

**STATE OF FLORIDA
BOARD OF PSYCHOLOGY**

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

DEAN R. CAULEY, Ph.D.

FINAL ORDER
REGARDING PETITION FOR DECLARATORY STATEMENT

This matter appeared before the Florida Board of Psychology (Board) pursuant to Sections 120.565, Florida Statutes, and Chapter 120-105, Florida Administrative Code, at a duly-noticed public meeting on January 21, 2011, in Orlando, Florida, for consideration of a Petition for Declaratory Statement, which is attached as Exhibit "A." The Notice of Petition for Declaratory Statement was published on September 24, 2010, in Vol. 36, No. 38, of the Florida Administrative Weekly. The matter was previously heard at the Board's meeting on October 22, 2010, and it was tabled to the January 21, 2011 meeting of the Board.

The Petitioner, Dean R. Cauley, Ph.D., was neither present nor represented by counsel. Having considered the Petition and the relevant statutes, the Board issues the following:

STATEMENT OF RELEVANT FACTS

1. On July 13, 2010, the Petitioner, Dean R. Cauley, Ph.D., filed a Petition for Declaratory Statement before the Florida Board of Psychology. The Petitioner seeks the Board's interpretation of Sections 490.012 and 490.014, Florida Statutes, and whether the Petitioner's work falls under the area of an exemption.
2. The Petitioner is licensed pursuant to Chapter 491, Florida Statutes.
3. The Petition is attached as Exhibit "A" and is incorporated by reference.

4. The Petition provides that this matter is being sought because of the perceived conflict between the statutory provisions of the Board of Psychology and the statutory provisions of the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling.
5. The Petitioner states that he is a doctoral level mental health counselor and sets forth his qualifications and background in the attached Petition. He states that he has been employed in the capacity of administering personality testing, intelligence testing, and sexual offender specific testing for over eight years in Florida and 13 years altogether. He also states that these tests are brought together into a narrative evaluation which he has been writing for over 13 years. He contends that it should be the case that the psychological testing can be described as “psychological testing” and that the written evaluation that incorporates these psychological testing outcomes can be described as a “psychological assessment.” He also contends that given his background, education training and experience, he should be able to use the terms “psychodiagnostic,” “psychological testing” and “psychological assessment” in presenting diagnostic conclusions based upon such testing and assessment of a psychological nature as allowed under his license. He contends that his work falls under an exemption and that he may use such terms.
6. On November 10, 2010, the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling filed an order regarding a substantially similar petition filed by the Petitioner, which is attached as Exhibit “B” and incorporated into this Final Order. (Final Order No. DOH-10-2494-DS-MQA, filed November 10, 2010).

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Chapter 490, Florida Statutes. The Board has the authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.
2. The Board finds that the Petitioner has standing regarding this Petition.
3. Section 490.012(1)(c), Florida Statutes, provides that

No person shall hold herself or himself out by any title or description incorporating the words, or permutations of them, “psychology,” “psychological,” or “psychodiagnostic,” or describe any test or report as psychological, unless such person holds a valid, active license under this chapter or is exempt from the provisions of this chapter. (emphasis added)

4. Section 490.014, Florida Statutes, entitled “Exemptions,” provides in subsection (1)(b) that

No provision of this chapter shall be construed to limit the practice of nursing, clinical social work, marriage and family therapy, mental health counseling, or other recognized businesses or professions, or to prevent qualified members of other professions from doing work of a nature consistent with their training, so long as they do not hold themselves out to the public as psychologists or use a title or description protected by this chapter. Nothing in this subsection shall be construed to exempt any person from the provisions of s. 490.012. (emphasis added)

5. Further, the Order of the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling provides that “[i]t is the Board’s opinion that pursuant to the scope of his mental health counseling licensure, Dr. Cauley, if he is properly trained and not prohibited by any other law, may provide testing, treatment and a diagnosis of a psychological nature.”
6. The Board declines to issue a Petition for Declaratory Statement of Sections 490.012(1)(c) and 490.014(1)(b), Florida Statutes, because the statutes are clear as

written. Even if the Board thought it should clarify the meaning of the statutes, and it does not, such interpretation would have broad applicability and would be more appropriate for rulemaking.

Based on the foregoing, the Board hereby **DENIES** the Petition for Declaratory Statement filed by Dean R. Cauley, Ph.D., requesting interpretation of Sections 490.012 and 490.014, Florida Statutes, and whether the Petitioner's work falls under the area of an exemption.

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

DONE AND ORDERED this 9 day of March, 2011.

BOARD OF PSYCHOLOGY



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 **Dean R. Cauley, Ph.D.**, 3270 Yukon Drive, Port Charlotte, FL 33948; 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 14th day of March, 2011.

Santha Soto
Deputy Agency Clerk

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE 7.13.10

Dean R. Cauley Ph.D., M.L.S.
3270 Yukon Drive
Port Charlotte, FL. 33948-6130

(941) 661-8895
Fax: (941) 627-6867

DCauley@Comcast.net

7/7/2010

PETITION FOR DECLARATORY STATEMENT.

Petition for Declaratory Statement before the Florida Board of Psychology.

Petitioner:

Dean R. Cauley Ph.D., MBA
3270 Yukon Drive
Port Charlotte, FL. 33948-6130
Phone: (941) 661-8895
Fax: (941) 627-6867
Email: DCauley@Comcast.net

The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought is the conflict between the rules of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling and the rules of the Board of Psychology as related to the petitioner's practice:

CHAPTER 490 PSYCHOLOGICAL SERVICES

490.012 Violations; penalties; injunction.--

(c) No person shall hold herself or himself out by any title or description incorporating the words, or permutations of them, "psychology," "psychological," or "psychodiagnostic," or describe any test or report as psychological, unless such person holds a valid, active license under this chapter or is exempt from the provisions of this chapter.

10 JUL - 9 AM 11:36
NOA/MEDICAL THERAPIES/
PSYCHOLOGY

Exhibit "A"

In relation to:

**CHAPTER 491
CLINICAL, COUNSELING, AND PSYCHOTHERAPY SERVICES**

(9) The "practice of mental health counseling" 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), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse.

**THE CONFLICT BETWEEN THESE TWO CHAPTERS
AS RELATED TO PETITIONER**

Petitioner holds a Ph.D. in mental health counseling from a CACREP accredited doctoral program. Petitioner has taken and completed graduate level coursework in "psychological evaluations" at a Masters and a Doctoral level. The petitioner's relevant licensing area indicates that the profession of mental health counseling "includes methods of a **psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders**".

This suggests that the best descriptor of such testing and assessments would be "psychological" in nature.

Additionally, the petitioner has worked in correctional facilities as well as civil commitment settings where his responsibility was to administer and interpret psychological testing. The petitioner has written peer reviewed research articles and published a doctoral dissertation which included the use of psychological testing devices and explored diagnostic issues (see attached Vita).

Therefore, given the background, education, training and experience as outlined the petitioner should, in good faith, be able to present his written work as being a "psychological assessment" based upon "psychological testing".

**HOW THIS CONFLICT
SUBSTANTIALLY EFFECTS PETITIONER**

As an expert witness in the field of sexually violent predator risk assessment the petitioner has testified over 125 times in 19 of 20 judicial districts in Florida. It has never been the situation that the petitioner was not accepted as an expert, qualified to discuss testing, assessment and psychological diagnosis of sexually violent predators under the civil commitment statute.

However, opposing counsel has presented the inability of the petitioner to perform "psychological testing" or "psychological assessments" as a limitation of the mental health license, implying to the trier of fact that doctoral level psychologists are inherently

more qualified than doctoral level mental health counselors based upon this licensing difference. This has afforded the opposing counsel an opportunity to publicly discredit the testimony of the petitioner based upon the semantic distinction in the licensing rules between a "mental health assessment" and a "psychological assessment". A distinction that is seemingly absurd yet is used as an attack on the professional credibility, education and training of the petitioner and thereby causing substantial harm to his practice.

WHAT THIS PETITION DOES NOT SEEK TO CLARIFY

On each occasion that the petitioner has sought clarification through either of the two Professional Regulation Boards the answer has been that the mental health counselor must "be very clear in your advertising and interactions with the public that you are licensed as a mental health counselor not a psychologist." This response has come on each occasion that the petitioner has inquired and on each licensing complaint filed against the petitioner in regards to the above issues. However, that is not what is in need of clarification. It has always been the situation that the petitioner has made it abundantly clear to the judge and/or jury what he is licensed in, where he went to school and what he studied at those schools. This is a usual part of expert qualification for the courts.

Also, it is understood that a professional – in any profession – must necessarily practice only in those areas for which he/she is trained, qualified and licensed. Therefore, that is not a part of the current request for clarification.

REQUEST FOR DECLARATORY STATEMENT

I am a doctoral level mental health counselor. I am a full clinical member of the American Psychological Association (APA) as well a member of APA's Division 39; Section I (Psychologist-Psychoanalyst Practitioners) and a member of Division 41 (American Psychology-Law Society). In my doctoral program I took coursework from an accredited university specific to "psychological evaluation" as well as "psychological testing".

I am fully licensed to diagnose and academically qualified to purchase, administer and interpret psychological testing and to present the testing results in a written assessment. I have been employed in the capacity of administering personality testing, intelligence testing, and sexual offender specific testing for over eight years in Florida, and 13 years altogether. These tests are then brought together into a narrative evaluation which I have been writing for over 13 years. Therefore it should be the case that the psychological testing can be described as "psychological testing", and that the written evaluation that incorporates these psychological testing outcomes can be described as a "psychological assessment". I feel that my background, education training and experience should afford me the right to use the term "psychodiagnostic" and – more importantly - "psychological testing" and "psychological assessment" in presenting diagnostic conclusions based upon such testing and assessment of a psychological nature as allowed under my license.

