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the act (as amended in 1991), employment testing violates Title VII if the complaining party demonstrates that use of the test resulted in a disparate impact, and the employer fails to demonstrate that use of the test is job-related and consistent with business necessity.

Three educational testing practices are subject to legal regulation at the federal level. First, using individually administered intelligence tests to place children into special classes for the educable mentally retarded has been challenged on both statutory (Title VI of the Civil Rights Act) and constitutional grounds (Equal Protection Clause of the Fourteenth Amendment). Compare *Larry P. v. Riles* (1972/1974/1979), which curtailed such use of tests, to *PASE v. Hannon* (1980), which upheld their use. Second, laws requiring students to pass minimum competency tests before graduating from high school have been challenged by minority and disabled students as violating the Equal Protection and Due Process Clauses of the Constitution and Title VI of the Civil Rights Act. Disabled students have further argued that the laws violate Section 504 of the Rehabilitation Act of 1973 and Public Law 94-142 (the Education for All Handicapped Children Act). See, for example, *Debra P. v. Turlington* (1979/1981), in which the judge suspended the use of the minimum competency test for 4 years, after which time all students who had attended segregated schools would have graduated. The third practice concerns access to test materials, which are usually unavailable to the general public. Public Law 94-12 gives parents of disabled children access to all records bearing on the placement of their children in special classes. It is unclear whether students and their parents could get access to test protocols under this law.

Licensure and Other Practice Issues

The state licensing or certification laws, which primarily regulate the practice of psychology, can be challenged with varying degrees of success on federal as well as state grounds, as detailed by Daniel B. Hogan (1979, 1:386-392; 4:20-33). His review suggests that there are three relatively successful bases for challenge: (1) the grounds for disciplinary proceedings are constitutionally vague; (2) eligibility standards for entry into the profession are arbitrary and capricious, and higher than necessary, and thus violate procedural due process guaranteed by the constitution; and (3) more recently, licensing requirements such as minimum fee schedules violate antitrust laws. In addition, antitrust laws have been used to prevent insurance companies from limiting coverage and reimbursement for psychotherapy because the services were not rendered under the aegis of a physician.

Federal law also recognizes a testimonial privilege between psychotherapists and patients. Although a federal court generally may compel a person to testify at

trial when the person's testimony is relevant to a case, the court may not compel a psychotherapist to testify in federal court about confidential communications with a patient. The patient but not the psychotherapist may waive the privilege. In upholding this privilege in *Jaffee v. Redmond* (1996), the United States Supreme Court reasoned that effective psychotherapy depends on an atmosphere of confidence and trust, and the mere possibility of disclosure may impede development of the relationship necessary for successful treatment. The court also noted that all 50 states and the District of Columbia recognized some form of the psychotherapist privilege. Although the Court did not delineate the full contours of the privilege, it recognized that situations may arise in which the privilege must give way to protect a serious threat of harm to the patient or to others.

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- Hogan, D. B. *The regulation of psychotherapists*. (1979). Cambridge, MA: Ballinger. Volume 1 (*A Study in the Philosophy and Practice of Professional Regulation*) provides an overview of professional regulation of psychology; volume 2 (*A Handbook of State Licensure Laws*) provides a comprehensive analysis of laws regulating psychologists; volume 3 (*A Review of Malpractice Suits in the United States*) examines the impact of malpractice suits on the practice of psychotherapy; and volume 4 (*A Resource Bibliography*) provides over 3,000 references on professional regulation.
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Elizabeth C. Wiggins

State Regulation

The U.S. federal and state governments are empowered to safeguard the public's health, safety, and welfare. Most activities in which psychologists participate—from clinical testing, diagnosis, and treatment, to organizational, consulting, and academic research—im-

plicate the public's health, safety, and welfare. Thus government regulates most of what psychologists do.

Governmental regulation applies to the universities, health care facilities, businesses, and other organizations that employ psychologists. Government can and does regulate virtually all clinical services and many psychological consultation services. In addition to the direct regulation of who may deliver psychological services or the form that professional businesses may take, government regulation often has an indirect but central role in the delivery of psychological services. For example, the implementation of an organizational psychologist's consultation on a business's personnel selection procedures is governed by regulations promulgated by administrative agencies such as the federal and relevant state Equal Employment Opportunity Commission and the U.S. Department of Labor, as well as congressionally enacted statutes and judicial opinions interpreting relevant federal and state constitutional provisions.

These different sources of law also affect the accessibility of psychological services. For example, most states have statutes prohibiting adolescents from directly obtaining psychotherapy without parental consent or some other form of responsible adult approval. Other statutes or evidence codes and their judicial interpretations determine which psychologist-client communications are protected from disclosure. For example, psychologists are required by statute or rule to report suspicions of child abuse in the majority of states, and case law may give rise to a duty to warn identifiable victims of a patient's potential violence.

The use of human and animal participants in research is another area of psychological practice that is extensively regulated. For example, federal law requires universities engaged in research to have an Institutional Review Board to establish guidelines ensuring that potential research participants are not coerced to participate. The law may even dictate instances in which raw or synthesized research and/or clinical data must be made available to third parties. For example, some judges have required researchers to make data relevant to the resolution of a legal dispute available to litigants, although the researcher had no other connection to the litigation.

The law regulating psychologists' activities is an amalgam of federal and state constitutions, statutes, regulations, and judicial opinions. In addition to these sources of governmental action, in certain realms the laws regulating psychologists' activities may be a blend of public and private acts. Under appropriate controls, government's protective responsibilities can be delegated to nongovernmental entities operating under the auspices of the government. State psychological associations and the American Psychological Association strongly influence the creation and modification of reg-

ulatory laws and practices. Indeed, many state statutes or regulations governing psychologists explicitly incorporate the American Psychological Association Ethics Code and make its violation grounds for discipline. Consequently, although it is technically correct to hold government accountable for the regulation of psychologists, it is a collaborative effort. A state administrative agency, charged by the legislature with the responsibility of oversight of psychological services, might turn to a special panel or board, staffed by psychologists not employed by the agency, to review requests for licenses or to impose sanctions for breaches of professional duty. Thus, in practice, psychologists' activities are regulated not only by elected and appointed governmental officials, but also by government bureaucrats, by members of the public serving on regulatory boards or panels, by academicians, and by other psychologists.

Regulations directly affect the myriad activities engaged in by psychologists who offer mental health services. Mental health is part of the broader health care industry, and health care services have long been subject to regulation. There are three common types of regulation for health care providers.

The least restrictive type of regulation is *registration*. Registration typically requires only providing basic information (name, address, background, and the like) to a group or agency. *Certification* is more restrictive; it prevents someone from using a title or undertaking an activity until there has been a review by the outside group or agency. For example, the state of New York requires that school psychologists be certified (by a state administrative agency and the state's department of education) to work in a school setting. To work outside the school, however, the same psychologist would have to be licensed. *Licensing* is the most restrictive form of regulation. In general, licensing limits who can provide services (for example, by specifying the training that is required) and also can restrict the scope of services that can be provided (for example, in some states, licensing laws allow master's level psychologists to administer psychological tests but do not grant them license to offer psychotherapy). Licensing also may bestow other benefits. In restrictive states like New York, for example, licensing requirements confer rights and responsibilities for licensed psychologists that exceed those for psychologists who are not licensed, including the right to use the title "psychologist." Even more important, although New York statutes explicitly protect client confidentiality when a licensed, registered psychologist delivers psychological services, the statutes are silent as to whether communications are privileged when a sub-doctoral or unlicensed psychologist performs the same services. Moreover, it is possible that a licensed psychologist will be held to a higher standard of care than an unlicensed psychologist will. Finally, insurance companies can refuse to reimburse unlicensed psychologists

for the same services for which they would have to reimburse licensed psychologists.

In addition to direct regulation of activities, indirect regulation can significantly affect a psychologist's activities. For example, the federal Medicare and Medicaid programs control who can be reimbursed for psychological services and also how much reimbursement is available. Similarly, private insurance carriers, as well as managed care groups, control access to health care services and payments, and the presence or absence of such access functionally regulates many psychological services.

Regulation is not unfettered, however. Other competing interests can prevent certain types of regulation. For example, although state and federal regulations are exempt, a professional association's regulation cannot violate antitrust provisions designed to encourage an open and competitive economic marketplace.

There is strong support for health care regulation, in general, and licensing, in particular. Licensing has very old roots, perhaps as old as the ancient Greeks. In the United States, licensing of psychology (along with all the other health care professions) increased throughout the twentieth century, and there appears to be no end in sight to extensive regulation of psychology. Nevertheless, there are some who argue that regulation is more successful in protecting the financial position of members of the health care professions than it is in ensuring quality health care services or in protecting the public from harmful practices. This has led some to argue that if there is going to be licensing, the licensing should focus on functions rather than people. Such a change might better protect the public by making sure that only persons trained in family therapy would offer such services or that only a person trained in child psychotherapy and assessment would treat a youngster. On the other hand, function licensing might increase costs by inevitably leading to even more specialization than already exists.

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Alan J. Tomkins and Daniel W. Shuman

GRADUATED EXPOSURE. See specific anxiety disorders, which are the subject of independent entries.

GRAHAM, CLARENCE HENRY (1906-1971), American psychologist. Graham was born in Worcester, Massachusetts. After graduating from Clark University in 1927, he entered the graduate program in psychology at Clark. His major professor was John Paul Nafe, whose mentor had been Edward B. Titchener, who had studied with Wilhelm Wundt.