

LISA PRIETO  
v.  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION  
Appeal from Non-Punitive Termination

Case No. 16-0763  
BOARD DECISION AND  
ORDER

**(Precedential)**

**No. 16-03**

**November 3, 2016**

**BEFORE:** Kimiko Burton, President; Lauri Shanahan, Vice-President, and Patricia Clarey, Richard Costigan, and Maeley Tom, Members.

**DECISION AND ORDER**

This case is before the State Personnel Board (SPB or Board) for consideration after having been heard and decided by an SPB Administrative Law Judge (ALJ). We have reviewed the ALJ's Proposed Decision sustaining the non-punitive termination. The Board has decided to adopt the attached Proposed Decision as a Precedential decision of the Board, pursuant to Government Code section 19582.5. The findings of fact and Proposed Decision of the ALJ are hereby adopted by the State Personnel Board as its Precedential decision.

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**THE STATE PERSONNEL BOARD**

Kimiko Burton, President  
Lauri Shanahan, Vice-President  
Patricia Clarey, Member  
Richard Costigan, Member  
Maeley Tom, Member

\* \* \* \* \*

I hereby certify that the State Personnel Board made and adopted the foregoing Board Decision and Order, and I further certify that the attached is a true copy of the Administrative Law Judge's Proposed Decision adopted as a Precedential decision by the State Personnel Board at its meeting on November 3, 2016.

  
SUZANNE M. AMBROSE  
Executive Officer

**ATTACHMENT**



801 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov

Governor Edmund G. Brown Jr.

LISA PRIETO  
v.  
CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITAION

Case No. 16-0763

**BOARD RESOLUTION  
AND ORDER**

Appeal from Non-Punitive Termination

The State Personnel Board (the Board) on November 3, 2016, carefully considered the Proposed Decision filed by the Administrative Law Judge (ALJ) in the appeal by Appellant, Lisa Prieto, Case No. 16-0763, from a Non-Punitive Termination by the California Department of Corrections and Rehabilitation (Respondent).

**IT IS RESOLVED AND ORDERED THAT** the findings of fact, determination of issues, and Proposed Decision of the ALJ are adopted by the Board as its Decision in the case on the date set forth below. A true copy of the Proposed Decision shall be attached to this Board Resolution and Order for delivery to the parties in accordance with the law, and the adoption of the Board Resolution and Order shall be reflected in the record of the meeting and the Board's minutes.

The foregoing Board Resolution and Order was made and adopted by the Board in Case No. 16-0763 during its meeting on November 3, 2016, as reflected in the record of the meeting and Board minutes.

**/s/ SUZANNE M. AMBROSE**  
SUZANNE M. AMBROSE  
Executive Officer

LISA PRIETO  
v.  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION  
  
Appeal from Non-Punitive Termination

Case No. 16-0763  
  
Proposed Decision

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**STATEMENT OF THE CASE**

The evidentiary record in this matter was established by stipulation and official notice, without an evidentiary hearing. On August 5, 2016, the parties filed a Joint Motion to Request Entry of Stipulated Facts, Take Official Notice, and Cancel Evidentiary Hearing (Joint Motion). The Joint Motion was granted on August 12, 2016. The matter was submitted to State Personnel Board Administrative Law Judge Amy Friedman on August 26, 2016, upon receipt of written closing briefs.

Appellant Lisa Prieto (Appellant) is represented by Andrew H. Baker, Esquire, Beeson, Tayer & Bodine, APC.

Respondent California Department of Corrections and Rehabilitation (Respondent or CDCR) is represented by Sarah R. Hartmann, Attorney, California Correctional Health Care Services.

On April 12, 2016, Respondent served a Notice of Non-Punitive Action on Appellant, terminating her employment as a Psychologist-Clinical, Correctional Facility, effective April 22, 2016. Respondent terminated Appellant's employment because she had not obtained a Psychology license from the California Board of Psychology (Psychology Board). Respondent contends that Appellant must be terminated because

Penal Code section 5068.5 mandates that she become licensed within three years of her appointment as a Psychologist-Clinical, Correctional Facility.

Appellant does not dispute that she was not licensed at the time of her termination. But, Appellant asserts that she was not required to obtain her license within three years under Penal Code section 5068.5, because she was exempt from licensure for five years under Business and Professions Code section 2910. Appellant therefore contends that her termination was unwarranted.

### **ISSUES**

The issues to be resolved are:

1. Did Respondent prove by a preponderance of the evidence that, as of the effective date of the non-punitive termination, Appellant failed to meet a continuing requirement of the position of Psychologist-Clinical, Correctional Facility?
2. Did Respondent validly non-punitively terminate Appellant?

### **FINDINGS OF FACT**

A preponderance of the evidence proves the following facts:

1. Appellant commenced her state service in June 2006, as a Psychometrist,<sup>1</sup> Correctional Facility, with Respondent. On April 22, 2013, Appellant was appointed as a Psychologist-Clinical, Correctional Facility. At that time, Appellant was not licensed as a Psychologist by the Psychology Board. She worked at North Kern State Prison.

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<sup>1</sup> A psychometrician is a person "who is skilled in the administration and interpretation of objective psychological tests." (*Merriam-Webster Dictionary*, [www.merriam-webster.com](http://www.merriam-webster.com) (last visited Sept. 26, 2016)).

2. On April 22, 2013, Appellant signed a "Statement of Understanding Clinical Psychologist, Correctional Facility." That document represented that Appellant's "In State Psychologist 3-year Waiver Expires on: 4-20-16." Appellant also acknowledged by her signature that she understood the provisions of Penal Code section 5068.5.
3. On April 12, 2016, Respondent served a Notice of Non-Punitive Termination on Appellant, terminating Appellant from her position as a Psychologist-Clinical, Correctional Facility, effective April 22, 2016. The asserted reason for the non-punitive termination was Appellant's failure to secure a Psychology license from the Psychology Board by April 21, 2016.
4. As of April 22, 2016, Appellant had not obtained a Psychology license from the Psychology Board.

#### Job Specifications

5. 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.

6. 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; ... maintains order

and supervises the conduct of persons committed to the California Department of Corrections and Rehabilitation; ....

7. 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.

#### Legal Provisions

8. The current version of California Penal Code section 5068.5 became effective on October 19, 2010, and states as follows:

(a) Notwithstanding any other law, except as provided in subdivisions (b) and (c), 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)(1) The requirements of subdivision (a) may be waived by the secretary 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 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 ....

(3) A waiver pursuant to this subdivision shall be granted only to the extent necessary to qualify for licensure, ....

(d) [¶]...[¶]

9. The current version of Business and Professions Code section 2910 became effective on January 1, 2016, and states as follows:

(a) 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:

(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.

(b) Commencing January 1, 2016, an individual employed or who becomes employed by one or more employers as described in subdivision (a) shall be exempt under this section for a cumulative total of five years.

Legislative History of Business and Professions Code section 2910

10. The January 1, 2016 amendments to Business and Professions Code section 2910 were introduced in the California Assembly as Assembly Bill 705 (AB 705). Reports by the Assembly Committee on Business and Professions concerning AB 705 contain the following passages:

- a. [This bill] requires individuals performing psychiatry within specified "exempt" settings, to work under the supervision of a licensed psychologist, accumulate the supervised hours required for licensure, and become licensed within five years.<sup>2</sup>
- b. [The Board of Psychology] indicates a loophole in current law allows employees in government settings to continue practicing without a license indefinitely without supervision by a licensed psychologist. ... They state this bill will enhance consumer protection....<sup>3</sup>
- c. [Existing law] [p]ermits the State Department of Public Health to waive specified licensure requirements in health facilities solely for persons in the professions of psychology, marriage and family therapy, clinical social work, or professional clinical counseling who are gaining qualifying experience for licensure, and prohibits the waiver from exceeding three years from the date of employment for psychologists,<sup>4</sup> .... (Health and Safety Code (HSC) Section 1277(b)(3).<sup>5</sup>
- d. [This bill] will clarify the original intent of the Psychology Practice Act (Act), which is to have qualified, licensed individuals performing psychological functions in both private and public settings. Currently, a loop hole [*sic*] allows employees in government settings serving vulnerable populations to continue practicing indefinitely without supervision by a licensed psychologist. ... This bill will provide consumer protection to the vulnerable individuals being served in exempt settings, by making employees subject to oversight and competency standards set forth by the [Psychology Board].<sup>6</sup>

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<sup>2</sup> Assem. Com. on Appropriations, AB 705 (Apr. 22, 2015), p. 1.

<sup>3</sup> Assem. Com. on Appropriations, AB 705 (Apr. 22, 2015), p. 1.

<sup>4</sup> The current version of Health and Safety Code section 1277 became effective on January 1, 2012. It provides that "the licensure requirements for professional personnel, including, but not limited to, ... psychologists, ... in the state and other governmental health facilities licensed by the state department shall not be less than for those professional personnel in health facilities under private ownership." (Health & Saf. Code, § 1277, subd. (b)(1).) Licensure, however, "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." (*Id.* at § 1277, subd. (b)(3).) A waiver granted pursuant to this section 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, ...." (*Ibid.*) A three-year waiver "shall be granted only to the extent necessary to qualify for licensure, ...." (*Id.* at § 1277, subd. (b)(5).)

<sup>5</sup> Assem. Com. on Bus. & Prof., AB 705 (Apr. 7, 2015), p. 2.

<sup>6</sup> Assem. Com. on Bus. & Prof., AB 705 (Apr. 7, 2015), p. 3.

e. [T]he [Psychology Practice] Act does not restrict the number of years that an individual may work in an exempt setting without becoming licensed....<sup>7</sup>

11. Reports by the California Senate concerning AB 705 contain the following passages:

a. Currently, a loop hole [*sic*] allows employees in government settings serving vulnerable populations to continue practicing indefinitely without supervision by a licensed psychologist. ... This bill will provide consumer protection to the vulnerable individuals being served in exempt settings by making employees subject to oversight and competency standards set forth by the [Psychology Board].<sup>8</sup>

b. [T]he [Psychology Practice] Act does not restrict the number of years that an individual may work in an exempt setting without becoming licensed....<sup>9</sup>

c. Welfare and Institutions Code Section 5751.2 and Health and Safety Code Section 1277 regulate community mental health and health facilities and ... require individuals employed in all exempt settings to become licensed within five years. This bill seeks to make licensing requirements consistent for individuals employed in exempt settings by requiring individuals employed in all exempt settings to obtain licensure within five years of the start of their employment.<sup>10</sup>

d. This bill updates the Psychology Licensing Law (Law) to require employees in exempt settings to be supervised by a licensed psychologist and become licensed within five years of practice, ....<sup>11</sup>

e. [Existing law] [p]ermits the Department of Public Health to waive specified licensure requirements in health facilities solely for persons in the professions of psychology, marriage and family therapy, clinical social work, or professional clinical counseling who are gaining qualifying experience for licensure, and prohibits the

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<sup>7</sup> Assem. Com. on Bus. & Prof., AB 705 (Apr. 7, 2015), p. 4.

<sup>8</sup> Conc. in Sen. Amend., AB 705 (June 11, 2015), pp. 1-2.

<sup>9</sup> Conc. in Sen. Amend., AB 705 (June 11, 2015), p. 2.

<sup>10</sup> Conc. in Sen. Amend., AB 705 (June 11, 2015), p. 3.

<sup>11</sup> Sen. Rules Com., Off. of Sen. Floor Analysis, AB 705 (June 11, 2016), p. 1; see also Sen. Com. on Bus., Prof. & Economic Development, AB 705 (June 8, 2015), p. 1.

waiver from exceeding three years from the date of employment for psychologists, .... (Health and Safety Code (HSC) Section 1277(b)(3).)<sup>12</sup>

- f. This bill carries out the original intent of the [Psychology Licensing] Law by clarifying and limiting exemptions to individuals practicing psychology without a license.<sup>13</sup>
- g. The California Psychological Association (CPA) writes, .... [The] Welfare and Institutions Code and Health and Safety Code state that individuals in exempt settings have five or three years, respectively, to become licensed. ... Without clarity in all code sections, there is a concern that individuals in an exempt setting might be able to practice indefinitely without supervision even if they fail the licensure exams.<sup>14</sup>

### **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, subs. (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." (*Id.* at § 19585, subd. (d).) In an appeal from 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,

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<sup>12</sup> Sen. Rules Com., Off. of Sen. Floor Analysis, AB 705 (June 11, 2016), pp. 3-4; see also Sen. Com. on Bus., Prof. & Economic Development, AB 705 (June 8, 2015), pp. 2-3.

<sup>13</sup> Sen. Rules Com., Off. of Sen. Floor Analysis, AB 705 (June 11, 2016), p. 5; Sen. Com. on Bus., Prof. & Economic Development, AB 705 (June 8, 2015), p. 4.

<sup>14</sup> Sen. Rules Com., Off. of Sen. Floor Analysis, AB 705 (June 11, 2016), p. 6; Sen. Com. on Bus., Prof. & Economic Development, AB 705 (June 8, 2015), p. 5.

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, pp. 3-5.)

The specifications for the classification of Psychologist-Clinical, Correctional Facility, require appointees to obtain a Psychology license from the Psychology Board within three years of appointment. Appellant admits that she did not do so. Respondent asserts that Appellant's employment must be terminated because, under Penal Code section 5068.5, the license requirement cannot be waived for more than three years. Appellant concedes that the three-year waiver period of Penal Code section 5068.5 applied to her when she was first appointed, but contends that when Business and Professions Code section 2910 was amended on January 1, 2016, she became exempt from licensure for five years under that statute. Both Penal Code section 5068.5 and Business and Professions Code section 2910 concern licensure of psychologists employed by governmental agencies. Determining which provision controls here is a matter of statutory interpretation.

#### Statutory Interpretation

When interpreting a statute, the goal is to effectuate the Legislature's intent. (*Cal. Teachers Assn. v. San Diego Community College Dist. (Teachers)* (1981) 28 Cal.3d 692, 698; *Cal. Correctional Peace Officers Assn. v. California (CCPOA)* (2010) 189 Cal.App.4th 849, 856.) The first resource for determining the Legislature's intent is a statute's words. (*Teachers, supra*, 28 Cal.3d at p. 698.) The words used are given their ordinary meanings, and read in context with the obvious purpose of the statute. (*Ibid.*; *CCPOA, supra*, 189 Cal.App.4th at p. 857.)

Penal Code section 5068.5 directly addresses licensing for persons providing mental health services in California's correctional system. It requires that any person employed to provide such services be licensed to practice in California. (Pen. Code, § 5068.5, subd. (a).) That edict specifically includes psychologists. (*Ibid.*) Thus, there is no inherent license exemption for psychologists employed in CDCR—rather, the default position is that licensure is required to hold such employment.

While CDCR psychologists are not exempt from licensure, section 5068.5 allows the Secretary of CDCR to waive the license requirement for employees who are gaining qualifying experience needed for licensure. (Pen. Code, § 5068.5, subd. (c)(1).) The Secretary's authority to grant waivers, however, is limited. A waiver granted by the Secretary "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, ...."

By its plain language, section 5068.5 applies to Appellant, a person who was employed to practice psychology in California correctional facilities. The language of section 5068.5 is clear, and its purpose is plain. The goal of the statute is to ensure that mental health providers practicing in California's correctional system, including psychologists, are licensed. In the case of psychologists, the Secretary may waive that requirement, but for only three years. The intent to preclude continued employment without a license beyond three years is readily apparent from the termination language included in the statute.

Appellant's contention that section 5068.5 does not control when she must obtain a license is foreclosed by the statute's introductory words: "Notwithstanding any other

law". "Notwithstanding" means "despite" or "without being prevented by." (*Merriam-Webster Dictionary*, [www.merriam-webster.com](http://www.merriam-webster.com) (last visited Sept. 26, 2016).) The phrase "notwithstanding any other law" therefore directly communicates the Legislature's intent that section 5068.5 operates independently of other licensing provisions. That phrase is not open to more than one reasonable interpretation. Moreover, it is reinforced by the words that immediately follow, "except as provided in subdivisions (b) and (c)," which unambiguously direct that the only exceptions to the licensure requirement are those contained within section 5068.5. In light of this restrictive language, applying a different statutory scheme in this matter would contradict section 5068.5's plain import, and thus frustrate the Legislature's intent.

Appellant's contention that Business and Professions Code section 2910 applies here is further foreclosed by another fundamental principle of statutory construction—the specific controls over the general. (*Miller v. Super. Ct.* (1999) 21 Cal.4th 883, 895; *Kennedy v. City of Ukiah* (1977) 69 Cal.App.3d 545, 552.) 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. The default license requirement and three-year waiver under Penal Code section 5068.5, however, are narrowly applicable to psychologists employed in California's correctional system under the authority of the Secretary of CDCR. Appellant was appointed as a Psychologist-Clinical, Correctional Facility. That classification is defined as completing clinical psychology assignments in California correctional facilities, and its typical tasks center on providing mental health services to CDCR inmates. True to the classification specifications, Appellant was assigned to North Kern State Prison while employed as a

Psychologist-Clinical, Correctional Facility. The nature of Appellant's position placed her squarely within the narrow provisions of section 5068.5; that statute therefore controls.

Although section 2910 would also apply to Appellant under its plain language, the more specific provisions of section 5068.5 act as an exception to that general statute. (*Miller, supra*, 21 Cal.4th at p. 895; *Kennedy, supra*, 69 Cal.App.3d at p. 552.) It is irrelevant that the five-year exemption of section 2910 was enacted more recently than the three-year waiver provision of section 5068.5. (*Miller, supra*, 21 Cal.4th at p. 895.) Additionally, the intent for the specific statute to control here is directly evidenced by the plain language of section 5068.5—as noted above, section 5068.5 applies “[n]otwithstanding any other law.” Under the rules of statutory construction, section 5068.5 operates as a specific exception to section 2910.

The language of Penal Code section 5068.5 is clear and unambiguous. “When legislative intent is expressed in unambiguous terms, we must treat the statutory language as conclusive; no resort to extrinsic aids is necessary or proper.” (*CCPOA, supra*, 189 Cal.App.4th at p. 862.) The inquiry in this matter is therefore at an end. Pursuant to section 5068.5, Appellant was required to obtain a Psychology license within three years of her appointment to the position of Psychologist-Clinical, Correctional Facility.<sup>15</sup>

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<sup>15</sup> Appellant did not address the conflict between the five-year exemption under Business and Professions Code section 2910 and the three-year licensure requirement under the specifications for the classification for Psychologist-Clinical, Correctional Facility. That question is moot, however, because Penal Code section 5068.5 is controlling and is consistent with the licensure requirements under the specifications.

### Legislative History

The parties argued that this case turns on an analysis of Business and Professions Code section 2910's legislative history. To the contrary, this matter is conclusively resolved by the plain language of Penal Code section 5068.5. Because that statutory language does not support more than one reasonable interpretation, a legislative history analysis is unwarranted. (*CCPOA, supra*, 189 Cal.App.4th at pp. 857-858, 862.) However, in the interest of fully addressing the dispute between the parties, a legislative history analysis follows. Consideration of the legislative history does not compel a different conclusion than that reached under a plain language analysis.

The relevant amendments to Business and Professions Code section 2910 originated with AB 705. Assembly materials described the purpose of AB 705 as "to clarify the original intent of the Psychology Practice Act, which is to have qualified, licensed individuals performing psychological functions in both private and public settings." Specifically, AB 705 was proposed to "enhance consumer protection" for "vulnerable individuals" by addressing "a loophole in current law allow[ing] employees in government settings to continue practicing without a license indefinitely without supervision by a licensed psychologist." The solution proposed by AB 705 was to require persons practicing psychology under the employment of academic institutions, public schools, and governmental agencies ("exempt settings") to work under supervision by a licensed psychologist and obtain a license within five years of commencing employment. The Assembly materials noted that Health and Safety Code section 1277 allows the Department of Public Health to waive licensure for mental health professionals, including psychologists, for no more than three years.

Senate materials relating to AB 705 likewise described the bill's purpose as closing a loophole whereby "the [Psychology Practice] Act does not restrict the number of years that an individual may work in an exempt setting without becoming licensed...." Action was proposed to "provide consumer protection to the vulnerable individuals being served in exempt settings...." Again, the solution posed was to require employees in exempt settings to be supervised by a licensed psychologist and obtain licensure within five years. The Senate materials also noted the three-year waiver authority of the State Department of Public Health under Health and Safety Code section 1277.

The legislative history of Business and Professions Code section 2910 demonstrates the Legislature's intent to restrict governmental employees' ability to practice psychology without a license, not to expand it. Numerous passages reiterate that AB 705's purpose was to close a loophole and curb licensure exemption. The legislative history specifically cited the three-year waiver provision under Health and Safety Code section 1277, but did not disapprove it, and the Legislature took no action to extend that waiver from three years to five, or to otherwise amend section 1277. One passage from the Senate materials speaks to creating a "consistent" five-year exemption, while incorrectly asserting that section 1277 requires licensure within five years. But overall, the legislative history does not show a desire to create a uniform five-year exemption period—the problem identified by the Legislature was not mere variation in the rules governing psychology licensure, but that persons practicing in exempt settings could potentially evade licensure altogether. The Legislature's unmistakable goal was to limit practice without a psychology license.

Regardless of Business and Professions Code section 2910's amendment, Appellant was required to obtain her Psychology license within a set time period under Penal Code section 5068.5. Appellant thus did not fall within the indefinite-practice loophole that the Legislature sought to correct through section 2910. Because Appellant was not part of the problem the Legislature sought to fix, intent for section 2910 to govern Appellant's licensure does not appear. Construing section 2910 as extending Appellant's ability practice psychology without a license would not further the Legislature's intent to limit such practice and protect vulnerable consumers.

Here again, the apparent Legislative intent does not support applying Business and Professions Code section 2910 to Appellant rather than Penal Code section 5068.5. Appellant thus was required to secure a Psychology license within three years of appointment as a Psychologist-Clinical, Correctional Facility, pursuant to section 5068.5.

#### **CONCLUSIONS OF LAW**

1. Respondent proved by a preponderance of the evidence that Appellant was required to obtain a Psychology license from the California Board of Psychology within three years of appointment as a Psychologist-Clinical, Correctional Facility, as a condition of continuing employment, and that Appellant failed to do so.
2. Respondent validly non-punitively terminated Appellant.

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**ORDER**

The California Department of Corrections and Rehabilitation's non-punitive termination of Appellant Lisa Prieto from her position as a Psychologist-Clinical, Correctional Facility, is **SUSTAINED**.

DATED: September 26, 2016

A handwritten signature in black ink, appearing to read 'A.J.O.', written over a horizontal line.

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Amy Friedman  
Administrative Law Judge  
State Personnel Board



Corrections/EAPT  
Attn: Sarah Hartmann  
10111 Old Placerville Road, Suite 100  
Sacramento, CA 95827

**PROOF OF SERVICE BY FIRST-CLASS MAIL**

I am over the age of 18 years and not a party to this action. I declare that I am employed by the California State Personnel Board, 801 Capitol Mall, Sacramento, California 95814.

On November 8, 2016, I caused the following document(s) to be served on the addressee:

**BOARD RESOLUTION AND ORDER/PROPOSED DECISION**

I served the above document(s) by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the State Personnel Board's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business, in the United States Postal Service in a sealed envelope with postage fully prepaid.

**Appellant:**

Lisa Prieto  
9600 Orchard Grass Court  
Bakersfield, CA 93313

**Respondent:**

Corrections/CCHCS  
Performance Management Unit  
Attn: Medical ERO  
P.O. Box 588500  
Elk Grove, CA 95758

**Appellant's Representative:**

Beeson, Tayer & Bodine  
Attn: Andrew Baker  
520 Capitol Mall, Ste. 300  
Sacramento, CA 95814-4714

**Respondent's Representative:**

Corrections/EAPT  
Attn: Sarah Hartmann  
10111 Old Placerville Road, Suite 100  
Sacramento, CA 95827

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 8, 2016, at Sacramento, California.

*Cynthia M. Esbona*

Cynthia Esbona  
Appeals Division

## PROOF OF SERVICE

Case Name: Lisa Prieto v. California Department of Corrections and Rehabilitation

Case No: 16-0763

Precedential Case No: 16-03

I am over the age of 18 years and not a party to this action. I declare that I am employed by the California State Personnel Board, located at 801 Capitol Mall, Sacramento, California 95814.

On November 10, 2016, I served the following document(s) on the below-mentioned addressee(s):

### BOARD DECISION AND ORDER (PRECEDENTIAL)

I served the above document(s) by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the State Personnel Board's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business, in the United States Postal Service in a sealed envelope with postage fully prepaid.

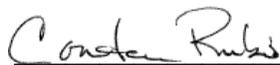
Lisa Prieto  
9600 Orchard Grass Court  
Bakersfield, CA 93313  
Appellant

Medical ERO  
Corrections/CCHCS  
Performance Management Unit  
P.O. Box 588500  
Elk Grove, CA 95758  
Respondent

Andrew Baker, Esq.  
Beeson, Tayer & Bodine  
520 Capitol Mall, Ste. 300  
Sacramento, CA 95814-4714  
Appellant's Representative

Sarah Hartmann  
Department of Corrections and Rehabilitation  
Office of Legal Affairs/EAPT  
10111 Old Placerville Road, Suite 100  
Sacramento, CA 95827  
Respondent's Representative

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 10, 2016, at Sacramento, California.



Constance Rubio  
Legal Department