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Panel rescinds order regarding behavior analysts

Board: This is a misunderstanding

Staff, wire reports

The state Board of Examiners of Psychologists voted Tuesday to rescind an emergency order requiring applied behavior analysts to be under direct supervision of a licensed psychologist.

The decision came in the wake of a lawsuit filed in Kanawha County Circuit Court by ABA therapist Jill Scarbro-McLaury, who said the rule undermined a new law extending insurance coverage for this therapy which can be used to treat autism.

Scarbro-McLaury also said the state Board of Examiners of Psychologists violated state open meetings laws and abused the rule-making process. The board had alleged that West Virginia faced "an immediate threat to public safety" when it successfully submitted the

June 7 emergency rule at the center of the lawsuit.

The board met via phone conference Tuesday evening and voted unanimously to strike down the rule.

The lawsuit faults the board for voting to pursue the emergency rule during a May 26 evening conference phone call, without providing proper notice to the public. The emergency rule became effective July 10. Scarbro-McLaury and her fellow ABA analysts were unaware of the meeting, or of the board's push to claim jurisdiction over their profession, the lawsuit said.

Board Executive Director Jeff Harlow said it was never the board's intention to interrupt services for children with autism.

In a release, Harlow said: "The board's motive in this matter is to protect autistic children. Behavior analysts have misinterpreted the rule to mean that it would hamper autistic children from receiving services. ... This is a mis-

understanding. The rule does not prevent services from being rendered. ... The board continues to offer to meet with behavioral analysts to see if together we can resolve this issue with the purpose of protecting these autistic children and the integrity of the practice of psychology in West Virginia."

The emergency rule had left only one person in the state qualified to practice ABA — Dr. Susannah Poe, director of WVU Healthcare's Klingberg Neurodevelopmental Center, a licensed psychologist and certified ABA therapist. She opposed the rule, concerned that hundreds of children granted access to treatment by the law passed during the 2011 session would have been cut off by the emergency rule.

Poe, Scarbro-McLaury and the two boards that oversee behavior analysts maintain that ABA and psychology are distinct practices, and ABA therapists should not be over-

seen by someone from another profession.

This may not be the end of the matter. Poe said the joint interim Judiciary Subcommittee C and the Joint Rule Making Review Committee will look at the rule and the autism bill.

Delegate Barbara Evans Fleischer, Demongalia, sits on both committees, co-chairs Judiciary C and played a major role in passing the autism bill. The timing was a bit of a coincidence. She said Rule Making Review had planned to

review the criteria for emergency rules, and Judiciary C was going to discuss

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Dr. Susannah Poe
Director of WVU's Kingberg
Neurodevelopmental Center

the Mountaineer Autism Project, which worked to pass the bill; and national autism legislation advocates Autism Speaks, issued this statement in response to the board's decision:

implementation of the autism legislation.

Several times, the psychology board tried to insert its oversight of ABA practice into the bill, without success, she said.

Poe, speaking for herself;

"The Board of Examiners of Psychologists clearly violated the open meetings law by failing to post its agenda and letting the public know that it was considering rules with the potential of disrupting the relationship between a family and their therapist. If, in fact, the intent of the board has always been to have an open conversation, the board should have held an open meeting instead of a teleconference at 7 at night. A publicly known meeting would have permitted the families and the therapist who work every day with these children to attend. ... This wound was self-inflicted. Misunderstandings happen when communication is non-existent. ... We are encouraged that the board recognized that the rule should be pulled since it was in violation of the law, and we hope no more roadblocks are placed in front of our families who just want to help their children."