

JUNE DOMINO  
v.  
CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION  
  
Appeal from Non-Punitive Termination

**SPB Dec. No. 19-01**  
Case No. 18-1948  
  
**BOARD RESOLUTION**  
**ADOPTING AND DESIGNATING**  
**PROPOSED DECISION AS A**  
**PRECEDENTIAL DECISION**

The State Personnel Board has reviewed the Proposed Decision filed by the Administrative Law Judge in the appeal by Appellant, June Domino, from a non-punitive termination imposed by Respondent, California Department of Corrections and Rehabilitation. After careful consideration,

**IT IS RESOLVED AND ORDERED THAT:**

1. The attached Proposed Decision of the Administrative Law Judge is **ADOPTED** in full;
2. The Board designates the adopted Proposed Decision as a precedential decision under Government Code section 19582.5;
3. The precedential decision shall be designated as SPB Dec. No. 19-01 in the Board's precedential decision numbering system; and
4. The precedential decision shall be uploaded and maintained in the Board's record, website, and other legal online publications as may be available or applicable.

\* \* \* \* \*

**STATE PERSONNEL BOARD**

Laurie Shanahan, President  
Shawnda Westly, Vice President  
Kimiko Burton, Member  
Kathy Baldree, Member  
Mona Pasquil Rogers, Member

\* \* \* \* \*

I hereby certify that the State Personnel Board made and adopted the foregoing  
Board Resolution and Order at its meeting on October 8, 2019.

  
**SUZANNE M. AMBROSE**  
Executive Officer

JUNE DOMINO  
v.  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION  
  
Appeal from Non-Punitive Termination

Case No. 18-1948  
Proposed Decision

---

**STATEMENT OF THE CASE**

This matter came on regularly for hearing before Ralph W. Kasarda, Administrative Law Judge (ALJ), State Personnel Board (SPB), on May 6, 2019, in Fresno, California. The matter was submitted at the conclusion of the hearing after oral closing arguments on that same date. On May 14, 2019, the ALJ ordered the record reopened to allow the parties to submit written briefs on the proper interpretation of Business and Professions Code section 2913 and Penal Code section 5068.5, subdivisions (c)(1) and (2). The parties filed their briefs and the matter was considered submitted on June 14, 2019.

Appellant June Domino (Appellant) was present and represented by Abdul Johnson, President, American Federation of State, County and Municipal Employees, Local 2620.

Respondent California Department of Corrections and Rehabilitation (Respondent, Department, or CDCR) was represented by Health Care Employee Relations Officer Natalie Frost, California Correctional Health Care Services (CCHCS). Health Care Employee Relations Officer Melissa Jensen, CCHCS, was also present on behalf of Respondent. Respondent non-punitively terminated Appellant from the classification of Clinical Psychologist (Correctional Facility), effective at the close of business on November 21, 2018, based on allegations Appellant failed to obtain a valid license issued

---

by the California Board of Psychology (Psychology Board) within four years of commencing employment as a psychologist in the state.

Appellant asserts that the four-year period for her to obtain her license had not yet expired as of the date that Respondent non-punitively terminated her. Appellant further asserts that Respondent's actions caused her undue hardship and compromised the health care of her former patients.

### **ISSUE**

The issue to be resolved is:

1. Did Respondent prove that Appellant failed to possess a valid license as a Clinical Psychologist issued by the Psychology Board within four years of commencing employment as a psychologist in the state?
2. Did Respondent validly non-punitively terminate Appellant?

### **FINDINGS OF FACT**

A preponderance of the evidence proves the following facts:

#### **Job Specifications**

1. The job specifications for the classification of Psychologist-Clinical,

Correctional Facility define the position as follows:

Under general direction, in a State correctional facility or outpatient clinic in the Department of Corrections and Rehabilitation, to carry out difficult assignments in clinical psychology which involve the assessment and treatment of adults, program development and evaluation, clinical research, professional training, and consultation; to maintain order and supervise the conduct of inmates; to protect and maintain the safety of persons and property; and to do other related work.

---

///

///

2. The typical tasks for that position include:

Applies psychological knowledge and techniques to the problems of mental and developmental disabilities in adult offenders in a correctional facility or clinic; conducts various forms of group and individual therapy, cognitive behavior therapy, and other forms of behavior modifications; selects, [administers], scores and interprets personality, intelligence, and other psychological tests; based on psychological tests and observations, case history, treatment progress and social factors, assesses patients [sic] needs and makes recommendations on admission, transfer, parole, discharge, and therapeutic activities . . . .

3. The minimum qualifications for that position include a licensing provision, as follows:

License: Possession of a valid license as a Psychologist issued by the [Psychology Board] . . . .

Individuals who do not qualify for licensure by the [Psychology Board] or who are in the process of securing this license will be admitted into the examination and may be appointed, but must secure a valid license within three years of an appointment or the employment shall be terminated.<sup>1</sup>

#### Appellant's Relevant Education and Work History

4. On February 1, 2005, Appellant began attending Pacifica Graduate Institute (Pacifica) to pursue doctoral studies in clinical psychology.
5. On June 10, 2007, while Appellant was still a student at Pacifica, Appellant began working part time as a psychological assistant at O. Jimmy Bamgbose, Inc. In this position, Appellant conducted individual therapy sessions, maintained progress notes, and tested and scored psychological assessments.

---

<sup>1</sup> This paragraph no longer reflects Penal Code section 5068.5, which was amended in 2017 and provides that the individual must secure a valid license within four years from the commencement of their employment within this state.

- Appellant performed these duties under the supervision of Dr. O. Jimmy Bamgbose (Dr. Bamgbose), a psychologist licensed by the Psychology Board.
6. On April 25, 2008, Appellant began working in a peace officer position as a Deputy Probation Officer II for the Los Angeles County Probation Department. While Appellant worked in that position, she continued attending Pacifica to pursue her doctoral studies in clinical psychology.
  7. In June 2010, Appellant received a Doctorate in Clinical Psychology from Pacifica Graduate Institute. She continued to work as a Deputy Probation Officer II until April 2013.
  8. On April 15, 2013, Appellant began working part-time as a psychologist assistant at Inland Psychiatrist Medical Group (Inland) in Redlands, California. Appellant accepted this position to complete the total number of post-doctoral hours required by the Psychology Board for licensure.<sup>2</sup> Appellant registered with the Psychology Board as a psychologist assistant to work in this position, pursuant to Business and Professions Code section 2913.
  9. As a psychologist assistant, Appellant conducted face-to-face therapy sessions under the clinical supervision of Dr. Ellisee Bastian (Dr. Bastian), a psychologist licensed by the Psychology Board. When Appellant conducted therapy sessions with patients, only she and her patient were present. Appellant also submitted and explained individual psychological treatment plans, maintained progress notes, collaborated in the assessments and evaluations of patients,

---

<sup>2</sup> California Code of Regulations, title 16, section 1387, subdivision (a), provides that to qualify for licensure as a psychologist, an applicant must complete 3,000 hours of supervised professional experience, at least 1,500 of which must be completed post-doctorally.

and attended psychiatric rounds at residential treatment centers with the treating psychiatrist.

10. On October 30, 2014, Appellant left Inland after she completed the total number of post-doctoral hours required by the Psychology Board for licensure.
11. On October 1, 2015, Appellant was appointed as a Psychologist-Clinical, Correctional Facility at the Central California Women's Facility, in Chowchilla, California. At the time, Appellant was appointed to that classification, the Psychology Board had not yet issued Appellant a valid license as a psychologist.
12. When Appellant was hired by Respondent, Appellant believed she had four years from her October 1, 2015, date-of-hire to obtain her psychologist license from the Psychology Board.
13. During an audit in October or November 2018, Respondent concluded that Appellant could no longer be employed as a Clinical Psychologist with CDCR because she had not been issued a valid license as a psychologist within five years from the commencement of her employment as a psychologist in the state (i.e., April 15, 2013).
14. Respondent non-punitively terminated Appellant from the classification of Clinical Psychologist, effective at the close of business on November 21, 2018.

### **PRINCIPLES OF LAW AND ANALYSIS**

An agency may non-adversely terminate an employee who fails to meet the standards for continuing employment under the State Personnel Board specifications for the employee's classification. (Gov. Code, § 19585, subds. (a), (b).) The requirements

---

for continuing employment, and thus the potential grounds for non-punitive termination, are "limited to the acquisition or retention of specified licenses, certificates, registrations, or other professional qualifications, education, or eligibility for continuing employment or advancement to the fully qualified level within a particular class series." (Gov. Code, § 19585, subd. (d).) In an appeal from a non-punitive termination, the agency bears the burden of proving by a preponderance of evidence that the employee failed to acquire or retain the specified license, certificate, registration, or other professional qualifications, education, or eligibility for continuing employment or advancement to the fully qualified level within a particular class series. (*George Lannes* (1992) SPB Dec. No. 92-10.) A preponderance of the evidence is generally defined as evidence that, "when weighed with that opposed to it, has more convincing force and the greater probability of truth." (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483.)

The specifications for the classification of Psychologist-Clinical, Correctional Facility and Penal Code section 5068.5, subdivision (a), require individuals employed in that classification to possess a valid Psychologist License from the Psychology Board.

Penal Code section 5068.5, subdivision (c)(1), also provides:

The requirements of subdivision (a) may be waived by the secretary [of CDCR] solely for persons in the professions of psychology or clinical social work who are gaining qualifying experience for licensure in those professions in this state. Providers working in a licensed health care facility operated by the department [CDCR] shall receive a waiver in accordance with Section 1277 of the Health and Safety Code.

Section 5068.5, subdivision (c)(2), further provides, in pertinent part:

A waiver granted pursuant to this subdivision *shall not exceed four years from the commencement of the employment in this state*, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure may be granted for one

additional year, based on extenuating circumstances determined by the department pursuant to subdivision (d). (Italics added.)

Section 5068.5, subdivision (d), thereafter provides:

The department shall grant a request for an extension of a waiver of licensure pursuant to subdivision (c) based on extenuating circumstances if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event that may impair the person's ability to qualify for and pass the licensure examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster; serious and prolonged illness of the person; serious and prolonged illness or death of a child, spouse, or parent; or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist that substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship that the department, in its discretion, determines to warrant the extension.

Thus, Penal Code section 5068.5 mandates that Clinical Psychologists employed by Respondent either possess a valid license issued by the Psychology Board, or obtain such a license absolutely no later than five years after commencing employment as a psychologist in California. The evidence established that Appellant did not possess a Psychologist License at the time of her non-punitive termination.

Appellant asserted her non-punitive termination was improper because she had four years from the time she began working for CDCR to become licensed (or five years if she qualified for a one year extension of the waiver); her employment as a psychologist assistant was not employment as a psychologist; and she suffered hardship as a result of her termination.

The Waiver Period Begins When the Employee Commences Work in the State

Appellant contends the language of Penal Code section 5068.5, subdivision (c)(2), is ambiguous, and asserts the overall five-year waiver period began when she commenced employment as a psychologist for the State of California, not in California. Appellant concludes that when the legislature used the language “employment in this state,” it must have meant “employment by the state.” To reach that conclusion, Appellant makes the following five-step argument: (1) The first use of “employment” in Penal Code section 5068.5, subdivision (c)(2), is qualified by the words, “in this state”; (2) The second use of the word “employment” in that sentence, however, (“the employment shall be terminated”), has no qualifier; (3) Therefore, “the employment shall be terminated” must refer to “employment in this state”; (4) Appellant reasons that construction cannot be correct, however, since Penal Code section 5068.5 concerns waivers by the Department, and the Department has no authority to terminate the employment of a psychologist working in the state but not for the Department; (5) To avoid this illogical result, Appellant concludes the two places where “employment” is mentioned within Penal Code section 5068.5, subdivision (c)(2), must be harmonized to mean employment “by the state.”

If the terms of a statute are unambiguous, courts presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.) In reading a statute, courts keep in mind the fundamental principle of statutory construction that “interpretations which render any part of a statute superfluous are to be avoided.” (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1207.) The function of the court is to construe and apply the law as it is enacted and not to add to it or detract from it. Hence, words may not be inserted in a

statutory provision under the guise of interpretation. (*In re Brandy R.* (2007) 150 Cal.App.4th 607, 610.)

Here, despite Appellant's assertions, Penal Code section 5068.5, subdivision (c)(2), plainly provides that the employee has to obtain a valid license within four years from the commencement of the individual's employment as a psychologist "in this state." The language of the statute is clear and unambiguous. Appellant has to obtain a license to practice psychology within four years from the time she began working as a psychologist in the State of California, or five years if she qualified for a one-year extension. Under Appellant's interpretation, however, the phrase "in the state" should not only be ignored, it should be rewritten by inserting new language ("by the state"). Thus, Appellant's interpretation is disfavored and must be rejected.

Even if the language of Penal Code section 5068.5, subdivision (c)(2), is ambiguous, the legislative history of Penal Code section 5068.5 further establishes that Appellant's construction is incorrect.

When Penal Code section 5068.5 was enacted in 1984, its reference to employment could have been construed to mean employment by CDCR. That section provided, in relevant part:

(a) Notwithstanding any other provision of law, except as provided in subdivision (b), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system shall be a . . . psychologist . . . licensed to practice in this state.

(b) . . . Additionally, the requirements of subdivision (a) may be waived in order for a person to gain qualifying experience for licensure as a psychologist in this state. ~~However, such a waiver shall not exceed two years from the date of the commencement of employment.~~ (Emphasis added.)

On October 2, 1989, amendments to Penal Code section 5068.5 were introduced in the California Assembly as Assembly Bill 1910 (AB 1910). AB 1910 added Penal Code section 5068.5, subdivision (c), but did not further describe what was meant by “employment.” In relevant part, the amended Penal Code section 5068.5 provided:

(a) Notwithstanding any other provision of law, except as provided in subdivision (b), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system shall be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state.

[¶] . . . [¶]

(c) Additionally, the requirements of subdivision (a) may be waived in order for a person to gain qualifying experience for licensure as a psychologist in this state. *However, the waiver shall not exceed two years from the date of the commencement of employment.* (Emphasis added.)<sup>3</sup>

On September 8, 2000, amendments to Penal Code section 5068.5 were introduced into the California Assembly as Assembly Bill 1975 (AB 1975), which clarified that employment meant “employment in the state.” AB 1975 changed subdivision Penal Code section 5068.5, subdivision (c), to conform to the requirements of Health and Safety Code, section 1277, as follows:

(c) The requirements of subdivision (a) may be waived in order for a person to gain qualifying experience for licensure as a psychologist or clinical social worker in this state in accordance with Section 1277 of the Health and Safety Code.<sup>4</sup>

---

<sup>3</sup> Assem. Bill No. 1910 (1989-1990 Reg. Sess.) § 120.

<sup>4</sup> On September 8, 2000, Health and Safety Code, section 1277, subdivision (b), provided that: [T]he licensure requirements for . . . psychologists . . . shall not be less than for those professional personnel in health facilities under private ownership. . . . [T]he requirements of this subdivision may be waived by the state department solely for persons in the professions of psychology . . . who are gaining qualifying experience for licensure in such profession in this state. *A waiver granted pursuant to this subdivision shall*

The introduction to AB 1975 provides, in relevant part:

Existing law requires that the licensure requirements for . . . psychologists . . . in state and other governmental health facilities, be not less than for those in privately owned health facilities. The State Department of Health Services is authorized to grant a waiver from licensure requirements for persons employed in publicly operated health facilities who are gaining qualifying experience for licensure. *The waiver cannot exceed 2 years from the commencement of employment in the state in the case of psychologists . . . with one additional year to be granted under extenuating circumstances, as specified.* (Emphasis added.)

[¶] . . . [¶]

This bill would conform the requirements for licensed professionals providing services in the state correctional system to those applicable to professional personnel in other state and governmental health facilities, as specified.<sup>5</sup>

The October 19, 2010, amendments to Penal Code section 5068.5 were introduced into the California Assembly as Assembly Bill 1628 (AB 1628). AB 1628 substantially amended subdivision (c) of Penal Code section 5068.5, and inserted “employment commences in this state” into that subsection, as follows:

(c)(1) The requirements of subdivision (a) may be waived by the secretary solely for persons in the professions of psychology . . . who are gaining qualifying experience for licensure . . . in this state. Providers working in a licensed health care facility operated by the department must receive a waiver in accordance with Section 1277 of the Health and Safety Code.

(2) *A waiver granted pursuant to this subdivision shall not exceed three years from the date the employment commences in this state in the case of psychologists, . . . at which time licensure shall have been obtained or the employment shall be terminated. . . .* (Emphasis added.)<sup>6</sup>

---

*not exceed three years from the date the employment commences in this state in the case of psychologists.*  
. . . (Emphasis added.)

<sup>5</sup> Assem. Bill No. 1975 (1999-2000 Reg. Sess.).

<sup>6</sup> Assem. Bill No. 1628 (2009-2010 Reg. Sess.) § 6.

On July 31, 2017, amendments to Penal Code section 5068.5 were introduced in the California Assembly as Assembly Bill 1456 (AB 1456). AB 1456 extended the time California correctional facilities could grant a waiver to psychologists gaining qualifying experience for licensure from three years to four years.<sup>7</sup> A report by the Assembly Committee on Business and Professions concerning AB 1456 contains the following:

In order to sit for the exam to become a licensed psychologist, applicants must have completed 3,000 hours (two years) of supervised experience, of which 1,500 hours must be completed after obtaining a doctoral degree in psychology. Outside of “exempt settings,” persons obtaining the required experience for licensure generally register with the [Psychology Board] as “psychological assistants,” and must be under immediate supervision of a licensed psychologist or a licensed psychiatrist at all times. . . . [T]here is a broader exemption for persons employed by . . . governmental agencies (“exempt settings”), which allows persons in these settings to practice psychology while gaining experience required for licensure. In 2015, AB 705 . . . was enacted to tighten up this provision of law by placing a maximum time limit of five years on the exemption, . . . . However, outside of the Business and Professions Code, there are various provisions of law permitting psychologists and other mental health professionals to practice mental health professions in certain government-related settings while obtaining the required experience necessary for licensure. For psychologists, the limit is generally three years. This bill is conforming those provisions of law to the recently amended Business and Professions Code limitation of five years.<sup>8</sup>

Thus, after the October 2, 1989, amendments to Penal Code section 5068.5, the language of Penal Code section 5068.5, subdivision (c), was arguably vague. That language simply stated that the waiver “shall not exceed two years from the date of the commencement of employment.” Conceivably, the phrase “commencement of employment” could be interpreted to mean employment by the state correctional system. It is clear from the later amendments to Penal Code section 5068.5, however, that the

---

<sup>7</sup> Assem. Bill No. 1456 (2017-2018 Reg. Sess.) § 2.

<sup>8</sup> Sen. Rules Com., Off. of Sen. Floor Analysis, AB 1456 (July 5, 2017), pp. 3-4.

legislature intended “commencement of employment” to mean employment in the state, not for the state.

The preface to AB 1975, which amended Penal Code section 5068.5 on September 8, 2000, declared the existing law (the law after the 1989 amendment) was that the licensure waiver “cannot exceed 2 years from the commencement of employment in the state.” The September 8, 2000, amendments replaced the vague language in Penal Code section 5068.5, subdivision (c), with a sentence stating the waiver could be granted according to Health and Safety Code section 1277. That section specifically provided that “[a] waiver shall not exceed three years from the date the employment commences in this state. . . .” AB 1628, which amended Penal Code section 5068.5 in 2010, notably inserted the “employment commences in this state” language into Penal Code section 5068.5, subdivision (c)(2). That language was not disturbed by the 2017 amendments to Penal Code section 5068.5.

If the legislature wanted to clarify that “commencement of employment” refers to employment by the state, it had several opportunities to do so. Instead, the legislature chose to clarify that “commencement of employment” means “employment commences in this state.” That interpretation is supported by Business and Professions Code section 2910, which governs the licensure and practice of psychologists in California. Business and Professions Code section 2910, subdivision (b), provides that, “Commencing on January 1, 2016, an individual employed or who becomes employed by one or more employers as described in subdivision (a)<sup>9</sup> shall be exempt under this section for a

---

<sup>9</sup> Business and Professions Code section 2910, subdivision (a), provides:

This chapter shall not be construed to restrict the practice of psychology on the part of persons who are salaried employees of accredited or approved academic institutions, public schools, or governmental agencies, if those employees are complying with the following:

*cumulative* total of five years.” (Italics added). “The five-year exemption under section 2910 is a broad provision, applicable to psychologists employed by any governmental agency, as well as academic institutions and public schools.” (*Lisa Prieto* (2016) SPB Dec. No. 1603, p. 11.) The Legislature’s intent in amending Business and Professions Code section 2910 was to restrict governmental employees’ ability to practice psychology without a license, not to expand it. (*Id.* at p. 14.) Appellant’s interpretation of Penal Code section 5068.5 would increase the time a psychologist could practice without a license, and conflicts with the Legislature’s intent.<sup>10</sup>

Thus, based on the language of Penal Code section 5068.5, subdivision (c)(2), and the legislature history, it is clear that Appellant was eligible for a licensure extension that commenced once she began working as a psychologist “in the state” and not as a Clinical Psychologist for CDCR.

#### Appellant Worked as a Psychologist When She was a Psychologist Assistant

Appellant argues her employment as a psychologist began when CDCR hired her as a Clinical Psychologist in 2015, not when she began working as a post-doctoral psychologist assistant at Inland in 2013. Respondent contends that Business and Professions Code section 2913 establishes that Appellant performed the duties of a

---

(1) Performing those psychological activities as part of the duties for which they were hired.

(2) Performing those activities solely within the jurisdiction or confines of those organizations.

(3) Do not hold themselves out to the public by any title or description of activities incorporating the words “psychology,” “psychological,” or “psychologist.”

(4) Are primarily gaining the supervised professional experience required for licensure that is being accrued consistent with the board’s regulations and the employees have as the primary supervisor a psychologist licensed in the state.

---

<sup>10</sup> The 2016 amendments to Business and Profession Code section 2910 closed a “loophole” that allowed employees in government settings to practice psychology without a license indefinitely without supervision by a licensed psychologist. (See *Lisa Prieto, supra*, SPB Dec. No. 16-03 at pp. 5-8.)

psychologist when she worked as a psychologist assistant, and her waiver period began at that time.

Business and Professions Code section 2913 allows a person other than a licensed psychologist to gain qualifying work as a psychologist in order to become eligible for licensure.<sup>11</sup> To do so, the unlicensed psychologist must be registered with the Psychology Board as a psychological assistant; have completed a doctoral degree; and work under the immediate supervision of a licensed psychologist. (Bus. & Prof. Code, § 2913, subds. (a), (b).) Appellant satisfied those requirements when she worked as a psychologist assistant at Inland after she received her doctorate degree in psychology. To work in that position, Appellant registered with the Psychology Board, and worked under the immediate supervision of Dr. Bastian, a licensed psychologist.

While working as a psychologist assistant at Inland, Appellant performed the duties of a psychologist, as defined by Business and Professions Code section 2903.<sup>12</sup> She

---

<sup>11</sup> Business and Professions Code section 2913 states, in relevant part:

A person other than a licensed psychologist may perform psychological functions in preparation for licensure as a psychologist only if all of the following conditions are met:

(a) The person shall register himself or herself with the board as a "psychological assistant"

....

(b) The person . . . (3) has completed a doctoral degree that qualifies for licensure under Section 2914.

[¶] . . . [¶]

<sup>12</sup> Business and Professions Code section 2903 provides:

(a) No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render to individuals, groups, organizations, or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

rendered psychological services to individuals consisting of face-to-face therapy sessions, prepared treatment plans, maintained progress notes, and collaborated in the assessments and evaluations of patients. Thus, Appellant worked as a psychologist in preparation for licensure at Inland.

Appellant essentially argues that a person performing psychological services while working as a registered psychological assistant under Business and Professions Code section 2913 should not be considered a person practicing psychology under Penal Code section 5068.5. Under Appellant's interpretation of Penal Code section 5068.5, an unlicensed psychologist could perform psychological services while employed as a registered psychological assistant for five years, and then work another four to five years for CDCR pursuant to a waiver under Penal Code section 5068.5. That would permit an unlicensed psychologist to stack multiple four or five exempt periods of employment, and remain unlicensed for close to 10 years. Appellant's interpretation conflicts with the legislative intent behind Business and Professions Code section 2910 to limit to five the number of years an unlicensed psychologist may work in an exempt setting while obtaining qualifying experience, and is therefore rejected.

///

///

///

---

(b) The application of these principles and methods includes, but is not restricted to: assessment, diagnosis, prevention, treatment, and intervention to increase effective functioning of individuals, groups, and organizations.

(c) ~~Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes, and behaviors that are emotionally, intellectually, or socially ineffectual or maladaptive.~~

Accordingly, it is found that for purposes of Penal Code section 5068.5, Appellant commenced employment as a psychologist in the state on April 15, 2013, when she commenced employment as a psychologist assistant at Inland.<sup>13</sup>

CDCR Cannot Grant Appellant an Extension to Obtain Licensure

Appellant argues that she suffered undue hardship as a result of her termination, because without income she is unable to prepare for the psychology licensing examination. Penal Code section 5068.5, subdivision (c)(2), provides for a four-year waiver, and a one-year extension in cases of undue hardship, for a total waiver of five years after the employee commenced employment as a psychologist in California. Unfortunately, because Appellant commenced employment as a psychologist in California on April 15, 2013, five years already had elapsed at the time of her non-punitive termination. Even if Appellant's termination constitutes undue hardship, as defined by Penal Code section 5068.5, subdivision (d), the Department has no authority to extend the licensure waiver period beyond five years from when Appellant commenced employment as a psychologist in this state.<sup>14</sup> Thus, Appellant is not entitled to an extension of the five year waiver period set forth in Penal Code section 5068.5, subdivision (c)(2).

///

///

---

<sup>13</sup> Respondent also argued in its closing brief that Appellant worked as a psychologist for O. Jimmy Bamgbose Inc. in 2007, and as a Deputy Probation Officer II for the Los Angeles County Probation Department, from 2008 to 2013. There is insufficient evidence in the record about her duties at those positions, however, to make that determination.

<sup>14</sup> Appellant also argued that the mental health of her patients suffered by her sudden departure. Appellant provided no evidence of this assertion and no legal authority that the time periods set forth in Penal Code section 5068.5, subdivision (c)(2), can be extended for this reason.

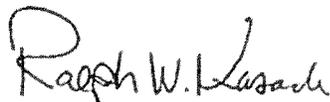
**CONCLUSIONS OF LAW**

1. The official specifications for the Clinical Psychologist (Correctional Facility) classification, as well as Penal Code section 5068.5, require the employee to either possess a valid license issued by the California Board of Psychology, or to obtain such a license absolutely no later than five years after commencing employment as a psychologist in California.
2. As of the close of business on November 21, 2018, Appellant was not in possession of a valid license issued by the California Board of Psychology, and more than five years had elapsed since the time she commenced employment as a psychologist in the state.
3. The non-punitive termination of Appellant from the classification of Clinical Psychologist (Correctional Facility) is legally appropriate.

**ORDER**

The California Department of Corrections and Rehabilitation's non-punitive termination of June Domino is **SUSTAINED**.

DATED: September 13, 2019



---

Ralph W. Kasarda  
Administrative Law Judge  
State Personnel Board