



**Final Report
of the Commissioner of Professional and Financial Regulation**

**to the Joint Standing Committee
on Education and Cultural Affairs**

Sunrise Review of L.D. 2345

**“Resolve, to Enhance the Availability of
Neuropsychological Assessment to Maine’s Children”**

January 31, 2001

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Governor*

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Table of Contents

Introduction	1
I. Charge from Committee.....	1
II. Independent Assessment by Commissioner.....	1
III. Summary of Proposed Legislation.....	2
IV. Evaluation Criteria.....	2
1. Data on Group.....	3
2. Specialized Skill.....	4
3. Public Health; Safety; Welfare.....	4
4. Voluntary and Past Regulatory Efforts.....	4
5. Cost; Benefit.....	6
6. Service Availability of Regulation.....	6
7. Existing Laws and Regulations.....	6
8. Method of Regulation.....	7
9. Other States.....	7
10. Previous Efforts.....	8
11. Mandated Benefits.....	8
12. Minimal Competence.....	9
13. Financial Analysis.....	9
IV. Recommendations of the Commissioner.....	10

Appendix A—Statutory Provisions Governing Sunrise Review

Appendix B—Request of the Committee for Sunrise Review

Appendix C—L.D. 2345, “An Act to Enhance the Availability of Neuropsychological Assessment to Maine’s Children”

Appendix D—Sunrise Review Questionnaire and Applicant Group Responses

Appendix E—Standards of Practice Governing the Use of Subordinates by Psychologists

Appendix F—Applicable Federal Department of Education Regulations

Introduction

Under 5 M.R.S.A. § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated. The sunrise review process consists of applying the evaluation criteria established by statute, 32 M.R.S.A. § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated

The sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant’s answers to the evaluation criteria and report those findings back to the Committee; or
3. The Committee may request that the Commissioner establish a technical review committee to assess the applicants' answers and report its findings to the Commissioner.

Copies of 5 M.R.S.A. § 12015(3) and a summary of the Sunrise Review process as enacted by P.L. 1995, c. 686 are included in Appendix A to this report.

Charge from Committee

In a letter dated March 16, 2000, the Joint Standing Committee on Education and Cultural Affairs of the 119th Legislature requested that the Commissioner of Professional and Financial Regulation conduct an independent assessment of L.D. 2345, “Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine’s Children” in accordance with the Sunrise Review Procedures of 32 M.R.S.A., Chapter 1-A, sub-chapter II. A copy of the Committee’s request is attached as Appendix B.

Independent Assessment by Commissioner

The requirements for an independent assessment by the Commissioner are set forth in 32 M.R.S.A. § 60-K. In conducting an independent assessment, the Commissioner is required to apply the specified evaluation criteria (set forth in 32 M.R.S.A. § 60-J) to all answers and information submitted to, or collected by, the Commissioner. After conducting the independent assessment, the Commissioner must submit a final report setting forth the Commissioner’s recommendations, including any draft legislation necessary to implement those recommendations.

If the Commissioner finds that some form of regulation is appropriate, the Commissioner must recommend the level of regulation and a responsible agency. Pursuant to 32 M.R.S.A. §

60-K(3), the recommendation “must reflect the least restrictive method of regulation consistent with the public interest.” Copies of 32 M.R.S.A. §§ 60-J and 60-K are included in Appendix A.

Summary of Proposed Legislation

L.D. 2345, “Resolve, to Enhance the Availability of Neuropsychological Assessment to Maine’s Children” directs the Department of Education to adopt rules permitting the use of a neuropsychological technician, under the supervision of a licensed psychologist, to administer and score neuropsychological tests of school children in Maine. The Resolve further directs the Department of Education to collaborate with the Board of Examiners of Psychologists, within the Department of Professional and Financial Regulation, to create a licensure category for neuropsychological technicians under Title 32, chapter 56 of the Maine Revised Statutes. A copy of L.D. 2345 is attached as Appendix C.

Evaluation Criteria

Ordinarily, an independent assessment by the Commissioner involves reviewing the responses to the evaluation criteria provided by the applicant groups to the Committee. In this instance, however, there was no “applicant group” but the Committee felt that an assessment and recommendation was necessary for its deliberations and requested that the Commissioner conduct an independent assessment. Since no applicant group existed, the Department collected information from interested parties through the use of the questionnaire included in Appendix D.

The following individuals and organizations responded to the Department’s request for information:

Francine Blattner, M.D., P.A.
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Joseph Schenkel, Ph.D.
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The evaluation criteria set forth in 32 M.R.S.A. § 60-J shall be presented in this report as follows:

- 1. The evaluation criteria, as set forth in the statute;**
- 2. A summary of the responses received from persons responding to the Department's request for information (the complete responses are included in Appendix D); and**
- 3. The Department's independent assessment of the responses to the evaluation criteria.**

1. Data on group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group.

Information Provided by Respondents:

Respondents to the Department's survey questionnaire estimated that 8 organizations provide neuropsychological testing services and that from 8—12 to 15—20 individuals or entities would be subject to the proposed regulation, with 15—20 being the most common estimate.

The Maine Psychological Association (P.O. Box 5435, Augusta, Maine, 04332); the American Psychological Association (750 First Street NE, Washington, D.C., 20002-4242) and its Division 40 (Neuropsychology); the National Academy of Neuropsychology (221 South Oneida Street, Suite 550, Denver, Colorado, 80224-2594; and the International Neuropsychological Society (700 Ackerman Road, Suite 550, Columbus, Ohio, 43202) represent psychologists and/or neuropsychologists. No known group or organization represents neuropsychological technicians.

Department Assessment:

L.D. 2345 proposes to create a licensure category for neuropsychological technicians. The Department found no information to contradict the estimates of the respondents and therefore estimates the potential pool of licensees to be between 15—20 individuals.

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Information Provided by Respondents:

Neuropsychological technicians or assistants usually possess a Bachelor's or a Master's degree in psychology or a closely related field and work under the direct and immediate supervision of a licensed psychologist. The technician or assistant has narrowly defined role consisting of the following:

- Administration and scoring of psychological/neuropsychological tests under the supervision of the psychologist
- Documenting behavioral observations of the patient/client during the exam

The supervising psychologist is responsible for the following:

- Selection of tests
- Interpretation of test data
- Interpretation of the observational information obtained during testing
- Interviewing of patient and family
- Communication of test results to patient/client, family, staff and other parties legally authorized to receive the information.
- Testing procedures

Neuropsychological technicians work under direct supervision of supervising psychologist and provide an extension of those skills; however, the licensed psychologist ultimately bears total responsibility for the care of patient.

Department Assessment:

There are no established guidelines for training of neuropsychological technicians. Although most neuropsychological technicians possess a degree in psychology or a related field, training is largely "on the job" under the supervision of the employing psychologist and no national standards or qualifications for licensure exist.

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Information Provided by Respondents:

Loss of neuropsychological technicians would decrease accessibility to a highly needed specialized service.

No potential harm to public is presented— the services performed by neuropsychological technicians are not dangerous to the client, they are not performed outside of the employing doctor’s office, and the procedures are not invasive or dangerous

No known complaints to law enforcement authorities, courts, boards, state agencies or associations were reported by any respondents.

Department Assessment:

The services of neuropsychological technicians are limited to administering and scoring tests used in assessing educational needs. The technicians do not evaluate the results or treat the patient, nor do they practice independently. Therefore, there appears to be little threat to public health, safety, or welfare.

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Information Provided by Respondents:

Voluntary efforts to protect the current practice are threatened and need to be protected through statute or regulation.

Each neuropsychologist is responsible for credentialing and training neuropsychological technicians in his or her employ and for the performance of the neuropsychological technicians supervised

The American Psychological Association (APA) Code of Ethics for Psychologists, adopted by the Maine Board of Examiners of Psychologists, requires that employees be trained and under the supervision of the psychologist. If this is not done, the Board of Examiners of Psychologists may discipline the psychologist for ethics violations. In addition, the Board of Examiners of Psychologists has distributed information concerning the Board’s opinion concerning the use of unlicensed assistants. Supervising psychologists must conduct their practices in accordance with state law and the APA Ethics Code (1992) and the Association of State and Provincial Psychology Boards Code of Conduct (1991).

APA Division 40 establishes standards of practice regarding the use of neuropsychological technicians.

Department Assessment:

Neuropsychological technicians do not practice independently, nor would L.D. 2345 authorize them to do so. The licensed psychologist who hires and supervises the neuropsychological technician remains responsible for the actions of that technician. The Department feels that the public is adequately protected under the existing regulatory structure.

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Information Provided by Respondents:

Respondents believe that regulation of neuropsychological technicians is likely to be expensive with no added benefit and that it will limit the availability of services.

Department Assessment:

Generally, establishing requirements for licensure of a previously unregulated profession tends to reduce the pool of available practitioners and increase the expenses and overhead costs of the practitioner, thus increasing the cost of services provided.

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Information Provided by Respondents:

Respondents expressed concern that regulation would decrease the availability of qualified technicians, thereby decreasing the accessibility of the service.

Department Assessment:

The number of neuropsychological technicians is fairly small and regulation typically does reduce the pool of practitioners; therefore, the Department concurs that formal regulation may reduce the number of neuropsychological technicians.

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from

nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Information Provided by Respondents:

Respondents felt that the existing law governing psychologists is adequate since the licensed psychologist is fully responsible for patient care and is responsible for the actions of his or her employees, both legally and ethically.

Department Assessment:

Technicians function as an extension of the services provided by the licensed psychologist. The technician's role is limited to the administration and scoring of tests, and he or she is not involved in diagnosis and treatment. The Department believes that existing regulations governing psychologists and the guidelines concerning the use of unlicensed assistants are sufficient.

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Information Provided by Respondents:

Respondents feel that regulation is not necessary—no standard degree or formal training programs exist for these technicians, they are trained and supervised by the doctor and do not practice independently. Respondents were opposed to efforts to portray technicians as providing independent services as they provide no treatment. If any type of regulation is deemed necessary, registration is the only feasible form.

Department Assessment:

Regulation was proposed primarily to address reimbursement issues associated with requirements imposed on the states through rules adopted by the U.S. Department of Education, which prohibit reimbursement for services provided by individuals who do not meet the definition of "qualified personnel." In order to be considered "qualified personnel," the individuals must have met certification, licensing, registration, or comparable requirements approved or recognized by the State Educational Agency (Maine's Department of Education). Representatives from the Maine's Department of Education have indicated that voluntary regulation, such as registration of personnel who have certain minimum qualifications would suffice. Therefore, the Department feels that system of self-regulation is more appropriate than state mandated licensure or registration.

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of

the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Information Provided by Respondents:

Some states, including Maine, license examiners, which are not the same as neuropsychological technicians. The laws of 32 states are silent on service extenders in psychology. Service Extenders are mentioned in the laws of 18 states but only 8 states require registration and only 2 states specifically regulate psychological testing. Generally, when regulated, it is for independent practice in some form, which is not appropriate for technicians with respect to neuropsychological testing

Department Assessment:

While a small number of states regulate service extenders (Maine does not), no states appear to have singled out neuropsychological technicians for licensure.

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation.

Information Provided by Respondents:

None known.

Department Assessment:

The Department is not aware of any previous attempts to regulate neuropsychological technicians.

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits.

Information Provided by Respondents:

Respondents were not aware of any plans to seek mandated benefits and the proposal does not seek authorize independent practice by neuropsychological technicians.

Department Assessment:

The reimbursement issue is limited to reimbursement of the employing psychologist by the school district. Therefore, mandated benefits are not at issue.

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Information Provided by Respondents:

Most respondents did not specify any minimum qualifications in addressing the sunrise review criteria. However, one respondent did indicate that a bachelor's degree or master's degree in psychology or a closely related field from a regionally accredited college or university. The sponsor of L.D. 2345 also expressed concern that requiring a master's degree would increase the cost of services and reduce the availability of qualified personnel.

Department Assessment:

No national standards exist for qualifications of neuropsychological technicians and information provided by respondents with respect to other aspects of the sunrise review criteria indicate that the majority of personnel serving as neuropsychological technicians possess a bachelor's degree. Furthermore, most training is performed by the supervising psychologist, who remains responsible for the conduct of the technician. Therefore, the Department believes that a bachelor's degree in psychology or a closely related field would be the appropriate standard for minimal competence.

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Information Provided by Respondents:

Respondents did not address methods of financing the proposed regulation.

Department Assessment:

Under the laws governing the operations of the Office of Licensing Regulation, each regulatory program must be self-sustaining. 10 M.R.S.A. § 8003-F. L.D. 2345 proposes that a neuropsychological technician's license be established as a licensure category under the Board of Examiners of Psychologists. A psychologist's license is subject to an application fee of \$150 and a biennial renewal fee of \$300. Conditional and temporary licenses for psychologists are subject to a \$150 fee. Since the potential licensee pool for neuropsychological technicians is quite small, it is likely that the fees for licensure would consist of a \$150.00 application fee and \$300.00 biennial license fee. Fees for registration with the Board of Examiners of Psychologists may be slightly less, depending upon the requirements for registration.

V. Recommendations of the Commissioner

Generally under the independent assessment method of sunrise review, the Commissioner must not only evaluate the information by the applicant group, but must also recommend to the Committee whether action should be taken on a proposal. If the Commissioner's recommendation supports regulation, the report must include any legislation required to implement that recommendation. The recommendations must reflect the least restrictive method of regulation consistent with the public interest.

In assessing the sunrise review criteria, the Department believes that formal regulation of neuropsychological technicians is not appropriate at this time and feels that the purposes of L.D. 2345 can be accomplished through self regulation and therefore does not recommend that the legislature proceed with the proposal set forth in L.D. 2345.

Maine does not currently require licensure of other assistive personnel employed by licensed psychologists. The Department feels that it would be inappropriate to single out a particular class of employee for regulation and the Board of Examiners of Psychologists has indicated that it does not feel that licensure of neuropsychological technicians is appropriate at the present time.

Furthermore, the issue that L.D. 2345 sought to resolve is primarily a reimbursement issue, resulting from certain federal education regulations. (34 C.F.R. § 300.115). Under the federal regulations, in order for a licensed psychologist in this State to be reimbursed for a neuropsychological assessment, the person administering the assessment must be administered by personnel who have met certification, licensing, registration, or other comparable requirements approved or recognized by the State Educational Agency (in this case, the State of Maine's Department of Education). (34 C.F.R. §300.23). (Copies of the applicable regulations are included in Appendix F.) Representatives of Maine's Department of Education have indicated to the Department and to the Board of Examiners of Psychologists that program of self regulation, such as a registration program administered by a private organization such as the Maine Psychological Association would satisfy and the federal requirements, so long as minimum qualifications for registration are established met by the registrants.

The Maine Psychological Association has indicated a willingness to undertake such a registration; therefore, the Department feels that the objectives of the proponents of the legislation can be accomplished through self-regulation, which is far less restrictive than a formal state licensure program. Based upon information received through conducting the sunrise review process, however, the Department would recommend that any form of self-regulation should address the following issues:

- Minimum qualifications of a bachelor's degree in psychology or a related field.
- Recognition that the licensed psychologist is remains fully responsible and liable for the conduct of the technician.

- The use of the term “neuropsychological technician” creates issues of concern for both the Board of Examiners of Psychologists and the state Department of Education. 32 M.R.S.A. § 3812 prohibits the use of the terms “psychological,” “psychologist” or “psychology,” unless licensed accordingly and the Department of Education has restrictions applicable to the use of the term “technician.” Therefore, it will be necessary to develop another term that may be used to refer to registrants under any program of self-regulation.

The Department feels that a program of self-regulation will serve to address the concerns of the proponents of L.D. 2345 and the Department of Education through the least restrictive and most cost effective means possible; therefore, it is the recommendation of the Commissioner of Professional and Financial Regulation that no further action be taken with respect to L.D. 2345.

Appendix A

Statutory Provisions Governing the Independent Assessment form of Sunrise Review

Appendix B

Request of the Committee for Sunrise Review

Appendix C

L.D. 2345

**“Resolve, to Enhance the Availability of
Neuropsychological Assessment to Maine’s Children”**

Appendix D

Sunrise Review Evaluation Questionnaire and Responses

Appendix E

Standards of Practice Governing the Use of Subordinates by Psychologists

Appendix F

Applicable Federal Department of Education Regulations