



### STATEMENT OF THE ISSUES

1. Whether Petitioner, Drew Breznitsky (“Petitioner” or “Mr. Breznitsky”), should be issued a license as a mental health counselor intern;
2. Whether Petitioner is unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of materials or as a result of any mental or physical condition pursuant to section 456.072(1)(z), Florida Statutes; and
3. Whether Petitioner is unable to practice as a mental health counselor intern with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance, in violation of section 491.009(1)(p), Florida Statutes.

### PRELIMINARY STATEMENT

On November 19, 2020, the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling (“Respondent” or “the Board”) notified Petitioner that his application for registration as a mental health counselor intern was denied through a Notice of Intent to Deny (“Notice”). The Notice was amended and, ultimately, stated that Respondent is not able to practice with reasonable skill, safety, or competence as a mental health counselor intern, pursuant to sections 491.009(1)(p) and 456.072(1)(z). Petitioner timely requested an administrative hearing to dispute the Board’s denial of his application, and on January 4, 2021, the Board referred this matter to DOAH for a formal administrative hearing. After granting one continuance, the undersigned issued a notice scheduling the final hearing for June 28 through July 2, 2021.

On June 21, 2021, Petitioner filed a Daubert Motion and/or Motion in Limine to Exclude Dr. Lawrence Wilson (“Motion in Limine”). The undersigned heard argument from both parties on the Motion in Limine.

After hearing the testimony of Dr. Wilson, reviewing the deposition of Dr. Abbas and weighing that testimony and the evidence offered in support of the Motion, the undersigned denied Petitioner's Motion in Limine.

The parties filed their Prehearing Stipulation which included stipulated facts. To the extent they are relevant, they have been incorporated into the Findings of Fact below.

On June 28, 2021, the hearing commenced as scheduled. At the final hearing, Petitioner testified on his own behalf and presented testimony from the following witnesses: Susan B. Deane, MS, LMHC, LMFT, QS; Jack Platt, Esquire; Dr. Duncan Bowen, Ph.D. (Expert); Greg Richer; Christopher Kissel; and Dr. Beth Mahoney, D.O. Petitioner's Exhibits 1, 2, 7 through 16, 18, and 20 through 33 were admitted into evidence without objection. Petitioner's Exhibits 3, 4 (pages 2 through 5), 6, and 19 were admitted into evidence over objection.

Respondent presented testimony from the following witnesses: Janet Hartman; Ashleigh Irving; Kimberly Simon; Liaqat Ali Abbas, M.D. (Expert); Lawrence Steven Wilson, M.D. (Expert); Dr. Alexis Polles, M.D.; and Dr. Dean Aufderheide (Expert). Respondent's Exhibits 1 through 16, 23 through 30, 32 through 43, 47 through 61, and 63 through 97 were admitted into evidence without objection. Respondent's Exhibits 17, 19 through 22, 31 through 36, and 41 were entered into evidence over objection.<sup>1</sup>

---

<sup>1</sup> Respondent's Exhibits 75 through 87 included credit card accounts showing alcohol purchases. The Exhibits were admitted subject to the Petitioner's hearsay objection. Respondent argued in its Proposed Recommended Order ("PROs") that during his deposition, Petitioner admitted that all the credit card account entries produced in response to requests for production were from his personal credit card accounts over which he had exclusive control and was sole signatory. In light of Petitioner's admission, the objections based on hearsay are overruled.

The seven-volume Transcript of the final hearing was filed with DOAH on August 10, 2021. At the conclusion of the final hearing, the parties requested 45 days to file PROs. The parties timely filed PROs, which have been carefully considered in preparation of this Recommended Order.

Unless otherwise indicated, all statutory references are to Florida Statutes (2020).

### FINDINGS OF FACT

#### Background

1. The Department is the state agency charged with regulating the practice of clinical social work in Florida, *see* § 20.43 and chs. 456 and 491, Fla. Stat. The Board is the state agency that implements and enforces regulations regarding the registration of mental health interns in the State of Florida.

2. Mr. Breznitsky is an applicant for licensure as a mental health counselor intern.

3. Mr. Breznitsky has a bachelor's degree in human services, and a minor in psychology. In March 2020, he earned a degree in counseling, with an emphasis in clinical mental health counseling, from Webster University. Petitioner's cumulative GPA upon graduation was 3.550. He also holds a master's degree in clinical mental health counseling and marriage and family therapy.

4. Mr. Breznitsky is the owner of Beachside Recovery Interventions and Consulting ("BRIC"), for which he has received positive online reviews for his work. BRIC provides interventions, peer support groups, educational seminars, human trafficking investigation, and expert witness services. As part of his position at BRIC, Mr. Breznitsky has testified as an expert witness in substance use, mental health assessment, and treatment services in six different counties in Florida. Mr. Breznitsky also provides services to the Brevard County Sheriff's Office Gang Unit, Drug Unit, and Sex Crimes

Unit. He sits on several task forces including the Brevard County Opioid Task Force, the Brevard County Human Trafficking Task Force, and the Brevard County Prevention Coalition.

#### Application Process

5. On May 18, 2020, Mr. Breznitsky submitted his application for registration as a mental health counselor intern to the Board.

6. On May 21, 2020, the Board informed Petitioner that his application was not complete and that additional documentation and information was needed related to prior disciplinary action and criminal history.

7. Mr. Breznitsky timely submitted the requested documentation and his application was completed on July 6, 2020, when the Board received official transcripts from Webster University. The Board obtains criminal history background screening for applicants in addition to any crimes disclosed by the applicant.

8. On August 6, 2020, pursuant to notice, Mr. Breznitsky appeared before the Board at a scheduled Board meeting.

9. Members of the Board questioned Mr. Breznitsky regarding his criminal and educational discipline history at the August 6, 2020, Board meeting. The Board, acting within their authority, passed a vote that required Mr. Breznitsky to appear at one of the next two board meetings, and to provide an evaluation from the Professional Resources Network (“PRN”) indicating that he is able to practice as a registered mental counselor intern with reasonable skill and safety.

10. On November 5, 2020, Mr. Breznitsky appeared before the Board at a Board meeting as instructed.

11. At the November 5, 2020, Board meeting, the Board voted to deny Mr. Breznitsky’s application for registration as a mental health counselor intern. On November 19, 2020, the Board filed its Notice in this matter.

12. It is undisputed that Mr. Breznitsky has met all requirements for licensure as a mental health counselor intern. However, there was a question about whether he could practice with reasonable skill and safety to patients.

Fact Witness Testimony

13. Petitioner presented multiple witnesses to attest to his ability to practice with reasonable skill and safety based upon personal observations and experience with Petitioner. The witnesses presented were familiar with working with him in various environments.

14. Jack Platt, a personal injury and criminal defense attorney, has been practicing law for more than 27 years. Mr. Platt represented Mr. Breznitsky in a criminal matter. Due to this representation, Mr. Platt has knowledge of Mr. Breznitsky's prior criminal issues.

15. Mr. Platt currently refers his criminal defense clients with substance abuse issues to Mr. Breznitsky to help them with seeking treatment and recovery. Mr. Breznitsky testifies in court on behalf of these clients to help redirect their sentences from incarceration to treatment.

16. While Mr. Platt does not socialize with Mr. Breznitsky, of most importance in this matter, he sees him in professional settings, including court. Mr. Platt credibly testified that he has never seen Mr. Breznitsky impaired by use of drugs or alcohol.

17. When asked if he believed that Mr. Breznitsky would pose a danger to the public health or safety and if he should be granted the ability to practice as a mental health counselor intern, Mr. Platt unequivocally testified that he didn't believe he would be a danger and that the profession would benefit from him being a part of it. Specifically, Mr. Platt testified that "Mr. Breznitsky gives these people these tools to deal with, not only the clients but the family. And he helps them move forward and become contributing members of society." Mr. Platt's testimony is credited.

18. Dr. Beth Mahoney, another witness familiar with Mr. Breznitsky in a professional setting, is a licensed medical doctor and has been practicing as a

psychiatrist for over 25 years. Dr. Mahoney's practice focuses on patients with addiction issues, trauma, and post-traumatic stress disorder ("PTSD"). Dr. Mahoney practices in the same building, and in collaboration, with Mr. Breznitsky. Mr. Breznitsky's business refers approximately four to five patients to Dr. Mahoney each month.

19. Dr. Mahoney sees Mr. Breznitsky at the office daily. They also interact and discuss patients. She has never seen Mr. Breznitsky impaired by use of drugs or alcohol, nor has she seen him do anything that would make her doubt his ability to be a mental health counselor intern. Moreover, Dr. Mahoney believes that he would be very good at practicing as a mental health counselor intern as he is able to evaluate patients quickly and get them the help they need. Dr. Mahoney's testimony is found to be credible.

20. Respondent has asserted that Dr. Mahoney has a financial interest in the success of Dr. Breznitsky being granted a license. However, the undersigned finds that the business relationship has no bearing on the issue of whether he is able to practice with competency or reasonable skill and safety. She credibly testified that she has never observed him impaired and she does not believe that he would pose a danger to others. In addition, she believes he would be an asset to the profession as a mental health counselor intern. Moreover, the referral relationship is currently with Mr. Breznitsky's company and it would not be impacted whether he is granted a license as he is not required to hold a license to continue the relationship.

21. Gregory Richter, who has served in law enforcement for approximately 20 years, created the "Coming Clean" documentary after the death of his brother from a drug overdose. Mr. Richter had interactions with Mr. Breznitsky both during the filming of the documentary and for showings, both locally and out of state, of the documentary after its completion. In addition to interactions related to the documentary, Mr. Richter has had social interactions with Mr. Breznitsky as well.

22. Due to the creation of the documentary, individuals with substance abuse issues request Mr. Richter's help. Mr. Richter recommends Mr. Breznitsky to these individuals.

23. Mr. Richter testified that he has never seen Mr. Breznitsky in a professional or personal setting impaired on drugs or alcohol, and does not believe he would be a danger to public health or safety should he be granted his registered mental health counselor intern license. Mr. Richter's testimony is found to be credible.

24. Susan Deane, licensed mental health counselor, a licensed marriage and family therapist, and a licensed qualified supervisor, also provides her services to BRIC.

25. Mr. Breznitsky interned with Ms. Deane during his graduate program, and she has been his mentor since that time. As part of her work with BRIC, Ms. Deane reviews and approves Mr. Breznitsky's substance abuse and mental health evaluations. Prior to signing any evaluation, Ms. Deane also discusses the patient and the evaluation with Mr. Breznitsky. The evaluation discussions routinely occur four to five times per week. Thus, Ms. Deane has many opportunities to assess his competency in the professional setting. She credibly testified that "he's extremely thorough." Ms. Deane would serve as Mr. Breznitsky's qualified supervisor if he is granted a license.

26. Christopher Kiesel is a private investigator who has focused primarily on criminal defense and due process investigations for approximately 10 years. Mr. Kiesel was instrumental in helping Mr. Breznitsky start the operation of BRIC and in helping him establish relationships with people he would need to perform his job effectively.

27. Mr. Kiesel works with Mr. Breznitsky on criminal defense cases when they share a common client. Mr. Kiesel has never seen Mr. Breznitsky impaired by use of drugs or alcohol. Mr. Keisel has never seen Mr. Breznitsky do anything that would make him doubt Mr. Breznitsky's ability to be a mental health counselor intern nor does he believe that if Mr. Breznitsky's



license was granted that he would be a danger to public health or safety. Mr. Kiesel's testimony is also credited.

28. Based on the testimony of five fact witnesses, there was no testimony of client care or attendance issues. There was no evidence of any incidents that would raise any concern that Petitioner was impaired in any way while working or in a personal setting.

29. The Board offered no witnesses or evidence to rebut the testimony of Petitioner's lay witnesses regarding any incidents that demonstrate Petitioner is unable to practice with reasonable skill and safety or whether he is competent to practice as a mental health counselor intern.

#### PRN Review

30. The Board directed Petitioner to undergo an evaluation with PRN to determine whether he is safe to practice with reasonable skill. Mr. Breznitsky contacted PRN as directed by Board. Petitioner first submitted to an intake interview with the PRN Intake Case Manager, Kim Simon. In addition to the intake interview, PRN obtained available information from the Board. After the intake interview, the intake team met to review and discuss Mr. Breznitsky's file. The members of the intake team included: Dr. Polles; William Jacobs, M.D (associate medical director); Delana Torrance (case manager supervisor); Ms. Simon (intake case manager); and Miranda Ivy (administrative support). Dr. Polles was the only member from the intake team who testified at the final hearing. Based on the review, the intake team was concerned that Mr. Breznitsky could be impaired and an independent evaluation was necessary. PRN then notified Mr. Breznitsky about the intake team's determination and he was given the names and contact information for three evaluators approved by PRN whom he could choose for the evaluation.

31. Petitioner selected Dr. Lawrence Wilson to perform the independent evaluation. A proper evaluation to diagnose an alcohol or substance use disorder requires obtaining a past history, current use information, and

validating information with objective testing. The intake interview and information provided to PRN from the Board was forwarded to Dr. Wilson, along with a letter which requested what was needed for PRN to make their determination regarding Petitioner's ability to practice safely.

32. The Board presented Dr. Wilson as an addiction medicine expert who evaluated Respondent. He is board-certified in addiction medicine. Dr. Wilson was a urologist until substance abuse impaired his ability to practice medicine, and he entered the PRN program. After successful completion of the PRN program, he pursued addiction medicine. He completed a two-year fellowship in addiction medicine at the Drug Abuse Comprehensive Coordinating Office (DACCO) in Tampa from 2010 to 2012. He worked at DACCO and eventually became its associate medical director. He currently serves as the CEO and medical director at Seven Summit Pathways, a private treatment facility in Tampa, which is a residential and outpatient medication-assisted substance abuse treatment facility. As the medical director of Seven Summit Pathways, he is responsible for patient's medical care. Dr. Wilson also routinely conducts evaluations for PRN.

33. Dr. Wilson has held teaching positions in addiction medicine at the University of Florida in the Department of Psychiatry, and in the Department of Psychiatry and Neurobiology at the University of South Florida. He is a certified medical review officer and is qualified to interpret laboratory test results for substances detected in laboratory test samples.

34. Mr. Breznitsky submitted to an in-office urine test, which detects the presence or absence of certain drugs and substances. The urine tests detect the presence of alcohol for 24 hours prior to testing and alcohol metabolites for two to three days after drinking. Mr. Breznitsky's test returned negative.

35. On September 18, 2020, Dr. Lawrence Wilson conducted an independent medical evaluation of Mr. Breznitsky. The evaluation included a

personal interview and examination of Mr. Breznitsky, and collection of hair and blood samples for forensic drug and alcohol analysis.

36. On October 2, 2020, Dr. Wilson's office collected another hair sample to perform a second drug test. The first hair sample, while being presumptively positive for cocaine, did not have sufficient hair in the sample for a definitive determination. The second hair test was positive for cocaine and cocaethylene.

37. Dr. Wilson's evaluation was based on his examination and interview; the reports on the three drug tests he performed on Respondent; the PRN intake information; interviews of witnesses identified by the Petitioner; a psychological report prepared by Petitioner's psychologist Dr. Eyring; and Petitioner's prescription for alprazolam,<sup>2</sup> a benzodiazepine.

38. Dr. Wilson diagnosed Mr. Breznitsky with alcohol use disorder of moderate to possibly severe based on his evaluation. He testified that Mr. Breznitsky consumed alcohol in larger amounts over a longer period of time than intended; his inability to control his alcohol use issues resulting in a failure to fulfill a major obligation at work; and his recurrent alcohol use in situations in which it was hazardous, i.e., driving while under the influence of alcohol. To support his opinion, he identified incidents from Mr. Breznitsky's past history but could not point to any incidents that

---

<sup>2</sup> The brand name for Alprazolam is Zanax.

demonstrated Mr. Breznitsky *is* unable to practice with reasonable skill and safety.<sup>3</sup>

39. Dr. Wilson's evaluation was provided to PRN upon completion and reviewed by the intake team to determine the best decision for public safety and Petitioner. Dr. Polles testified that Dr. Wilson addressed the intake team's concerns in his evaluation and his documented findings gave support to his final diagnoses and recommendations. PRN accepted Dr. Wilson's findings.

40. PRN provided a copy of Dr. Wilson's evaluation to Mr. Breznitsky. Petitioner disagreed with Dr. Wilson's findings and recommendations. Due to his dissatisfaction with Dr. Wilson's findings, Mr. Breznitsky was offered a second evaluation by another evaluator approved by PRN. However, Petitioner declined a second evaluation. Mr. Breznitsky was then offered alternative treatment solutions, which Mr. Breznitsky also declined. Based in part on Dr. Wilson's opinion and the intake team's review of Mr. Breznitsky's history, PRN determined Petitioner is not able to practice and is a serious danger to the safety and welfare of the public.

---

<sup>3</sup> Dr. Wilson testified that he based his decisions regarding his diagnosis on several factors that are based on incidents that occurred more than 10 years prior to his evaluation of Mr. Breznitsky. His testimony was as follows:

Q: ... You say that he uses in larger amounts or over a longer period than intended, what did you base that on?

A: Well, he's drinking large shots of 151 rum. He's drinking excessive amounts of alcohol.

Q: Can you tell me the last time he drank 151 rum?

A: No. And like I told you before it's moot.

Q: ... What major role obligations has he failed to fulfill?

A: He had issues in school, well, I don't know if he lost his employment. He certainly lost his job. He lost his occupation because he was arrested. ...

Q: In the last ten years, what major role obligations has he failed to fulfill?

A: Don't know.

Q... In the last ten years, when has he used in physically hazardous conditions?

A: Don't know.

41. By letter dated October 27, 2020, Dr. Polles communicated to the Board that Dr. Wilson diagnosed Mr. Breznitsky with alcohol use disorder, moderate to severe; stimulant (Cocaine Type) use disorder, mild to moderate; sedative hypnotic anxiolytic use, evaluate for use disorder; history of generalized anxiety disorder; and stressors including professional licensure, employment, and substance use. She further communicated that Dr. Wilson recommended a residential, partial hospitalization program with housing. Petitioner requested an agreement to intensive outpatient treatment. PRN denied the request.

Dr. Bowen's Testimony

42. Petitioner presented expert testimony of Dr. Duncan Bowen to refute Dr. Wilson's opinions. Dr. Bowen, a psychotherapist, is a licensed mental health counselor, the same professional license that Mr. Breznitsky would ultimately pursue. Dr. Bowen has been practicing for more than 40 years with experience in mental health and substance abuse issues. Dr. Bowen is not board-certified in addiction medicine or addiction psychiatry, and he does not hold the kinds of certifications Dr. Wilson holds. However, he has performed evaluations of licensed healthcare providers. In addition, Dr. Bowen has testified as an expert witness hundreds of times with the majority of those cases being for drugs, alcohol, and mental health issues. Dr. Bowen disagreed with Dr. Wilson's findings, including his conclusion that Mr. Breznitsky has a lifetime alcohol use disorder.

43. Dr. Bowen conducted an evaluation of Mr. Breznitsky. Dr. Bowen met with Mr. Breznitsky on three separate occasions for interviews, he considered documents that he received; conducted independent interviews with Mr. Breznitsky's colleagues; obtained past history; performed an in-office urine alcohol and substance screening test (Precision Plus Urinalysis - 13 Panel Screen); and conducted a Minnesota Multiphasic Personality Inventory-2 ("MMPI-2") personality test of Petitioner.

44. Dr. Bowen testified that the MMPI-2 test is one of the most researched inventories in the United States to determine an individual's personality traits and one of the most recognized tests within the legal system.

45. Dr. Bowen completed training on administering the MMPI-2 test and interpretation of its results. Additionally, Dr. Bowen's doctoral thesis involved the administration and interpretation of MMPI-2 test results. During his professional career, Dr. Bowen has administered the MMPI-2 thousands of times. The early part of his career involved administering and interpreting MMPI-2 results for applicants to the Brevard County Sheriff's Office to ensure that they were psychologically and emotionally fit to be sheriff's deputies. He currently routinely administers and interprets the MMPI-2 when he is working with clients with potential mental health or substance abuse issues.

46. Dr. Bowen collected the urine sample for the Precision Plus urine test. He performed the test by standing outside the office restroom with the door cracked while Petitioner was in the restroom. After collection of the sample, Dr. Bowen read the reactive panel on the specimen cup, which was negative for all substances. The Precision Plus test screens for alcohol ingestion within the previous 24 hours and cocaine for three days.

47. After the evaluation, Dr. Bowen concluded that "Mr. Breznitsky is not a danger to himself, children, or the community at large. He has the ability to make sound assessments and decisions in life matters. He is not a danger to clients with whom he may provide mental health or substance abuse counseling."

48. Similarly, at the final hearing, Dr. Bowen testified that in his opinion, Mr. Breznitsky would not be a danger to public health and safety and that he would be able to practice safely if he were granted his mental health counselor intern license.

49. The Board disputed the MMPI-2 validity and results. Dr. Aufderheide testified that Dr. Bowen's report did not indicate whether Dr. Bowen gave

Mr. Breznitsky required instructions on taking the test, and he disputed whether a mental health examination was performed prior to the test being administered.

50. However, Dr. Bowen testified that he conducted a mental health exam on Mr. Breznitsky and gave him the required instructions prior to administering the MMPI-2. Further, he testified that he made sure Mr. Breznitsky was alone in a secure room, with periodic monitoring, while the test was being conducted.

51. The Board disputed the results of the MMPI-2 because the results were reported as “marginally valid.” The Board suspected the report was “marginally valid” due to Mr. Breznitsky painting himself in a favorable light. The Board challenged Dr. Bowen’s testimony on the basis that he relied upon the results of the “marginally valid” MMPI-2. Dr. Bowen testified that when formulating his opinion, he took into consideration that the MMPI-2 results were “marginally valid,” but did not rely solely on the result in his evaluation of Mr. Breznitsky. Dr. Bowen testified that he considered the MMPI-2, his clinical observations during the evaluation, and his 30 years of experience working with drug, alcohol, and mental health clients to reach his conclusion that Mr. Breznitsky was safe to practice as a registered mental health counselor intern.

52. Respondent also challenged the urinalysis test conducted by Dr. Bowen on the basis that he collected a urine sample that was not physically “observed.” Dr. Polles questioned the results of the panel test used by Dr. Bowen and explained that the panel tests are screening tools, inaccurate, and not appropriate for independent evaluations for substance use disorders. The question raised was whether there was an opportunity for tampering with the test results without someone directly observing the production of the urine sample. Dr. Bowen credibly testified that the method he used to administer the test was standard industry practice among private practitioners. There was also no credible evidence offered at hearing to

demonstrate that Mr. Breznitsky tampered with the urine sample. The urinalysis test administered by Dr. Bowen returned negative for substances tested on that date and the results are accepted.

Dr. Polles' Testimony

53. Respondent offered the testimony of Alexandria Polles, M.D., the medical director and CEO of PRN. PRN is designated as one of the State of Florida's impaired practitioner programs. It serves as a consultant to the Florida Department of Health on matters of practitioner impairment. The mission of PRN is to protect public health, safety, and welfare. It oversees the process for evaluation of professionals referred to the program, if needed, and provides monitoring of recommended treatment.

54. Dr. Polles is certified by the American Board of Psychiatry and Neurology, the American Board of Addiction Medicine, and is a Fellow of the American Psychiatric Association. Dr. Polles has served on the faculty of the University Medical Center at the University of Florida, and at the Osteopathic School of Medicine in Hattiesburg, Mississippi. She has authored a number of peer-reviewed articles, contributed to texts, and given many lectures.

55. Dr. Polles testified that evaluators approved by PRN must have experience in the area of concern for the evaluation. Moreover, evaluators approved by PRN are required to attend an annual meeting to review what their evaluations must include.

56. Dr. Polles explained that in addition to the collection of information, PRN requested certain laboratory tests to assist in the evaluation, which included an "observed" urine test, a blood test for alcohol use, and a HairStat test.

57. "Observed" urine tests means that a healthcare provider actually observes urine directly collected in the specimen cup. Dr. Polles testified that "observation" prevents substitution or tampering with the specimen by the donor.



58. Dr. Polles did not evaluate Mr. Breznitsky, as she does not perform evaluations. Thus, her testimony does not offer a first-hand assessment of whether Mr. Breznitsky could practice as a registered mental health counselor intern with reasonable skill and safety. However, Dr. Polles accepted Dr. Wilson's conclusion that Petitioner is not safe to practice without treatment. She further testified that based on her training, alcohol use disorder is a lifetime illness.

Dr. Aufderheide's Testimony

59. Respondent also presented Dr. Aufderheide as an expert. Like Dr. Polles, he did not evaluate Mr. Breznitsky and offered no opinions related to whether he has any mental health or substance abuse disorders or whether Mr. Breznitsky could practice as a mental health counselor intern with reasonable skill and safety.

60. Dr. Aufderheide has been chief of mental health services with the Florida Department of Corrections for 17 years. Dr. Aufderheide ensures that all psychiatrists, psychologists, and mental health professionals are appropriately licensed and credentialed. He has been licensed as a psychologist in Florida since 1993, and is Board-certified in correctional psychology.

61. Dr. Aufderheide was offered as an expert in treating mental health practitioners for mental health disorders and substance abuse, and co-occurring morbidities.

62. Dr. Aufderheide's testimony focused in part on the MMPI-2 test administered by Dr. Bowen. Similar to Dr. Bowen's explanation, Dr. Aufderheide testified that the MMPI-2 is a psychological test that measures psychopathology, psychological and behavioral dysfunction, and personality traits. Dr. Aufderheide believes the MMPI-2 is not intended to be used by professionals to interpret mental status evaluations and other tests.

63. Although Dr. Aufderheide was concerned with the evaluation performed by Dr. Bowen, those concerns were persuasively addressed

through Dr. Bowen's testimony at the final hearing. Thus, the undersigned finds that Dr. Bowen's evaluation and conclusions are credited.

Dr. Abbas' Testimony

64. Dr. Abbas, a forensic toxicologist, testified at the hearing as well. He works for United States Drug Testing Laboratories (USDTL). USDTL tests biological samples for drugs, as well as alcohol biomarkers. Dr. Abbas was familiar with the testing of the urine sample provided by Mr. Breznitsky.

65. Dr. Abbas is currently the manager of the certification department that reports all the positive results reported out of USDTL's laboratory.

66. The parties stipulated to the validity of the two test results, i.e., the HairStat Specimen No. 7374951 (the hair test) and the PEth test (blood test), which were both processed by USDTL.

67. The PEth test uses a sample of dried blood.

68. Regarding the PEth test, Dr. Abbas' testimony was critical as it pertained to Dr. Wilson's opinion regarding the frequency and the last time Mr. Breznitsky consumed alcohol. Most important, his testimony rebutted Dr. Wilson's testimony pertaining to the ability to determine the frequency of consumption of alcohol during a specified time period. Specifically, he testified that "he could only report if the test is positive or negative. He could not state how much alcohol a person consumed in the last 28 days; he could not state how frequently a person consumed alcohol in the last 28 days; and he could not state the quantity a person consumed in the last 28 days."

69. Dr. Abbas determined that Petitioner's PEth test results were positive for phosphatidylethanol at 181 nanogram per milliliter. The PEth test results also referenced a confirmed cutoff of 20 nanograms per milliliter. The cut off is an industry-wide value that is used as a threshold, and any specimen measured at 20 and above is considered to be positive. The initial testing was done on a similar instrument that the confirmatory testing is done using liquid chromatography mass spectrometry.

70. Dr. Abbas further testified to the results confirmed by USDTL from Petitioner's second hair sample taken by Dr. Wilson's office. The results were reported positive as follows: 1) Benzoylecgonine: positive 524 pg/mg; 2) Cocaine: positive 2595 pg/mg; and 3) cocaethylene: positive 773 pg/mg.

71. Dr. Abbas explained that hairs are a reservoir matrix where drugs collect and degrade over time. Therefore, whenever a reservoir matrix is examined, you cannot pinpoint when somebody used it, how much they used it, and how often they used it. It simply reflects that an individual used a certain substance within the three-month period prior to collection and/or was exposed to it.

72. Dr. Abbas' ultimate conclusions from the test results for Mr. Breznitsky were that they were negative for: amphetamines, opiates, PCP, and cannabinoids. The results were presumptive positive for cocaine and were confirmed positive for: benzoylecgonine, cocaine, and cocaethylene.

#### Mr. Breznitsky's Testimony

##### Personal and Criminal Background

73. Mr. Breznitsky acknowledged that he has a criminal history and a past with substance use. His criminal history began more than 10 years prior to submitting his application for registration as a mental health counselor intern. The most recent criminal conviction involving alcohol, occurred in 2007.

74. Mr. Breznitsky's substance use, which contributed to his criminal history, stemmed from stress related, in part, to loss of key family members. He testified that his mother, grandmother, and grandfather died within a two-year time period. Due to the stress of the deaths, Mr. Breznitsky began drinking heavily. Following the separation from his long-time girlfriend of five years, Mr. Breznitsky began drinking more heavily on a daily basis. Petitioner subsequently had three Driving Under the Influence (DUI) arrests within an 18-month period. His first arrest occurred in April 2005. He was placed on probation, completed a DUI Level I course, and had a six-month

licensure suspension. Mr. Breznitsky's second DUI occurred in 2007. His third DUI occurred a few days after he posted bail from his second DUI and both cases were consolidated. Additionally, Mr. Breznitsky reported that, while in high school, he was arrested for Criminal Mischief while drinking alcohol.

75. In 2011, while still on probation, he was a passenger in a car driven by his friend who was pulled over. He was charged with a Violation of Probation ("VOP") for being out of the county and not informing his Probation Officer. There was no evidence offered at hearing that he was intoxicated or that alcohol was involved. He was arrested for the VOP offense and spent nine and a half months in prison.

76. There has been no subsequent involvement with law enforcement for DUI or involving alcohol since 2007.

77. Mr. Breznitsky has presented persuasive evidence that he has changed his life since his last known criminal offense. Mr. Breznitsky has owned BRIC for a number of years, and has received awards from the community for his work. Mr. Breznitsky has been married and has been approved to adopt his two children.

78. To the contrary, the Board did not present any competent substantial evidence of behavior that demonstrated Mr. Breznitsky has not been rehabilitated from his criminal past since his last criminal offense.

#### Mr. Breznitsky's Treatment History

79. Petitioner admitted that "he used cocaine when he drank alcohol; he never really experimented too much outside of that but ultimately just became a completely different person, and I drank to numb my emotions. I drank to cope with trauma; I drank to cope with depression, shame, guilt, family stuff, the loss of my mother." In 2009, Petitioner was required to complete a 12-month Residential program where he was treated for alcohol use disorder at Phoenix House in Ocala. Mr. Breznitsky eventually continued treatment at Phoenix House on a Partial Hospitalization Plan/Intensive

Outpatient Program basis, completing a total of 18 months of treatment. He was placed on five years' criminal probation and had his driving privileges suspended for five years with the requirement that he have an interlock device placed for six months once returning to driving. His treatment did not involve treatment with a psychiatrist nor was he prescribed psychotropic medications. While in treatment, he had an introduction to Twelve Step Recovery and attended Narcotics Anonymous meetings. Mr. Breznitsky remained sober during his 18 months at Phoenix House and continued to abstain from alcohol for approximately 3 to 4 years, after which time, abstinence from alcohol was no longer required as part of his treatment.

#### Mr. Breznitsky's Recovery Plan

80. Mr. Breznitsky testified that while in treatment, he focused on PTSD, depression, self-harm, and personal mental health recovery because those were the stressors that led to his alcohol use. He indicated that he regularly sees his therapist, checks in with his supervisors, maintains close friends, and ensures that he engages in self-care.

81. Additionally, at hearing, Respondent testified that he currently maintains his sobriety by regularly eating breakfast each morning, meeting with his pastor on a weekly basis, attending church on Sundays, regularly exercising, and using a sensory deprivation tank.

82. Dr. Aufderheide was asked to opine on whether Petitioner's recovery plan of attending church, regularly engaging with colleagues and close friends, surfing, exercising, and refuge recovery, would be recognized by the medical community. He did not offer an opinion regarding the efficacy of the treatment plan recommended by Dr. Wilson. However, he suggested that a recovery plan should include drug testing.

#### Ultimate Findings of Fact

83. In general, Dr. Wilson was concern with the frequency and amount of alcohol Mr. Breznitsky was consuming. His concerned stemmed from his belief that Mr. Breznitsky had recently drank with such frequency that it

would affect his ability to practice as a mental health intern with reasonable skill and safety. However, there was not sufficient competent substantial evidence to demonstrate that Mr. Breznitsky exhibited behavior to demonstrate he was impaired.

84. The positive test results for alcohol and coathelylene is significant. However, the positive test results alone do not prove Mr. Breznitsky is unable to practice safely as a registered mental health intern.

85. Dr. Wilson testified that he diagnosed Mr. Breznitsky with alcohol use disorder moderate to severe, because he believed Mr. Breznitsky consumed alcohol in larger amounts over a longer period of time than intended; his inability to control his alcohol use issues resulting in a failure to fulfill a major obligation at work; and his recurrent alcohol use in situations in which it was hazardous, i.e., driving while under the influence of alcohol. He also diagnosed him with cocaine-type use disorder of mild to moderate severity.

86. At the final hearing, Dr. Wilson maintained his opinion that Mr. Breznitsky was not safe to practice as a registered mental health intern based in part on his “suspicions that [Mr. Breznitsky’s] use was more recent than three months ago because now the three-month window has moved two weeks additional yet he’s still testing positive.”<sup>4</sup> In addition, they were based

---

<sup>4</sup> At the final hearing, Dr. Wilson testified regarding his suspicions on more than one occasion when formulating his opinion about Mr. Breznitsky’s ability to practice as a registered mental health intern. His testimony about his suspicions include, but are not limited to, the following:

Q: Yeah let’s take them one at a time and look at some of the comments that you made in those and what they were based on. Dimension 1, what was your conclusion there?

A: I felt he was at a moderate risk for being intoxicated based on the discrepancy between what he was telling me and the laboratory result of his PEth test. They were incongruent. And I believe I did not know for sure how much this gentleman was drinking. So I claimed he was at moderate risk, and I felt he was event at moderate risk for going through alcohol withdrawal if he keeps drinking based on the fact that they didn’t know how much he was drinking, but I knew he had a very high PEth test.”

in part on assumptions that were not proven at the hearing and more importantly, on facts that were based on incidents from Mr. Breznitsky's past history that occurred at least 10 years before his evaluation.

87. Dr. Wilson's opinions appeared to be influenced by his honest and genuine belief that Mr. Breznitsky would benefit from the care and treatment he could receive as a participant in PRN. He may well be correct. At best, he demonstrated that Mr. Breznitsky was not able to practice with reasonable skill and safety more than 10 years before his evaluation. However, the issue is not whether there is suspicion or a risk of Mr. Breznitsky being unsafe to practice, but rather the issue is whether he is unsafe to practice at this time. Nothing in the record demonstrated that Mr. Breznitsky was a danger while working with clients or patients. The evidence taken as a whole is not sufficient competent and substantial evidence that Mr. Breznitsky is now unable to practice as a registered mental health intern with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, or chemicals, or any other type of material, or as a result of any mental or physical condition.

#### CONCLUSIONS OF LAW

88. DOAH has jurisdiction over the parties and subject matter of this case, pursuant to sections 120.569 and 120.57(1).

89. Chapters 456 and 491, and Florida Administrative Code Rule 64B4-5 regulate mental health counseling.

90. Section 491.0045 establishes the requirements for licensure as a mental health counselor intern and provides that the Department "shall

---

Q: And, Doctor what about the cocaine use that was mentioned in there as well?

A: Well, I again, I know he was using cocaine. That's evident by the tests. He reported it. I did not know how often. I could not tell. My suspicion was this was not a --- his test result was more than likely due to multiple uses over a period of time, more than likely, but I had no knowledge to prove otherwise, but I was suspicious."

register” an applicant that satisfies the applicable provisions of sections 491.0045 and 491.005.

91. Pursuant to section 456.072(2), the Board has the authority to deny an application for registration as a mental health counselor intern upon finding a violation of any of the grounds for discipline contained in section 456.072(1).

92. Section 456.072(1) provides that certain acts shall constitute grounds for which disciplinary action may be taken. Section 456.072(1)(z) provides as follows:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(z) Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

93. Pursuant to section 491.009(2), the Board has the authority to deny an application for registration as a mental health counselor intern upon finding a violation of any of the grounds for discipline contained in section 491.009(1).

94. Section 491.009(1) establishes grounds for denial of a license or disciplinary action, as specified in section 456.072(2), including under section 491.009(1)(p):

Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance.

95. Section 456.003(1) establishes the Legislature's intent “that persons desiring to engage in any lawful profession regulated by the [Department]



shall be entitled to do so as a matter of right if otherwise qualified.” Section 456.003(2) further describes the Legislature's intent that such professions are regulated to preserve the public health, safety, and welfare.

96. Section 456.013(3)(c), provides:

In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.

97. The plain language of section 456.013(3)(c) authorizes the board to require that an applicant personally appear before the board.

98. Petitioner, as the license applicant, has the burden to prove by a preponderance of the evidence that he meets the requirements for certification in this licensing case. *See Dep't of Child. & Fams. v. Davis Fam. Day Care Home*, 160 So. 3d 854, 857 (Fla. 2015); *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996) (holding that an applicant for licensure has the burden to prove his entitlement to the license); § 120.57(1)(j), Fla. Stat.

99. Petitioner also bears the burden of demonstrating that he is entitled to licensure. *Dep't of Child. & Fams. v. Davis Fam. Day Care Home*, 160 So. 3d at 857; *Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d at 934 (“The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue.”).

100. A preponderance of the evidence is evidence that, more likely than not, tends to prove the proposition set forth by a proponent. *Gross v. Lyons*,

763 So. 2d 276, 289 (Fla. 2000). *See also Haines v. Dep't of Child. & Fams.*, 983 So. 2d 602, 606 (Fla. 5th DCA 2008).

101. In an application proceeding, while the ultimate burden remains with Petitioner to prove he meets the requirements for licensure, it is the Board's burden to prove the specific acts or violations which it alleges are grounds for denial and to produce competent, substantial evidence to support those reasons. *See M.H. v. Dep't of Child. & Fams.*, 977 So. 2d 755, 761 (Fla. 2d DCA 2008) (“Without question, an applicant for a license has the initial burden of demonstrating his or her fitness to be licensed. ... But if the licensing agency proposes to deny the requested license based on specific acts of misconduct, then the agency assumes the burden of proving the specific acts of misconduct that it claims demonstrate the applicant's lack of fitness to be licensed.”).

102. In Florida, licenses to practice are considered a privilege granted by the State, not a right. *See, e.g., Lescher v. Dep't of High. Saf. & Motor Veh.*, 985 So. 2d 1078, 1084 (Fla.2008); *Borrego v. Ag. for Health Care Admin.*, 675 So. 2d 666, 668 (Fla. 1st DCA 1996).

103. As an administrative agency, the Board has “particularly broad discretion in determining the fitness of applicants who seek to engage in an occupation in the conduct of which is a privilege rather than a right.” *Osborne Stern & Co.*, 670 So. 2d at 934 (citing *Osborne Stern & Co. v. Dep't of Banking & Fin.*, 647 So. 2d 245 (Fla. 1st DCA 1994) (Booth, J., concurring and dissenting)).

104. Based on the evidence offered at hearing, Petitioner met his burden of proof that he is able to practice as a registered mental health counselor intern with reasonable skill and safety.

105. There is not sufficient evidence in the record to find, by a preponderance of the evidence, that Mr. Breznitsky continues to have an alcohol use and substance use disorder such that he would be an immediate, serious danger to the public health, safety, and welfare.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling issue a final order granting Petitioner's application for registration as a mental health counselor intern, which may include conditions to ensure Petitioner's continued sobriety.

DONE AND ENTERED this 11th day of February, 2022, in Tallahassee, Leon County, Florida.



\_\_\_\_\_  
YOLONDA Y. GREEN  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of February, 2022

COPIES FURNISHED:

Timothy Frizzell, Esquire  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399

Robert Antonie Milne, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

Stephen B. Burch, Esquire  
Smith & Associates  
Suite 540  
709 South Harbor City Boulevard  
Melbourne, Florida 32901

John Benjamin Fricke, Esquire  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399

Kimberly Marshall, MPH, JD  
Executive Director  
Board of Clinical Social Work, Marriage  
and Family Therapy and Mental Health  
Counseling  
Department of Health  
4052 Bald Cypress Way, Bin C06  
Tallahassee, Florida 32399

Louise St. Laurent, General Counsel  
Department of Health  
4052 Bald Cypress Way, Bin C65  
Tallahassee, Florida 32399

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.