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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HEALTH,

Petitioner,
v.

SPK
DOAH CASE NO. 04-1087PL
DOH CASE NO. 2001-12558

B. KERRY BROWN, L.C.S.W.,

Respondent.

**PETITIONER'S MOTION
FOR OFFICIAL RECOGNITION**

COMES NOW the Department of Health and, pursuant to Sections 90.201(1), 90.203, and 120.569(2)(i), Florida Statutes, respectfully request this Administrative Law Judge (ALJ) to take judicial notice of Sections 491.009(2)(s), Florida Statutes (2000). As good cause for granting this Motion, Petitioner states:

1. Respondent is the subject of an Administrative Complaint filed by the Department. A Formal hearing is scheduled for June 21, 2004 via teleconference in Tampa and Tallahassee, Florida.
2. Section 90.201(1), Florida Statutes, states that a court may take judicial notice of public statutory law and resolutions of the Florida Legislature.
3. Section 90.202(9), Florida Statutes, states that a court may take judicial notice of rules promulgated by governmental agencies of this state that are published in the Florida Administrative Code or in bound written copies.

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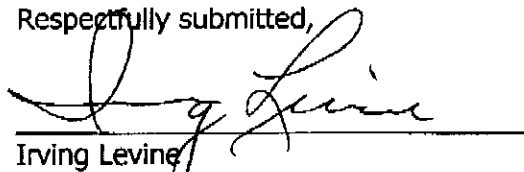
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P.02/05

4. Section 90.203, Florida Statutes, provides that a court shall take judicial notice of any matter in Section 90.202, when a party requests it and provides that adverse party with written notice of the request, and furnishes the court with sufficient information to enable it to take judicial notice of the matter.
5. Section 120.569(2)(i), Florida Statutes, states that when judicial notice is requested, the parties shall be notified and given an opportunity to examine and contest the material.
6. Petitioner requests this ALJ take judicial notice of Section 491.009(2)(s), Florida Statutes (2000), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.
7. Petitioner maintains that Exhibit "A" furnishes sufficient information to enable this ALJ to take judicial notice of these matters.
8. Petitioner contacted Respondent concerning this Motion on May 20, 2004, and as of this date, has not been advised of Respondent's position.

WHEREFORE, Petitioner requests the Administrative Law Judge take judicial notice of Section 491.009(2)(s), Florida Statutes (2000).

Respectfully submitted,



Irving Levine
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(850) 414-8126
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Ch. 491

CLINICAL, COUNSELING, AND PSYCHOTHERAPY SERVICES

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(3) Proof of completion of the required number of hours of continuing education and completion of the laws and rules course shall be submitted to the department or the board in the manner and time specified by rule and on forms provided by the department or the board.

(4) The department or the board shall adopt rules and guidelines to administer and enforce the provisions of this section.

History.—ss. 15, 19, ch. 87-252; ss. 19, 20, ch. 90-263; s. 4, ch. 91-429; s. 14, ch. 95-279; s. 170, ch. 99-397.

491.009 Discipline.—

(1) When the department or the board finds that an applicant, licensee, provisional licensee, registered intern, or certificateholder whom it regulates under this chapter has committed any of the acts set forth in subsection (2), it may issue an order imposing one or more of the following penalties:

(a) Denial of an application for licensure, registration, or certification, either temporarily or permanently.

(b) Revocation of an application for licensure, registration, or certification, either temporarily or permanently.

(c) Suspension for a period of up to 5 years or revocation of a license, registration, or certificate, after hearing.

(d) Immediate suspension of a license, registration, or certificate pursuant to s. 120.60(6).

(e) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(f) Issuance of a public reprimand.

(g) Placement of an applicant, licensee, registered intern, or certificateholder on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the applicant, licensee, registered intern, or certificateholder to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of a designated licensee or certificateholder.

(h) Restriction of practice.

(2) The following acts of a licensee, provisional licensee, registered intern, certificateholder, or applicant are grounds for which the disciplinary actions listed in subsection (1) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license, registration, or certificate under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.

(b) Having a license, registration, or certificate to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Maintaining a professional association with a person who the applicant, licensee, registered intern, or certificateholder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.

(g) Knowingly aiding, assisting, procuring, or inducing any nonlicensed, nonregistered, or noncertified person to hold himself or herself out as licensed, registered, or certified under this chapter.

(h) Failing to perform any statutory or legal obligation placed upon a person licensed, registered, or certified under this chapter.

(i) Willfully making or filing a false report or record, failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct filing of a report or record. Such report or record includes only a report or record which requires the nature of a person licensed, registered, or certified under this chapter.

(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of health care services or to a provider of health care services or goods; referring a patient or client to oneself for health care services on a fee-paid basis when those services already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 491.0111.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession, license, registration, or certification under this chapter.

(m) Soliciting patients or clients personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or deceptive conduct.

(n) Failing to make available to a patient or client upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered intern, or certificateholder who have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee, registered intern's, or certificateholder's conduct or background.

(p) Being unable to practice the profession in which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence.

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CLINICAL, COUNSELING, AND PSYCHOTHERAPY SERVICES

Ch. 491

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as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the secretary, the secretary's designee, or the board that probable cause exists to believe that the licensee, registered intern, or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered intern, or certificateholder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered intern, or certificateholder refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered intern, or certificateholder resides or does business. The licensee, registered intern, or certificateholder against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee, registered intern, or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.

(g) Violating provisions of this chapter, or of chapter 456, or any rules adopted pursuant thereto.

(r) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(e) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience.

(t) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(u) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(v) Failure of the licensee, registered intern, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.

(w) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

History.—ss. 15, 19, ch. 87-252; ss. 19, 20, ch. 90-283; s. 4, ch. 91-429; s. 229, ch. 98-410; s. 1136, ch. 97-103; s. 16, ch. 97-198; ss. 208, ch. 97-264; s. 154, ch. 98-166; s. 214, ch. 2000-160.

491.0111 Sexual misconduct.—Sexual misconduct by any person licensed or certified under this

chapter, in the practice of her or his profession, is prohibited. Sexual misconduct shall be defined by rule.
 History.—ss. 15, 19, ch. 87-252; ss. 19, 20, ch. 90-283; s. 4, ch. 91-429; s. 510, ch. 97-103.

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(1) Any psychotherapist who commits sexual misconduct with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; however, a second or subsequent offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any psychotherapist who violates subsection (1) by means of therapeutic deception commits a felony of the second degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The giving of consent by the client to any such act shall not be a defense to these offenses.

(4) For the purposes of this section:

(a) The term "psychotherapist" means any person licensed pursuant to chapter 456, chapter 459, part I of chapter 464, chapter 490, or chapter 491, or any other person who provides or purports to provide treatment, diagnosis, assessment, evaluation, or counseling of mental or emotional illness, symptom, or condition.

(b) "Therapeutic deception" means a representation to the client that sexual contact by the psychotherapist is consistent with or part of the treatment of the client.

(c) "Sexual misconduct" means the oral, anal, or vaginal penetration of another by, or contact with, the sexual organ of another or the anal or vaginal penetration of another by any object.

(d) "Client" means a person to whom the services of a psychotherapist are provided.

History.—s. 1, ch. 90-70; s. 13, ch. 91-201; s. 4, ch. 91-429; s. 137, ch. 2000-318.

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(a) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a clinical social worker issued pursuant to this chapter:

1. "Licensed clinical social worker."
2. "Clinical social worker."
3. "Licensed social worker."
4. "Psychiatric social worker."
5. "Psychosocial worker."

(b) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a marriage and family therapist issued pursuant to this chapter:

1. "Licensed marriage and family therapist."
2. "Marriage and family therapist."
3. "Marriage counselor."
4. "Marriage consultant."
5. "Family therapist."
6. "Family counselor."
7. "Family consultant."

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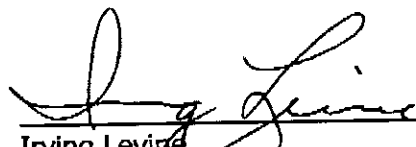
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P.05/05

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy hereof has been furnished to Christopher J. Schulte, Esq., Burton, Schulte et al, P.O. Box 1772, Tampa, Florida 33601-1772, by
☐ postage-paid U.S. Mail, ☐ Hand-Delivery, ☐ E-mail, ☒ Facsimile Transmission,
and/or ☐ Over-Night Mail, this 24th day of May, 2004.


Irving Levine
Assistant General Counsel

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