

PLM

By: Heather Coleman  
Deputy Agency Clerk

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

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2003-26154  
License No. SW 1373

J. K. MCCARTHY-VERNER, L.C.S.W.,

Respondent.

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**FINAL ORDER**

This matter appeared before the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, at a duly-noticed public meeting on January 28, 2005, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes, pursuant to Respondent's election of rights. Petitioner has filed an Administrative Complaint seeking disciplinary action against the license. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Petitioner was represented by Kathryn Price, Assistant General Counsel, Florida Department of Health. Respondent was not present.

**FINDINGS OF FACT**

Based upon the admission of the factual allegations, the Board adopts as its finding of facts the facts alleged in the Administrative Complaint.

## CONCLUSIONS OF LAW

The conclusions of law alleged and set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the conclusions of law by the Board.

The violations set forth warrant disciplinary action by the Board.

### **THEREFORE IT IS ORDERED AND ADJUDGED:**

1. Respondent shall pay an administrative fine in the amount of \$1,500.00 to the Board within 30 days from the date this Final Order is filed. Payment shall be made to the Board of ~~Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, and mailed~~ to DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320.

2. Respondent shall be placed on probation for a period of 6 months. During this probation, probationer shall appear at the first meeting after probation commences, and the last meeting preceding termination of probation, and at such other time requested by the board. Respondent shall submit quarterly reports to include, brief statement of why practitioner is on probation, current practice location, description of current practice, brief statement of compliance with the probationary terms, and description of any problems. Respondent shall appear before the Board prior to termination of probation, at which time the Board can terminate probation, extend probation, or otherwise place terms on probation.

3. Respondent shall complete 12 hours of continuing education in risk management, to include record keeping, to be completed within one year of the date of this order.

**RULING ON MOTION TO ASSESS COSTS**

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$1584.44 to be paid within 30 days from the date of entry of this Order. Payment shall be made to the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, and mailed to DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

~~DONE AND ORDERED~~ this 3<sup>rd</sup> day of March, 2005.



SUSAN J. FOSTER, Board Executive Director  
for the Board of Clinical Social Work, Marriage and  
Family Therapy, and Mental Health Counseling

**NOTICE OF APPEAL RIGHTS**

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 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 U.S. Mail to **J. K. McCarthy-Verner, L.C.S.W.**, 3015 Hartley Road, #24, Jacksonville, Florida 32257; **John J. Sulik, Esq.**, 445 Pablo Point Drive, Jacksonville, Florida 32225; by interoffice mail to **Michael T. Flury**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Kathryn Price**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265  
this 4<sup>th</sup> day of March, 2005.

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*Shaunda Lewis*

**Deputy Agency Clerk**

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

V.

CASE NO. 2003-26154

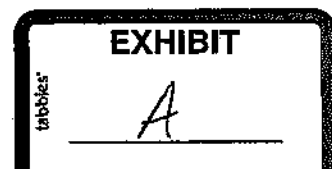
J. KAY VERNER, L.C.S.W.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling against Respondent, J. Kay Verner, L.C.S.W., and alleges:

1. Petitioner is the state agency charged with regulating the practice of licensed clinical social work pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 491, Florida Statutes.
2. Respondent is a licensed clinical social worker (L.C.S.W.) in the State of Florida, having been issued license number SW 1373 on June 6, 1983.
3. Respondent's address of record is 1136 Fruit Cove Road, Jacksonville, Florida 32259.
4. From on or around May 29, 2003 through on or around July 30, 2003, Respondent provided psychotherapy to K.L., the minor daughter of J.L.
5. On or around October 16, 2003, J.L. made a verbal request for a copy of the Respondent's treatment record for K.L.



6. On or around November 6, 2003, J.L. made a written request that Respondent's record of treatment for K.L. be provided to a subsequent treating psychiatrist.

7. On or around March 28, 2004, Respondent provided a written statement to the Department indicating that he did not have K.L.'s record of treatment, and that the records were lost during an office move.

8. To date, Respondent has not provided a copy of the records or a report of treatment in lieu of providing the records to J.L.

9. To date, Respondent has not provided a copy of Respondent's record of treatment for K.L. to the subsequent treating psychiatrist.

10. Respondent is a health care practitioner as defined by Section 456.001(4), Florida Statutes (2003).

11. Section 456.057(4), Florida Statutes (2003) provides:

4) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

12. Rule 64B4-9.002, Florida administrative Code provides, in relevant part:

**64B4-9.001 Requirements for Client Records.**

(1) A licensed clinical social worker, marriage and family therapist, or mental health counselor, including any registered intern or provisional licensee, shall maintain responsibility for all records relating to his clients as provided in §456.057, F.S. All such records shall remain confidential except as provided by law or as allowed pursuant to a written and signed authorization by the client specifically requesting or authorizing release or disclosure of records in his office or possession.

(2) A full record of services shall be maintained for 7 years after the date of the last contact with the client or user.

**COUNT ONE**

~~13. Petitioner re-alleges and incorporates paragraphs 1-11 as if fully set forth~~  
in this count.

14. Section 456.072(1)(cc), Florida Statutes (2003), provides that violating a provision of Chapter 456 is an act for which disciplinary action may be taken by the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling.

15. Respondent failed to provide to J.L., the legal representative of K.L., a copy of Respondent's record of treatment for K.L. upon J.L.'s verbal request in or around October 6, 2003 and failed to provide a report of treatment in lieu of providing the record to J.L.

16. Respondent failed to forward a copy of K.L.'s treatment record to a subsequent treating psychiatrist upon written request by J.L. on or around November 6, 2003.

17. Based on the foregoing, Respondent violated Section 456.072(1)(cc), Florida Statutes (2003), by violating Section 456.057(4), Florida Statutes (2003).

**COUNT TWO**

18. Petitioner re-alleges and incorporates paragraphs 1-12 as if fully set forth in this count.

19. Section 491.009(1)(t), Florida Statutes (2003), provides that violating a rule relating to the regulation of profession is an act for which disciplinary action may be taken by the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling.

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20. Respondent failed to maintain responsibility for the patient records of K.L. and failed to maintain the records for a period of seven years, when the records were lost during Respondent's office move, in violation of Rule 64B4-9.001, Florida Administrative Code.

21. Based on the foregoing, Respondent violated Section 491.009(1)(t), Florida Statutes (2003), by violating Rule 64B4-9.001, Florida Administrative Code.

WHEREFORE, the Petitioner respectfully requests that the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling to enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 9th day of June, 2004.

John O. Agwunobi, M.D., M.B.A.  
Secretary, Department of Health

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Heather Coleman  
DATE 6-10-04

By: Kathryn E. Price  
Kathryn E. Price  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar # 850860  
(850) 414-8126  
(850) 488-1855 FAX

~~Reviewed and approved by: [Signature] Date 6/10/04~~

PCP: June 3, 2004

PCP Members: Zalwany  
Shyers  
Adelju Kur-Ojo

DOH v. J. Verner, L.C.S.W.; Case Number 2003-26154

**NOTICE OF RIGHTS**

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

**NOTICE REGARDING ASSESSMENT OF COSTS**

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**CASE NO. 2003-26154**

**J. KAY VERNER, L.C.S.W.**

**Respondent.**

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**MOTION TO ASSESS COSTS  
IN ACCORDANCE WITH SECTION 456.072(4)**

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COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling (the Board) for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2003). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2003),<sup>1</sup> states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant to this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. Such costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the

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<sup>1</sup> Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. . . .

3. The investigation and prosecution of this case has resulted in costs in the total amount of one thousand, four hundred eighty three dollars and seventy-eight cents (\$1,483.78), based on the following itemized statement of costs:

Complaint:	\$ 72.57
Investigation:	915.64
Legal:	<u>495.57</u>
	\$1483.78

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of one thousand, four hundred eighty three dollars and seventy-eight cents (\$1,483.78), as evidenced in the attached affidavit.

4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of one thousand, four hundred eighty three dollars and seventy-eight cents (\$1,483.78), as supported by competent, substantial evidence. This assessment of

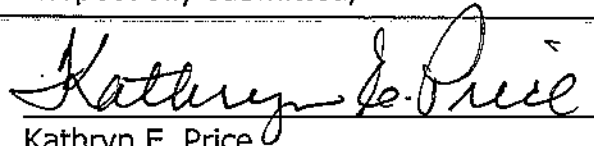
costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2004).

WHEREFORE, the Department of Health requests that the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling enter a Final Order assessing costs against the Respondent in the amount of one thousand, four hundred eighty three dollars and seventy-eight cents (\$1,483.78).

DATED this 4th day of November, 2004.

Respectfully submitted,

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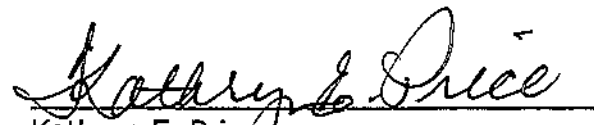


Kathryn E. Price  
Assistant General Counsel  
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4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar # 850860  
(850) 414-8126  
(850) 488-1855 FAX

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided by U.S. Mail to John J. Sulik, Esquire, 445 Pablo Point Drive, Jacksonville, Florida 32225-3259, this 4th day of November, 2004.

Respectfully submitted,



Kathryn E. Price  
Assistant General Counsel

## AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA  
COUNTY OF LEON:

**BEFORE ME**, the undersigned authority, personally appeared **CHARLENE G. WILLOUGHBY**, who was sworn and states as follows:

- 1) My name is Charlene G. Willoughby.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am the Investigation Manager for the Consumer Services Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than five years. My business address is 1580 Waldo Palmer Lane, Tallahassee, Florida 32308.
- 4) As Investigation Manager, my job duties include data base administration for the Time Tracking System. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting **DOH case number 2003-26154 (Department of Health v. J KAY VERNER, LCSW, are One thousand Four Hundred Eighty Three dollars and seventy-eight cents (\$1,483.78).**
- 6) The costs for **DOH case number 2003-26154 (Department of Health v. J KAY VERNER, LCSW** are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for **DOH case number 2003-26154 (Department of Health v. J KAY VERNER, LCSW, are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.**
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators and lawyers). A designated DOH employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time

worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

- 9) Charlene G. Willoughby, first being duly sworn, states that she has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of her knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Charlene G. Willoughby  
Charlene G. Willoughby, Affiant

State of Florida  
County of Leon

Sworn to and subscribed before me this 1 day of November, 2004,  
by Charlene G. Willoughby, who is personally known to me.

Mary R. Wilson  
Notary Signature



MARY R. WILSON  
MY COMMISSION # DD 313854  
EXPIRES: June 7, 2008  
Bonded Thru Budget Notary Services

Name of Notary Printed

Stamp Commissioned Name of Notary Public:

## Complaint Cost Summary

Complaint Number: 200326154

Complainant's Name: LEIFSEN, JOSEPH A

Subject's Name: VERNER J KAY MCCARTHI

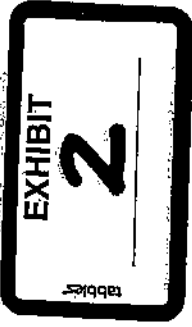
***** Cost to Date *****		
	Hours	Costs
Complaint:	1.50	\$72.57
Investigation:	13.40	\$915.64
Legal:	6.40	\$495.57
	*****	*****
Sub Total:	21.30	\$1,483.78
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
<b>Total Costs to Date:</b>		<b>\$1,483.78</b>





# Time Tracking Report

## Itemized Cost/Expense by Complaint



Complaint 200326154

Report Date: 10/29/2004

Record Type	Staff Code	Activity Hours	Staff Rate	Cost/Expense Amount	Cost/Expense Date	Cost/Expense Code	Cost/Expense Description
<b>BUREAU OF CONSUMER COMPLAINTS</b>							
Cost	HA11	1.50	\$48.38	\$72.57	10/28/2003	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
			SubTotal	\$72.57			
<b>BUREAU OF INVESTIGATIVE SERVICES</b>							
Cost	J181	0.70	\$68.33	\$47.83	02/09/2004	4	ROUTINE INVESTIGATIVE WORK
Cost	J181	2.80	\$68.33	\$191.32	02/09/2004	76	REPORT PREPARATION
Cost	J181	0.50	\$68.33	\$34.17	02/05/2004	4	ROUTINE INVESTIGATIVE WORK
Cost	J181	0.50	\$68.33	\$34.17	09/23/2004	6	SUPPLEMENTAL INVESTIGATION
Cost	J181	1.50	\$68.33	\$102.50	09/23/2004	58	TRAVEL TIME
Cost	J181	0.40	\$68.33	\$27.33	03/11/2004	6	SUPPLEMENTAL INVESTIGATION
Cost	J181	1.00	\$68.33	\$68.33	02/06/2004	4	ROUTINE INVESTIGATIVE WORK
Cost	J181	1.50	\$68.33	\$102.50	02/06/2004	76	REPORT PREPARATION
Cost	J181	1.00	\$68.33	\$68.33	04/05/2004	6	SUPPLEMENTAL INVESTIGATION
Cost	J181	1.00	\$68.33	\$68.33	03/10/2004	6	SUPPLEMENTAL INVESTIGATION
Cost	J181	1.00	\$68.33	\$68.33	09/21/2004	6	SUPPLEMENTAL INVESTIGATION
Cost	J181	1.00	\$68.33	\$68.33	09/21/2004	58	TRAVEL TIME
Cost	J181	0.50	\$68.33	\$34.17	03/24/2004	6	SUPPLEMENTAL INVESTIGATION
			SubTotal	\$915.64			
<b>BUREAU OF LEGAL SERVICES</b>							
Cost	HL54A	0.10	\$77.43	\$7.74	09/24/2004	59	LOCATING CASE FILE
Cost	HL54A	0.20	\$77.43	\$15.49	09/24/2004	1	ROUTINE ADMINISTRATIVE DUTIES
Cost	HL54A	1.00	\$77.43	\$77.43	10/27/2004	25	REVIEW CASE FILE



# Time Tracking Report

## Itemized Cost/Expense by Complaint

Complaint 200326154

Report Date: 10/29/2004

Record Type	Staff Code	Activity Hours	Staff Rate	Cost/Expense Amount	Cost/Expense Date	Cost/Expense Code	Cost/Expense Description
Cost	HL54A	0.30	\$77.43	\$23.23	05/04/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.40	\$77.43	\$30.97	06/14/2004	79	STIPULATION
Cost	HL54A	0.20	\$77.43	\$15.49	04/29/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.50	\$77.43	\$38.72	03/01/2004	25	REVIEW CASE FILE
Cost	HL54A	1.10	\$77.43	\$85.17	03/01/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.50	\$77.43	\$38.72	04/28/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.90	\$77.43	\$69.69	04/30/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.10	\$77.43	\$7.74	04/30/2004	33	TELEPHONE CALLS
Cost	HL54A	0.30	\$77.43	\$23.23	05/10/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.60	\$77.43	\$46.46	03/19/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAI
Cost	HL54A	0.20	\$77.43	\$15.49	07/29/2004		ROUTINE ADMINISTRATIVE DUTIES

**SubTotal** \$495.57

**Total Cost/Expense** \$1,483.78