

**STATE OF FLORIDA
BOARD OF PSYCHOLOGY**

**IN RE: PETITION FOR DECLARATORY STATEMENT OF
RONALD L. ROSENTHAL, Ph.D.**

FINAL ORDER

THIS MATTER came before the Board of Psychology ("Board") pursuant to Section 120.565, Florida Statutes (FS), at a duly-noticed public held on January 23, 2009, in Orlando, Florida, for consideration of the above-referenced Petition for Declaratory Statement filed December 16, 2008, by Ronald L. Rosenthal, Ph.D., ("Petitioner"). The Notice of the Petition for Declaratory Statement was published on January 16, 2009, in Volume 35, No. 02, of the Florida Administrative Weekly. No comments by interested persons were received. Petitioner was neither present at the meeting nor represented by counsel. The Board was represented by Mary Ellen Clark, Assistant Attorney General. Having considered the petition, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is a licensed psychologist in the state of Florida.
2. Section 490.0149, FS, provides in part:
 - (1) As used in this section, the term "certified psychology specialist," "board-certified psychology specialist," or "psychology diplomate" means a psychologist with recognized special competency acquired through an organized sequence of formal education, training, experience, and professional standing that is recognized by a certifying body approved by the board pursuant to criteria adopted under subsection (3).
 - (2) A person licensed as a psychologist may not hold himself or herself out as a certified psychology specialist, board-certified psychology

specialist, or psychology diplomate unless the person has received formal recognition from an approved certifying body.

3. Petitioner states that he is certified in biofeedback by the Biofeedback Certification Institute of America (BCIA)

4. BCIA does not meet the criteria set forth in Rule 64B18-18.008, Florida Administrative Code and is not a Board approved certifying body.

5. Petitioner seeks the Board's interpretation of Section 490.0149, FS, and a determination of whether he may hold himself out as certified in biofeedback by the BCIA.

CONCLUSIONS OF LAW

6. The Board has jurisdiction over this matter pursuant to Section 120.565, FS.

7. Section 490.003(4), FS, defines the "Practice of psychology" and states in part that "[t]he ethical practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning, including evaluation of mental competency to manage one's affairs and to participate in legal proceedings; counseling, psychoanalysis, all forms of psychotherapy, sex therapy, hypnosis, **biofeedback**, and behavioral analysis and therapy." (Emphasis added.)

8. The Board determined that, as biofeedback is contained within the definition of psychology, then the holding out of oneself as "certified in biofeedback" would constitute the holding out as "certified psychology specialist."

9. The Board answers the question in the negative; no, pursuant to Section 490.0149, FS, Petitioner is not entitled to hold himself out as certified in biofeedback by the BCIA, a non-approved certifying body.

10. This Order constitutes final agency action and may be appealed by any party pursuant to Section 120.68, FS, and Rules 9.110 and 9.190, Florida Rules of Appellate Procedure (FRAP), by filing a notice of appeal conforming to the requirements of Rule 9.110(d), FRAP, 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 4 day of March, 2009.

BOARD OF PSYCHOLOGY

Allen Hall

Allen Hall, Executive Director
for Richard Hoffman, 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 Ronald L. Rosenthal, Ph.D., 10691 N. Kendall Drive, Suite 314, Miami, Florida 33176; and by interoffice mail to Mary Ellen Clark, Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this 9th day of March, 2009.

Harmony H. Clark

Deputy Agency Clerk

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Amy L. Conway*
DATE 12-16-08

Petition For Declaratory Statement Before
The Board of Psychology

Petitioner: Ronald L. Rosenthal, Ph.D.
10691 N. Kendall Drive, Suite 314
Miami, FL 33176
Phone: (305) 598 0013
Fax: (305) 598 0014

Relevant Statutory Rule: Section 490.0149

December 12, 2008

08 DEC 15 PM 1:12
MHA/MEDICAL TECHNICIANS/
PSYCHOLOGIST

I am seeking a declaratory statement from the Board of Psychology concerning Section 490.0149 of the Florida Statutes, which provides rules pertaining to specialization within the practice of psychology. In particular, I am seeking the affirmation of my right to hold myself out as certified in biofeedback by the Biofeedback Certification Institute of America (BCIA).

Section 490.0149 of the Florida Statutes was enacted by the Florida legislature in 2008 at the behest of the Florida Psychological Association (FPA). The FPA was concerned at the increasing prevalence of so-called "vanity boards." The vanity boards are certificates of specialization within psychology that are obtained with little or no attention to the demonstration of advanced training and experience. They are granted by agencies that often have no close ties to more respected organizations within psychology and, typically, the payment of fees is the primary requirement to obtain the status of "board certified psychologist."

In an effort to protect the public and curtail the spread of vanity boards, FPA sought a law that would regulate the agencies eligible to certify licensed psychologists. Psychology is a diverse field, and there was much debate during the process of promulgating these regulations. Ultimately, the statute was crafted and in section (1) it specifically refers to three terms that are to be regulated: certified psychology specialist, board certified psychology specialist and psychology diplomate (see below).

1) As used in this section, the term "certified psychology specialist," "board-certified psychology specialist," or "psychology diplomate" means a psychologist with recognized special competency acquired through an organized sequence of formal education, training, experience, and professional standing that is recognized by a certifying body approved by the board pursuant to criteria adopted under subsection (3).

The statute also includes a section authorizing the Board of Psychology to establish criteria used to determine the eligibility of certifying agencies. In section 3a of the statute, it states that the agency should, "Be national in scope, incorporate standards of the profession, and collaborate closely with organizations related to specialization in psychology." The Board of Psychology adopted rules (see below) to implement the statute and extended the criteria to exclude certifying agencies that grant certification to individuals who are not psychologists. This additional restriction has had a major impact on many psychologists, including myself.

64B19-18.008 Board Approval of Specialty Certifying Bodies

To obtain Board approval as a certifying body, eligible to grant formal recognition declaring a licensed psychologist to be a "certified psychology specialist," board-certified psychology specialist," or a "psychology diplomate," pursuant to Section 490.0149, F.S., an applicant shall file a petition demonstrating that it:

(1) Is an independent body, national in scope, that incorporates standards of the profession, collaborates closely with organizations related to specialization in psychology, and only certifies doctoral-level, licensed psychologists as having advanced qualifications in a particular psychological specialty through demonstrations of competence in the specialty being recognized;

Biofeedback is a therapeutic modality used in relaxation training, stress management, physical medicine, and rehabilitation. It is an eclectic field, and it is used by a number of different disciplines for a wide variety of conditions and disorders. Psychologists have a long

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history of using biofeedback training and experimental psychologists conducted much of the original research leading to the development of the field in the 1960's and 70's. To this date, most clinical biofeedback is provided by psychologists and other mental health professionals. However, there are many skilled biofeedback providers who are physical therapists, occupational therapists, or physicians.

Early providers of clinical biofeedback services quickly realized that a certifying agency would be essential for the long-term growth of the field. In January 1981, the Biofeedback Certification Institute of America was formed. Its mandate was to establish and maintain professional standards for the provision of biofeedback services and to certify those who meet those standards. The BCIA is an autonomous, non-profit corporation. Its policies and procedures are determined by an independent board of directors, comprised of distinguished clinicians, educators and researchers. Historically, approximately 70% of certificants have been psychologists or other mental health professionals. Certification by BCIA is a rigorous process that includes didactic training, mentoring and a written examination.

Currently, there are no agencies that provide certification in biofeedback solely to psychologists. As it stands now, I believe that I may not be able to present myself as certified in biofeedback by the BCIA because the BCIA cannot be approved by the board under the current rules.

There are several reasons why the Board of Psychology should permit me to represent myself as certified in biofeedback. The first has to do with the specific language of the law and the rules implementing it. I am not representing myself as a psychology diplomate, board certified psychology specialist, or certified psychology specialist by mentioning my biofeedback certification. The BCIA certification indicates proficiency in the multi-disciplinary field of biofeedback and I am able to provide these services because it falls within the scope of practice of psychology.

The restriction on my right to mention my biofeedback certification also impairs my ability to compete with other biofeedback providers. The statute applies only to psychologists; mental health counselors, marriage and family therapists, physical therapists, occupational therapists and others can continue to promote their biofeedback certification. This gives them a significant advantage in marketing and when dealing with potential clients and managed care organizations. Some insurance companies are beginning to require BCIA certification before authorizing biofeedback services. How am I supposed to deal with that situation?

Finally, I believe that the Board of Psychology should permit me to represent myself as certified in biofeedback because doing so would be consonant with the spirit of the law. The intent of the law was to protect the public and to curtail the use of bogus specialization certificates in marketing. I do not believe that any members of the Board of Psychology would hold the opinion that BCIA certification in biofeedback is a vanity board. I feel that I am a highly qualified biofeedback professional and the public has a right to know that I am certified by a prestigious agency. I respectfully request the Board of Psychology to reaffirm my right to represent myself as certified in biofeedback by the Biofeedback Certification Institute of America.

Ronald L. Rosenthal, Ph.D Dec 12, 2008
Ronald L. Rosenthal, Ph.D.
P.Y. 4847

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MEDICAL DEPT/PSYCH/0103