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STATUTORY REGULATION OF PSYCHOLOGISTS: ITS SCOPE AND CONSTITUTIONALITY

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WHATEVER the word "psychology" may mean to the layman or expert, since Pavlov and Freud it has become commonplace in the modern American vocabulary. It would appear that the "psychological" approach may be taken to any subject, problem, or human endeavor that one cares to conjecture upon. Factories are now built psychologically sound as well as structurally sound. Telephones and radar are designed, at least partly upon the basis of psychological investigation, to be compatible in their physical outline and appearance with the subjective needs, desires, and limitations of man. Children are raised in accordance with the insights and understanding of this discipline. Lives, marriages, and homes are changed, and employer-employee relations affected, by the appropriate use of psychology. If we are to accept the definition in the *Encyclopaedia Britannica*, psychology is at least as broad as human thought and conduct.¹

Specialists who have mastered some aspect of this discipline have, as a consequence, an ever increasing market for their services.² The application of the principles of the science of psychology to human needs has blossomed forth into a flourishing profession.³ Inevitably, government, under the aegis of the police power, has moved forth to protect the public from charlatans (or more cynically, perhaps, in

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¹ "Psychology is (1) the study of mind and of mental phenomena. . . . (2) In the 20th century the scope of psychology was enlarged to include all the integrated action of the total individual, human or animal. . . . In general, it may be said, human psychology studies the whole person—his thoughts, his conduct and also those properties of him which make him think and act as he does." 18 *ENCYCLOPEDIA BRITANNICA* 657 (1957).

² Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 *COLUM. L. REV.* 474 (1951).

³ *Ibid.*

response to pressure groups, has moved forth to protect vested professional interests).⁴ It is my purpose to present the extent to which government regulates the psychologist by legislation directed specifically to him; to examine the nature of this regulation; and to ascertain whether this regulation exceeds permissible constitutional bounds.

CATEGORIES OF REGULATORY LEGISLATION

Fourteen states⁵ have enacted statutes specifically regulating psychologists in some way. In general such legislation provides that certain activities are proscribed for all except those people explicitly exempted, and standards for gaining membership in the exempted group are provided. Each of these statutes logically falls into one or more of the following three categories:

1. Licensure Statute;
2. Certification Statute;
3. Conjunctive Statute.

Licensure statutes are unique in that the activity proscribed is the practice of, or the offer to practice, the profession that is being regulated.⁶ Certification statutes are unique in that only the use of some designated title or titles descriptive of, or related to, the profession is proscribed.⁷ Until recently, the first two categories would have sufficed to describe all the known regulatory legislation relating to psychologists. However, a third category has entered the field. This is the conjunctive statute. For want of a better name, and as the title suggests, the conjunctive statute only

⁴ Louisell, *The Psychologist in Today's Legal World: Part II*, 41 MINN. L. REV. 731, 736 (1957).

⁵ This figure is accurate up to, but not including the 1958 state legislative sessions. These states are Arkansas, California, Connecticut, Florida, Georgia, Kentucky, Maine, Maryland, Minnesota, New Hampshire, New York, Tennessee, Virginia and Washington. Citations of the statutes are included in the lead column of the tabular appendix. None of the United States territories or possessions have psychologist regulatory legislation.

⁶ Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 COLUM. L. REV. 474, 482 (1951).

⁷ *Ibid.*

proscribes an area of combined activity, *i.e.*, the proscribed area is entered only when a person *both* practices the profession *and* uses the title or designation. It is of importance in the following discussion to note that to establish a violation of a conjunctive statute two elements are required. This is unlike the licensure and certification statutes, where only one element is required. Thus, under a conjunctive statute, a non-exempt person may either use the proscribed title or may practice the profession with impunity, irrespective of his professional qualifications or the lack of them, as long as he does not do both these things.

The advent of the conjunctive psychology statute is apparently indicative that regulation of psychologists solely by licensure or certification or both, is not adequate or completely satisfactory. This conclusion is bolstered by the fact that the statutes of the five states⁸ which most recently promulgated psychology regulatory statutes for the first time are either exclusively of the conjunctive type or have a conjunctive section. From a purely deductive logical approach this is a strange situation since it would seem that a conjunctive statute protects the public least of the three categories. Merely by virtue of its conjunctive nature, it proscribes a much smaller area of professional activity than do the others. But this fact must be viewed against the background of the relative lack of efficacy of the certification statutes. The titles proscribed by these statutes all include the word "psychologist" (or directly related words, *i.e.*, "psychology" or "psychological"), and may be prefaced by qualifying adjectives such as "licensed," or "certified," "clinical," "applied," or certain combinations thereof.⁹ Unless precisely the title proscribed by any given statute is used, the statute is not violated. Many titles, however, have been developed and have become well recognized by the public as being descriptive of professionals active in disciplines

⁸ Since 1956, conjunctive legislation has been enacted in California, CAL. BUS. & PROF. CODE ANN. § 2903 (West Supp. 1958); Florida, FLA. STAT. ANN. § 490.01 (Supp. 1957); Maryland, MD. ANN. CODE, art. 43, § 619 (1957); New Hampshire, N.H. REV. STAT. ANN. § 330-A:1 (Supp. 1957); and New York, N.Y. EDUC. LAW § 7601 (Supp. 1958).

⁹ See the third column of the appendix.

which are subdivisions of, or peripherally related to, psychology. Examples of such descriptive terms would be: psychotherapist, psychoanalyst, psychiatrist, psychodiagnostician, social worker, marriage counselor, child guidance counselor, etc. The use of such titles is of course not violative of any of the statutes specifically regulating psychologists. As a consequence, certification statutes are readily circumscribed from a practical point of view.

Licensure statutes on the other hand pose a different problem, definitional in nature. As indicated above, psychology is a very broad discipline. "Licensure legislation which fails to recognize the differentiation of services rendered and skills required in a profession leads either to the denial of licenses to applicants having extensive experience in a limited field or to authorizing applicants to practice in fields possibly entirely foreign to their experience."¹⁰ Furthermore, whatever definition is used must, of course, be definite and certain or else it is violative of the "due process"¹¹ or the "separation of powers" requirements of the United States Constitution and many state constitutions. That psychology regulatory legislation may well be "void for vagueness" will be presently demonstrated.

Whether or not the conjunctive type regulatory statute is adequate to solve the problems raised by the licensure and certification statutes, the legislatures of late have obviously turned to them.¹² Therefore, as a basis for examining, and a framework against which to comprehend, all the statutory regulation of psychologists we will proceed to analyze the New York statute which was one of the first conjunctive psychology statutes ever enacted¹³ and which has been copied with various modifications in other states.¹⁴ In this analysis, constitutional considerations will be kept foremost in mind.

¹⁰ Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 COLUM. L. REV. 474, 490 (1951).

¹¹ U.S. CONST. amend. XIV, § 1.

¹² See note 8 *supra*.

¹³ The first one enacted was in 1951 in Georgia, GA. CODE ANN. § 84-31 (1955). However, the New York statute, N.Y. EDUC. LAW § 7601 (Supp. 1958), which was the second conjunctive psychologist regulatory statute ever enacted (enacted in April, 1956), appears to have been a catalyst for the conjunctive statutes that followed within a year; see note 8 *supra*.

¹⁴ *E.g.*, California, CAL. BUS. & PROF. CODE ANN. § 2900 (West Supp.

ANALYSIS OF THE NEW YORK STATUTE

At the outset it should be noted that the concept of a conjunctive statute in the field of regulation of professions is apparently original with the author. Although the New York statute¹⁵ has invariably been described as a certification statute,¹⁶ it will be demonstrated that it is not a certification statute at all, but rather a conjunctive statute. Important differences in legal consequences flow from this distinction.

The New York statute may be conveniently viewed as having three main divisions:

a. A person representing himself as a psychologist, as defined by the statute, who is neither registered under the statute nor otherwise exempt, is guilty of a misdemeanor.¹⁷

b. Requirements, both scholastic and experiential, for registration as a psychologist under the statute are set, and administrative machinery for implementing registration is provided.¹⁸

c. Communications between a psychologist registered under the act and his client are granted privilege in the same manner as that of an attorney and his client.¹⁹

Each of these three main divisions will be investigated in order.

The exact wording of the statute must now be considered with respect to the first main division creating the misdemeanor:

[A]ny person not a certified psychologist who shall represent himself as a psychologist, as defined in this article . . . shall be guilty of a misdemeanor²⁰

1958); Florida, FLA. STAT. ANN. § 490.01 (Supp. 1957); and New Hampshire, N.H. REV. STAT. ANN. § 330-A (Supp. 1957).

¹⁵ N.Y. EDUC. LAW § 7601 (Supp. 1958).

¹⁶ E.g., Louisell, *The Psychologist in Today's Legal World: Part II*, 41 MINN. L. REV. 731, 733 (1957); Memorandum of State Dep't of Mental Hygiene, N.Y. Sess. Laws 1956, at 1928; and the New York statute itself.

¹⁷ N.Y. EDUC. LAW § 7608 (Supp. 1958).

¹⁸ N.Y. EDUC. LAW § 7605 (Supp. 1958).

¹⁹ N.Y. EDUC. LAW § 7611 (Supp. 1958).

²⁰ N.Y. EDUC. LAW § 7608 (Supp. 1958).

When does a person "represent himself as a psychologist, as defined in this article"? The statute provides in the section entitled "Definitions" that:

A person represents himself to be a "psychologist" when he holds himself out to the public by any title or description of services incorporating the words "psychological," "psychologist," or "psychology," and under such title or description offers to render or renders services to individuals, corporations, or the public for remuneration.²¹

Thus the statute is violated if, and only if, the proscribed title is used and simultaneously the violator, under the title, renders or offers to render services for remuneration. It is apparent that two separate and distinct elements are involved. The statute is quite explicit with respect to what are the proscribed titles. However, what are the "services" that are forbidden? Are they *any* kind of services performed under the title of "psychology"? Would it be a violation to perform engineering, medical or some semi-skilled or unskilled services under the title? This issue is of importance since, as will be seen, it affects the constitutionality of this portion of the statute.

It would appear self-evident that the proscribed services specified by the statute are psychological services. There is compelling evidence and authority for this conclusion. At every other place in the statute where the word "services" appears, it is modified by one of the descriptive terms "psychological," or "psychology." More conclusively, in a legislative memorandum by the New York State Department of Education, the agency that drafted the statute, it is specified that "the effect of the bill is, however, that no one can call himself a psychologist and accept pay for performing *psychological services* unless he holds a certificate issued by the Department of Education."²² Governor Harriman, in his memorandum approving the bill at the time of its enactment into law, explained that the bill "prohibits any person in the State of New York from calling or holding himself out as a

²¹ N.Y. EDUC. LAW § 7601(2) (Supp. 1958).

²² Memorandum of State Educ. Dep't, N.Y. Sess. Laws 1956, at 1928. (Emphasis added.)

psychologist and accepting pay for performing *psychological services* unless he has been certified by the State Education Department.”²³ There is no alternative to the conclusion that the “services” proscribed by the statute are psychological. Accordingly, New York has a conjunctive statute wherein the proscribed conjunctive area is the use of the specified psychological titles *and* the rendering of psychological services for money.

Both of these elements are required to make out the crime. But what services are psychological? Equivalently, when does a person practice psychology? There is no attempt whatever to define these phrases in the statute. Indeed, in a legislative memorandum urging the passage of the statute, the draftsman of the bill, the New York State Department of Education, admitted that “there is no attempt to define the practice of psychology.”²⁴ By way of corroboration, one of the main sponsors of the statute, the New York State Department of Mental Hygiene, stated in a similar memorandum that the bill “did not define the nature and scope of the practice of psychology. . . .”²⁵ Is this because the courts and the public know explicitly the definition of this phrase? Hardly! Experts in the field are in strong disagreement on the subject. In the same memorandum the Mental Hygiene Department admitted “that attempts had been made to draft a definition of the nature and scope of the practice of psychology but the efforts had completely failed.”²⁶ Can such undefined legislation be constitutional?

Both the New York²⁷ and United States²⁸ constitutions specify that a person may not be deprived of life, liberty or property except by due process of law. A long line of both federal and New York constitutional decisions have established that unless a statute is drawn in terms which are so definite and clear that a person may reasonably ascertain whether he is within the areas of conduct proscribed by the

²³ N.Y. Sess. Laws 1956, at 1684. (Emphasis added.)

²⁴ *Supra* note 22.

²⁵ Memorandum of State Dep't of Mental Hygiene, N.Y. Sess. Laws 1956, at 1928.

²⁶ *Ibid.*

²⁷ N.Y. CONST. art. I, § 6.

²⁸ U.S. CONST. amend. XIV, § 1.

statute, the statute must be considered a denial of due process of law and consequently void.²⁹ It has also been cogently argued that not only must those persons apparently affected by the statute have definite standards by which to guide their behavior, but due process also requires that the courts have standards set forth for them in the statute sufficiently definite to enable them to administer justice in accordance with the intent of the legislature.³⁰ Otherwise the courts would be left in a definitional quandary, the solution of which the principle of separation of powers denies to the judiciary since it would entail legislating.

The requirements for definiteness in the provisions of a statute are especially stringent in the case of a penal statute. Since the New York statute makes violation a misdemeanor, it is penal in nature.³¹ It follows that if any type of statute must be definite and clear to avoid being void for vagueness, then surely so must the New York statute meet these requirements.

It would therefore seem a truism that the criminal provisions of this statute are void for vagueness. Obviously no standard whatever has been incorporated in the statute to define one of the two essential elements of the crime, *i.e.*, rendering or offering to render psychological services.³² If this were merely a certification statute, it would be unnecessary to have such a standard. But it is not a certification statute; it is a conjunctive statute and consequently must fall as unconstitutional since both elements must be definite and clear.³³

²⁹ *E.g.*, *United States v. Cardiff*, 344 U.S. 174 (1952); *Connally v. General Constr. Co.*, 269 U.S. 385 (1926); *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921); *Trio Distrib. Corp. v. Albany*, 2 N.Y.2d 690, 143 N.E.2d 329, 163 N.Y.S.2d 585 (1957); *People v. Fifth*, 159 N.Y.S.2d 794 (Monroe County Ct. 1957).

³⁰ Note, *Due Process Requirement of Definiteness in Statutes*, 62 HARV. L. REV. 77 (1948).

³¹ *Department of Health v. Owen*, 42 Misc. 221, 85 N.Y. Supp. 397 (Sup. Ct. 1903), *aff'd*, 94 App. Div. 425, 88 N.Y. Supp. 184 (1st Dep't 1904).

³² Memorandum of State Educ. Dep't, N.Y. Sess. Laws 1956, at 1928.

³³ This is not to suggest that if a clear standard of "psychological services" were incorporated in the statute, the constitutional problem would be completely eliminated. Even if this were exclusively a certification statute, rather than a conjunctive statute, the issue as to whether the use of the generic words "psychology" and "psychologist" may validly be proscribed is not at all clear

The second of the three main divisions of the New York statute, now to be analyzed, sets forth the professional requirements for registration. One of the qualifications necessary for registration of a candidate is that he have "at least two years of satisfactory supervised experience in rendering psychological services."³⁴ The important terms here are "satisfactory" and "psychological services." Thus an administrative tribunal in the form of a Board of Examiners set up by the statute³⁵ must determine whether a candidate satisfies the "psychological services" requirement, which requirement the draftsman of the statute has declared is not defined in the statute,³⁶ and the absence of which a state agency sponsoring the statute declared was due to the fact that all attempts at definition were unsuccessful.³⁷ *Prima facie*, this is an unconstitutional delegation of legislative power to an administrative agency.³⁸ Since the Board must sit in judgment upon whether specific candidates meet the requirements as to satisfactory "psychological services," there must of necessity be some ascertained or ascertainable stand-

in New York. Consider the situation of a person who obtained a master's or doctor's degree in the field of psychology, prior to the passage of the New York regulatory statute, at an educational institution specifically chartered by the New York Board of Regents as proper to grant such degrees. [The function of conferring the right to grant degrees is exclusively that of the Regents, N.Y. EDUC. LAW pt. I, p. XXV; *People v. Marlowe*, 40 N.Y. Crim. Rep. 448, 455, 203 N.Y. Supp. 474, 478 (Ct. Spec. Sess. 1923) (dictum).] Does he not have a vested right to use the descriptive and not necessarily professional title of "psychologist"? It would appear that even though an educational degree grants little by way of legal right it should confer at least that right. This right, however, clearly does not accrue to the person obtaining such a degree subsequent to the passage of the regulatory statute, N.Y. EDUC. LAW § 7601 (Supp. 1958), since the statute modifies the grant accruing from a subsequently conferred degree. Nor would a person be entitled to use a special statutory title such as "certified psychologist," if this were the title proscribed by the statute, see *People v. Marlowe*, *supra*, since the right to use the word "certified" to prefix "psychologist" is not conferred by any degree. But surely the proscription of the use of the bare generic term "psychologist," by someone granted a degree in that field prior to regulatory legislation, would be inequitable and of doubtful validity.

³⁴ N.Y. EDUC. LAW § 7605(1) (e) (Supp. 1958).

³⁵ N.Y. EDUC. LAW § 7603(1) (Supp. 1958).

³⁶ Memorandum of State Educ. Dep't, N.Y. Sess. Laws 1956, at 1928.

³⁷ Memorandum of State Dep't of Mental Hygiene, N.Y. Sess. Laws 1956, at 1928.

³⁸ The courts of many states, and of New York particularly, are conscientious in invalidating statutes improperly delegating legislative power to administrative agencies. See GELLHORN & BYSE, ADMINISTRATIVE LAW 115-18 (1954).

ard set for them by the legislature in accordance with which the Board may judge.³⁹ Clearly this has not been provided. For the Board to define "psychological services" would be precisely the type of legislative voyage upon which the legislature itself refused to embark.

The irony of the definitional quandary reaches its apex when it is recognized that the members of the Board of Examiners, selected by the Commissioner of the Department of Education to sit in judgment on the qualifications of the registration candidates, must themselves meet certain requirements in order to be appointed to the Board. One of the requirements for the majority of the Board members is that they have five years experience in "rendering service, teaching, or research in psychology," and that they presently be engaged in "rendering service in psychology."⁴⁰ In order to select the board members, what standard may the Commissioner of Education use in ascertaining the meaning of the term "psychological service"? His department, which drafted the statute, clearly declared that no definition of the practice of psychology is contained therein. Perhaps he can turn to the Advisory Council, also set up by the statute,⁴¹ whose function is to "advise with the department concerning any and all matters that come within the purview of this article and the enforcement thereof."⁴² However the requirement for appointment to the Advisory Council itself, at least for three-fourths of its members, is that they shall be "representative of psychologists engaged primarily in rendering psychological services."⁴³ Where can the Commissioner now turn for help in deciding on appointments to the Advisory Council?—the statute provides no other boards or councils. To postulate any more administrative bodies subject to this definitional quandary would set us on the fruitless road of infinite regress. For failure to define what is meant by "psychological services," there is not only no valid standard

³⁹ *Packer Collegiate Institute v. University of the State of N.Y.*, 298 N.Y. 184, 81 N.E.2d 80 (1948).

⁴⁰ N.Y. EDUC. LAW § 7603(2) (Supp. 1958).

⁴¹ N.Y. EDUC. LAW § 7604 (Supp. 1958).

⁴² *Ibid.*

⁴³ *Ibid.*

by which to judge who is properly registrable under the statute but, ironically enough, there is no way of judging who is qualified to judge who is properly registrable.

The last major division of the New York statute creates a class of privileged communications between a registered psychologist and his client "on the same basis as those provided by law between attorney and client."⁴⁴ The attorney-client privilege is the oldest and best defined privileged communication known to the common law. In New York the common-law privilege has been codified by a statute which provides that only those communications of an attorney are privileged which are made "in the course of his professional employment."⁴⁵ But when is a "psychologist" registered under the statute communicating "in the course of his professional employment"? From the discussion of the other major provisions of the statute it is clear that there is just no way of knowing the answer to this question from anything within the statute or from legislative intent. The conclusion would appear inescapable that this attempt at creating a new privileged communication in New York must fail as being too indefinite to be enforceable.

Thus all three of the major divisions of the New York statute specifically directed at regulating psychologists violate basic constitutional safeguards, both state and federal, primarily because that which is intended to be regulated has not been defined. This is not a new problem in the legislative history of the New York statute. A psychology licensing bill submitted in 1951 to Governor Dewey for his signature was vetoed specifically because it did not adequately define the practice of psychology.⁴⁶ In the drafting of the present statute the constitutional necessity of defining that which is to be regulated and administered was completely ignored under the spurious theory that a certification statute was being written. This concept of the nature of the New York statute is, of course, patently incorrect.

⁴⁴ N.Y. EDUC. LAW § 7611 (Supp. 1958).

⁴⁵ N.Y. CIV. PRAC. ACT § 353.

⁴⁶ N.Y. Sess. Laws 1951, at 1597.

COMPARING THE STATUTES

New York's conjunctive statute, as analyzed, demonstrates that the problems inherent in certification and licensure statutes are combined rather than resolved by a conjunctive statute. The major constitutional problem of the conjunctive statute is that derived from its licensure component, *i.e.*, the definition of the practice of psychology or of psychological services. The constitutional problem posed by inadequate definition or, more properly, the lack of definition of this term, has apparently been recognized by the Florida and California legislatures. Both states passed psychology regulatory legislation subsequent to the New York statute. Both Florida and California have conjunctive penal sections within their statutes. Both states provide a definition of when a person "represents himself to be a psychologist," which is almost identical with that of the New York statute.⁴⁷ However, an additional definition is added in each statute defining the term "psychological services" as "any services if the words 'psychological,' 'psychologist,' or 'psychology,' are used to describe the services *by the person rendering* or offering to render them."⁴⁸ If this additional definition does nothing else, it at least saves these statutes from being "void for vagueness." But it also has another effect. In practice, it transforms the conjunctive section of the statute into a certification section, though the conjunctive form is maintained. The activity that is proscribed by the statute is not an objective professional service, but rather any act that the violator of the statute subjectively described by the proscribed titles of "psychology" or "psychological." Obviously then, it is the use of the titles as applied to any activity that is proscribed, and not the doing of any objective professional act. Thus the wording of the section is couched in the familiar form of a conjunctive section, *i.e.*, a proscribed title plus a proscribed activity, while in fact it is only the use of the title that is proscribed when the title is applied by

⁴⁷ CAL. BUS. & PROF. CODE ANN. § 2093 (West Supp. 1957); FLA. STAT. ANN. § 490.01(1) (Supp. 1957).

⁴⁸ CAL. BUS. & PROF. CODE ANN. § 2903 (West Supp. 1957); FLA. STAT. ANN. § 490.01(2) (Supp. 1957). (Emphasis added.)

the actor simultaneously to his act and to himself. In essence, the licensing component of the conjunctive sections of the California and Florida statutes have been changed into a more than usually complicated certification component in order to avoid the constitutional defects of the conjunctive New York law.

But if the constitutional problems are avoided by this technique, the practical problems are not. The practical difficulty inherent in a certification statute which proscribes such broadly generic titles as "psychologist" and "psychology" is, as discussed above, that the species of titles within the genus of the proscribed title, or related titles, are not proscribed. Thus, for example, a psychoanalyst may call himself by that title and describe his services as psychoanalysis or psychotherapy and violate neither of the conjunctive-in-form sections of the California and Florida laws.

The question may properly be posed whether it is possible to define psychological services or the practice of psychology with sufficient definiteness to satisfy the constitutional requirements of "due process of law" and "separation of powers" without at the same time diluting the statute from a licensure or conjunctive type to that of certification. Some of the states having legislation in this field have definitions of these terms which apparently vary in their degree of definiteness. At one extreme is the licensure provision of Virginia⁴⁹ wherein there is no definition at all of the practice of clinical psychology although this activity is explicitly proscribed. Such a statute must fall as a denial of due process of law. On the other hand, there are some instances where the issue is not so clear. In these statutes⁵⁰ the proscribed practice or services are described in a broad and perhaps too vague manner (from a due process viewpoint) but there are also set forth some definite and specific examples of the broad definition. Do the examples save the broad definition or do they themselves assume the role of the definition? This is a constitutional no-man's land; there is no satisfactory gen-

⁴⁹ VA. CODE ANN. § 54-112 (1958).

⁵⁰ ARK. STAT. ANN. § 72-1501 (1957); GA. CODE ANN. § 84-3101 (1955); KY. REV. STAT. ANN. § 319.010 (1955); TENN. CODE ANN. § 63-1106 (1955).

eral rule. The table appended catalogues for all states having psychological regulatory statutes such definitions as exist, the nature of the regulatory provisions, and other related data to give a readily visualized account of the statutory situation in the United States. But the fact of the matter is that there appear to be no cases reported testing the constitutionality of any of these laws and/or these definitions.⁵¹ Thus there is no clear authority on the subject, although one commentator has recognized that in a licensure statute for psychologists some degree of definiteness must be achieved in the definition of the practice of psychology if the requirements of due process are to be met.⁵² If, as in New York, the members of the organized psychiatric, psychoanalytic, psychological, and related disciplines cannot agree on the definition of the practice of psychology or psychological services,⁵³ then we are led reasonably to deduce that at least at this time in that particular jurisdiction a definition cannot be formulated which is constitutionally sound.⁵⁴ Under such conditions, at least, the dictates of common sense require that the legislature abstain from any attempt to regulate the practice of psychology either by licensing or conjunctive provisions. The legislature may not and cannot exclude individuals from an area of activity when the legislature itself cannot ascertain the nature or bounds of the area.

On the other hand, there are doubtless certain types of professional services which when rendered by charlatans constitute a real threat to the welfare of unsuspecting individuals. Nevertheless, the only statutory regulation which at this time may clearly be constitutional is a pure certification statute, although reference to the appended table will demonstrate that in some certification statutes the requirements for certification include experience in the practice of

⁵¹ However, the writer has been informed that litigation, in the form of a suit for a declaratory judgment, challenging the constitutionality of the New York statute has been commenced in New York City.

⁵² Note, *Regulation of Psychological Counseling and Psychotherapy*, 51 COLUM. L. REV. 474, 486-87 (1951).

⁵³ Memorandum of State Dep't of Mental Hygiene, N.Y. Sess. Laws 1956, at 1928.

⁵⁴ But see Louisell, *The Psychologist in Today's Legal World: Part II*, 41 MINN. L. REV. 731, 748-49 (1957).

psychology or the rendering of psychological services even though these terms are nowhere defined in the statute.⁵⁵ Recognizing the real inadequacy of pure certification statutes in protecting the public from charlatanry, it would appear that this is an evil which cannot be remedied until the professionally expert in the various psychological and related disciplines engage in a concerted, searching, and successful program to describe with reasonable clarity a definition of the practice of psychology or the rendering of psychological services. Perhaps these disciplines are yet too young to produce such definitions or standards. If this is so, then we must await their maturity before government may properly enter this field to regulate by license, or conjunctive prescription;⁵⁶ to do otherwise is arbitrary, or capricious, and consequently constitutionally invalid.

⁵⁵ The statutes of Maine, Minnesota, Virginia, and Washington are of this type. It is of interest to note that Connecticut also had, until recently, a statute with this type of constitutional defect, CONN. GEN. STAT. § 4635 (1949), *i.e.*, requiring experience "in the practice of psychology" in order to be certified even though there was no definition of the "practice of psychology" anywhere in this statute. However, this portion of the Connecticut statute was repealed by Conn. Pub. Acts 1st Sess. 1947, No. 269, which requires "experience of a type satisfactory to the Board." If the repealed provision was so vague as to constitute an improper delegation of legislative power, then this new provision is unconstitutional, *a fortiori*.

⁵⁶ See Louisell, *supra* note 54.

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>Arkansas</p> <p>ARK. STAT. ANN. §§ 72-1501 to -1513 (1957) (added by Laws of 1955).</p> <p>Licensure & Certifi- cation</p>	Psychological, Psychology & Psychologist	Not Applicable	<p>I. "A person practices as a 'Psychological Examiner' within the meaning of this act when he holds himself out to be a Psychological Examiner, or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for education or vocational selection, guidance or placement. The Psychological Examiner practices the following only under qualified supervision; overall personality appraisal or classification, personality counseling, psychotherapy or personality readjustment techniques."</p> <p>II. "A person practices as a 'Psychologist' within the meaning of this act when he holds himself out to be a Psychologist, or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for education or vocational selection, guidance or placement, or for such purposes as overall personality appraisal or classification, personality counseling, psychotherapy or personality readjustment."</p>

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>I. Psychological Examiner</p> <p>(A) Good moral character</p> <p>(B) Two years of graduate training in psychology including a master's degree, or such training and experience as the Board of Examiners shall consider equivalent thereto</p> <p>(C) Written examination.</p> <p>(D) Non-citizen may be refused license—in discretion of Board</p> <p>II. Psychologist</p> <p>(A) Good moral character</p> <p>(B) Doctorate degree in psychology or in closely allied field at discretion of the Board</p> <p>(C) One year of experience in psychology</p> <p>(D) Examination, written or oral, or both at discretion of Board</p> <p>(E) Non-citizen may be refused license in discretion of Board</p> <p>Substitute training and experience may be accepted by Board at its discretion in lieu of (B) and (C)</p>	<p>Yes</p>	<p>Yes, same as attorney-client</p>

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>California</p> <p>CAL. BUS. & PROF. CODE §§ 2900-80 (Supp. 1958) (added by Laws of 1957).</p> <p>Certification & Conjunctive</p>	<p>Certified Psychologist</p>	<p>Psychology, Psychologist & Psycho- logical</p>	<p>"The term 'Psychological Services' as used in this chapter, refers to any services if the words 'psychological,' 'psychologist' or 'psychology' are used to describe the services by the person rendering or offering to render them."</p>
<p>Connecticut</p> <p>CONN. GEN. STAT. §§ 20-186 to -195 (1958) (added by Laws of 1957).</p> <p>Certification</p>	<p>Psychologist, Psychological & Psychology</p>	<p>Not Applicable</p>	<p>Not Applicable</p>

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>(A) 21 yrs. old</p> <p>(B) Good moral character</p> <p>(C) U.S. citizen or declar. of intent. to become a citizen</p> <p>(D) "Doctorate degree in Psychology or in educational psychology or has had training in psychology deemed equivalent by the Committee"</p> <p>(E) One year of "suitable supervised professional experience"</p> <p>(F) Not engaged in unethical practices</p> <p>(G) Examination written and oral</p>	<p>Yes</p>	<p>Yes, same as attorney-client</p>
<p>(A) Twenty-one yrs. of age</p> <p>(B) Good moral character</p> <p>(C) "Doctoral degree based upon a program of studies whose content was primarily psychological"</p> <p>(D) "Has had at least one year's experience of a type satisfactory to the Board"</p> <p>(E) An examination in psychology (which may be waived in discretion of Board for a person practicing psychology for three years in another state)</p>	<p>Yes</p>	<p>No</p>

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>Florida</p> <p>FLA. STAT. ANN. §§ 490.01-.09 (Supp. 1958 (added by Laws of 1957).</p> <p>Certification & Conjunctive</p>	Psychologist	Psychology, Psychological & Psychologist	<p>"The term 'psychological services' within the meaning of this chapter refers to any services if the words 'psychological,' 'psychologist' or 'psychology' are used to describe such services by the person or organization rendering or offering to render them."</p>
<p>Georgia</p> <p>GA. CODE ANN. §§ 84-3101 to -3119 (1955) (added by Laws of 1951).</p> <p>Certification & Conjunctive</p>	Licensed Applied Psychologist	Applied Psychologist	<p>"Renders to individuals or to the public for fees any service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing, administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological diagnosis, classification or evaluation, or for education or vocational placement, or for such purposes as psychological counseling, guidance or readjustment."</p>

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>(A) Good moral character</p> <p>(B) U.S. citizen</p> <p>(C) "Degree of Doctor of Philosophy with Major in Psychology"</p> <p>(D) "At least one year's experience in the field of psychology"</p> <p>(E) Written and oral or practical examination</p>	Yes	No
<p>(A) Good moral character</p> <p>(B) U.S. citizen or declared intention to become citizen</p> <p>(C) Degree of Doctor of Philosophy in Psychology or in a closely allied field in discretion of the Board</p> <p>(D) One year of experience in Applied Psychology</p> <p>(E) Written and/or oral examination</p>	Yes	Yes, same as attorney-client

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>Kentucky</p> <p>KY. REV. STAT. ANN. §§ 310.010 to -990 (1955) (added by Laws of 1948).</p> <p>Licensure & Certification</p>	Certified Clinical Psychologist	Not Applicable	<p>(A) "Renders to individual clients for fees or personal profit, any professional service requiring the application of recognized principles, methods, and procedures of the science and profession of clinical psychology, such as the administration and interpretation of standardized tests of mental abilities and personality characteristics, for the purpose of psychological diagnosis, classification or evaluation; or</p> <p>(B) For fees or personal profit, applied such psychological techniques for purposes of reeducation, guidance or readjustment."</p>
<p>Maine</p> <p>ME. REV. STAT. ANN. ch. 67, §§ 1-10 (1954) (added by Laws of 1953).</p> <p>Certification</p>	Certified Psychologist	Not Applicable	Not Applicable

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>(A) 21 years of age</p> <p>(B) Good moral character</p> <p>(C) Citizen of U.S. or legally declared intention to become one</p> <p>(D) Doctor of Philosophy or its equivalent in Psychology</p> <p>(E) One year's experience in practice of psychology</p> <p>(F) Examination</p>	<p>Yes</p>	<p>Yes, same as attorney-client</p>
<p>(A) 21 years of age</p> <p>(B) Good moral character and ethical in the practice of psychology</p> <p>(C) U.S. citizen or has filed declaration of intention or application for naturalization</p> <p>(D) Resident of Maine</p> <p>(E) "Doctorate or Master's Degree with major in Psychology, which may include education and Child Psychology"</p> <p>(F) "One year's experience . . . in the practice of psychology"</p> <p>(G) Examination</p>	<p>Yes</p>	<p>No</p>

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>Maryland</p> <p>MD. ANN. CODE art. 43, §§ 618-44 (1957) (added by Laws of 1957).</p> <p>Conjunctive</p>	<p>Not Applicable</p>	<p>Psychological, Psychologists & Psychology</p>	<p>"Under such title or description offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to individuals, corporations or the public for compensation, or other personal gain."</p>
<p>Minnesota</p> <p>MINN. STAT. ANN. §§ 148.79-.86 (Supp. 1958). (added by Laws of 1951 as amended by Laws of 1953).</p> <p>Certification</p>	<p>Certified Psychologist</p>	<p>Not Applicable</p>	<p>Not Applicable</p>

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>(A) Written and/or oral examination</p> <p>(B) 21 years of age</p> <p>(C) Good moral character</p> <p>(D) U.S. citizen or has legally declared his intention of becoming a citizen</p> <p>(E) "Doctoral degree based on a program of studies whose content was primarily psychological"</p> <p>(F) Two years of professional experience in psychology</p>	<p>Yes</p>	<p>No</p>
<p>(A) 21 years of age</p> <p>(B) Good moral character and professionally ethical</p> <p>(C) U.S. citizen or filed declaration of intention</p> <p>(D) "Doctorate or Master's Degree with major in Psychology, which may include educational and Child Psychology"</p> <p>(E) One year of employment as a psychologist</p> <p>(F) Examination in psychology</p>	<p>Yes</p>	<p>No</p>

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>New Hampshire</p> <p>N.H. REV. STAT. ANN. §§ 330-A:1 to 21 (Supp. 1957) (added by Laws of 1957).</p> <p>Conjunctive</p>	Not Applicable	Psychologist, Psychological & Psychology II	<p>"Under such title or description offers to render or renders services to individuals, corporations, or the public for remuneration."</p>
<p>New York</p> <p>N.Y. EDUC. LAW §§ 7601-14 (Supp. 1958) (added by Laws of 1956).</p> <p>Conjunctive</p>	Not Applicable	Psychologist, Psychology & Psycho- logical	<p>"Under such title or description offers to render or renders services to individuals, corporations, or the public for remuneration."</p>

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>(A) Examination in psychology</p> <p>(B) Good moral character</p> <p>(C) U.S. citizen or legally declared intention to become a citizen</p> <p>(D) "Doctoral degree based on program of studies whose content was primarily psychological"</p> <p>(E) Two years supervised experience in the field of psychology</p>	Yes	Yes, same as attorney-client
<p>(A) 21 years</p> <p>(B) Good moral character</p> <p>(C) U.S. citizen or has legally declared intention to become such a citizen</p> <p>(D) "Doctoral degree based on a program of studies whose content was primarily psychological"</p> <p>(E) Two years "satisfactory supervised experience in rendering psychological services"</p> <p>(F) Written examination with possible supplementary oral examination</p>	Yes	Yes, same as attorney-client

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>Tennessee</p> <p>TENN. CODE ANN. §§ 63-1101 to -1122 (1956) (added by Laws of 1953).</p> <p>Licensure & Certification</p>	<p>Psychological, Psychologist & Psychology</p>	<p>Not Applicable</p>	<p>I. "A person practices as a 'Psychological Examiner' within the meaning of this chapter when he holds himself to be a psychological examiner, and/or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement. The psychological examiner practices the following only under qualified supervision; over-all personality appraisal or classification, personality counseling, psychotherapy or personality readjustment techniques."</p> <p>II. "A person practices as a 'Psychologist' . . . when he holds himself out to be a Psychologist and/or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for education or vocational selection, guidance or placement, or for such purposes as over-all personality appraisal or classification, personality counseling, psychotherapy or personality readjustment."</p>

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
<p>I. Psychological Examiner</p> <p>(A) Good moral character</p> <p>(B) Two years of graduate training in psychology including a Master's Degree, or such training and experience as the Board of Examiners shall consider equivalent thereto</p> <p>(C) Written examination</p> <p>(D) U.S. citizen</p> <p>II. Psychologist</p> <p>(A) Good moral character</p> <p>(B) Doctorate Degree in Psychology or in closely allied field at discretion of the Board</p> <p>(C) One year of experience in psychology</p> <p>(D) Examination, written or oral, or both at discretion of Board</p> <p>(E) U.S. citizen. Substitute training and experience may be accepted by Board at its discretion in lieu of (B) and (C)</p>	<p>Yes</p>	<p>Yes, same as attorney-client</p>

State and Type of Regulatory Statute	Proscribed Titles for:		Definition of Proscribed Practice
	Certification Section	Conjunctive Section	
<p>Virginia</p> <p>VA. CODE ANN. §§ 54-103 to -112 (1958) (added by Laws of 1946).</p> <p>Licensure & Certification</p>	Certified Clinical Psychologist	Not Applicable	None
<p>Washington</p> <p>WASH. REV. CODE §§ 18.83.010 to .180 (Supp. 1957) (added by Laws of 1955).</p> <p>Certification</p>	Certified Psychologist	Not Applicable	Not Applicable

Major Requirements for Registration, i.e., for Exemption From Penalties	Some Form of Inter-State Reciprocity?	Privileged Communication
(A) Good moral character (B) Doctorate in Psychology (C) "Five Years of Actual Clinical experience" (D) Examination	No	No
(A) Good moral character (B) Doctor of Philosophy in Psychol- ogy, or doctor's degree in related field and two years of experience practicing psychology under qualified supervision (C) Examination	Yes	Yes, same as attorney-client