

# Senate Executive Departments and Administration Committee

*Deb Chroniak 271-1403*

**HB 650-FN**, relative to procedures of the board of psychologists.

**Hearing Date:** March 22, 2017

**Time Opened:** 10:06 a.m.

**Time Closed:** 10:33 a.m.

**Members of the Committee Present:** Senators Carson, Reagan and Gannon

**Members of the Committee Absent :** Senators Soucy and Woodburn

**Bill Analysis:** This bill makes various changes to the regulation of psychology practitioners including the requirements of the board of psychologists relating to investigation and hearings concerning disciplinary proceedings, the form of complaints against licensees, and the disclosure of patient records.

**Sponsors:**

Rep. McGuire

Rep. Cilley

Rep. P. Schmidt

Rep. Hatch

Rep. Kurk

Sen. Reagan

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**Who supports the bill:** Representative Carol McGuire, Merrimack 29;  
Representative Polly Campion, Grafton County; Dr. Deborah Warner, Littleton, New Hampshire, Psychologist Association

**Who opposes the bill:** No one

**Who is neutral to the bill:** Attorney Matthew Mavrogeorge, New Hampshire Department of Justice, Administrative Prosecutions Unit (APU)

**Summary of testimony presented in support:**

**Representative Polly Campion, Grafton 12, House ED & A Committee:**

- Significant effort to work through requirement changes to regulation for the Board of Psychologists. Their rules were not made specific when statutes changed.

**Attorney Matthew Mavrogeorge:**

- Investigate and prosecute cases for 30 of the state licensing boards, including the Board of Psychologists.

- Speaking for informational purposes.

- The bill, as amended by the House, page 2, section VII, Disciplinary Action was brought to the Committee's attention. RSA 329-B:21, I(c) discusses changing the RSA to read from, "Upon written complaint", to "Upon written, signed, and sworn

statement”. The provision that this sorts to amend is the provision that talks about the Board being able to undertake an investigation or disciplinary proceeding. The statute includes (a), (b) and (c); (a) under its own initiative; (b) being upon referral from the Advisory Committee; and, (c) is the language which is sort to be changed.

- Attorney Mavrogeorge pointed out their office sees anonymous complaints from a number of boards, whistleblower type complaints because of being afraid of losing a job, so they want to bring significant issues to the board’s attention for possible investigation, but without identification.

- Changing part (c) to require a signed and sworn statement could make it so these types of anonymous complaints may not be investigated.

- Part (a) “the board could take investigation upon its own initiative” could be read broadly, suggesting exclusion of anonymous complaints.

- If part (c) is kept as written it would make sense to add additional language to part (a) making clear, “upon its own initiative” includes anonymous complaints, or email complaints, phone complaints, or complaints which do not need to be signed and sworn statement, standard in part (c).

- The concern is closing a door on legitimate complaints because they do not meet the signed sworn statement standard proposed.

- Page 7, section 11, Investigation and Complaints, Response and Summary, Roman IX, bold language states “Prior to the settlement or other negotiated termination of proceedings, the board shall provide the licensee with a summary of the investigation.....” This means that the licensee will be moving forward for disciplinary action and would get a summary of the investigation. Attorney Mavrogeorge would add to this section, the “**Board or an individual or agent authorized by the Board**”, would provide the summary of the investigation to the licensee.

- The AG’s office handles the settlement of the investigation or preparation of a hearing when the Board decides to take disciplinary action.

- The Administrative Prosecution’s Unit (within the AG’s office) should be the one who provides the summary of the investigation to the licensee.

**Senator Carson** read back the language addition to Attorney Mavrogeorge stating, “the Board or an agent authorized by the Board”.

**Senator Carson** asked about page 2 and the language, signed and sworn statement where Attorney Mavrogeorge referred to part (a) and asked, “where is part (a)”? Part (a) is current statute; this legislation amends part (c) of Roman I.

- Attorney Mavrogeorge is inclined to have part (a) of the statute amended to address the Board, on its own initiative to include anonymous complaints or complaints which do not meet the requirements set forth in part (c), i.e., an email complaint, a phone call, a letter signed, but not sworn to, etc.

**Senator Carson** stated that there are two different parts of the statute where one is the Board may investigate any phone call, email, anonymous complaint, and they do not have to investigate if they do not want. Then, part (c) says, if written, and it is a signed and sworn statement, the Board has to investigate. There is concern of creating a problem between part (a) and part (c). Attorney Mavrogeorge said that part (a) needs to include anonymous complaints, complaints that do not conform to part (c). The only other option is to keep the statute as it is.

**Representative Carol McGuire (in support):**

- Attempt to bring patient privacy protections when psychologists were under the Board of Mental Health Practice. When the psychologists split from the Board of Mental Health Practice, all statutes did not transfer over. This bill adds all patient protections.
- This bill also cleans up and updates some statutes, which was requested by the Board of Psychologists.
- The main reason for the legislation is to make sure the privacy protection which was approved by Board of Mental Health Practice, transferred over to the Board of Psychologists.

**Senator Carson** asked Representative McGuire if it was the House intention when adding the language, “written, signed and sworn statement” to remove other types of complaints, i.e., email, phone calls, anonymous complaints. Representative McGuire stated no. When a full investigation happens, the Board would have the complainant sign and swear to their complaint. If language needs to be strengthened, that is not a problem for Representative McGuire. **Senator Carson** stated **part (a) and (c) need to be tied together.**

**Dr. Deborah Warner, Littleton, New Hampshire (in support) (testimony provided):**

- Previously served on Board of Mental Health Practice.
- Psychology Board was broken off from the Board of Mental Health Practice to its own board a few years ago at which time it had to bring forward its own rules.
- Dr. Warner went over her submitted testimony. Section 1 was requested by the Board of Psychologists which adds language to assure that the Board investigator was a psychologist member of the Board.
- Section 2, 11 and 13 is distinction between allegation and complaint. In the past, any communication from the public to the Board was officially called a “complaint” and the Board would have to report that complaint. A distinction was developed by the Board of Mental Health Practice so when a communication first is received, it is called an allegation which is considered carefully by the Board. The Board can do a formal investigation to see what is going on, or they can make a complaint by order and send to the Administrative Prosecution Unit for an official investigation.
- Section 3 adds language on behavioral and medical updating statute allowing psychologist to be paid in general medical practices.
- Section 4, 5, 6, 12, 13, 14, and 15 pertain to moving the financial responsibility of this board to itself. Previously it was under the financial collection of the Board of Mental Health Practice.
- Section 7 through 14 cover criminal history records release, signed and sworn threshold, privacy of medical records, language updates and clarifications.
- Dr. Warner stated she was not sure it was a necessity to change part (a) pertaining to section 7, but there is no objection. In terms of section IX, she is okay to say, “or agent authorized by the Board”. She would add to the last sentence (line 23, page 8, his or her counsel, **“or other parties as designated by the board”**.

**Summary of testimony presented in opposition:** No one

**Future Action:** Pending

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Date Hearing Report completed: March 27, 2017

[file: HB 650-FN-F report]