

By: Angel Sandell
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF PSYCHOLOGY**

**IN RE: PETITION FOR DECLARATORY
STATEMENT OF**

KATHARINE SANDELL WESTIE, Ph.D.

FINAL ORDER
REGARDING PETITION FOR DECLARATORY STATEMENT

This matter appeared before the Board of Psychology Pursuant to Sections 120.565 and 120.57(2), Florida Statutes, and Chapter 120-105, Florida Administrative Code, at a duly-noticed public telephonic meeting on November 18, 2011, for consideration of a Petition for Declaratory Statement, which is attached as Exhibit "A." The Petitioner was present during consideration of this matter and was not represented by counsel.

STATEMENT OF RELEVANT FACTS

1. On October 10, 2011, the Petitioner, Katharine Sandell Westie, Ph.D., filed a Petition for Declaratory Statement regarding Section 490.003(4)(a), Florida Statutes.
2. The Notice of Petition for Declaratory Statement was published on October 28, 2011, in Vol. 37, No. 43, of the Florida Administrative Weekly. No comments by interested persons were received.
3. Section 490.003(4) sets forth the definition of the phrase "practice of psychology." Subsection (4)(a) further states that psychological services may be rendered to individuals, couples, families, groups, and the public without regard to place of service.

states that she has a few long-term patients who have come to her periodically over many years (20-25) for routine life stressors, who would like to continue to be treated by her periodically by videoconference or by telephone. The Petitioner believes this to be in the best interest of these long established patients to be able to continue with periodic sessions with her by teletherapy. The majority of her patients are being transferred to other providers.

5. The Petitioner asks whether this scenario would be allowable under the scope of practice of a clinical psychologist in Florida. Specifically, she clarifies that she would be in Michigan providing services by videoconference or telephone from her office in Michigan, in a private setting. The Petitioner further states that she would continue to see these patients face-to-face during the times she is in Miami, Florida. Also, she states that she is maintaining her Florida office, her Florida license, and is in the process of obtaining a Michigan license.
6. The Petitioner states that at some point in the future she may want to do this process in reverse, by providing a videoconference session to a Michigan patient while she is in Florida.

GROUND FOR APPROVAL

7. The Board has jurisdiction of this matter pursuant to Chapter 490, Florida Statutes, and has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.
8. The Petition filed in this cause is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

8. The Petition filed in this cause is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.
9. For purposes of determining standing in this matter, the Petitioner is a substantially affected person, because the Petitioner is a Florida-licensed practitioner who seeks guidance on interpreting Section 490.003(4)(a), Florida Statutes, as applied to her future, particular circumstances.
10. Section 490.003(4) sets forth the definition of the phrase “practice of psychology.” Subsection (4)(a) further states that psychological services may be rendered to individuals, couples, families, groups, and the public without regard to place of service.
11. The primary issue, pursuant to Section 490.003(4)(a), Florida Statutes, is whether the Petitioner is allowed to continue to treat the few long term patients (20-25 years) by videoconference or by telephone when she retires and moves to Michigan, with periodic face-to-face meetings when she is in Miami, Florida.
12. Based on the facts set forth in the Petition, and being otherwise advised in the premises, the Board answers this particular question above in the affirmative. The Board’s response to this Petition addresses *solely* the question propounded by the Petitioner. The Board’s conclusion is based solely on the Board’s application of the narrow, factual circumstances outlined in the Petition to the pertinent statutory provision set forth in the Petition. In deciding this matter, the Board does *not* opine with respect to the law in Michigan.
13. The Petitioner also states that at some point in the future she may want to do this process in reverse, by providing a videoconference session to a Michigan patient while she is in Florida. The Board declines to issue a position with respect to this issue at this time.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 16 day of February, 2011.

BOARD OF PSYCHOLOGY

Allen Hall

Allen Hall, Executive Director
for Rafael Rivas-Vazquez, Psy.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.569, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health, and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Katharine Sandell Westie, Ph.D.**, 888 Douglas Road, #1410, Coral Gables, FL 33134; and by interoffice mail to **Donna C. McNulty**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 16th day of February, 2012.

Angel Sanders
Deputy Agency Clerk

Petition for Declaratory Statement Before the Florida Board of Psychology

Petitioner: Katharine Sandell Westie, Ph.D., ABPP
888 South Douglas Road, #1410
Coral Gables, FL 33134
Phone: 305-431-3389 Fax: 786-800-3411
e-mail: kswestie@gmail.com
My License Number: PY 2686 (since 1981)

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE OCT 10 2011

Rules on which the declaratory statement is sought:

Currently, in Section 490.003(4)(a), Florida Statutes, it reads as follows:

"(4)(a) Psychological services may be rendered to individuals, couples, families, groups, and the public ***without regard to "place"*** (emphasis added) of service."

My situation and question:

I am retiring from my position at Jackson Memorial Hospital in Miami after 30 years, effective November 30, 2011. As I will be spending part of the year in my home in Michigan, I am closing my small private practice also, as of December or January. My question refers to patients in this private practice.

I have a few long-term patients who have come to me periodically over many years (20-25 years) for routine life stressors, who would like to continue to be treated by me periodically by videoconference or teletherapy. I feel it would **be in the best interest of these long established patients** to be able to continue with periodic sessions with me via teletherapy. They feel strongly about this as well. They are without significant psychopathology or risk for harm to self or others, and have been stable over time, dealing with typical life stresses.

Since tele/video therapy is a relatively new issue in psychology, I would like to ask for the board to inform me if this would be allowable under my scope of practice of a clinical psychologist in the State of Florida. To clarify—I would be in Michigan, providing services by videoconference or telephone from my office in Michigan, in a confidential setting. I would continue to see these patients face to face during the times I am in Miami. I would of course abide by all legal and ethical laws and guidelines as if these sessions were in a traditional face-to-face sessions.

I will be maintaining my Florida office, my Florida license, and am in the process of obtaining a Michigan license also.

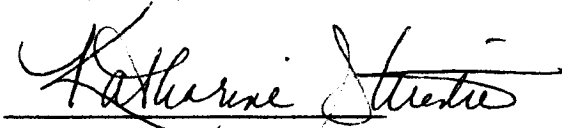
I assure you that the majority of my private practice patients are being transferred to other providers in the community. The patients in question are ones, in my clinical judgment, would be **appropriate to be seen in this way, and would be best served by this plan, after many years of an established and successful therapeutic relationship.**

I would appreciate a declaratory statement of your position on this, regarding my particular situation.

At some point in the future, I may also want to do this process in reverse, providing a videoconference session to a Michigan patient while I am here in Florida, though that is a less pressing issue right now.

Since I am in the process of closing the practice as we speak, I would like to know if offering these few patients the tele/video conferencing option is allowable per the opinion of the board.

Thank you very much for your wisdom and statement regarding my particular situation.


Katharine S. Westie, Ph.D., ABPP

10/5/11
Date

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The following case may bear relevance:, though it deals with the reverse, seeing non-Florida patients by videoconferencing while in Florida. My case involved seeing Florida patients while in another state.

Final Order No. DOH-06-0976- A< -MOA. ~ . FILED DATE - (, -, C-0& De ~ r tme nt of Health By: **STATE OF FLORIDA BOARD OF PSYCHOLOGY IN RE: THE PETITION FOR DECLARATORY STATEMENT OF MARC B. DIELMAN, Ph.D. 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 on April 28, 2006, in Tampa, Florida, for the purpose of considering the Petition for Declaratory Statement filed March 10, 2006, by Marc B. Dielman, Ph.D., ("Petitioner"). Notice of the Petition was published on March 31, 2006, in the Florida Administrative Weekly, Volume 32, No. 13. No comments by interested persons were received. Petitioner was not present at the meeting and was represented by Erin Smith Aebel, Esquire. 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 psychologist licensed in good standing in the State of Ohio 2. Petitioner intends to move to Florida in 2006 to live part time. 3. Petitioner asks whether treating patients who are physically located in Ohio by telecommunications, including telephone sessions, e-mails, and video conferencing, while he is physically located in Florida, constitutes the practice of psychology in Florida requiring Florida licensure **CONCLUSIONS OF LAW** 1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes. 2. The Board answers the question in the affirmative. The psychological treatment of patients who are physically located in Ohio by telecommunications, including telephone sessions, e-mails, and video conferencing, by a psychologist physically located in Florida, constitutes the practice of psychology in Florida requiring Florida licensure. 3. This Order constitutes final agency action and may be appealed by any party pursuant to Section 120.68, Florida Statutes, and Rules 9.1 10 and 9.190, Florida Rules of Appellate Procedure, by filing a notice of appeal conforming to the requirements of Rule 9.1 10(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 day of i&v=, 2006 BOARD OF PSYCHOLOGY / & L < > - ; 4 i q
USA an Love, Exedutive Director for Rafael Rivas-Vazquez, Psy.D., Chair

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