

GAH

Final Order No. DOH-02-0517-DS-MOA
FILED DATE - 4/15/02
Department of Health
By: Vicki R. Kenon
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF PSYCHOLOGY

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF
BERNADINE RICE

FINAL ORDER

THIS MATTER came before the Board of Psychology ("Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held in Miami, Florida, on March 22, 2002, for the purpose of considering the Petition for Declaratory Statement filed by Bernadine Rice, General Counsel, Orange County Sheriff's Office ("Petitioner"). Notice of the Petition was published in the Florida Administrative Weekly on December 14, 2001, at Volume 27, Number 50. Having considered the petition, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Petitioner is General Counsel of the Orange County Sheriff's Office (OCSO). One of OCSO's employees is Dr. James Herndon, who is employed by OCSO on a salaried basis as a "Staff Psychologist."
2. Dr. Herndon's duties in his OCSO employment include conducting pre-employment psychological examinations, certifying deputies as being fit or unfit for duty when their mental state is in question, and assisting crisis intervention teams.
3. In addition, the University of Central Florida Department of Public Safety and Police has contracted with OCSO for pre-employment psychological examinations, which Dr. Herndon conducts.
4. Petitioner asks five questions regarding OCSO's employment of Dr. Herndon:

- a. Does Florida law require that Dr. Herndon be a licensed psychologist to perform his duties for the OCSO?
- b. If Dr. Herndon is exempt from the licensing requirements of Chapter 490, F.S., is his status jeopardized by performing pre-employment psychological examinations for the University of Central Florida Department of Public Safety and Police as part of his regular duties for the OCSO?
3. If Dr. Herndon is exempt from the licensing requirements of Chapter 490, F.S., is his status jeopardized if he occasionally counsels agency members on an informal basis?
4. May Dr. Herndon use the title, "Staff Psychologist," in performing his responsibilities for the OCSO?
5. If Dr. Herndon holds an earned Ed.D. from the University of Sarasota, is he qualified to be a licensed psychologist?

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code.
2. Regarding Petitioner's Question 1: Section 490.014(2)(a), Florida Statutes, provides an exemption from the licensure requirement for a salaried employee of a government agency, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a psychologist pursuant to Section 490.012(1)(a), which prohibits a person from holding herself or himself out by any professional title, name, or description incorporating the word "psychologist" unless such person holds a valid, active license as a psychologist under Chapter 490. It is the opinion of the Board that Dr. Herndon's employment by OCSO falls within this exemption from licensure, i.e., Dr. Herndon is not required to be licensed as a

psychologist in order to perform the duties for which he was trained and hired solely within the confines of OCSO. Neither OCSO nor Dr. Herndon may hold Dr. Herndon out to the public as a psychologist.

3. Regarding Petitioner's Question 2: As long as the pre-employment psychological examinations that Dr. Herndon conducts for the University of Central Florida Department of Public Safety are within the confines of his OCSO employment, Dr. Herndon is exempt from the licensure requirement.

4. Regarding Petitioner's Question 3: As long as the occasional counseling of agency members on an informal basis is within the confines of his OCSO employment, Dr. Herndon is exempt from the licensure requirement.

5. Regarding Petitioner's Question 4: Dr. Herndon may not use the title "Staff Psychologist" in performing his responsibilities for the OCSO. Pursuant to Section 490.012(1)(a), Dr. Herndon may not hold himself out by any professional title, name, or description that incorporates the word "psychologist." Furthermore, pursuant to Section 490.012(1)(c), neither Dr. Herndon nor OCSO may refer to Dr. Herndon by any title or description incorporating the words, or permutations of them, "psychology," "psychological," or "psychodiagnostic," nor may any test or report conducted or produced by Dr. Herndon be referred to as "psychological." These prohibitions apply regardless of context, including office door plaques, business cards, correspondence, and the like.

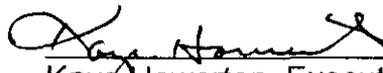
6. Regarding Petitioner's Question 5: The Board cannot determine whether Dr. Herndon is qualified to be a licensed psychologist unless and until he submits an application for licensure, including submission of all required documentation and

payment of all required fees.

7. This Order constitutes final agency action and may be appealed by any party pursuant to Section 120.68, Florida Statutes, and Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, by filing a notice of appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal, accompanied by the appropriate filing fee, and with the department's clerk of agency proceedings, within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 10 day of April, 2002.

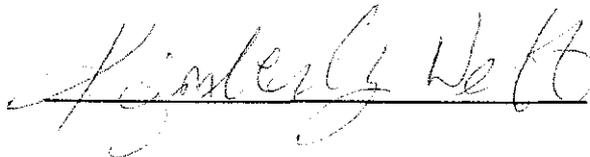
BOARD OF PSYCHOLOGY

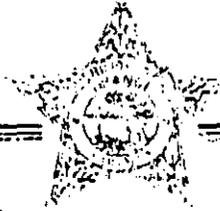


Kaye Howerton, Executive Director
for Katurah Jenkins-Hall, Ph.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Bernadine Rice, General Counsel, Orange County Sheriff's Office, Legal Services Section, 55 West Pines Avenue, Orlando, Florida 32806, this 16th day of April, 2002.





Sheriff Kevin Beary

ORANGE

COUNTY SHERIFF'S OFFICE

Telephone (407) 836-3700

Post Office: Box 1440, Orlando, Florida 32802-1440

Visit us on the Internet: <http://www.ocso.com>

November 16, 2001

Handwritten signature: Kevin Beary
01 NOV 2001 PM 2:18
RECEIVED
GENERAL

Nancy Snurkowski, Esquire
Chief Attorney
Legal Section
Department of Business & Professional
Regulation
2727 Mahan Drive
Tallahassee, Florida 32308

Dear Ms. Snurkowski:

I am writing to inquire about Dr. James Herndon's status under Chapter 490, F.S., particularly with regard to recent legislative changes.

Dr. Herndon is employed on a salaried basis as a "Staff Psychologist" by the Orange County Sheriff's Office ("OCSSO") to conduct pre-employment psychological examinations, certify deputies as being fit or unfit for duty when their mental state is in question, and assist crisis intervention teams. The University of Central Florida Department of Public Safety and Police contracted with the OCSSO for pre-employment psychological examinations; Dr. Herndon conducts these tests.

If an OCSSO employee wishes to receive a regular course of psychological counseling, he or she may do so through an Employee Assistance Program ("EAP") that is managed by a third-party administrator. However, the OCSSO is also considering making Dr. Herndon available for agency members who may desire occasional and informal counseling, versus the regular course of counseling that is available in EAP.

Dr. Herndon is not licensed in Florida as a psychologist. Therefore, we are confronted with the following issues concerning his status:

1. Does Florida law require that Dr. Herndon be a licensed psychologist to perform his duties for the OCSSO?
2. If Dr. Herndon is exempt from the licensing requirements of Chapter 490, F.S., is his status jeopardized by performing pre-employment psychological examinations for the University of Central Florida Department of Public Safety and Police as part of his regular duties for the OCSSO?

Handwritten note: 12/3/01
C/M



The First Agency in Orange County to Receive Both
International and State Accreditation.



Nancy Snurkowski, Esquire
November 16, 2001
Page Two

3. If Dr. Herndon is exempt from the licensing requirements of Chapter 490, F.S., is his status jeopardized if he occasionally counsels agency members on an informal basis?
4. May Dr. Herndon use the title, "Staff Psychologist," in performing his responsibilities for the OCSO?
5. If Dr. Herndon holds an earned Ed.D. from the University of Sarasota, is he qualified to be a licensed psychologist?

There is ambiguity in the statute regarding use of the title, "psychologist." I understand members of the Florida Legislature were approached about amending the law to clearly limit the use of "psychologist" to licensed individuals. A Florida Department of Professional Regulation supervisor informed us that relevant statutes have been changed, and Dr. Herndon's use of the title, "staff psychologist," may no longer be appropriate. I understand your office is responsible for seeking cease-and-desist orders for violations of Chapter 490, F.S. Your prompt assistance in this matter will be greatly appreciated.

Please contact me with any questions or comments. Thank you for your consideration and assistance.

Sincerely,

KEVIN BEARY
Sheriff of Orange County

Bernie Rice

Bernadine Rice
General Counsel
Legal Services Section
55 West Pine Loch Avenue
Orlando, FL 32806
407/251-2420 (office)
407/251-2420 (fax)
bernie.rice@ocfl.net

251-2407

c: Director Dan Ford