

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

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Declaratory Ruling 2015/01

Judith Helen Seldin and Karen Gottschalk have requested a Declaratory Ruling from the Michigan Department of Licensing and Regulatory Affairs pursuant to section 63, MCL 24.263, of the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, and Mich Admin Code, R 338.81. Specifically, Ms. Seldin and Ms. Gottschalk ask for a determination of whether subsection 18223(2), MCL 338.18223(2), of the Public Health Code, MCL 333.1101 *et seq.*, and Mich Admin Code, R 338.2514(4) should be interpreted to permit limited licensed psychologists to advertise that they are practicing psychology under the supervision of a licensed psychologist.

On behalf of the Bureau, I grant Ms. Seldin and Ms. Gottschalk's request and issue the following Declaratory Ruling:

APPLICABLE STATUTE AND RULES

MCL 333.18223(2) imposes two restrictions on limited licensed psychologists (LLPs). It provides, in pertinent part:

The limitations must require supervision by a psychologist who has a license other than a limited license and *must prohibit advertising or other representation to the public that will lead the public to believe the individual is engaging in the practice of psychology.* [Emphasis added.]

As permitted by subsection 18223(1), MCL 338.18223(1), of the Public Health Code, the Department of Licensing and Regulatory Affairs in 2007 promulgated Mich Admin Code, R 338.2514. Subsection (4) of the rule provides:

(4) A limited licensed psychologist or a temporary limited licensed psychologist is *prohibited from advertising or making any other representation to the public that leads the public to believe the individual is engaging in the practice of psychology.* This subrule does not prohibit a limited licensed psychologist or a temporary limited licensed

psychologist from buying, printing, and using business cards or letterhead for purposes of identification. [Mich Admin Code, R 338.2514(4) (emphasis added).]

Subsection (2) of the same rule establishes that a fully licensed psychologist “may advertise unless such advertising is false or misleading.” Mich Admin Code, R 338.2514(2). Subsection (3) sets forth the following requirements:

(3) A [fully licensed psychologist] psychologist . . . who employs a limited licensed psychologist or a temporary limited licensed psychologist . . . may advertise the individual’s identity and qualifications. The advertisement shall do all of the following:

(a) Identify the individual’s employer.

(b) Identify the individual as either a “limited licensed psychologist” or a “temporary limited licensed psychologist.” Abbreviations or acronyms of the title are not permitted.

(c) Clearly and conspicuously display 1 or both of the following statements, as appropriate: “A Limited Licensed Psychologist may practice under the supervision of a Licensed Psychologist,” or “A Temporary Limited Licensed Psychologist may practice under the supervision of a Licensed Psychologist.” [Mich Admin Code, R 338.2514(3).]

The previous version of Rule 338.2514 provided, in pertinent part, that “[a] limited licensee licensed pursuant to any section of part 182 of the code *may not advertise*; however, a psychologist licensed pursuant to section 18223(1) may in advertising identify a limited licensee subject to the following provisions . . .” 2003 Annual Admin Code Supp, R 338.2514(8) (emphasis added).

QUESTION PRESENTED

Whether a limited licensed psychologist may advertise, provided the advertisement does not lead the public to believe the individual is engaging in the practice of psychology without supervision?

ANALYSIS

Ms. Seldin and Ms. Gottschalk both posted similar advertisements on the “Psychology Today” website. The advertisements identified the individuals as limited licensed psychologists, stated that LLPs practice under supervision, identified their supervisors, and indicated that their supervisors supported the advertisements. The Michigan Department of Licensing and Regulatory Affairs sent correspondence to Ms. Seldin and Ms. Gottschalk on July 8, 2014, stating and requesting acknowledgement of the statute and rule and requesting a statement as to how they would comply. In response, Ms. Seldin and Ms. Gottschalk removed their advertisements.

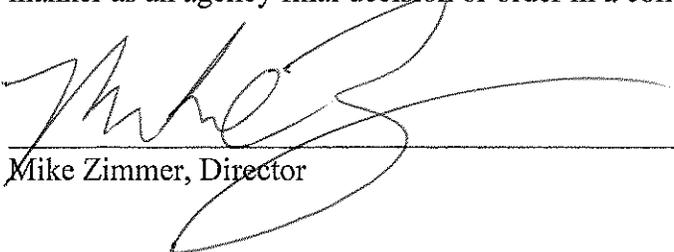
Prior to the 2007 promulgated rule change, all advertisements by LLPs were prohibited. The 2007 rule change veered from the complete ban, but in doing so created an ambiguity. The ambiguity lies in two reasonable interpretations of the promulgated rule.

The first interpretation is that an LLP is prohibited from both (1) advertising, and (2) making any other representation to the public that leads the public to believe the individual is engaging in the practice of psychology. This interpretation comports with the “rule of the last antecedent,” which provides that “a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows” *Barnhart v Thomas*, 540 US 20, 26 (2003), citing 2A N Singer, *Sutherland on Statutory Construction* (6th rev ed 2000), § 47.33, p 369 (“Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent”).

The second interpretation is that an LLP may advertise, provided the advertisement does not “lead the public to believe the individual is engaging in the practice of psychology.” MCL 333.18223(2); see also Mich Admin Code, R 338.2514(4). This interpretation maintains a focus on avoiding the undesired result (misleading the public), in keeping with the dominant purpose of the public health code: to protect the health, safety, and welfare of the people of this state. MCL 333.1111. The Supreme Court of Michigan has recognized that the last antecedent rule generally applies, “unless there is something in the subject matter or dominant purpose which requires a different interpretation.” *Haveman v Bd of Co Rd Comm’rs for Kent Co*, 356 Mich 11, 18; 96 NW2d 153 (1959).

Therefore, it is my ruling that a limited licensed psychologist may advertise, provided the advertisement does not lead the public to believe the individual is engaging in the practice of psychology without supervision. This can be accomplished by (1) identifying the licensed psychologist who supervises the LLP; (2) identifying the LLP as either a “limited licensed psychologist” or a “temporary limited licensed psychologist” (without using an abbreviation or acronym); and (3) clearly and conspicuously displaying one or both of the following statements, as appropriate: “A Limited Licensed Psychologist may practice under the supervision of a Licensed Psychologist,” or “A Temporary Limited Licensed Psychologist may practice under the supervision of a Licensed Psychologist.” I reach this conclusion based upon a plain language reading of the existing statute.

This ruling is limited to the specific facts presented and to the statute and rule identified. This ruling is binding on this agency, Ms. Seldin, and Ms. Gottschalk unless it is altered or set aside by a court of competent jurisdiction. This agency may not retroactively change this ruling, but may do so prospectively in its discretion. This ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.



Mike Zimmer, Director

8-18-15

Date