

RJM

FILED DATE - MAY 30 2013

Department of Health

By: *Maal Sauced*  
Deputy Agency Clerk

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

IRENE ACOSTA, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 DEPARTMENT OF HEALTH, BOARD OF )  
 CLINICAL SOCIAL WORK, MARRIAGE )  
 AND FAMILY THERAPY AND MENTAL )  
 HEALTH COUNSELING, )  
 )  
 Respondent. )

DOAH Case No. 12-1207

2013 APR 31 PM 12 05  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FILED

**FINAL ORDER**

THIS CAUSE came before the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on May 3, 2013, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to the Recommended Order and Respondent's Response to Petitioner's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B and C) in the above-styled case. Petitioner was neither present nor represented by counsel. Respondent was represented by Deborah Bartholow Loucks, Assistant Attorney General, Attorney at Law. The Board was represented by Elana J. Jones, Assistant General Counsel.

Upon review of the Recommended Order, the exceptions to the Recommended Order filed by Petitioner, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

## RULINGS ON PETITIONER'S EXCEPTIONS

Exception One. Petitioner's first exception is to the Finding of Fact set forth in paragraph 22, page 9, of the Recommended Order. The Board found that the finding was based on competent substantial evidence in the record and denied this exception on the grounds that the Board does not have the authority to reweigh the evidence or to judge the credibility of the witnesses.

Exception Two. Petitioner took exception to the Conclusion of Law set forth in paragraph 28 of the Recommended Order. Petitioner takes exception to the Administrative Law Judge (ALJ) making this a Conclusion of Law and asked the Board to view it as a Finding of Fact, which Petitioner argues was not based on competent substantial evidence in the record. The Board found that this paragraph is properly a conclusion of law and denied the exception because the Board agrees with the ALJ's conclusion of law.

Exception Three. Petitioner took exception to paragraph 31 of the Recommended Order. Petitioner states that her claim was not based on "some vague notion of due process" but on Section 120.60(5), Florida Statutes. Section 120.60(5), Florida Statutes, codifies due process rights in cases where the board or department is seeking to revoke, suspend, annul or withdraw a license; but because Petitioner relinquished her license, this statute does not apply. The Board denied the exception because it agrees with the ALJ's conclusion of law.

Exception Four. In her exceptions, Petitioner referenced paragraph 37 of the Recommended Order, and Section 120.560(5), Florida Statutes. The Recommended Order does not contain a paragraph 37; and there is no Section 120.560(5), Florida Statutes. The Board voted to deny this exception because it does not comply with Section 120.57(1)(k), Florida Statutes, that provides, in part, "an agency need not rule on an exception that does not clearly

identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

#### **FINDINGS OF FACT**

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated by reference herein.
2. There is competent substantial evidence to support the findings of fact set forth in the Recommended Order.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes (2012), and Chapters 456, and 491, Florida Statutes (2012).
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated by reference herein.

#### **RECOMMENDATION**

Upon a complete review of the record in this case, the Board determines that the Recommendation of the Administrative Law Judge that the Board deny Ms. Acosta's "Amended Emergency Motion to Reinstate Licensed Mental Health Counselor Intern License or for Alternative Relief" is accepted and the Motion is hereby DENIED.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 30<sup>th</sup> day of May, 2013.

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

Cindy Ritter for  
Sue Foster, Executive Director  
on behalf of Mary W. Bridgman, VICE- 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 FLORIDA DISTRICT COURT OF APPEAL IN THE 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 electronic mail to **Irene Acosta**, by sending same by electronic mail to her counsel of record, **Howard Hochman**, Law Offices of Howard J. Hochman, at hoch3333@aol.com; by electronic mail to: **Deborah B. Loucks**, Assistant Attorney General, deborah.loucks@myfloridalegal.com; and **Elana J. Jones**, Assistant General Counsel, Department of Health, elana\_jones@doh.state.fl.us; and by regular U.S. Mail to **Claude B. Arrington**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, on May 30, 2013.

Brygel Sanders

**Deputy Agency Clerk**