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Date: November 16, 2016
To: Sunset Advisory Commission
Attn: Mr. Robert Romig
From: Mary Lou Serafine
Re: Staff Report: Texas State Board of Examiners of Psychologists

I understand that the Staff has asked for comments that (1) support or oppose the recommendations; (2) suggest changes to the recommendations; or (3) summarize new issues that should be included in the Report. I recognize the diligent work reflected in the Report and appreciate the opportunity to submit the following.

General Comments

I am Mary Lou Serafine, the plaintiff who brought the law suit against the psychology board ending in the federal Court of Appeals' decision that, as the Staff Report correctly states in Issue 5, "***held the definition of psychological services in Texas' statute unconstitutionally infringes on free speech.***" (Report at 4).

I am also among those persons—in my case potentially offering future life-coach services—whom the Court of Appeals identified as having their freedom of speech rights infringed by the definition of "psychological services" that was struck down.

The heart of the *Serafine v. Branaman* decision is this: The federal courts have now analyzed this law—and they will analyze every similar, future law—under the Constitutional guarantee of freedom of speech. Freedom of speech means, in my view, that we are free to talk and listen to whomever we please, whenever we wish, including one-on-one, for pay. There are exceptions for crime, fraud, defamation, etc. But on the whole the freedom to speak and listen is the heart of the freedom to think, and to believe.

It is important to emphasize that the only thing psychologists do is ***talk***. They do not touch the body, build homes or bridges, or affect public health and safety.

The *Serafine v. Branaman* case lasted four years. It went to trial in federal court. The trial transcripts and briefs written by me and by the Attorney General, as well as the Court's decision, are posted at www.mlserafine.com.

My criticism of the Staff Report concerning Issue 4 is that its substance is identical to the psychology board's arguments in federal court—in other words, the exact ones that were rejected as a justification for the unconstitutional licensing act that was struck down.

I would, then, like to offer the following suggested changes:

Suggested Change in Issue 4 (Executive Summary)

Currently the Report's Executive Summary states:

ISSUE 4

Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.

Texas has a continuing need to regulate the practice of psychology. Licensed psychologists provide a wide range of psychological services such as individual and group therapy to vulnerable populations. Treatment often occurs without supervision in otherwise unregulated settings, and psychologists apply a considerable amount of judgment in treatments and therapies. (Report at 3.)

I respectfully suggest removing all of the above and replacing it with the following.

ISSUE 4

Texas Should Consider *Certifying* rather than *Licensing* Psychologists, as a way of providing regulation without the risk of violating the right to free speech under the Constitution, with more resulting constitutional litigation.

A *certificate* in psychology would tell the public that the certified person has passed the State's requirements and has the State's "stamp of approval." A *license*, by contrast, prohibits all unlicensed people—virtually all

Texans—from engaging in the types of conversations that the law once said—before being struck down—constituted “psychological services” or “the practice of psychology.” That list is shown in Appendix E, page 47. The sections struck down as unconstitutional are 501.003(b)(2) and, by implication, 501.003(c).

A *certificate* instead of a *license* in psychology would comport with Texas’ current regulation of teachers. Teachers are certified, not licensed. The State would of course be free to hire only certified psychologists for any of its state-funded programs.

Suggested Change in Issue 4 (Report at pages 27-28).

Currently the Report states:

Findings

Texas has continuing need to regulate the practice of psychology.

•**Potential for harm.** Psychologists work directly with the public, including vulnerable populations the state seeks to protect through the regulation of occupations. Many patients suffer from mental disorders or impairments, placing them in an especially sensitive position. Treatment often occurs without supervision in otherwise unregulated settings, and psychologists apply a considerable amount of judgment in treatments and therapies. The authority and trust given to psychologists creates an opportunity for abuse, whether financial, emotional, sexual, or otherwise.

Psychological professionals delve into sensitive topics and their conclusions carry significant impact. Psychologists treat patients suffering from trauma, abuse, drug or alcohol addiction, or other mental health conditions. Courts and other governmental entities rely on psychologists’ opinions to help make decisions that can substantially affect the lives of Texans. Psychologists may assert whether a parent should have custody of children, whether an individual deserves a harsh or more lenient prison sentence, whether someone is competent to work, or whether to involuntarily commit an individual to a state hospital. Conclusions often rest on nuanced interpretations of a patient’s biological, cognitive, and social history, making oversight or later review of these conclusions especially difficult. (Report at 27-28.)

I respectfully suggest removing all of the above and replacing it with the following, in order to provide the legislature with balanced information.

•**Conflicting Policy.** The Staff had the benefit of various points of view. During this period, two proposed new statutes were circulated, one by the Texas State Board of Examiners of Psychologists, and a second by private psychological organizations. This spurred further requests for meetings with Staff. We discern at least two competing views.

One emphasizes the liberty interests of both the public, on the one hand, and service providers, on the other. According to this point of view, the public—individuals, organizations, and businesses—should be free to choose providers who offer them services they wish to buy, whether those are therapies, organizational activities to improve relations within a business, or alternative helping activity such as yoga, Eastern thought, or life-coaching. In this point of view, the problems of life are not “disorders.” Adherents of this view point to the lack of complaints and absence of malpractice law suits concerning the actual *practice* of therapy, or psychological practices, as opposed to non-therapy complaints such as billing fraud, sexual impropriety, and similar conduct that is already prohibited by other law. This group points to the absence of research establishing that the licensing of psychologists leads to improvements in either safety or mental health. They also point to the self-interest of psychological organizations in eliminating competition in the marketplace for such services.

The other point of view points to the necessity of licensing as a method of preventing harm to the public. Adherents of this point of view note that psychologists work directly with the public, including vulnerable populations who suffer from mental disorders or impairments, placing them in an especially sensitive position. According to this point of view, treatment often occurs without supervision in otherwise unregulated settings, and psychologists apply a considerable amount of judgment in treatments and therapies. The authority and trust given to psychologists creates an opportunity for abuse, whether financial, emotional, sexual, or otherwise.

Adherents of this view also point out that psychological professionals delve into sensitive topics and their conclusions carry significant impact—not only with the individuals but possibly with courts and other governmental entities.

Thank you for the opportunity to provide commentary. I would be happy to speak with any one interested in these issues at any time.

Very truly yours,

M. L. Serafine

Mary Lou Serafine