STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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| GREGORY J. HARRIS,<br><br>Petitioner,<br><br>vs.<br><br>BOARD OF CLINICAL SOCIAL WORK, MARRIAGE AND FAMILY THERAPY AND MENTAL HEALTH COUNSELING,<br><br>Respondent. | ) | Case No. 97-3864RX |
| GREGORY J. HARRIS,<br><br>Petitioner,<br><br>vs.<br><br>BOARD OF CLINICAL SOCIAL WORK, MARRIAGE AND FAMILY THERAPY AND MENTAL HEALTH COUNSELING,<br><br>Respondent. | ) | Case No. 97-5032RU |

## FINAL ORDER

A formal administrative hearing was held in this case before the Division of Administrative Hearings, by Daniel M. Kilbride, Administrative Law Judge, on March 16, 1998, in Tallahassee, Florida.

## APPEARANCES

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## STATEMENT OF THE ISSUES

### Case No. 97-3864RX

Whether Rule 64B4-21.007, formerly numbered 59P-21.007, Florida Administrative Code, is an invalid exercise of delegated legislative authority.

### Case No. 97-5032RU

Whether the determination, in the first instance, by the Respondent of whether a petitioner for a Chapter 120, Florida Statutes, formal hearing has raised a disputed issue of material fact, is a statement that constitutes a rule, pursuant to Section 120.52(15), Florida Statutes.

## PRELIMINARY STATEMENT

On August 22, 1997, Petitioner filed a Petition for Administrative Determination of a Rule with the Clerk of the Division of Administrative Hearings. This case was assigned to the undersigned and was set for hearing. Shortly thereafter, this matter was abated on motion of the Petitioner, in order for Petitioner to seek a waiver of certain portions of the rule. On October 27, 1997, Petitioner filed a Challenge to an Agency Statement Which is Defined as a Rule. The case was assigned to the undersigned Judge. An Amended Challenge was filed on November 14, 1997. The two cases were consolidated by Order, dated December 4, 1997. The formal hearing was continued twice

at the request of the Respondent. Respondent's Motion for Summary Final Order was denied on February 16, 1998.

At the hearing on March 16, 1998, Petitioner offered the testimony of Dr. F. Donald Kelly, Jr., and Dr. Gloria Lobnitz. Petitioner submitted four exhibits. Respondent offered the testimony of Dr. Lobnitz, and submitted six exhibits.

The transcript of the hearing was filed on April 1, 1998. Petitioner filed his proposed final order on April 17, 1998. Respondent filed its proposals on April 16, 1998. Each of the parties' proposals have been given careful consideration in the preparation of this final order.

## FINDINGS OF FACT

Based on the stipulation of the parties and the evidence educed at hearing, the following findings of fact are found:

1. Petitioner filed an application for licensure as a marriage and family therapist pursuant to Section 491.005, Florida Statutes.

2. After consideration of the documents submitted by Petitioner, Respondent issued its Order of Intent to Deny filed August 1, 1997.

3. The grounds stated by the Respondent for denying Petitioner's application are that Petitioner did not demonstrate that he completed two years of clinical supervision under the supervision of a supervisor that meets the qualifications stated in Rule 64B4-21.007, Florida Administrative Code.

4. Petitioner completed six semester hours of graduate coursework in marriage and family systemic theories and techniques at an accredited university. The courses were taught by Petitioner's clinical supervisor.

5. Petitioner's supervisor for his clinical experience is a licensed psychologist who did not complete, as a student, six semester hours or eight quarter hours of graduate coursework in marriage and family systemic theories and techniques.

6. The Board interprets Rule 64B4-21.007 to require the supervisor to take the coursework as a student. Teaching these subjects is not considered coursework.

7. Petitioner filed a timely Petition for Formal Hearing which alleged that he had completed two years of clinical supervision under a qualified supervisor.

8. Respondent denied Petitioner's Petition for Formal Hearing on the grounds that Petitioner had not raised a disputed issue of material fact.

9. Petitioner filed a notice of appeal of Respondent's Order denying the Petition for Formal Hearing. Said appeal is pending before the Florida First District Court of Appeal.

10. When Respondent receives petitions for hearing on licensure denials requesting a hearing pursuant to Section 120.57(1), Florida Statutes, the Board reviews the petition and the application file and determines if the applicant has raised a disputed issue of material fact.

11. Rule 64B4-21.007, Florida Administrative Code, was originally adopted on July 6, 1988, as Rule 21CC-21.007.

12. The rule, as originally promulgated, defined "qualified supervisor" as, inter alia, a licensed psychologist who also meets the educational requirements for licensure as a marriage and family therapist. The language requiring the licensed psychologist to meet the educational requirements for licensure as a marriage and family therapist was deleted by the Board in 1993. The deleted language would have required the supervisor to demonstrate not only six semester hours of graduate coursework in marriage and family systemic theories and techniques, but also to demonstrate all of the coursework required for licensure as a marriage and family therapist, a practicum in marriage and family therapy under a qualified supervisor as defined by the Board, and supervised experienced under a qualified supervisor as defined by the Board.

13. In 1996, the Board amended the rule to define "qualified supervisor" as, inter alia, a licensed psychologist who "can document a minimum of six semester or eight quarter hours of graduate coursework in marriage and family systemic theories and techniques."

14. The purpose of the amendment was to provide interns access to qualified people to supervise applicants for licensure in marriage and family therapy, while ensuring that the supervisor was in fact supervising for marriage and family

therapy, i.e., training marriage and family interns.

15. Significant differences exist between the profession of marriage and family therapy and the use of marriage and family systemic theories as a modality in the practice of psychology.

16. The legislature recognizes those differences and requires specific education for each of the licenses issued under Chapter 491.

17. The uniqueness of marriage and family therapy as a distinct profession is an acceptance and integration of a systemic paradigm of thought. The professional marriage and family therapist sees the whole as greater than the sum of its parts and seeks to understand the interrelationship of the parts.

18. The education and training required for entry into the profession of marriage and family therapy provides socialization into the systemic framework of the profession, and the two years of supervised clinical experience is a part of that socialization process.

19. The Respondent alleges that it would not be appropriate for the Board to accept only teaching experience in lieu of coursework for an individual to meet the requirements a qualified supervisor.

20. The Board accepts various kinds of educational experiences as meeting the educational requirements of Rule 64B4-21.007(1)(d), including audited courses and externships from recognized clinics.

21. In requiring "qualified supervisors" to demonstrate education, as opposed to teaching experience, the Board seeks to establish a standard and fair evaluation procedure.

22. There is a standardization that has an element of fairness in a paper review in accepting a transcript from a regionally accredited institution as proof of the required education. The Respondent also alleges that accepting teaching experience as meeting the educational requirements of Rule 64B4-21.007 presents a daunting task and would amount to accreditation by the Board of courses taught by persons applicants seek to have approved as qualified supervisors.

## CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding, pursuant to Section 120.56(1), Florida Statutes (1997).

### Standard for Challenging Existing Rule

24. The 1996 amendments to the Administrative Procedures Act (APA) took effect on October 1, 1996. Section 120.56(1), Florida Statutes (1997), authorizes "[a]ny person substantially affected by a rule . . . [to] seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority."

25. Section 120.56(3), Florida Statutes (1997), authorizes a substantially affected person to "seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule."

26. Section 120.52(8), Florida Statutes (1997), defines "invalid exercise of delegated legislative authority" as:

> [A]ction which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:
>
> a. The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;
>
> b. The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;
>
> c. The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;
>
> d. The rule is vague, fails to establish adequate standards for agency decisions or vests unbridled discretion in the agency;
>
> e. The rule is arbitrary or capricious;
>
> f. The rule is not supported by competent substantial evidence; or
>
> g. The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

27. Section 120.536(1), Florida Statutes (1997), further

provides:

> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

28. Although Section 120.56(2), Florida Statutes (1997), places the burden on the agency to prove that a newly proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised, Section 120.56(3), Florida Statutes, regarding existing rules, transfers no such burden to the agency; thus, leaving Petitioner with the burden to establish the invalidity of an existing rule. Cortes v. State Board of Regents, 655 So. 2d 132, 135-136 (Fla. 1st DCA 1995).

29. Petitioner clearly is a substantially effected person. See generally Moorhead v. Department of Professional Regulation, Board of Psychological Examiners, 503 So. 2d 1318 (Fla. 1st DCA 1987). Therefore, Petitioner, in order to establish the invalidity of an existing rule, must present evidence that the rule is vague, fails to establish adequate standards for agency

decisions or vests unbridled discretion in the agency; or that Respondent promulgated this rule without thought or reason. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. den., 415 So. 2d 1359 (Fla. 1982).

30. In directing agencies to enact rules to implement statutory mandates, the legislature is not delegating to an administrative official the power to say what the law is, but rather the ability to execute the law "pursuant to and within the confines of the law itself." Brewer v. Insurance Commissioner and Treasurer, 392 So. 2d 593, 595 (Fla. 1st DCA 1981); see also Florida Beverage Corp. v. Wynne, 306 So. 2d 200 (Fla. 1st DCA 1975).

> "While executive branch agencies cannot usurp legislative prerogatives, 'rulemaking authority may be implied to the extent necessary to properly implement a statute governing the agency's statutory duties and responsibilities.' Fairfield Communities v. Florida Land and Water Adjudicatory Comm'n, 522 So.2d 1012 (Fla. 1st DCA 1988). 'An administrative agency must have some discretion when a regulatory statute is in need of construction in its implementation.' General Tel. Co. of Florida v. Marks, 500 So. 2d 142, 144 (Fla. 1986). An administrative rule by which an agency exercises such discretion, or which fails to extinguish the discretion a statute confers, is not invalid on that account."

Cortes v. Board of Regents, supra at 136-137.

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31. The applicable statute, pursuant to which the rule was

promulgated, is Section 491.005(3), Florida Statutes, which establishes the requirements for licensing as a Marriage and Family Therapist. The pertinent portion of this statute which pertains to who is a qualified supervisor, reads as follows:

> (3) Upon verification of documentation and payment of a fee . . . the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:
>
> * * *
>
> (b)1. Has a minimum of a master's degree with major emphasis in marriage and family therapy, or a closely related field, and has completed all of the following requirements:
>
> * * *
>
> d. A minimum of one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, . . . under the supervision of an individual who met the requirements for supervision under paragraph (c). . . .
>
> * * *
>
> (c) Has had not less than 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the postmaster's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. . . .

32. The contested paragraph within Rule 64B4-21.007, Florida Administrative Code, adopted in November of 1996, reads as follows:

> 64B4-21.007 Definition of "a Licensed

> Marriage and Family Therapist with at Least Five Years Experience or the Equivalent, Who is a Qualified Supervisor."
>
> (1) "A licensed marriage and family therapist with at least five years experience or the equivalent, who is a qualified supervisor," as used in Section 491.005(3)(c), Florida Statutes, is defined as an individual who, during the period for which the applicant claims supervisor, met one of the following:
>
> * * *
>
> (d) Was licensed as a psychologist, clinical social work, or mental health counselor in Florida, or in the state in which the supervision took place, and can document a minimum of six (6) semester or eight (8) quarter hours of graduate coursework in marriage and family systemic theories and techniques, and five (5) years of clinical experience in marriage and family therapy.

33. The rule must be weighed against its statutory authority, and then must be measured against the requirements of Section 120.52(8), Florida Statutes.

34. Section 491.005(3)(b) and (c), Florida Statutes, sets forth the educational and experiential requirements for licensure as a marriage and family therapist in the state of Florida. Among those requirements are not less than two years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least five years of experience, or the equivalent, who is a qualified supervisor as determined by the board.

35. Rule 64B4-21.007, Florida Administrative Code, defines "qualified supervisor," to include the equivalency requirements of "a licensed marriage and family therapist with at least 5 years experience." A licensed marriage and family therapist, to be licensed, must have demonstrated completion of six semester (or eight quarter) hours in marriage and family systemic theories.

36. From the evidence, it appears that the Board has determined that the same requirements must be met by supervisors of clinical practice in order to qualify under the statute. They have set forth this requirement in Rule 64B-21.007(1)(d) through the use of the term "document . . . graduate coursework. . . ."

37. Rule 64B4-21.007 implements the specific statutory authority specifically granted in Section 491.005(3)(c), and the use of the term "document . . . graduate coursework" does not enlarge, modify or contravene the statute.

38. In 1997, the legislature amended Section 491.005(3)(c), Florida Statutes, to require persons who intend to practice in Florida to meet the experience requirements of that section to register pursuant to Section 491.0045, Florida Statutes. The legislature did not amend the language with regard to who is a "qualified supervisor."

> When the legislature reenacts a statute, it is presumed to know and adopt the construction of the statute by the agency responsible for its administration, except to the extent that the new statute differs from prior constructions.

Cole Vision Corporation v. Department of Business and Professional Regulation, Board of Optometry, 668 So. 2d 404, 408-409 (Fla. 1st DCA 1997). The amendments to Rule 64B4-21.007 were adopted in November 1996, prior to the amendment of the statute. The legislature must be presumed to have adopted the Board's use the term in the rule.

39. In Florida East Coast Industries v. Department of Community Affairs, 677 So. 2d 357 (Fla. 1st DCA 1996), the court considered whether rule amendments to Chapter 9J5, Florida Administrative Code, the purpose of which were to "enunciate and clarify certain minimum criteria which shall be used to determine whether or not a comprehensive plan or plan amendment is in compliance," on the grounds that the rules were vague. Petitioner argued that the proper standard to determine vagueness was whether men of common intelligence could understand the rules. The Court rejected this standard on the grounds that the standard is properly applied to penal provisions, meaning a fine, penalty or confinement. The proper standard, as applied by the Court, is the customary standard of statutory construction. If words are not defined, they must be construed according to their plain and ordinary meaning, or according to the meaning assigned to the terms by the class of persons within the purview of the statute. Id. At 362.

40. The terms which Petitioner disputes in Rule 64B4-21.007 are "document" and "coursework." In the rule, the word

"document" is used as a verb. Webster's Ninth New Collegiate Dictionary, 1991 Merriam-Webster, Inc., defines "document" as follows: to furnish documentary evidence of, to provide with factual or substantial support for statements made. The rule, by use of this word, requires the applicants to prove that the supervisor has a minimum of six semester (or eight quarter) hours of "graduate coursework" in marriage and family systemic theories and techniques.

41. "Graduate coursework" is defined in relation to the statute it implements. Section 491.005(3)(b), Florida Statutes, requires the applicant for licensure to demonstrate completion of graduate coursework in dynamics of marriage and family systems, marriage therapy and counseling theory and techniques, and family therapy and counseling techniques. A supervisor who is qualified by licensure as a marriage and family therapist would have been required, on initial licensure, to demonstrate completion of graduate coursework in the statute courses. The meaning of the requirement to "document . . . graduate course" is to prove by documentary evidence having completed the identified coursework. The absence of one tense of the verb "to complete" does not change the requirement, or make it vague or ambiguous.

42. For the same reasons, the rule does not fail to establish adequate standards. By plain and ordinary its meaning, "document . . . graduate coursework" means to prove that one has taken the identified coursework. How that requirement must be

documented is not exclusively determined by the Board. That is left to the applicant (and his or her supervisor). The Board does exercise discretion in its adjudicatory determinations of whether the documentation is sufficient and can be the subject of Section 120.57(1) formal hearing. See Koger v. Department of Professional Regulation, Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling, 647 So. 2d 312 (Fla. 1st DCA 1997); See also Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So. 2d 515, (Fla. 1st DCA 1984). However, that exercise of discretion does not render the rule invalid.

43. The test for determining whether a proposed rule is arbitrary and capricious was "borrowed" from traditional analysis under the equal protection clause of the Fourteenth Amendment. As stated by First District Court of Appeals,

> Significantly, the same factors used to test the validity of a statute on the ground that it constitutes a violation of the equal protection clause, in cases in which the rational basis standard is applicable, apply as well to rule challenges at the administrative trial level. Agrico Chemical Co., 365 So. 2d at 762 ([T]he test of arbitrariness to be applied in a proposed rule challenge "is the same for the proposed rule as it would be for a statute having the same effect").

Florida League of Cities v. Department of Environmental Regulation, 603 So. 2d 1363 at 1367-8 (Fla. 1st DCA 1992). That test is whether the rule is unsupported by facts or logic or is unsupported by thought or reason. The new standard in Section

120.536(1), Florida Statutes, does not eradicate the reasonably related test, but instead narrows its scope. Section 120.52(8)(e) retained the requirement that a rule not be arbitrary or capricious, but changed the focus of the agency's action to whether the proposed rule is reasonably related to the law the proposed rule seeks to implement rather than whether the rule was reasonably related to the general purpose or legislative intent behind the agency's enabling statute. The House of Representatives Committee on Streamlining Governmental Regulations Final Bill Analysis and Economic Impact Statement, June 14, 1996, at page 25 states that the amendments to the APA were intended to overrule the case law holding that rules and regulations are valid so long as they are reasonably related only to the purpose of the enabling legislation; a specific statute must be implemented through the agency's general rulemaking authority.

44. The record establishes that Rule 64B4-21.007 is supported by facts and logic. The testimony of Dr. Lobnitz and Dr. Kelly demonstrates that it is reasonable and necessary to require education in the marriage and family systemic paradigm by a proposed "qualified supervisor." Even Petitioner's expert witness agreed that it would be inappropriate for the entire requirement to be met by teaching experience only. The Board accepts a variety of educational experiences as equivalent to "graduate coursework." Dr. Lobnitz testified as to the

difficulty involved in evaluating teaching experience to determine if that experience is equivalent to graduate study. In fact, the current rule places a lighter burden on "qualified supervisors" than the previous rule.

45. The rule is supported by logic and reason, and is reasonably related to the specific statutory charge to determine who is a qualified supervisor, and to ensure that marriage and family therapy interns receive the necessary training and professional socialization to become a member of the profession.

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46. Section 120.56(4), Florida Statutes, provides:

> Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

Enforcement of existing laws does not create new law, and does not constitute an agency statement that constitutes a rule. Security Mutual Life Insurance Company of Lincoln, Nebraska v. Department of Insurance, ___ So. 2d ___ , DCA Case No. 97-2399 (Fla. 1st DCA March 12, 1998).

47. It is the statutory duty of the Board to decide if a petitioner states a disputed issue of material fact. Section 120.569(2)(a), Florida Statutes, specifically directs

petitioners: "Except for any proceeding conducted as prescribed in Section 120.56, a petition or request for a hearing under this section shall be filed with the agency." The agency determines whether or not a hearing before the Division of Administrative Hearings is necessary: "If the agency requests an administrative law judge from the division, it shall so notify the division. . . . On the request of any agency, the division shall assign an administrative law judge. . . ." The agency determines if a request for an administrative law judge is proper.

48. Section 120.52(1), Florida Statutes (1997) defines "licensing" as the agency process respecting the issuance, denial, . . of a license or imposition of terms for the exercise of a license." Section 120.60, Florida Statutes (1997) governs the licensing process, and provides that the licensing process is subject to Sections 120.569 and 120.57, Florida Statutes. Section 120.60(3) provides that a notice of denial of an application for licensure must inform the applicant of ". . . any administrative hearing pursuant to Sections 120.569 and 120.57 . . . which may be available." Section 120.569(1), Florida Statutes (1997) provides, in pertinent part, that ". . . Section 120.57(1) applies whenever the proceeding involves a disputed issue of material fact."

49. It is the Board's province to make a determination of whether a disputed issue material fact exists. Rule 28-5.201(3)(a), Florida Administrative Code[1], establishes the

standards for agency review of a petition:

> (a) A petition may be denied if the petitioner does not state adequately a material factual allegation, such as a substantial interest in the Agency determination, or if the petition is untimely.

50. The only question for the Board is whether the statement is adequate, not whether the allegations can be proven, in order for the petition to be forwarded to the Division of Administrative Hearings for a formal hearing. See Greseth v. Department of Health and Rehabilitative Services, 604 So. 2d 530, at 532 (Fla. 4th DCA 1992) and Tuchman v. Florida State University, 489 So. 2d 133, 134-35 (Fla. 1st DCA 1986).

51. Whether the Board properly determined that the Petitioner has failed to raise a disputed issue of fact is an adjudicatory process governed by Chapter 120 and is the subject of an appeal to the First District Court of Appeal. This tribunal is without authority to rule on that issue. What constitutes a dispute of material fact or whether the Petitioner has adequately raised a disputed issue of material fact are different issues than who, by law, makes the initial determination.

52. By making the determination of whether a dispute of material fact has been raised, the Board is applying the law, not implementing it or interpreting it in the sense of Section 120.52(15), Florida Statutes. The Board is not prescribing law or policy; the law and policy exist in the statutes and the case

law interpreting the statutes. The law, not a Board policy, requires the Board to make this determination. If the applicant disagrees with the determination, the applicant is entitled to appeal that decision. This applicant has in fact appealed that decision.

53. None of the applicable provisions grant the Board authority to adopt rules concerning the hearing procedures in licensure issues. The Board is bound by the Uniform Rules promulgated by the Administration Commission pursuant to Section 120.54(5), Florida Statutes (1997). The adoption by the Board of a rule stating that petitioners who do not raise disputed issues of fact are not entitled to a hearing pursuant to Section 120.57(1), Florida Statutes, would not constitute implementation or interpretation of law or policy, nor would it prescribe law or policy or describe procedure or practice requirements.

FINAL ORDER

Based on the foregoing findings of fact and conclusions of law,

ORDERED that Petitioner has failed to demonstrate that Rule 59P-21.007, Florida Administrative Code, is an invalid exercise of delegated legislative authority, and the Petition is DISMISSED.

It is further,

ORDERED that Petitioner has failed to demonstrate that the Board's implementation of Section 120.569, Florida Statutes, is

an agency statement that constitutes a rule, and the Petition is DISMISSED.

DONE AND ORDERED this 21st day of May, 1998, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of May, 1998.

## ENDNOTE

1/ In 1997, Uniform Rules of Procedure were promulgated, which all agencies are required to adopt. Section 120.54(5), Florida Statutes. Rule 28-106.201(2) mandates that petitions for hearing involving disputed issues of material fact must contain a statement of all disputed issues of material fact. The suggestive language of the former rule, that the petition "should" state the facts disputed, has been replaced.

COPIES FURNISHED:

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## NOTICE OF RIGHT TO APPEAL

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 the notice of appeal with the Agency Clerk of the Division of Administrative Hearings 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 Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.