

**FLORIDA DEPARTMENT OF HEALTH, BOARD OF PSYCHOLOGY
TALLAHASSEE, FLORIDA**

In re:

Petition for Declaratory Statement of

[REDACTED]

Petitioner.

_____/

**PETITION FOR DECLARATORY STATEMENT BEFORE THE BOARD OF
PSYCHOLOGY**

[REDACTED] "Petitioner" [REDACTED] by and through her undersigned counsel, hereby submits this Petition for Declaratory Statement, pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, and states as follows:

STATEMENT OF FACTS AND LAW

1. [REDACTED] originally filed a Petition for a Declaratory Statement pro se [REDACTED]

[REDACTED]
[REDACTED]

2. At that meeting, the Board of Psychology denied [REDACTED] Petition on the basis that it was overbroad and did not include particular facts.

3. The Board suggested that another Petition for Declaratory Statement which contained more specifics and details would be considered.

4. Accordingly, [REDACTED] files this new Petition setting forth in detail the facts applicable to her case.

5. This is a Petition for a Declaratory Statement from the Florida Board of Psychology, Department of Health, by licensed psychologist [REDACTED]

6. The Petitioner's name, address and related information are:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(Note: Contact her through her counsel at (407) 331-6620)

[REDACTED]

7. The Petitioner's attorneys and representative are:

George F. Indest III, J.D., M.P.A., LL.M.
Board Certified in Health Law

[REDACTED]

[REDACTED]
[REDACTED]

Lenis L. Archer, J.D., M.P.H.

[REDACTED]

[REDACTED]
[REDACTED]

THE HEALTH LAW FIRM
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8. The statute for which interpretation and a declaratory statement is sought is:

Section 490.003(4), Florida Statutes.

9. Petitioner [REDACTED] is a psychologist licensed in the state of Florida. She has practiced psychology for twenty (20) years. [REDACTED] She has been licensed in Florida since 2001.

10. [REDACTED] primarily treats children for behavior mood, attention, and cognitive issues. She conducts neuropsychological evaluations and also consults and trains parents in behavior management techniques. She occasionally provides therapy services to adult patients.

11. At present, Petitioner has fewer than twenty (20) regular patients weekly.

12. [REDACTED] husband [REDACTED] was recently relocated to California because of his job. Because of this [REDACTED] will be spending a large majority of her time in that state.

13. [REDACTED] intends to provide treatment to her patients while outside the state of Florida by treating them by telecommunication, specifically, video and telephone conferencing. This type of practice is often called teletherapy or telepsychology and is becoming an accepted means of providing therapy.

14. Limitations on Services and Treatment by Video/Telecommunication:

- a. Petitioner [REDACTED] sees all patients for testing in a face-to-face personal meeting, if indicated, in her office in Florida.
- b. [REDACTED] refers patients to other local providers if she determines that such patients via teleconference would be inappropriate.
- c. [REDACTED] expects to be in Florida intermittently to see patients personally.

15. Inter-jurisdictional Practice Issues:

- a. [REDACTED] intends to remain fully licensed in Florida.
- b. [REDACTED] is applying for a California license to practice psychology.
- c. [REDACTED] has contacted the California Board of Psychology for advice on providing services and treatment to her Florida Patients who are in Florida by video/telecommunication from California. The California Board of Psychology has advised her that she may legally do this.
- d. As shown by the American Psychological Association's 50 state survey, California would not prohibit this. Exhibit (3).

16. Availability for Emergencies and Coverage:

- a. [REDACTED] patient population do not typically experience acute psychological episodes that necessitate emergency intervention.
- b. Nevertheless, [REDACTED] has arranged cross-coverage agreement with a local psychologist, who has an office in Orlando, to provide coverage for her in the event she is not available or has a client in Florida who might require emergency in-person intervention.
- c. [REDACTED] intends to keep her present office in Florida open for in-person visits and testing.
- d. [REDACTED] gives her patients her cell phone number so that she is available to answer calls and respond as needed when she is in California.

17. Parameters of [REDACTED] Practice

- a. [REDACTED] plans to travel back to Florida intermittently to see patients

for in-person, face-to-face visits, and to conduct testing and some initial interviews if indicated, at her Florida office.

- b. Between visits to Florida, [REDACTED] would like to treat her patients via telecommunication from her home office in California in a private setting to ensure confidentiality.
- c. [REDACTED] practice will comply with America Psychological Association's "Guidelines for the Practice of Telepsychology." Exhibit (6).
- d. [REDACTED] has made arrangements for a local colleague and Orlando area practitioner to provide in-person intervention services in case of an emergency during the periods she is not in Florida.
- e. [REDACTED] would refer patients for whom teletherapy would be inappropriate to other practitioners for follow-up.
- f. In addition, [REDACTED] has her patients sign an extensive consent form regarding teletherapy services before any treatment occurs. Exhibits (4) and (5).

18. Statutory Provisions, Rules, and Orders Applicable to Petitioner's Case

- a. The statutory provision on which a declaratory statement is sought is Chapter 490.003(4), Florida Statutes, which defines the practice of psychology.
- b. Specifically, Section 490.003(4)(a), Florida Statutes, states "[p]sychological services may be rendered to individuals, couples, families, groups, and the public without regard to place of service." Emphasis added.

- c. The American Psychological Association (APA) has recognized the legitimacy of telepsychology. On July 31, 2013, it adopted "Guidelines for the Practice of Telepsychology." Exhibit (6). [REDACTED] intends to fully comply with the APA Guidelines in her practice.
 - d. The APA defines telepsychology as the "provision of psychological services using telecommunication technologies, . . . [t]elecommunication technologies include but are not limited to telephone, mobile devices, interactive videoconferencing, email, chat, text, and Internet." Exhibit (6).
 - e. The Florida Board of Psychology's Declaratory Statement dated June 5, 2006, in Final Order No. DOH-06-0976-A, stating that teletherapy constitutes the practice of psychology requiring Florida licensure, implies that teletherapy is permissible in Florida so long as the psychologist is properly licensed. Exhibit (7). [REDACTED] is properly licensed.
 - f. The Florida Board of Psychology's Declaratory Statement dated February 16, 2012, in Final Order No. DOH-12-0324, stated that a Florida licensed psychologist in Michigan may provide telepsychology services to Florida patients, thus also acknowledging the legitimacy of teletherapy. Exhibit (8).
19. Substantial Affect of Statutory Provisions in Petitioner's Case
- a. Petitioner has standing to petition the Board of Psychology in this matter. Petitioner is a Florida licensed psychologist who seeks guidance on interpreting Section 490.003(4)(a), Florida Statutes, as applied to her

future, particular circumstances.

- b. Petitioner would be substantially affected by the Board of Psychology's declaratory statement on this matter.
- c. If this petition is denied, Petitioner may be unable to maintain continuity of care for her Florida patients and her practice in Florida would not be financially sustainable.

20. Use of Telepsychology in [REDACTED] Practice

- a. [REDACTED] has treated some of her young patients for half their lives, and believes that continuing to treat through teletherapy is in the best interest of her patients due to the long term successful therapeutic relationships she has developed with them.
- b. [REDACTED] has not found that the quality of therapy she provides is diminished by treating patients through teletherapy.
- c. Treating patients via teletherapy also benefits [REDACTED] by giving her the ability to treat patients in settings most beneficial to them.
- d. In many instances a patient's home environment is the best setting for therapy.
- e. Many of [REDACTED] patients have indicated that they prefer to have most of their therapy conducted via teletherapy, even when she is available for an in-person session in Florida.
- f. [REDACTED] can observe behaviors exhibited in the home environment which patients may not exhibit in a more artificial, office setting. This

enables [REDACTED] to be more effective in aiding to modify negative behaviors usually exhibited in a more natural, home setting.

21. Additional Matters

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NATURE OF DECLARATORY STATEMENT SOUGHT

WHEREFORE, [REDACTED] respectfully requests that the Board of Psychology issue a Declaratory Statement holding that her practice of telepsychology, at times from California, for patients in Florida, as outlined above falls within the meaning of Section 490.003(4)(a)Florida Statutes, and is not otherwise prohibited.

CERTIFICATE OF FILING/SERVICE

I hereby certify that a copy of the foregoing has been served by me as follows:
original filed via telefax, with the original following via Federal Express, overnight delivery, on:

Agency Clerk

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

with a copy served via telefax, followed by Federal Express, overnight delivery, on:

this [REDACTED] day of [REDACTED] 2014.

GEORGE F. INDEST III, ESQUIRE
Board Certified in Health Law

LENIS L. ARCHER, ESQUIRE

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ATTORNEYS AND REPRESENTATIVES OF
[REDACTED], Ph.D., PETITIONER

- [REDACTED]
- Exhibit (1): Board of Psychology Board Quorum Meeting Minutes, November 22, 2013
 - Exhibit (2): Curriculum Vitae of [REDACTED], Ph.D.
 - Exhibit (3): Telepsychology 50-State Review, American Psychological Association
 - Exhibit (4): Online/Teletherapy/Telephone Consent Information Form for Insurance,
[REDACTED]
 - Exhibit (5): Informed Consent for Participation in Online/Teletherapy/Telephone

Treatment, [REDACTED]

Exhibit (6): Guidelines for the Practice of Telepsychology, American Psychological Association, July 31, 2013

Exhibit (7): Final Order No. DOH-06-0976-A

Exhibit (8): Final Order No. DOH 10-2-0324-DS-MQA

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