

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

HEALTH  
LINK  
Heather Coleman  
DATE 4-19-04

BOARD: Psychology  
CASE NUMBER: 1997-07030  
COMPLAINT MADE BY: E.B.  
COMPLAINT MADE AGAINST: Thomas Saunders, Ph.D.  
1315 Tusawilla Road, Suite 101  
Winter Springs, Florida 32708  
DATE OF COMPLAINT: April 7, 1997  
INVESTIGATED BY: Marjorie E. Diettel  
Orlando ISU  
REVIEWED BY: Richard J. Shoop  
RECOMMENDATION: Dismiss (4097)

**NOTICE OF DISMISSAL/CLOSING ORDER**

**THE COMPLAINT:** Complaint alleges that the Subject of the investigation violated Section 490.009(2)(i),(q),(s), (now at Section 490.009(1)(i),(w),(r) Florida Statutes), Florida Statutes, by willfully making or filing a false report or record; by violating any provision of Chapter 490 or 456, or the rules thereunder; and by failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance.

**THE FACTS:** This investigation was predicated upon receipt of a complaint from E.B. alleging that Saunders provided services to S.C., a resident of Pasadena Lodge Adult Living Facility, without E.B.'s authorization (E.B. stated that she was the legal guardian of S.C.) E.B.

alleged that she asked Saunders to stop providing services to S.C., but he continued to do so in spite of her request.

The Administrative Complaint that was filed in this case in September of 1997 contained three counts. The first count alleged that Saunders violated Rule 64B-19-18.008, Florida Administrative Code, because he relied on permission given by the administrative staff of Pasadena Lodge to provide treatment for S.C. The exact language of the rule, as quoted in the administrative complaint, states that "psychologists may not rely on permission from the administrative staff of a facility to perform evaluations or provide treatment to adults *who have not been declared legally incapacitated* but who, nonetheless, are unable to give informed consent for evaluation or treatment." (Emphasis added). However, a review of the investigative files indicates that S.C. had been declared legally incompetent by a circuit court judge a year prior to the allegations at issue in the case. Therefore, Rule 64B19-18.008, Florida Administrative Code, was not applicable to the facts of the case. Interestingly, while E.B. was appointed as the legal guardian of S.C., the guardianship order specially excluded E.B. from having the authority to make any decisions related to the health care of S.C. Therefore, Saunders did not have to seek authorization from E.B. prior to providing services to S.C. This then begs the question of who had the authority to make decisions regarding the health care of S.C. The guardianship order makes mention of a health care surrogate designated by an advance directive. However, it does not specifically state the name of the surrogate. Further, the Department was not able to find any evidence that a health care surrogate was ever appointed for S.C. The Department recently attempted to obtain the facility records for S.C., but the facility had closed down in 2002 and the location of the records was unknown. Since there is no evidence that a surrogate had been appointed for S.C., then the facility could give permission for Saunders to provide services to S.C. Therefore, there is no evidence that Saunders was in violation of Rule 64B-19-18.008, Florida Administrative Code. Whatever the case, Saunders did not have to obtain permission from E.B. prior to providing services to S.C., so Count One of the Administrative Complaint cannot be sustained.

Count Two of the Administrative Complaint alleges that Saunders willfully made or filed a false report or record because claims were billed to

Medicare for services provided to S.C. by licensed mental health counselors who were not directly supervised by Saunders at the time that they were performing the services billed to Medicare. Under Medicare guidelines, services provided to recipients by licensed mental health counselors can only be billed to Medicare under the name of a clinical psychologist if that clinical psychologist directly supervised the licensed mental health counselor at the time that these services were rendered. Direct supervision by a clinical psychologist is defined under Medicare guidelines as being physically present and immediately available throughout the time that the service is being performed by the licensed mental health counselor. Saunders admitted that he was not present at the time that the licensed mental health counselors provided therapy services to S.C. As to why he was not present, Saunders stated in a June 2002 letter that "[i]n my failure to stay current with the change in licensure law when the meaning of 'direct supervision' came to mean '...being physically [present] in the same building...' I *accidentally* violated that statute many times within a brief period *without knowing*." (Emphasis added). The key words in that statement are "accidentally" and "without knowing". In order to prove that Saunders violated Section 490.009(2)(i), Florida Statutes (1996), the Department would have to prove that Saunders willfully made a claim for payment knowing that the services rendered did not qualify for payment under Medicare because he did not directly supervise the licensed mental health counselors who provided the services that were billed for. The Department would be unable to prove this allegation by clear and convincing evidence because all the witness testimony indicated that Saunders did not know that he couldn't bill Medicare for those services. Further, Saunders fully reimbursed Medicare for all the services that were provided to S.C. by the licensed mental health counselors. This too shows a lack of intent on the part of Saunders to make or file a false report or record.

Count Three of the Administrative Complaint alleges that Saunders failed to meet the minimum standards of performance in professional activities. This count was based solely on the issues of not obtaining consent from E.B. and the improper billing. The Department could not prove that Saunders failed to meet the minimum standards of performance in professional activities for not obtaining consent from E.B. for the same reasons that Count One of the Administrative Complaint could not be

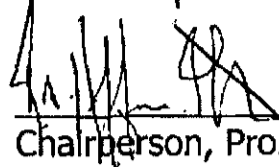
proven, that is E.B. did not have the authority to give consent for the therapy services. The issue of who did have that authority cannot be decided because there is no evidence indicating who did possess that authority. The facility asked Saunders and his employees to provide services to S.C. and it could very well have had the authority to do so. As for the improper billing issue, at least one court of law has held that the Department does not have the power to regulate the amount or nature of the details contained in billings to third party payors, so long as they are not fraudulent and do not disclose patient confidences. *See Kasdaglis v. Department of Health, 827 So.2d 328, 334 FN6. (4<sup>th</sup> DCA 2002).* As was mentioned above, there is no evidence that the billing in question was fraudulent because there is no evidence of intent on the part of Saunders to fraudulently bill Medicare for services rendered to S.C.

Therefore, based on the foregoing, the Department recommends that this case be dismissed based on the fact that, while there was probable cause to proceed with an Administrative Complaint at the time that probable cause was found, the additional information received by the Department after probable cause was found indicates that there is insufficient evidence to prove the violations alleged in the Administrative Complaint.

THE LAW: Pursuant to Section 456.073(2), Florida Statutes, the Department, pursuant to the provisions of Section 20.43(3), Florida Statutes, finds that, while there was sufficient evidence to prove that a violation may have occurred at the time that probable cause was found in this case, there is now insufficient evidence to prove that a violation of Chapter 490, Florida Statutes, or the rules promulgated thereunder has occurred.

It is, therefore, ORDERED that this matter should be and the same is hereby DISMISSED.

DONE AND ORDERED this 15 day of April, 2004.



Chairperson, Probable Cause Panel  
Board of Psychology

PCP Date: April 15, 2004  
PCP Members: Hoffman and Lewis

*Thomas Saunders, Ph.D., case no. 1997-07030*