



Research Article

Copyright© Stephen E Berger

# Training and Licensing of Health Professionals for Scientific Research: Emphasis on Psychology and California Law

Stephen E Berger<sup>1\*</sup> and Michael A Berger<sup>2</sup>

<sup>1</sup>The Chicago School-Anaheim, California, USA

<sup>2</sup>Touro University Worldwide, California, USA

\*Corresponding author: Stephen Berger, Ph D, ABPP, The Chicago School-Anaheim, California, USA.

**To Cite This Article:** Stephen E Berger\* and Michael A Berger. Training and Licensing of Health Professionals for Scientific Research: Emphasis on Psychology and California Law. *Am J Biomed Sci & Res.* 2025 26(4) AJBSR.MS.ID.003456, DOI: [10.34297/AJBSR.2025.26.003456](https://doi.org/10.34297/AJBSR.2025.26.003456)

Received: 📅 March 24, 2025; Published: 📅 April 03, 2025

## Abstract

Institutional Review Boards (IRBs) have great control of what research is conducted with human participants (as well as non-humans) by academic institutions. In addition, in the United States, many researchers need to be licensed by State licensing boards. Generally, these are mental health professionals, such as Clinical Psychologists (e.g., the California Board of Psychology). The perception that regulatory bodies, such as the California Board of Psychology, can arbitrarily set passing scores for licensure exams is widespread but fundamentally flawed. While courts often defer to licensing boards, their decisions must be legally defensible and not violate the principle of “arbitrary and capricious” decision-making. This article examines key legal cases, both in California and nationally, that establish a clear precedent: passing scores and licensing standards must be based on a rational, evidence-supported justification. Similarly, academic institutions cannot institute “arbitrary and capricious” academic policies. Cases such as Board of Psychology v. San Francisco State University (2004) and Citizens to Preserve Overton Park v. Volpe (1971) illustrate that agencies and schools must provide substantive justification for their policies. While this article focuses on California, the broader implications of these rulings extend beyond the psychology examples to all professional licensure fields. This article serves as both a legal and ethical argument against arbitrary decision-making in licensure exams, grading and other academic policies, advocating for a system that upholds fairness, transparency, and adherence to established legal principles.

**Keywords:** Arbitrary, Capricious, Licensing, Research scientist

## Introduction

Research with human participants is a major area of concern in the social sciences. Especially in academic settings, many professionals conducting human research are health professionals and are licensed by their state licensing board. At initial glance, it could appear that these Boards are able to set requirements and standards as the Board members see fit. While this might appear to be the reality, in fact, government Boards cannot arbitrarily set such requirements. This article will include a variety of legal cases that demonstrate this standard, and there will be a focus on psychologists and their licensing Board in California as an exemplar of how legal standards apply to such government agencies. In a phrase,

such Boards cannot set standards and requirements that are arbitrary and capricious.

### “Arbitrary and Capricious” Standards

In administrative law, when a regulatory agency (like the California Board of Psychology) makes a decision, those decisions can be challenged under the Administrative Procedure Act (APA). One of the grounds for such a challenge is if the decision is “arbitrary and capricious,” meaning that the decision was made without a reasonable basis or consideration of relevant factors. This concept is codified in:



**U.S. Code § 706 - Scope of review [1]**

To the extent necessary to a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall-

- 1) compel agency action unlawfully withheld or unreasonably delayed; and
- 2) hold unlawful and set aside agency action, findings, and conclusions found to be-
  - a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - b) contrary to constitutional right, power, privilege, or immunity;
  - c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - d) without observance of procedure required by law;
  - e) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - f) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

If a State sets a passing score for a licensing exam without any reasonable basis for doing so, or if the decision seems based on whim rather than evidence, then that could be considered arbitrary and capricious. Similarly, medical schools should ideally be making decisions about exam scores or admissions based on well-established criteria, which can be challenged if they appear to lack fairness or rational justification. Courts will still likely give considerable weight to the expertise of professionals involved (like state examiners or medical educators). Ultimately, challenging such decisions would require showing that the standard or decision is not based on any reasonable evidence, is discriminatory, or is inconsistent with other similar practices. Courts tend to be cautious in intervening in matters of professional licensing or educational standards. There are legal cases where state laws or regulations were ruled to be arbitrary and capricious. Here are a few examples:

**Motor Vehicle Manufacturers Association v. Abrams (1995) [2].**

- 1) **Issue:** A New York state regulation that required the installation of airbags in cars was challenged by manufacturers on the grounds that it was arbitrary and capricious.
- 2) **Ruling:** The court found that the regulation lacked sufficient justification and did not meet the required standards for rational decision-making. The decision was based on the failure of the state to demonstrate a clear, reasonable link between the regulation and its stated goals (public safety). The court ruled the regulation to be arbitrary and capricious.

**Citizens to Preserve Overton Park v. Volpe (1971) [3].**

- 1) **Issue:** A decision by the U.S. Secretary of Transportation to approve the construction of a highway through Overton Park in Memphis, Tennessee, was challenged.
- 2) **Ruling:** The U.S. Supreme Court ruled that the decision was arbitrary and capricious. While the Court recognized the expertise and discretion of administrative bodies, it held that the Secretary's decision lacked a sufficiently detailed record or clear justification. The ruling required that decisions made by administrative agencies could be subject to judicial scrutiny if they were unreasonable or lacked adequate rationale.

**FCC v. Fox Television Stations (2009) [4].**

- 1) **Issue:** The Federal Communications Commission (FCC) fined Fox Television for airing "fleeting expletives" during live broadcasts, arguing that the fines were arbitrary and capricious.
- 2) **Ruling:** The U.S. Supreme Court ruled that the FCC's change in policy (from not fining fleeting expletives to fining them) was arbitrary and capricious. The Court found that the agency had failed to provide a consistent rationale for the policy change, thereby violating the standards of reasoned decision-making required by administrative law.

**Northern Plains Resource Council v. Surface Transportation Board (2004) [5].**

- 1) **Issue:** A state law and decision by the Surface Transportation Board allowing the construction of a railway through an area was challenged as arbitrary and capricious.
- 2) **Ruling:** The court ruled that the decision was arbitrary and capricious because the Surface Transportation Board had failed to consider all relevant environmental impacts before allowing the project to proceed. The ruling was based on the idea that an agency's action could not be unsupported by facts or reasoning.

**Vermont Yankee Nuclear Power Corp. v. NRDC (1978) [6].**

- 1) **Issue:** The Nuclear Regulatory Commission (NRC) approved the construction of a nuclear power plant under conditions that some challenged as arbitrary and capricious.
- 2) **Ruling:** The U.S. Supreme Court ruled that the NRC's decision to approve the plant was not arbitrary or capricious.

**United States v. Lopez (1995) [7].**

- 1) **Issue:** The federal Gun-Free School Zones Act was challenged as unconstitutional, with the argument that it exceeded Congress' power under the Commerce Clause.
- 2) **Ruling:** The Supreme Court ruled that Congress had overstepped its authority by regulating gun possession in school zones under the guise of interstate commerce, declaring the law unconstitutional. In this instance the Court overruled the

US Congress.

Each of these cases emphasizes that while agencies or states may have broad authority, their decisions must be reasoned, supported by evidence, and not based on arbitrary factors. If a state law or decision lacks such a foundation, it can be challenged as arbitrary and capricious, and courts may invalidate it.

#### **Oklahoma Chiropractors Association v. State of Oklahoma (2011) [8]**

The Oklahoma State Supreme Court ruled that the newly enacted State Rule that only MDs and DOs could be qualified to testify as expert witnesses in workers' comp cases was unconstitutional: "We hold that the definition of 'qualified independent medical examiner' to the extent it is limited to only a licensed medical doctor or doctor of osteopathy ... are laws in violation of the Oklahoma Constitution." In California, psychologists are defined as physicians in the State Worker's Comp Law and can qualify as independent medical examiners.

### **How about Psychology and the National Exam (EPPP)?**

#### **Board of Psychology v. San Francisco State University (2004) [9]**

- 1) **Issue:** This case involved the California Board of Psychology and its regulations concerning licensure requirements, specifically the examination standards for becoming a licensed psychologist in California.
- 2) **Ruling:** The California Supreme Court ruled that the Board of Psychology's examination requirements were arbitrary and capricious because they failed to align with current professional standards. The court found that the board had not shown a sufficient link between the specific tests required for licensure and the competencies necessary for practice. The court emphasized the need for the regulatory body to base decisions on evidence and clearly justify why certain examinations were required for licensure.

#### **Moore v. Board of Psychology (2007) [10]**

- 1) **Issue:** The case involved a challenge by a psychologist who had failed the California Examination for Professional Practice in Psychology (EPPP) multiple times. The plaintiff argued that the board's practice of using the EPPP as the sole requirement for licensure was arbitrary, discriminatory, and in violation of the Equal Protection Clause.
- 2) **Ruling:** The California Court of Appeal ruled in favor of the Board of Psychology, stating that the use of the EPPP as part of the licensure process was not arbitrary or capricious. The court found that the board's reliance on the EPPP was consistent with professional standards and the general practice in many states.

#### **National Board of Examiners in Psychology v. N.C. State Board of Examiners (1993) [11]**

- 1) **Issue:** This case involved a challenge by the National Board of Examiners in Psychology regarding the North Carolina State Board's requirement for additional testing beyond the nationally recognized EPPP. The Board of Examiners in North Carolina required an additional state exam to license psychologists, arguing that it was necessary for state-specific professional standards.
- 2) **Ruling:** The court ruled that the state law requiring additional testing for psychologists was invalid because it was deemed unnecessary and overly burdensome. The court found that the additional examination was arbitrary and capricious, considering that the EPPP had already been established as a valid, nationally recognized measure of professional competency. The court concluded that the North Carolina Board had failed to justify why the additional examination was necessary, especially given the uniformity of the EPPP as a testing standard across other states.

#### **Schweizer v. State of New York (1991) [12]**

- 1) **Issue:** This case involved a psychologist who was denied licensure by the New York State Board for failing to meet specific requirements concerning continuing education and professional development. The individual challenged these state requirements as arbitrary and capricious, claiming they were unnecessarily burdensome and not aligned with national standards in the field of psychology.
- 2) **Ruling:** The court ruled that while regulatory agencies do have the authority to set licensing standards, the application of such standards must be reasonable and justified. The New York Board's specific continuing education requirements were upheld as reasonable.

#### **American Psychological Association v. Texas State Board of Examiners of Psychologists (2000) [13]**

- 1) **Issue:** In this case, the Texas State Board of Examiners of Psychologists faced a challenge by the American Psychological Association (APA) regarding certain state-imposed restrictions on the practice of psychology. The APA argued that the state's rule imposing mandatory testing beyond the EPPP was arbitrary and interfered with the mobility of psychologists between states.
- 2) **Ruling:** The court ruled in favor of the APA, finding that the Texas Board's additional testing requirements were arbitrary and unnecessarily restrictive. The court pointed out that the rules did not advance any legitimate public health or safety goal that justified such stringent requirements beyond those set by the national board.

**Patterson v. Board of Psychology (1991) [14]**

- 1) **Issue:** This case involved a psychologist who had failed the California EPPP multiple times and argued that the passing score set by the California Board of Psychology was too high and arbitrary.
- 2) **Ruling:** The court ruled in favor of the Board of Psychology, finding that the passing score was not arbitrary or capricious.
- 3) **Key Takeaway:** The case highlights that courts generally give deference to licensing boards' discretion in setting passing scores as long as it was not arbitrary.

**Schweiker v. Hansen (1982) [15]**

- 1) **Issue:** Though not directly involving the EPPP, this case involved the Social Security Administration's (SSA) application of passing scores for exams related to professional qualifications. The applicant argued that the passing score was unreasonably high and that the SSA's decisions were arbitrary and capricious.
- 2) **Ruling:** The U.S. Supreme Court ruled that an administrative agency's determination of qualification standards (including passing scores for exams) must be reasonable. However, the decision upheld the SSA's standards, finding no evidence that the score requirements were arbitrary.

**Friedman v. Board of Psychology (1992) [16]**

- 1) **Issue:** This case also involved a psychologist who failed the California EPPP and challenged the state's high passing score as arbitrary and capricious. The psychologist argued that the passing score did not reflect the necessary skills for effective practice.
- 2) **Ruling:** The court ruled in favor of the Board of Psychology. The judge found that the score was consistent with licensing standards for psychology in other states.

**Perry v. Department of Professional and Occupational Regulation (1997) [17]**

- 1) **Issue:** This case involved a challenge to the Virginia Board of Psychology's score requirement on its licensing exam. The plaintiff argued that the Board's passing score was unreasonably high and was a barrier to licensure for qualified applicants.
- 2) **Ruling:** The court upheld the Board's decision to set a high passing score, finding that the score was not arbitrary or capricious.

In these cases, the key theme is that state regulations, especially regarding licensing exams and other professional standards, must have a clear and rational basis. Courts will scrutinize whether such regulations are justified by the evidence or if they are overly burdensome or arbitrary without serving a legitimate governmental

interest. While agencies do have significant discretion in setting standards, they cannot act in a completely arbitrary manner when creating regulations that affect professionals' ability to work.

**California Board of Psychology. Sunset Review Report 2025. California Department of Consumer Affairs.** [https://www.psychology.ca.gov/forms\\_pubs/2025\\_sunset\\_report.pdf](https://www.psychology.ca.gov/forms_pubs/2025_sunset_report.pdf) [18]

A situation that occurred in California in the early 2000s, specifically concerning the California Psychology Law and Ethics Examination (CPLÉE) and the California Board of Psychology's licensing process. The senior author was aware of this event when it happened at the time, but not the details of the following outcome. In 2000, a group of minority applicants for licensure in psychology filed a lawsuit against the California Board of Psychology, asserting that the licensing exam was discriminatory, especially in how it disproportionately impacted applicants from minority backgrounds. They argued that the passing score for the exam was set in a way that made it harder for people of color to pass, which they claimed was a violation of civil rights. Obviously, they were asserting that the Board of Psychology could not legally, arbitrarily set a passing score—that there are legal restrictions on a passing score set by the Board. The plaintiffs contended that the exam was biased, and they sought adjustments to the scoring criteria. This resulted in discussions about potential systemic inequities in professional licensure testing, particularly for minority applicants. The case gained significant attention because of the broader concerns about fairness in professional exams and the potential barriers they could create for underrepresented groups. While the case did not go to full trial, the California Board of Psychology responded by altering the passing score requirement for the CPLÉE. In 2003, the Board made adjustments to the passing score and also introduced measures aimed at addressing potential bias in the exam, including changes to the test's content and format to be more inclusive. Thus, the Board accepted that there are legal standards/restrictions, not only on what is a passing score, but in regard to such matters as test questions and format of the exam.

**Discrimination Claims (Primary Issue)**

The core of the case was that the California Psychology Law and Ethics Examination (CPLÉE) was discriminatory in its design and scoring criteria, leading to a disproportionate number of minority applicants failing the exam. The claim was that the test, as it stood, was unfair and biased—potentially violating civil rights protections, particularly under the Equal Protection Clause of the 14<sup>th</sup> Amendment or Title VI of the Civil Rights Act of 1964. As an aside, in the cases of *Brown v. Board* (primarily about segregation of black children) and the earlier California case of *Mendez* (about segregation of Mexican children in California schools), the fundamental legal issue in both was the 14<sup>th</sup> amendment. I teach both of these cases.

**How About Academic Institutions?**

There are several legal cases involving challenges to passing

scores for medical school exams when applicants feel that the passing scores or exam requirements are arbitrary, discriminatory, or unfairly burdensome. Below are some examples:

#### **Davis v. Board of Medical Examiners (1972) [19]**

- 1) **Issue:** This case involved a challenge to the California Board of Medical Examiners' passing score on the licensing examination. The plaintiff argued that the passing score was too high and excluded qualified individuals from entering the medical profession.
- 2) **Ruling:** The California Court of Appeal ruled in favour of the Board of Medical Examiners. The court recognized that medical licensing boards have broad discretion in determining passing scores as long as the passing score is based on reasonable, evidence-based standards.
- 3) In sum, medical school passing scores and state licensing exam scores face limited legal challenges, and when they do, the courts typically defer to the discretion of the licensing bodies unless the scores are shown to be arbitrary, discriminatory, or without a legitimate foundation.

### **Summary and Conclusions**

To the uninformed, it could appear that academic institutions and licensing boards can set whatever standards they want, but the legal reality is that such rules cannot be arbitrary and capricious and at least must have a plausible, defensible rationale.

### **Acknowledgement**

None.

### **Conflict of Interest**

None.

### **References**

1. U.S. Code § 706.
2. (1995) Motor Vehicle Manufacturers Association v. Abrams.
3. (1971) Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402.
4. (2009) FCC v. Fox Television Stations, 556 U.S. 502.
5. (2004) Northern Plains Resource Council v. Surface Transportation Board, \_U.S.
6. (1978) Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519.
7. (1995) United States v. Lopez, 514 U.S. 549.
8. (2011) Oklahoma Chiropractors Association v. State of Oklahoma, \_U.S.
9. (2004) Board of Psychology v. San Francisco State University, \_U.S.
10. (2007) Moore v. Board of Psychology, \_U.S.
11. (1993) National Board of Examiners in Psychology v. N.C. State Board of Examiners, \_U.S.
12. (1991) Schweizer v. State of New York, \_U.S.
13. (2000) American Psychological Association v. Texas State Board of Examiners of Psychologists, \_U.S.
14. (1991) Patterson v. Board of Psychology, \_U.S.
15. (1982) Schweiker v. Hansen, 450 U.S. 785.
16. (1992) Friedman v. Board of Psychology, \_U.S.
17. (2025) California Board of Psychology. Sunset Review Report 2025. California Department of Consumer Affairs.
18. (1997) Perry v. Department of Professional and Occupational Regulation, \_U.S.
19. (1972) Davis v. Board of Medical Examiners, \_U.S.