



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

DIRECTOR, OFFICE OF PROFESSIONAL DISCIPLINE
475 PARK AVENUE SOUTH, 2ND FLOOR
NEW YORK, NEW YORK 10016-6908
Tel. (212) 951-6500
Fax (212) 951-6537

July 28, 2010

KATHY ROBERTS, ESQUIRE
CENTER FOR JUSTICE & ACCOUNTABILITY
870 MARKET STREET - SUITE 682
SAN FRANCISCO CA 94102

Re: John Francis Leso, Psychologist
(Complaint of Dr. Steven Reisner)

Dear Ms. Roberts:

I write in response to the above-referenced complaint which you submitted on Dr. Reisner's behalf.

Based on the allegations contained in the complaint, I find no legal basis for instituting an investigation into Dr. Leso's activities while in the military service of the United States.

Prior to September 1, 2003, the practice of the profession of psychology was undefined by statute in New York. Effective September 1, 2003, New York Education Law section 7601-a defined the practice of the profession of psychology as:

the observation, description, evaluation, interpretation and modification of behavior for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior; enhancing interpersonal relationships, personal, group or organizational effectiveness and work and/or life adjustment; and improving behavioral health and/or mental health. The practice includes, but is not limited to psychological (including neuropsychological) testing and counseling; psychoanalysis; psychotherapy; the diagnosis and treatment of mental, nervous, emotional, cognitive or behavioral disorders, disabilities, ailments or illnesses, alcoholism, substance abuse, disorders of habit or conduct, the psychological aspects of

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physical illness, accident, injury or disability, psychological aspects of learning (including learning disorders); and the use of accepted classification systems.

Although the practice of the profession of psychology was undefined by statute in New York State prior to September 1, 2003, for purposes of evaluating your complaint I have assumed that the above definition would have applied even prior to that date.

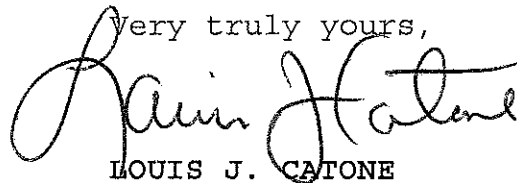
I find no basis for investigating your complaint because it does not appear that any of the conduct complained of constitutes the practice of psychology as understood in the State of New York. First, there does not appear to have been any therapist-patient relationship between Dr. Leso and any of the Guantanamo detainees. Moreover, I can only interpret the phrase "modification of behavior for the purpose of ... eliminating ... undesired behavior" in the definition of the practice of psychology as referring to behavior undesired by one's patient, not behavior undesired by third parties. If Dr. Leso's conduct did not constitute the practice of psychology, then he cannot be guilty of practicing the profession of psychology with gross negligence, with gross incompetence, etc., and he cannot be guilty of engaging in conduct "in the practice of the profession" evidencing moral unfitness to practice.

While the military (or a civilian employer) is free to require that one hold a particular professional license as a condition of obtaining a position, that, without more, does not mean that some or all of the activities performed for that employer constitute the practice of a profession. The fact that Dr. Leso may have possessed special knowledge gained through his education, training, and/or experience as a psychologist that made him useful to the military in developing interrogation techniques does not mean that Dr. Leso's conduct in that regard constituted the practice of psychology. One can certainly envision non-psychologists developing interrogation techniques for use by the military or others; that does not make the non-psychologists guilty of practicing psychology without a license.

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I appreciate that there is considerable difference of opinion among reasonable people as to whether some of the interrogation techniques utilized on detainees at Guantanamo Bay were appropriate. But it is not within this Office's purview to express an opinion on that issue. We are limited to investigating instances of possible professional misconduct by licensees, and your complaint simply does not allege facts that show that the complained-of conduct constituted the practice of psychology as understood by the State of New York.

Of course, should Dr. Leso - or any other New York licensee - ever be criminally convicted in a court martial or in a civilian trial of committing any act constituting a crime under Federal law, this Office would have jurisdiction to prosecute for a violation of New York Education Law section 6509(5)(a)(ii). Short of such a conviction, however, there is no basis for this Office to open an investigation into the conduct alleged by you.

Very truly yours,

LOUIS J. CATONE