07-09-12

Department Of Health
Before the Tennessee Board for Professional Counselors,
Marital & Family Therapists and Clinical Pastoral Therapists

Petition For Declaratory Order
Notice of Hearing
And
Notice To Potentially Interested Persons

Johnnie Welch has filed a Petition for a Declaratory Order pursuant to Tenn. Code Ann. § 4-5-223 and the Rules of the Tennessee Department of Health Division of Health Related Boards, Tenn. Comp. R. & Regs. 1200-10-.11.

1. **Petitioner's Name:** Johnnie Welch, L.P.C.
P.O. Box 1506
Dyersburg, TN 38025

Docket Number: 17.39-117319A

2. **Petitioner's Attorney:** None

3. **Organization, if any, that the Petitioner represents:** None

4. **Statement of the facts that led to the filing of this petition:**

The petitioner is a Licensed Professional Counselor/Mental Health Service Provider (LPC/MHSP) licensed by the Board for Professional Counselors, Marital & Family Therapists and Clinical Pastoral Therapists (Board) and employed by the Tennessee Department of Correction (TDOC). TDOC recently made changes to its policy regarding the hiring of "Licensed Independent Practitioners" which excluded LPC/MHSPs from those recognized as "Licensed Independent Practitioners." TDOC has stated, through its attorney, that the exclusion of LPC/MHSPs from the list of "Licensed Independent Practitioners" is based on the TDOC legal office's opinion that LPC/MHSPs are limited in their ability to diagnose clinical disorders because T.C.A. §63-22-150, which defines the "[p]ractice of counseling as a mental health service provider" "effectively says that while the MHSP may do certain clinical assessment work (necessarily, by implication from the recognition of ability to 'diagnose and treat mental disorders that interfere with mental health,') the MHSP is not authorized to make diagnoses of 'pathological human behavior' on the basis of "clinical tests."

Petitioner disagrees with TDOCs understanding of the definition of the "practice of counseling as a mental health service provider" and exclusion of LPC/MHSPs from the list of "Licensed Independent Practitioners." He would like the Board to clarify the meaning of the statute.

5. **Summary of the relief the Petitioner is requesting, including the specific nature of the requested order and the conclusions the Petitioner would like the agency to reach at the conclusion of the declaratory process:**

The Petitioner is requesting that the Board conclude:

1) "that LPC/MHSPs are not limited from making DSM diagnosis because of their inability to use certain test[s];"
2) "that LPC/MHSP's are qualified to make a definitive clinical diagnosis" and that the Board state that 'LPC[/]MHSP[s] may make a definitive diagnosis of clinical pathology within the meaning of TCA 62-2-150;'"
3) "that LPC/MHSPs are recognized as independent mental health practitioners in Tennessee under current statutes and rules;"
4) "that treatment planning and evaluation is an ongoing process that continues throughout the counseling relationship;"
5) "Finally...that the ability to diagnose is not different for LPC/MHSPs and LCSWs [Licensed Clinical Social Workers]."

6. **Detailed outline and summary of the statutes or regulations that the agency is called upon to interpret or upon which it is to rule:**

Petitioner asks for clarification on the definition of the "Practice of Counseling as a Mental Health Service Provider" which is found in Tennessee Code Annotated §63-22-150(5) with cross reference to §63-22-150(1).
The statute reads:
Tenn. Code Ann. §63-22-150. Part Definitions

As used in this part, unless the context otherwise requires:

(1) "Appraisal activities" means selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, achievements or interests, which are used to understand, measure or facilitate such individual's normal human growth and development, but does not include the use of projective techniques in the assessment of personality, nor the use of psychological or clinical tests designed to identify or classify abnormal or pathological human behavior, nor the use of individually administered intelligence tests. Consistent with each counselor's formal education and training, licensed professional counselors may administer and utilize appropriate assessment instruments that measure and/or diagnose problems and/or dysfunctions within the context of human growth and development as part of the counseling process or in the development of a treatment plan;

(5) "Practice of counseling as a mental health service provider" means the application of mental health and human development principles in order to:

(A) Facilitate human development and adjustment throughout the life span;

(B) Prevent, diagnose, and treat mental, emotional or behavioral disorders and associated disorders that interfere with mental health; **(C)** Conduct assessments and diagnoses for the purpose of establishing treatment goals and objectives within the limitations prescribed in subdivision (1); and

(D) Plan, implement and evaluate treatment plans using counseling treatment interventions. "Counseling treatment interventions" means the application of cognitive, affective, behavioral and systemic counseling strategies that include principles of development, wellness and pathology that reflect a pluralistic society. Nothing in this definition shall be construed to permit the performance of any act that licensed professional counselors designated as mental health service providers are not educated and trained to perform, nor shall it be construed to permit the designation of testing reports as "psychological."

This language also appears in the Board rules, in the sections regarding "Definitions," Tenn. Comp. R. & Regs. 0450-01-.01(30), and the "Scope of Practice," Tenn. Comp. R. & Regs. 0450-01-.02(2).

7. **Statement of how the statute, rule, and/or order cited above specifically and directly produces and effect or result upon the Petitioner:**

Because he is an LPC/MHSP, Petitioner has been excluded from classification as a "Licensed Independent Practitioner" by TDOC and is therefore unable to obtain an employment position he desires.

A hearing has been scheduled for Friday, September 7, 2012, at 9 a.m. before the Tennessee Board for Professional Counselors, Marital & Family Therapists, and Clinical Pastoral Therapists in the Health Related Boards Conference Center at 227 French Landing, Nashville, Tennessee 37243.

The administrative Procedures Division Docket Number is 17.39-117319(A)

If you are interested in intervening or participating in this case in any way or think that you may be affected by the possible outcome of this case, you must file a Petition to Intervene pursuant to Tenn. Code Ann. §4-5-310 and Tenn. Comp. R. & Regs 1350-04-01-.12, stating your specific interest in the case and you legal position/argument regarding those interests. The Petition must be submitted in writing to:

Administrative Procedures Division
Office of Secretary of State of Tennessee
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243

A copy of the Petition must be mailed to Petitioner at the address above and to:

Johanna L. Barde
Assistant General Counsel
Tennessee Department of Health
Office of General Counsel
220 Athens Way, Metrocenter
Nashville, TN 37243
(615) 741-1611

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 12th day of July, 2012.

Submitted for publication by:

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Filed in the Department of State on July 12, 2012.

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