



Scrabble®:

DSM-5 TRO LEP CBOP CBSS CLEE EPPP



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Many factors must be considered when determining an applicant's eligibility for licensure of a regulated profession. Qualifications for licensure are set forth in statute and, in addition to filing applications and payment of relevant fees, generally include components related to education, examination, and experience. Some boards have the authority to assess moral character as a prerequisite to licensure. Moral character assessments may include a criminal background check to reveal past indiscretions.

Under some circumstances, applicants for licensure may have a licensure or employment history as a practitioner in a related profession. When these applicants are considered, questions about activities under the applicant's "other" license may arise relevant to the applicant's eligibility for the additional license. Consider the following.

A licensed educational psychologist (Plaintiff) with a master's degree who was licensed by the California Board of Behavioral Sciences (CBBS) sought licensure as a psychologist from the California Board of Psychology (CBOP). As a licensed educational psychologist, Plaintiff served as the lead school

psychologist for autism in a California school

**Counsel's
Column**

district from 2000 through 2012. The Plaintiff also worked for another school district from October 2013 through November 2014. During these employment periods, Plaintiff is alleged to have conducted over 4,500 evaluations of more than 2,500 students. Through her work, Plaintiff often testified against Alta Regional Center (ALTA) in proceedings that resulted in Alta being ordered to provide special educational services to students with disabilities.

To qualify for licensure as a psychologist, the Plaintiff earned a doctorate degree in psychology, completed her postgraduate hours, and passed the Examination for Professional Practice in Psychology (EPPP). In July 2013, the Plaintiff filed an application for licensure with the CBOP and in August 2015 sat for the California Psychology Law and Ethics Examination (CPLEE). Upon completion of the CPLEE, Plaintiff was told she received a passing score. Later that month, Plaintiff was allegedly told by a CBOP staff person that her application was approved and she

could come pick up her psychology license. When she arrived at the CBOP office, Plaintiff was told that her CPLEE examination score could not be located.

In the interim, in July 2015, an employee at Alta filed a complaint with the CBBS alleging, among other allegations, that the Plaintiff had practiced outside her scope of practice by conducting an evaluation of a minor patient using DSM-5 coding. At some point and in violation of HIPAA, the complainant at Alta also sent two reports prepared by Plaintiff to the CBOP. Without any notice to the Plaintiff, the CBOP sent her application file to its enforcement department, concluding that her application should be denied. As a result, the enforcement department sent a letter to the Plaintiff that her application was denied and offered her an opportunity to appeal the decision.

In October 2015, Plaintiff filed a complaint in a United States District Court seeking a declaratory judgment and a temporary restraining order (TRO). Under the TRO, Plaintiff asked the court to prohibit the CBOP from refusing to issue her a license. Under the declaratory judgment, Plaintiff sought to have the patient reports submitted in violation of HIPAA returned to the patient's parents, to have the CBOP placed in federal receivership, and to be awarded damages, costs, and attorney's fees. The complaint asserted numerous causes of action, including a conspiracy theory, age discrimination, due process violations, and violations of right to association under the First Amendment.

Based on the time-sensitive issues, the Plaintiff sought an ex parte order issuing the TRO. (An ex parte order is issued by a court prior to and without hearing from an adverse party, in this case the CBOP.) In assessing the entry of a TRO, the court noted that the Plaintiff must show that she is subject to immediate and irreparable harm, loss, or damage. As part of her attempts to show the magnitude of the circumstances and irreparable harm to which she would be subjected, the Plaintiff noted that she was under contract with the California Department of Justice to work for the Department of Corrections (DOC) but that such employment was contingent upon her becoming licensed as a psychologist by November 25, 2015. In addition, the Plaintiff argued that she was a single parent and the sole provider for her family and that, based upon her age (50), she would have difficulty in gaining employment should the DOC opportunity be revoked.

The court stated that nothing in the record "...supports the conclusion that Plaintiff is being blackballed such that, despite the credentials she presents, she has been rendered unemployable." Finding that the Plaintiff failed to present any financial figures showing she would be unable to pay for the necessities of life, as well as noting previous case law finding that temporary loss of income through loss of a job does not constitute irreparable harm, the court found that Plaintiff could not bear her burden of proof.

Further, and in rendering its ruling, the court assessed Plaintiff's likelihood of success on the merits, an additional component of substantiating the issuance of a TRO. It

held that Plaintiff had not met her burden under the likelihood of success criterion. The court noted that Plaintiff's claims were vague and conclusory and did not contain the specific facts or evidence to support the allegations related to a conspiracy theory. It also noted that the Plaintiff had not produced the CBOP denial of licensure letter and did not produce any evidence suggesting that a licensed educational psychologist could lawfully perform the functions alleged in the complaint before the CBOP.

Accordingly, the court denied the motion for the TRO. The court noted that if the Plaintiff so desired, she could set the matter for a hearing on the issuance of a preliminary injunction. This case consists of interesting facts and a judicial analysis of how and when to enter a TRO. Boards of social work should review their application processing and anticipate how to address applicants who may be under current investigations by other agencies.

Holcomb v. California Board of Psychology, 2015 U.S. Dist. LEXIS 158181 (US Dist. Ct. CA 2015)