rule on the validity of the Supervised Professional Experience and the Requirements for Licensure without Examination Rules.

Respondent decided not to appeal the AHC's decision. The decision not to appeal may have been based in part on practical considerations. There were approximately 250 people awaiting a hearing. If the decision invalidating the Educational Requirements Rule were appealed and the Rule found to have been lawfully promulgated, the Department and Committee would then have had to face a challenge of the reasonableness of the Rule. The process would naturally consume time, and the delay could constitute due process violations for those awaiting hearings. An emergency rescission of 4 C.S.R 235-3.010 was filed on April 12, 1979, bearing an effective date of March 23, 1979. The final rescission of the regulation occurred November 1, 1979.

Following this decision, the Committee reviewed all applications from candidates who had been denied licensure because of deficient education. The Committee's only standard for review was the statutory requirement that the doctoral or master's degree be "based on a program of studies whose content was primarily psychological." MO. REV. STAT. § 337.020 (2)(a)-(b) (1978). Many applicants, including Greensfelder, were granted licensure under this standard; others were again denied licensure because their courses of study were not "primarily psychological" or on other grounds not named before, such as unsatisfactory supervised professional experience. The AHC has held hearings for several of the applicants redenied licensure because of deficient programs of study and has granted licenses to many of these applicants simply because it disagreed with the Committee's determination of what constituted a "primarily psychological" course of study. (Information obtained through conversations with Committee members.).

Missouri has now entered the post-grandfather clause stage of psychologist regulation. The

A North Carolina court of appeals, however, reached a contrary conclusion when interpreting similar statutory language.[130] The North Carolina psychologist licensing act authorized the board to promulgate rules and regulations "as may be necessary to regulate its proceedings and otherwise to implement the provisions of [the act]."[131] The court declared that the board, in promulgating an educational requirements rule applicable to applicants not possessing a degree in psychology,[132] acted within its rulemaking authority. The court found the rule consistent with legislative intent and reasonably necessary to implement the act.[133] Similarly, the Oklahoma board has authority to promulgate rules necessary to the proper performance of board duties.[134] An Oklahoma court, concerned only with the reasonableness of a board rule that interpreted statutory language, did not even question the existence of the board's authority to promulgate the rule.[135]

In general, a licensing board authorized to promulgate rules to implement the statute can issue rules that clarify imprecise statutory

Department offered its first Examination for the Professional Practice of Psychology on October 14, 1979. The American Association of State Psychology Boards developed this examination with the intent of establishing minimum standards nationwide for psychologist certification or licensure. The test was first offered in 1965. The test measures knowledge across a broad range of psychology that all psychologists, regardless of their specialties, should possess. The examination was primarily geared for applicants with a doctoral degree in psychology plus one or two years of supervised experience. Studies show that holders of a doctorate of philosophy score significantly higher than do holders of a master's degree or a doctorate in education. Applicants specializing in industrial, clinical, or social psychology in general score higher than those in experimental psychology. Counseling and educational psychologists achieve the lowest scores. Terris, *The National Licensing Examination*, 4 PROFESSIONAL PSYCH. 386, 386-89 (1973). In Missouri, approximately 57 candidates took the examination and 31 failed. Approximately 70% of those who failed held master's degrees. The Committee, therefore, may have felt its efforts to be stringent were exonerated by the results of this examination. *See* Cathcart & Graff, *Occupational Licensing: Factoring It Out*, 9 PAC. L.J. 147, 147 (1978) (purpose of examination is to validate minimum standard of knowledge that should have been learned and retained through course work and supervised experience).

130. *See In re* Partin, 37 N.C. App. 302, 246 S.E.2d 519 (1978).

131. N.C. GEN. STAT. § 90-270.9 (1975), *construed in In re* Partin, 37 N.C. App. 302, 310, 246 S.E.2d 519, 525 (1978).

132. *See* notes 98-99 *supra* and accompanying text.

133. 37 N.C. App. 302, 310, 246 S.E. 2d 519, 524-25 (1978). The court observed that the Educational Requirements Rule evinced board recognition of the fact that an applicant may fulfill the statutory educational requirement of possession of a degree based on a "primarily psychological" program of studies through a program that is not strictly labeled as one in psychology. *Id.*

134. *See* OKLA. STAT. ANN. tit. 59, § 1359 (West 1971).

135. *See* Whittle v. State Bd. of Examiners of Psychologists, 483 P.2d 328 (Okla. 1971). The court's inquiry focused on the board rule interpreting the statutory requirement that grandfather applicants have "satisfactory professional experience."

terms. Such rules assist the board in making licensing decisions, minimize the potential for a charge of acting in an arbitrary and capricious manner, and provide the public with precise notice of licensure requirements. Board promulgated rules should be upheld if they are reasonable and consistent with the legislative scheme.

A final issue[136] surrounding psychologist licensing acts concerns the stringency of the requirements for grandfather licensure. A grandfather provision is essential in statutes that regulate a previously unregulated profession because courts view an individual's professional practice as a vested property right of which he or she cannot be deprived without due process of law.[137] Missouri's grandfather licensure

136 The Missouri Act requires that the communications be made in the course of professional services and provides that the licensed psychologist cannot be compelled to testify concerning any privileged communication without the communicator's consent. MO. REV. STAT. § 337.055 (1978). *See also* D.C. CODE ANN. § 2-496 (1973) (psychologist/patient privilege same as physician/patient privilege); GA. CODE ANN. § 84-3118 (1979) (communications between psychologist and client privileged as are attorney/client communications); KAN. STAT. ANN. § 74-5323 (1972) (same); OKLA. STAT. ANN. tit. 59, § 1372 (West 1971) (same).

The Alaska statute provides that "[no] psychologist or psychological associate may reveal to another person a communication made to him or her by a client of his or hers about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity." Exceptions include professional conferences and written authorization from the client permitting revelation of the communications. ALASKA STAT. § 08.86.200 (1977). In *Allred v. State*, 554 P.2d 411 (Alaska 1976), the Alaska Supreme Court held that this provision makes a client's communications to his psychologist confidential, but does not create a testimonial privilege. The court then proceeded to establish a common-law psychotherapist/client privilege that encompasses court room testimony. Its recognition of a common-law privilege was based on a four part test. First, the court noted the inherent confidentiality of communications to a psychotherapist in the course of treatment. Second, this confidentiality is essential to achievement of the goals of psychotherapy. Third, society has an interest in the psychotherapist-patient relationship and it should be fostered. Fourth, the injury to the psychotherapist-patient relationship caused by fear of disclosure outweighs the benefits justice would derive from disclosure. *Id.* at 416-18. The court was careful to restrict the scope of this privilege to communications made to psychiatrists or licensed pyschologists. Communications to counselors, psychiatric social workers, and psychological associates are not privileged. *Id.* at 418.

Many states provide an exception to the privilege that arises when the purpose of the proceeding is to determine mental competency or the client raised the defense of mental incapacity. *See, e.g.*, D.C. CODE ANN. ch. 111, § 5306(2) (Smith-Hurd Supp. 1979). Making psychologist/client communications confidential is one of the chief purposes of psychologist licensure or certification acts and is an important way to enhance the profession's status. National Psychological Ass'n for Psychoanalysis v. University of New York, 8 N.Y.2d 197, 201-02, 168 N.E.2d 649, 651-52, 203 N.Y.S.2d 821, 824-25, *appeal dismissed*, 365 U.S. 298 (1960). *See also* Geiser & Rheingold, *Psychology and the Legal Process: Testimonial Privileged Communications*, 19 AM. PSYCH. 831, 832 (1964) (privileged communications between client and psychologist as a professional status symbol).

137. *See* Whittle v. State Bd. of Examiners of Psychologists, 483 P.2d 328, 329 (Okla. 1971).

provision permits individuals practicing psychology prior to enactment of the licensing statute to obtain a license without examination.[138] The grandfather applicant must, however, meet all other qualifications required of nongrandfather applicants, including possession of an appropriate master's or doctoral degree.[139]

The Illinois Psychologist Registration Act[140] and the Practice of Psychology Act of the District of Columbia[141] contained grandfather clauses similar to Missouri's because both required a master's or doctoral degree for grandfather licensure.[142] Neither clause, however, sur-

---

Accord, Miller v. Carter, 547 F.2d 1314, 1328 (7th Cir. 1977) (right to engage in a particular type of employment is a very important right); Division of Beverage of Fla. Dept. of Business Regulation v. Foremost-McKesson, Inc., 330 So. 2d 143, 146 (Fla. 1976) (liquor distributor license is an existing investment which must be protected against sudden shift of public policy); State v. Bridwell, 592 P.2d 520, 525 (Okla. 1979) (license to practice a profession is at least a property interest that deserves appropriate protection).

138. *See* MO. REV. STAT. § 337.020(5) (1978).

139. *Id.* House Bill No. 255 required less stringent qualifications for licensure of practicing psychologists than of post-grandfather period applicants. The House Bill required grandfather applicants to possess either a doctoral degree plus one year of "satisfactory supervised professional experience," H.B. 255 § 3(2)(3)-(4), 79th General Assembly, 1st Sess. (1977), or a master's degree plus five years of "professional experience satisfactory to the committee." *Id.* § 4(2)(2). Future applicants must possess a doctoral degree, plus one year of supervised professional experience. *Id.* § 3(2)(3)-(4).

Numerous other states also require that applicants for grandfather licensure possess an advanced degree. Some states do not distinguish between grandfather and future applicants in terms of educational requirements. *See, e.g.,* IOWA CODE ANN. § 154B.6(3) (West Supp. 1980-81) (all applicants must possess either doctoral or master's degree); MINN. STAT. ANN. § 148, 92 (West Supp. 1979) (all applicants for licensure as a consulting psychologist must possess doctorate; all applicants for licensure as psychologist must possess doctorate or master's degree). Several states place less stringent educational requirements on grandfather applicants. *See, e.g.,* ILL. ANN. STAT. ch. 111, § 5312 (Smith-Hurd 1978) (post-grandfather applicants must possess doctorate; grandfather applicants may possess only a master's degree); KAN. STAT. § 74-5312 (1972) (same); KY. REV. STAT. ANN. § 319.061 (Baldwin 1979) (same); OKLA. STAT. ANN. tit. 59, § 1366 (West 1971) (same).

140. ILL. ANN. STAT. ch. 111, §§ 5301-5329 (Smith-Hurd 1978).

141. D.C. CODE ANN. §§ 2-481 to 2-494 (West Supp. 1978-79).

142. ILL. ANN. STAT. ch. 111, § 5312(a) (Smith-Hurd 1978). This statute provides that for two years after the date the act became effective, a "[m]aster's degree in psychology from an approved college, university, or other institution and 2 years professional experience which is deemed satisfactory by the Department . . . meet the education and examination requirements" placed on future candidates for licensure. These requirements include "a doctoral degree in psychology from a college, university, or other institution approved by the Department," *id.* § 5311(d); "at least 2 years of satisfactory professional experience," *id.* § 5311(e); and "pass[ing] an examination conducted by the Department to determine . . . fitness to receive a certificate." *Id.* § 5311(f).

D.C. CODE ANN. § 2-487 (West Supp. 1978-79) provides that, within one year after the effective date of the act, an applicant may be licensed without examination if he or she is of good moral

vived judicial scrutiny. Plaintiff in *Taylor v. Hayes*[143] possessed a bachelor's degree in psychology, thirty-two hours of post-graduate study at approved schools, and nine years of practical experience as a psychologist. The Illinois Department of Education and Registration informed Taylor that his educational and practical experience was statutorily insufficient to warrant grandfather licensure.[144] On review an Illinois appellate court assumed that a person who has practiced a profession for years is qualified to practice that profession.[145] Because the plaintiff's right to pursue his profession existed prior to enactment of the licensure act, the regulation of his profession must be reasonable as it affects him.[146] The court found the act arbitrary, unreasonable, and unconstitutional as applied to plaintiff because it failed to provide a method for determining whether a person previously engaged in the practice of psychology qualified for licensure even though that person lacked an advanced degree.[147]

The United States Court of Appeals for the District of Columbia in *Berger v. Board of Psychologist Examiners*[148] held the Psychology Act's

character, maintains a residence or office in the District of Columbia, pays the application fee, and possesses either:

(A) a doctoral degree in psychology from an accredited college or university or other doctoral degree acceptable to the Commissioner, and has completed at least two years of postgraduate experience not including terms of internship; or (B) a master's degree in psychology from an accredited college or university, and has engaged in psychological practice acceptable to the Commissioner for at least seven years after the attainment of his or her highest degree. *Id.*

143. 131 Ill. App. 2d 305, 264 N.E.2d 814 (1970).

144. *Id.* at 308, 264 N.E.2d at 815. Plaintiff alleged that this denial of licensure had a substantial effect on him in that he could no longer present himself as a psychologist, either in the telephone book or on his office door; he lost his membership in his professional organization; and he received a decreased number of referrals and a concomitant loss of income. *Id.* at 380, 264 N.E.2d at 816.

145. *Id.* at 310-11, 264 N.E.2d at 817. To support this assumption the court cited Watson v. Maryland, 218 U.S. 173 (1910), in which the Supreme Court declared that "those who have acceptably followed the profession in the community for a period of years may be assumed to have the qualifications which others are required to manifest as a result of an examination before a board of medical experts." *Id.* at 177. *See also* Dent v. West Virginia, 129 U.S. 114 (1889) (licensing of physicians whose credentials included only practical experience is permitted).

146. *See* Taylor v. Hayes, 131 Ill. App. 2d 305, 311, 264 N.E.2d 814, 818 (1970).

147 *Id.* The court dismissed as unreasonable the suggestion of the Department of Registration and Education that plaintiff earn a master's degree by taking post-graduate courses and completing an internship 17 years after college graduation. The court refused, however, to issue a writ of injunction compelling the Department to certify plaintiff. Instead, the court directed the Department to examine plaintiff and evaluate his qualifications without reference to the act's educational requirements, and to determine in this manner whether he is competent for certification. *Id.*

148. 521 F.2d 1056 (D.C. Cir. 1975).

irrefutable presumption that professional competence is related to possession of a graduate degree violative of due process of law. The court stated that the presumption arbitrarily and unreasonably deprived individuals of a constitutionally recognized interest in the practice of a chosen profession.[149] Although Berger practiced psychology in the District of Columbia for over thirteen years, the board denied his application for licensure without examination because he possessed neither a doctoral nor a master's degree.[150] In its reversal of the board, the United States Court of Appeals described the practice of psychology as an amorphous, inexact, and mysterious discipline for which graduate education may be rationally required in the future. It was irrational, however, to place such educational requirements on current practitioners who received their training when psychology graduate education was "even less meaningful."[151] Due process requires that an applicant already practicing psychology be given a fair opportunity to demonstrate professional competence before being denied a license. This requirement does not greatly impair administrative efficiency because it applies only to a specific number of individuals and presents the agency with a definable burden of limited duration.[152]

In *Whittle v. State Board of Examiners of Psychologists*[153] the Oklahoma Supreme Court also stressed that grandfather applicants must be granted a license in the absence of suitable procedures for

149. *Id.* at 1063.

150. *Id.* at 1058-59. The District of Columbia Court of Appeals affirmed the board's decision. *See* Berger v. Board of Psychologist Examiners, 313 A.2d 602 (D.C. 1973). The court of appeals dismissed petitoner's action without prejudice on procedural grounds. In issuing his complaint to the board and then to the court of appeals, petitioner relied on statutory provisions outlining proper administrative procedure. He could not simultaneously attack the statute's constitutionality as "one cannot in the same proceeding both assail a statute and rely upon it." *Id.* at 604 (citing Buck v. Kuykendall, 267 U.S. 307, 316 (1925)). In addition, the act provides that only one aggrieved by a board decision may seek judicial review; petitioner did not allege he was so aggrieved because he could not claim that the board erred in denying him a license. The court of appeals suggested two alternative remedies for petitioner. He could continue to practice psychology, and if criminally charged with practicing without a license or enjoined from so doing, he could claim as a defense that the statute is unconstitutional. Second, petitioner could seek a judicial declaration in an original action that the act is unconstitutional. *Id.* at 604-05.

151. 521 F.2d at 1061.

152. *Id.* at 1063-64. The United States Court of Appeals answered the procedural arguments of the District of Columbia Court of Appeals (*see* note 150 *supra*) observing that plaintiff's constitutional claim did not seek to invalidate the entire statute on which plaintiff relied and from which the court derived its jurisdiction. Rather, plaintiff desired a declaration that only one portion of the statute as applied to him violates due process. *Id.* at 1060.

153. 483 P.2d 328 (Okla. 1971).

proving their incompetence. Plaintiff fulfilled the statutory requirements for grandfather licensure,[154] but was unable to comply with a board rule requiring, as evidence of satisfactory professional experience, testimonial letters from three to five psychologists licensed or eligible for licensing and personally familiar with the nature of the applicant's practice. Plaintiff, a solo practitioner, could not produce testimonial letters because no other psychologists were adequately acquainted with his practice.[155] The board denied plaintiff a license. On review, the court found the rule unreasonable and unduly restrictive. Plaintiff's psychology practice was a vested property right subject only to rules and regulations rationally related to protection of the public health and welfare.[156] Psychologist licensing acts, therefore, must provide flexible procedures so grandfather applicants can demonstrate

154. OKLA. STAT. ANN. tit. 59, § 1366(b)(1)-(2) (West 1971) provides for licensure without examination within one year of the effective date of the Psychologists Licensing Act of an applicant who is at least twenty-one years of age, of good moral character, a resident of Oklahoma, and a United States citizen. Further, the applicant must have a doctoral or master's degree "from an accredited institution based upon a program which is primarily psychological or the equivalent thereof." The applicant possessing a doctorate must have five years of professional experience satisfactory to the Board; the applicant with a master's degree must have eight years of such experience.

Whittle had been practicing as a psychology consultant to commerce and industry since the early 1950's (more than ten years before enactment of the Psychologists Licensing Act) and he possessed bachelor and master's degrees in psychology. 483 P.2d at 328.

A holder of a master's degree could also be licensed as a psychologist in Oklahoma if he applied within one year of the effective date of the act, if he "has been engaged full time in rendering under supervision psychological services for five years, of which the last three have been in the State of Oklahoma," and if he passed the examination. OKLA. STAT. ANN. tit. 59, § 1362(b) (West 1971).

155. 483 P.2d at 329.

156. *Id.* at 329-30. The court remanded the case to the board. *Id.* at 330. The court directed the district court to retain its supervisory jurisdiction to ensure justice and to allow plaintiff to continue his psychology practice while awaiting the board's decision.

On remand the board devised an alternative procedure for Whittle to obtain suitable references. Three psychology consultants from other states who were experts in industrial-organizational psychology observed and evaluated Whittle's psychology practice. They determined that he was only marginally qualified to practice psychology but did not recommend denial of licensure since they knew of less competent individuals who were practicing psychology in other states. The board permitted Whittle to continue his practice, but refused to endorse him by granting him licensure. Smith, *Psychology and the Courts: Some Implications of Recent Judicial Decisions for State Licensing Boards*, 9 PROFESSIONAL PSYCH. 489, 490-91 (1978).

The courts in *Taylor*, *Berger*, and *Whittle* (*see* notes 143-56 *supra*) did not direct issuance of a license; rather they remanded the licensure question to the psychology boards. Implicit in such remands is judicial recognition that licensing boards have the right and obligation to assess professional competence. *Id.* at 491-92.

their professional competence.[157] Grandfather licensure provisions that presume a need for graduate education to meet competence standards for psychologists may be unconstitutional; the presumption probably deprives grandfather applicants of vested property rights without due process of law.

III. CONCLUSION

State regulation of psychologists may be necessary to protect the public from incompetent practitioners, but the effectiveness of psychologist licensing laws is questionable because of the various problems and issues that arise in connection with the licensing acts. Legislatures frequently describe the requirements for psychologist licensure in uncertain and ambiguous terms. Although the terms have survived judicial scrutiny,[158] vague terminology may result in the issuance of a license to an incompetent candidate or the denial of a license to one actually qualified to practice psychology. The promulgation of rules by licensing boards to clarify statutory requirements serves an extremely useful purpose. The rules provide more concrete, objective standards on which to base the decision to grant or revoke a license and reduce the possibility of a successful challenge by a licensee or applicant on the grounds of denial of due process.[159]

The procedures used by the licensing agency in deciding whether to grant, deny, revoke, suspend, or withhold a license may also provoke charges of due process denial.[160] To ensure that the board acts rationally and in the public interest, legislatures may wish to adopt procedu-

157. Some states have provided less rigid procedures for grandfather licensure. *See, e.g.,* ALA. CODE § 34-26-45 (1975) (board may waive any requirements for grandfather licensure, including the examination and educational requirements, if it "deems such action to be in the public interest"); GA. CODE ANN. § 84-3109 (1979) (same); MD. ANN. CODE art. 43, § 631 (1980) (board may grant grandfather license without examination to applicant who establishes "to the satisfaction of the Board . . . that he has received by experience or otherwise the substantial equivalent of [the Act's required qualifications for licensure]"); OHIO REV. CODE ANN. § 4732.15 (Page 1977) (board may waive any requirements for grandfather licensure, including examination and educational requirements, if applicant "demonstrates to the board's satisfaction professional competence in the practice of psychology").

158. *See* notes 46-61 *supra* and accompanying text.

159. One psychologist advises licensing boards that the safest way to avoid a due process challenge is in the promulgation of explicit rules and regulations. Smith, *Psychology and the Courts: Some Implications of Recent Judicial Decisions for State Licensing Boards*, 9 PROFESSIONAL PSYCH. 489, 497 (1978).

160. *See* notes 62-79 *supra* and accompanying text.

ral safeguards, such as placement of a lay person on the licensing board or promulgation of formal procedural guidelines for the board.

Legislatures may also find it necessary to clarify the scope of the psychologist licensing acts. There is considerable confusion in many states, including Missouri, over whether the legislature intended to include counselors within the scope of the psychologist licensing law.[161] This confusion could be resolved with a definitive exemption clause;[162] the optimal solution requires the enactment of separate licensure acts for professions closely related to psychology.[163]

Courts generally accept the legislative delegation of substantial authority to psychologist licensing boards.[164] The nondelegation doctrine is not violated when legislatures properly defer to administrative expertise in deciding questions of professional competence, and where standards to guide the agency can be inferred from the statutory scheme. The challenge to Missouri's act reveals, however, that it is prudent for a legislature to state precisely the nature and scope of the board's rulemaking power.[165]

Finally, where expansion of the coverage of psychologist licensing acts is necessary, the legislature must provide flexible procedures for determining the competence of previously unregulated practitioners seeking licensure.[166] An irrefutable presumption that certain credentials are essential for competence risks a judicial determination of unconstitutionality.

Other aspects of the regulation of psychologists continue to demand legislative attention. There is a trend towards amending licensing or certification acts to require evidence of continuing education for license renewal.[167] Furthermore, sunset laws leave some states suddenly without any legislation to regulate the practice of psychology.[168] The Mis-

161. *See* notes 80-108 *supra* and accompanying text.

162. MO. REV. STAT. § 337.045(1) (1978) exempts school, vocational, and vocational rehabilitation counselors from the statute's application. Perhaps this should be broadened to exempt explicitly all counselors, including marriage, child, and family counselors, if such is the intent of the legislators.

163. *See* note 88 *supra* and accompanying text.

164. *See* notes 109-119 *supra* and accompanying text.

165. *See* notes 120-136 *supra* and accompanying text.

166. *See* notes 137-157 *supra* and accompanying text.

167. One reason for this trend may be pressure from the federal government as it progresses toward national health insurance and the concomitant need for greater accountability of health professionals and assurance of their competency. *See* HANDBOOK, *supra*, note 38, at G-36 to -38.

168. As of July 1, 1979, Florida and South Dakota had no laws regulating the practice of

souri legislature can be commended for taking a step, which was long overdue, in enacting the psychologist licensing act. Now Missouri, along with many other states, must continue to assess the effectiveness of its regulation of psychologists and eliminate weaknesses in its licensing scheme.

Jeanne Fischer

---

psychology. Their previous psychologist regulatory statutes automatically terminated because of sunset laws which provide for the expiration of agencies that cannot justify their existence. Almost 30 states have similar sunset laws, and Arizona, Georgia, Kansas, and Montana will be without psychologist regulation in 1980 if their legislatures fail to save it. Legislatures did prevent the expiration of psychologist licensing boards in Oklahoma and Alabama. The Florida and South Dakota legislatures refused to reauthorize psychologist regulatory agencies largely because licensed psychologists could not agree among themselves on the proper standards for licensure. Again, the debate centered on whether counselors should be permitted to qualify for psychologist licensure. *See* Foltz, *Sun Sets on Psychology Licensing Boards in South Dakota and Florida*, APA MONITOR 3 & 14 (Sept./Oct. 1979). *See also* American Personnel & Guidance Association Guidepost, 1 & 3 (Aug. 1979).