

FILED DATE - SEP 06 2016

Department of Health

Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF CLINICAL SOCIAL WORK, MARRIAGE AND FAMILY THERAPY
AND MENTAL HEALTH COUNSELING

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF
MICHAEL G. HOLLER, LMHC

FINAL ORDER

THIS MATTER came before the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling (Board) pursuant to Section 120.565, Florida Statutes. At a duly-noticed public meeting held on August 11, 2016, in Jacksonville, Florida, the Board considered Michael Holler's (Petitioner) Petition for Declaratory Statement. Petitioner was neither present nor represented by counsel. The Board was represented by Deborah Bartholow Loucks, Attorney at Law.

The Petition was filed with the Department of Health on June 24, 2016. Petitioner is requesting that the Board issue a Declaratory Statement interpreting Rule 64B4-7.006, Florida Administrative Code. Petitioner asked the Board to issue a declaratory statement that would determine two issues related to the use of testing/instruments of a psychological nature, including in the performance of evaluations of minors for the purpose of addressing custody, residence, or visitation disputes.

FINDINGS OF FACT

1. The Petition was duly filed and noticed in the Florida Administrative Law Register; Volume 42 Issue 124, published on June 27, 2016.
2. The Petition is attached hereto and incorporated herein by reference.

3. Petitioner is a Florida licensed mental health counselor.

CONCLUSIONS OF LAW

4. The Board has jurisdiction over this matter pursuant to section 120.565, and Chapter 491, Florida Statutes.

5. Section 120.565, Florida Statutes, provides that an agency may provide its opinion as to the applicability of a statutory provision, or of any rule, as it applies to the petitioner's particular set of circumstances.

6. Rule 64B4-7.006, Florida Administrative Code, is titled "Requirements for Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes."

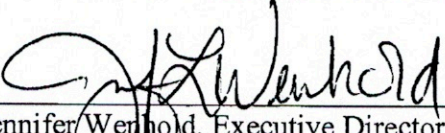
7. Petitioner did not describe any particular set of circumstances to which the Board could apply the cited rule.

8. The Board declined to answer the petition because it believes that the statute and rule are clear. Section 491.009(3), Florida Statutes, provides, in part, "The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral)."

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

DONE AND ORDERED this 31 day of August, 2016.

BOARD OF CLINICAL SOCIAL WORK, MARRIAGE AND FAMILY
THERAPY AND MENTAL HEALTH COUNSELING



Jennifer Wenhold, Executive Director
on behalf of Susan Gillespy, LMFT, 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 120.68, 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 was furnished by U.S.

Mail to: **Michael Holler, LMHC**, 91831 O/S Hwy. Suite A, Tavernier, Florida 33070 and to his counsel of record, **David G. Hutchison**, P.O. Box 1262, Key Largo, Florida 33037; and by electronic mail to: **Deborah B. Loucks**, Assistant Attorney General, Office of the Attorney General, deborah.loucks@myfloridalegal.com, and **Angela Southwell**, Office of the Attorney General, angela.southwell@myfloridalegal.com, on September 6, 2016.



Deputy Agency Clerk

**PETITION FOR DECLARATORY STATEMENT BEFORE THE
FLORIDA DEPARTMENT OF HEALTH**

Petitioner:

Michael G. Holler, LMHC
91831 O/S Hwy.
Suite A
Tavernier Fl. 33070
mholler@terrannova.net

FILED
Department Of Health
Deputy Clerk
CLERK *Angal Sanders*
DATE **JUN 24 2016**

Attorney for Petitioner:

David G. Hutchison, Esq.
P.O. Box 1262
Key Largo, Fl. 33037
(305) 451-0013
Info@floridakeyslegal.com

Petitioner is requesting the following determination:

- 1) Whether an LMHC can conduct testing using testing/instruments of a psychological nature or;
- 2) Whether an LMHC must use testing/instruments of a psychological nature when appropriate, such as in, but not limited to, performing evaluations of minors for the purpose of addressing custody, residence, or visitation disputes

Rule 64B4-7.006 states:

"64B4-7.006 Requirements for Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.

(1) To perform evaluations of minors for the purpose of making a recommendation regarding custody, residence or visitation, the licensee shall have:

- (a) Competence in performing assessments of a psychological nature on children and families;
- (b) Education and training in the areas of child and family development, child and family psychopathology, and the impact of divorce on children and families; and
- (c) Knowledge of the legal standards and procedures governing divorce and child custody.

(2) *When providing such evaluation of a minor, the licensee shall:*

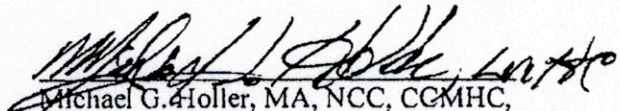
- (a) Be impartial, act in the best interest of the child, avoid conflicts of interest, and not have been the treating psychotherapist nor had a prior relationship with any of the parties to the evaluation; and

(b) *Use multiple avenues of data gathering, including testing and interviewing methods, and shall involve all persons central to the child in question, including, at a minimum, communication with the child, the parties seeking custody or visitation, any treating mental health professional, family physician, and relatives of the immediate families.*" (emphasis added)

The Petitioner asserts that the rule not only authorizes an LMHC when conducting an evaluation of minors for the purpose of addressing custody, residence or visitation disputes, to conduct testing using instruments of a psychological nature, but requires the licensee to utilize testing as one of the methods of data gathering.

Wherefore, the Petitioner respectfully requests that this Board render a declaratory statement that an LMHC may conduct testing using testing/instruments of a psychological nature, and that an LMHC must use testing/instruments of a psychological nature when appropriate, such as in, but not limited to, performing evaluations of minors for the purpose of addressing custody, residence, or visitation disputes.

Respectfully submitted,


Michael G. Holler, MA, NCC, CCMHC,
CFMHE, CCCE, LMHC