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Jill Latonick- Flores, Ph.D. LPC, LSOTP
PsySR End Torture Action Committee
#5 Professional Plaza
P.O. Box 762
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Dear Dr. Flores:

Pursuant to the PsySR End Torture Action Committee's request, I have prepared the following legal opinion concerning the effective date of the recent APA membership referendum.

I. Introduction

A dispute has arisen in the American Psychological Association over the appropriate role for psychologists to play in settings where individuals are being detained in violation of international law. In June of 2008, members petitioned the APA Council of Representatives to send a mail ballot to the membership to vote on matters at issue in this dispute. In September, 2008 the provisions in the resolution were approved by the membership by a margin of 59%-41%.

Now a dispute has arisen over the effective date of the measure. APA officials contend it is not effective until August 1, 2009 while others, including many who supported the new resolution, contend it was effective upon passage. You have asked me to render a legal opinion on this matter.

I believe the confusion over this issue can be definitively resolved by a careful reading of the relevant section of the APA Bylaw and the relevant APA Rule of Council respectively.

II. Relevant Provisions

The APA Bylaws provide as follows

Article IV (5)

Upon **petition** of 1% of the Members in good standing, a request for a **mail vote** of the voting Members of the Association upon any matter, but not involving an amendment to the Bylaws, may be addressed to Council, which shall present the matter covered by the petition, if it is not inconsistent with the Certificate of Incorporation or these Bylaws, to the voting Members of the Association for a mail vote. Council shall take such action, as may be necessary to implement the result of any such vote. [Emphasis added.]

For purposes of this analysis it is important to distinguish between a petition for a mail vote and the actual mail vote itself. The petition is the request that the matter in dispute be placed before the membership in the form of a mail vote. It is not the mail vote itself. The petition is sent to the Council of Representatives which under the Bylaws is obligated to submit the subject matter covered in the petition to the membership in a mail vote.

Association Rule 30-3 lists the actions the Council is required to take after receiving the petition to create a mail ballot to be sent to the membership as required under the bylaws. It is important to note that these actions are listed sequentially. Rule 30-3.1 provides as follows:

30-3. PETITIONED MAIL VOTES BY MEMBERS

30-3.1 The following procedure shall be followed if a petition for a mail vote of members is submitted in accordance with Article IV, Section 5 of the APA Bylaws:

The APA Recording Secretary, upon receipt of a petition, shall acknowledge its receipt and shall determine if the signatures on the petition meet the requirements of the APA Bylaws. When this condition is met, the Recording Secretary shall transmit the petition to the Board of Directors, whereupon the presiding officer of the Board shall determine if the petition represents a proper motion under the APA Bylaws and Association Rules. If it is determined that the motion is proper, the Board shall proceed to fix the time and manner in which the vote is to be conducted and shall notify the Election Committee of its responsibility. The Board shall determine when and in what form the ballot is to be mailed; any material that is to accompany the ballot such as information and pro and con statements; and the closing date of the vote. In setting a time for mailing the ballot, the Board may consider other mailings that are planned. **Action on a petition is not complete until the next annual meeting.** Following

closing of the poll, the Election Committee shall count the vote and prepare a report on the vote for Council. Council, in receiving the report of the Election Committee, shall make a minute of the action taken regarding the petitioned motion or of its defeat. A petition, once submitted, is not subject to amendment. Minor editorial changes may be made by the Board of Directors with agreement of the sponsor of the petition, but such changes must not alter the sense of the petition. If substantial changes appear to be indicated, a reformulated petition should be submitted in proper form with new signatures. [Emphasis added.]

It is quite clear that Association Rule 30-3.1 lays out the actions the Council must take after receiving a petition from the membership *in preparation for* sending a mail ballot to the membership. It does not determine when the motion in the mail ballot goes into effect. Read in full context the sentence, "Action on a petition is not complete until the next annual meeting" refers to the designated time when these actions that are to be taken by the APA Council of Representatives in preparing the mail ballot are deemed "complete."

In the case at hand this would have been August of 2008 since the ballot was prepared in advance of the August 2008 meeting. Thus, the August 2008 meeting was "the next annual meeting" to follow the completion of the ballot. This sentence on which APA relies to justify its position that the motion does not take effect until August of 2009 does not refer to or relate in any way to the effective date of the resolution contained in the mail vote if it passes. The sequencing of steps makes clear as well that the "completion" of the petition predates the closing of the polls. In addition it would be very peculiar legislative language to refer to a motion being "complete" when in fact what is meant is that it "takes effect."

Opinion

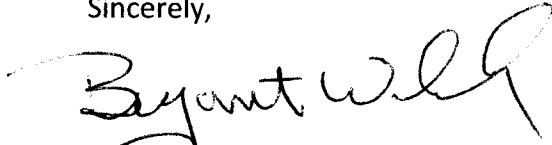
In the current dispute, APA through its public relations office, legal affairs office, and its ethics office has misinterpreted Rule 30-3 to refer to the effective date of the new resolution. It is legal error. It is a standard statutory understanding that unless otherwise specified in the statute a provision takes effect when it is passed. Accordingly, the policy that was approved by the membership is effective as of the date it passed in September 2008. Because this matter is mandated by the Bylaws, the APA Council of Representatives has no discretion to alter it in any way. Instead, the bylaws mandate that Council record a minute to note that the *measure has been passed* and to take all necessary steps to implement the new resolution. The APA Council of Representatives is now under mandate to implement these provisions or, alternatively, be in violation of the APA bylaws.

While I recognize that reading statutory language for a layperson can seem complex, I do not believe this interpretation is vulnerable to much disagreement in the legal community. Thus, it is my opinion that APA central office interpretation of Rule 30-3.1 is incorrect and that the motion in the referendum passed by the membership in September of 2008 is in effect and all

action contrary to that interpretation constitutes a violation of Bylaws and the members' rights under those Bylaws.

I hope the above opinion proves helpful to you as you deliberate on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryant Welch". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Bryant L. Welch, J.D., Ph.D.