

MARYLAND STATE BOARD OF
SOCIAL WORK EXAMINERS

v.

KRISTEN ALLEN, LCSW-C,
RESPONDENT
LICENSE No.: 17492

* BEFORE KRYSTIN J. RICHARDSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-BSW1-87-20-22607
* BSW No.: 2017-2374

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On February 24, 2020, the Maryland State Board of Social Work Examiners (Board) issued charges against Kristen Allen (Respondent) for failure to report suspected child abuse in violation of the Maryland Social Workers Act (Act). Md. Code Ann., Health Occ. §§ 19-101 through 19-407 (2014).¹ Specifically, the Board alleges that the Respondent failed to report suspected child abuse in violation of Health Occupations Article § 19-311 (5), (12), and (14) and § 5-704 of the Family Law Article, and failed to maintain adequate documentation in violation of Health Occupations Article § 19-311 (5), (6), and (20) and Code of Maryland Regulations (COMAR) 10.42.03.03(A)(5)(b) and 10.42.03.06(A)(7).

¹ Unless otherwise noted, all references to the Health Occupations Article hereinafter cite the 2014 Replacement Volume.

I held a hearing by video conferencing on March 24, 2021, April 19 and April 21, 2021. Md. Code Ann., Health Occ. § 19-312; COMAR 28.02.01.20B. The Respondent was present and was represented by Meghan K. Casey, Esquire, and Sarah M. Nyren, Esquire. Kelly Cooper, Assistant Attorney General, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for Board Hearings, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020), COMAR 10.42.04; COMAR 28.02.01.

ISSUES

1. Whether the Respondent, as a mandatory reporter, failed to report suspected child abuse to the local department of social services or to the appropriate law enforcement agency, in violation of Maryland Code Annotated, Health Occupations Article, Section 19-311(5), (12) or (14), or Maryland Code Annotated, Family Law Article, Section 5-704;
2. Whether the Respondent failed to maintain adequate documentation in violation of Maryland Code Annotated, Health Occupations Article, Section 19-311(5), (6), and (20), and COMAR 10.42.03.03A(5)(b) and 10.42.03.06A(7); and
3. If there were violations, what are the appropriate sanctions?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Board:

- Bd. Ex. 1 Complaint, dated July 7, 2017
- Bd. Ex. 2 Excerpts of Personnel Records from Catholic Charities, dated April 4, 2017

- Bd. Ex. 3 Treatment Records from Catholic Charities for L.B.² (Client), dated February 28, 2019
- Bd. Ex. 3A *Subpoena Duces Tecum* sent to Villa Maria, dated February 8, 2019
- Bd. Ex. 3B Telephone contact notes, dated June 2, 2014
- Bd. Ex. 3C Treatment Plans for the Client, dated February 21, 2017
- Bd. Ex. 3D 2017 Treatment session contact notes, dated April 18, 2017
- Bd. Ex. 3E 2016 Treatment session contact notes, dated December 29, 2016
- Bd. Ex. 3F 2015 Treatment session contact notes, dated December 29, 2015
- Bd. Ex. 3G 2014 Treatment session contact notes, dated December 30, 2014
- Bd. Ex. 3H 2013 Treatment session contact notes, dated December 31, 2013
- Bd. Ex. 4 Miesha Rice's Interview Transcript, dated October 5, 2018
- Bd. Ex. 5 The Client's Interview Transcript, dated October 9, 2018
- Bd. Ex. 6 Melissa Jenkin's Interview Transcript, dated October 29, 2018
- Bd. Ex. 7 Correspondence from the Respondent's attorney with attachments, dated July 6, 2018
- Bd. Ex. 8 Respondent's interview transcript, dated October 10, 2018
- Bd. Ex. 9 Correspondence from the Respondent's attorney, dated November 9, 2018
- Bd. Ex. 10 Respondent's interview transcript, dated March 19, 2019
- Bd. Ex. 11 Licensing information, dated February 10, 2020
- Bd. Ex. 12 Investigative information, dated November 30, 2018
- Bd. Ex. 13 Evaluation of Complaint for MBSWE, dated January 30, 2020
- Bd. Ex. 14 Curriculum Vitae of Dr. Carlton E. Munson, dated January 27, 2021
- Bd. Ex. 15 Charges Under the Maryland Social Workers Act, dated February 24, 2020

² The Client's initials are used to preserve confidentiality.

I admitted the following exhibits into evidence on behalf of the Respondent³:

- Resp. Ex. 8 Licensing Information of Respondent, dated February 10, 2020
- Resp. Ex. 9 Licensing Information of Melissa Jenkins, undated
- Resp. Ex. 14 Villa Maria Personnel Records for Respondent and Onboarding Materials, dated January 2, 2013
- Resp. Ex. 15 Villa Maria Personnel Records for Respondent – References, dated November 27, 2012
- Resp. Ex. 16 Villa Maria Personnel Records for Respondent – Training Logs and Transcript, dated July 12, 2013

Testimony

The Board presented the testimony of the following witnesses: Miesha Rice; L. B. (Client); Garcia Gilmore, Board Investigator; and Dr. Carlton Munson, whom I accepted as an expert in social work, generally accepted professional standards in the practice of social work, documentation in social work, and the reporting requirements for suspected child abuse.

The Respondent testified and presented the testimony of the following witness: Melissa Jenkins, LCSW-C, Villa Maria.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant, the Respondent was a licensed social worker in the State of Maryland. The Respondent was initially licensed on October 5, 2011. (Bd. Ex. 11.)
2. The Respondent was employed as a therapist by Catholic Charities, Villa Maria from January 2, 2013 through April 18, 2017. The Respondent was assigned to the Child and Family Services Division. (Bd. Ex. 2.)

³ Respondent Exhibits 1 through 7, 10 through 13, and 17 through 20 were not offered. Respondent Exhibits 21 and 22 were offered, but objections were made to their admission, which I sustained. I retained Exhibits 21 and 22 to preserve the record, but I did not consider them in rendering this Proposed Decision.

3. Between January 24, 2013 and April 18, 2017, the Respondent provided treatment to the Client for depression and anxiety. At times during her treatment, the Client brought her four-year-old grandson to her therapy sessions with the Respondent. (Bd. Ex. 3.)

4. Sometime in April 2016, the Client brought her grandson to her visit with the Respondent and asked the Respondent to look at a bruise on the child's elbow. The grandson told the Respondent the bruise occurred when he fell off his bike. The Respondent did not observe any other bruising on the child.

5. The Respondent found the bruise to be consistent with the activities of a four-year-old. Because the Client was anxious, the Respondent offered to contact her supervisor to alleviate the Client's concerns. The Respondent also provided the Client with contact information for Child Protective Services (CPS).

6. The Respondent did not document her inspection of the grandson's injury or her conversation with the grandson as to how the injury occurred.

7. Following her meeting with the Client, the Respondent conferred with her supervisor, who agreed with her assessment that the occurrence of the bruise was not reportable.

8. The Respondent did not document the contact with her supervisor regarding the Client's concerns. (Bd. Ex. 3, pg.169; Bd. Ex. 7, pp. 495, 496, Tr. 402.)

9. On April 13, 2016, the Client reported to the Respondent that the Client was anxious, worried, and scared about her grandson, who was no longer living with her. The Client further reported that she witnessed her daughter's boyfriend spank her grandson with an open hand on the child's bottom. During this visit, the Client expressed concern that the daughter's boyfriend was controlling and she worried about her daughter experiencing emotional abuse. (Bd. Ex. 3, pg. 186; Bd. Ex. 10, pg. 588.)

10. On April 18, 2016, the Client told the Respondent that the grandson likes the daughter's boyfriend because the grandson is a "good boy" and no longer gets in trouble. (Bd. Ex. 3, pg. 185.)

11. On June 2, 2016, the Client reported to the Respondent that she was experiencing multiple stressors, including an incident when she learned her grandson sustained a head injury requiring staples. The Client described being in a panic, speeding and running red lights to get to the grandson's home to transport him to the hospital, and being confronted by the police due to her poor driving. (Bd. Ex. 3, pg. 180.)

12. On September 4, 2016, the grandson died from injuries sustained from the Client's daughter's boyfriend.

13. On September 29, 2016, the Client advised the Respondent she was angry with everyone due to the tragic loss of her grandson. The Client expressed anger at the Respondent because she believed the Respondent should have called CPS when the Client showed the Respondent the bruise on the grandson's arm during the session that took place before his death. (Bd. Ex. 3, pg. 158.)

14. During the September 29, 2016 session, the Respondent reminded the Client that during the prior visit, the Respondent had inspected the bruise and asked the grandson how it occurred. The grandson said he received the bruise when he fell. The Respondent further noted that a therapist cannot report on every child that has a bruise, especially if the child does not report that the bruise occurred when someone injured them. (Bd. Ex. 3, pg. 158.)

15. On or about July 12, 2017, the Board received a complaint from a licensed social worker alleging that the Respondent failed to report the Client's belief that her grandson was being abused by her daughter's boyfriend. (Bd. Ex. 1.)

16. After receiving the complaint, the Board initiated an investigation.

DISCUSSION

Legal Framework

In this matter, the Board has the burden to demonstrate by a preponderance of the evidence that the licensee has committed the alleged violations of the Act. COMAR 10.42.04.06C(2). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002)

The grounds for probation, reprimand, suspension, or revocation of a license, under the Act, include the following:

Subject to the hearing provisions of § 19-312 of this subtitle, the Board may deny a license to any applicant, fine a licensee, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

...

(5) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of social work;

(6) Violates any provision of this title or regulations governing the practice of social work adopted and published by the Board;

...

(12) Fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file the report;

...

(14) Fails to report suspected child abuse or neglect in violation of § 5-704 of the Family Law Article;

...

(20) Fails to maintain adequate patient records;

Health Occ. § 19-311(5), (6), (12), (14), and (20).

Section 19-311(14) of the Health Occupations Article explicitly references Family Law § 5-704, which includes the following requirements:

(a) Notwithstanding any other provision of law, including any law on privileged communications, each health practitioner, police officer, educator, or human service worker, acting in a professional capacity in this State:

(1) who has reason to believe that a child has been subjected to abuse or neglect, shall notify the local department or the appropriate law enforcement agency; and

(2) if acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, shall immediately notify and give all information required by this section to the head of the institution or the designee of the head.

...

(c) Insofar as is reasonably possible, an individual who makes a report under this section shall include in the report the following information:

(1) the name, age, and home address of the child;

(2) the name and home address of the child's parent or other person who is responsible for the child's care;

(3) the whereabouts of the child;

(4) the nature and extent of the abuse or neglect of the child, including any evidence or information available to the reporter concerning possible previous instances of abuse or neglect; and

(5) any other information that would help to determine:

(i) the cause of the suspected abuse or neglect; and

(ii) the identity of any individual responsible for the abuse or neglect.

Md. Code Ann., Fam. Law § 5-704 (2014 & Supp. 2016).

The pertinent regulations provide as follows:

Responsibilities to Clients.

A. The licensee shall:

...

(5) Maintain documentation in the client's record which:

(b) Accurately reflects the services provided, including treatment plans, treatment goals, and contact notes;

COMAR 10.42.03.03A(5)(b).

And:

Standards of Practice.

A. Professional Competence. The licensee shall:

...

(7) Document and maintain appropriate and accurate records of professional service, supervision, and research work;

COMAR 10.42.03.06A(7).

The Merits of the Case

Based upon the evidence presented, I do not find the Respondent failed to report suspected abuse as required by Health Occupations § 19-311 (5), (12), (14) and Family Law § 5-704. The Respondent exercised professional judgment in assessing the matter. The Respondent had a long-term professional relationship with the Client and became well-acquainted with the grandson, who frequently attended therapy sessions with the Client. As indicated above, section 5-704 of the Family Law Article requires a mandatory reporter, in their "professional capacity" if the professional "has reason to believe that a child has been subjected to abuse or neglect," to report the suspected abuse or neglect to certain identified entities. As a social worker that provides mental health services, it is in the professional domain of the Respondent to make assessments and evaluate information. Here, the Respondent gathered information from the

Client, physically inspected the bruise, and asked questions of the grandson. She exercised professional judgment based on her training and experience.

The initial complaint in this matter arose from statements made by the Client during a grief counseling session after the death of her grandson. The grandson died as a result of child abuse inflicted by the Client's daughter's boyfriend. Miesha Rice, a licensed clinical social worker, provided grief support to the Client through the Family Bereavement Center of the Baltimore City State's Attorney's Office between May and June 2017. According to Ms. Rice, the Client said she informed the Respondent that the grandson was being abused one month prior to his death. Recognizing that the Respondent, a licensed social worker, is a mandatory reporter, Ms. Rice notified the Board.

At the hearing, Ms. Rice testified that the Client's statements to her regarding the Respondent's observation of the marks on the grandson's arms, and possibly fingerprints on his neck, required the Respondent's mandatory reporting of suspected child abuse to CPS. Tr. 30.

Garcia Gilmore, Board Investigator, testified that after receiving the June 17, 2017 complaint, he proceeded to investigate the matter, including subpoenaing the Client's treatment records from Villa Maria. Mr. Garcia conducted interviews, under oath, of Ms. Rice, the Client, Melissa Jenkins, the Respondent's then supervisor, and the Respondent.

Mr. Gilmore's interview with the Client was brief. He acknowledged that at no time did he ask the Client to describe the marks on the grandson that were viewed by the Respondent. He also conceded that he did not ask the Client what she said when presenting the marks to the Respondent. Tr. 292.

Mr. Gilmore also testified regarding his interview of the Respondent. He explained that he asked the Respondent several times if the Client presented other marks on the grandson

besides the elbow. Mr. Gilmore testified that the Respondent was consistent in stating that the Client did not present any other markings to be assessed.

The Client testified at the hearing. When asked if she remembered what month and year she presented the elbow bruise to the Respondent, the Client testified: "It was definitely 2016. I want to say it was August." Tr. 59. The Client further testified that she showed the Respondent bruises to the grandson's jaw and arm. Additionally, the Client testified that she asked the Respondent to look at the bruises. The Client recalled "being concerned and asking what [the Respondent's] opinion was about him being abused." Tr. 63. The Client did not remember any discussion with the Respondent regarding CPS.

Dr. Munson testified at length regarding mandatory reporters, professionals who must report child abuse if they have reason to believe so. Dr. Munson reviewed the treatment notes authored by the Respondent and concluded the Respondent violated Family Law section 5-704 by failing to report the abuse of the grandson. Tr. 126; 202.

Upon additional questioning, Dr. Munson acknowledged that the guidelines from the Maryland Department of Human Services state mandatory reporters should utilize professional judgment and knowledge to evaluate any suspicion. Tr. 169. In his testimony, Dr. Munson agreed that a social worker does not automatically report every bruise presented to them and that reporting depends on the situation and context. Tr. 184; 188.

Dr. Munson opined that while the Respondent's documentation of treatment sessions with the Client generally met acceptable standards, there were instances when the Respondent did not appropriately document her interactions and inquiries with the grandson. Most notably, there was no documentation of her assessment of the grandson's bruised arm.

The Respondent testified that she began treating the Client for anxiety and depression as soon as she started her tenure at Catholic Charities in January 2013. Tr. 378. The Respondent recalled that the Client asked her to assess a bruise on the grandson's arm in April 2016. The Respondent testified that she remembered seeing the bruise before the June 2016 incident when the grandson had a head wound sutured, and her observation of the grandson's bruise was close to her licensure exam on April 19, 2016. Tr. 385.

The Respondent testified that when she asked the grandson about the bruise to his arm, the grandson's response did not raise any suspicion. Specifically, the grandson indicated the bruise occurred from falling off a bike. The Respondent concluded it was an age-appropriate bruise. The Respondent also testified that she did not see any bruising on the grandson's jaw or neck area. Tr. 402.

The Respondent testified that during the treatment session on April 13, 2016, the Client was anxious and concerned about the grandson because the Client saw her daughter's boyfriend spank the grandson with an open palm to the child's buttocks. The Respondent determined such an incident would not constitute abuse in Maryland. Tr. 411-414. At a therapy session on April 18, 2016, the Respondent documented that the Client stated the grandson likes his mother's boyfriend and that the grandson is a "good boy" that does not get into trouble anymore. Tr. 417.

On June 2, 2016, the Client reported being overwhelmed by multiple issues, including having to drive the grandson to the hospital for a head wound. The Client's explanation of how the head wound occurred raised no concerns of child abuse for the Respondent. Tr. 421-423. The Respondent testified that she did not suspect abuse and focused on the Client's high anxiety of having to drive the grandson to the hospital.

The Respondent had interactions with the grandson over a period of years and utilized her professional training and experience to make a professional determination as to how the arm bruise occurred. With such frequent interactions with the Client and the grandson, the Respondent could appropriately assess the information presented to her and clarify any concerns. Although Dr. Munson opined the occurrence constituted a reportable incident, he also indicated that professional judgment should be exercised and that such matters do not occur in a vacuum.

Based on the testimony presented, I conclude that the Respondent assessed the situation and all information provided, utilizing her professional judgment. Further, I conclude that the Respondent contacted her then-supervisor to discuss both the bruise and the Respondent's decision not to report because she suspected no abuse had occurred. Both the Respondent and Ms. Jenkins testified credibly that they discussed the grandson's bruise, the Respondent's assessment, and whether the Respondent should have contacted CPS. Exercising professional judgment, the Respondent was reasonable in not suspecting child abuse. It has not been established by a preponderance of the evidence that a violation of Health Occupations § 19-311(5), (12), (14) and Family Law § 5-704 occurred.

Based upon the testimony and evidence presented, I find that the Respondent failed to maintain adequate and appropriate documentation. There is a discrepancy as to when the Client believes she presented the bruise on the grandson's arm to the Respondent. The Client testified she believed it was in August, but she was equivocal on this point. Although the Respondent documented an August session in her treatment notes, there is no mention of the bruise in those notes. The Respondent testified credibly that her assessment of the injury happened in April 2016, providing context that it was near her licensure exam and before the grandson suffered a head wound, which occurred in June 2016. Ms. Jenkins testified that she communicated with the

Respondent regarding the bruise but could not provide a date. I find it more likely than not that the Respondent observed the child's bruise in April 2016.

However, independent of whether the bruise was observed in April or August 2016, the Respondent failed to document her assessment of the injury and contact with her supervisor in violation of Health Occupations § 19-311(5), (6), and (20), and COMAR 10.42.03.03A(5)(b) and 10.42.03.06A(7).

Sanctions

The Board may impose disciplinary sanctions and/or a monetary penalty against a licensee who is found to have violated the Act. Health Occ. §§ 19-311, 19-311.1; COMAR 10.42.03.07, COMAR 10.42.09.03. The Board's regulations contain a matrix of sanctions in COMAR 10.42.09.04, factors to be taken into account when assessing a monetary penalty in COMAR 10.42.04.11D,⁴ and considerations that may mitigate or aggravate otherwise appropriate sanctions in COMAR 10.42.09.05. The Board is seeking a disciplinary sanction of a Reprimand, a suspension of license for a minimum of two years, the completion of an ethics course within one year of the final order, and that the Respondent be required to pay a fine of \$500.00 due within one year of the final order. The Board also recommended that the Respondent bear responsibility for all costs associated with the hearing pursuant to COMAR 10.42.04.12.

Because I find that the Respondent did not violate Health Occupations § 19-311 (5), (12), (14) and Family Law § 5-704 by failing to report abuse, I will recommend a lesser sanction than that sought by the Board. I have considered the mitigating and aggravating factors noted in the regulations and believe a proper sanction for the Respondent's violation to be the disciplinary

⁴ A licensee who is found to have violated the Act is liable to pay costs, Health Occ. § 19-312(f), COMAR 10.42.04.12, which also is taken into account when determining a monetary penalty under this regulation.

imposition of a Reprimand and that she be required to take a documentation course within one year of the Order issued in this matter.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent, as a mandatory reporter, did not fail to report suspected child abuse to the local department of social services or the appropriate law enforcement agency. Md. Code Ann., Health Occ. § 19-311(5), (12), and (14) (2014); Md. Code Ann., Fam. Law § 5-704 (2019).

I further conclude as a matter of law that the Respondent failed to maintain adequate patient records. Md. Code Ann., Health Occ. § 19-311(5), (6), (20) (2014); COMAR 10.42.03.03A(5)(b) and 10.42.03.06A(7).

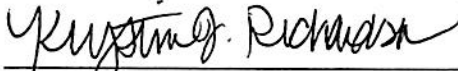
I further conclude that the Respondent is subject to a disciplinary sanction of a Reprimand and is required to take a documentation course within one year of the Order for the cited violations. *Id.*; COMAR 10.42.03.07; COMAR 10.42.04.11; COMAR 10.42.09.03-.05.

PROPOSED ORDER

I **PROPOSE** that charges filed by the State Board of Social Work Examiners against the Respondent on February 19, 2019, be **UPHELD** in part and **DISMISSED** in part.

I further **PROPOSE** that the Respondent be subject to a Reprimand and be required to take a documentation course within one year of the Order for the cited violations.

July 9, 2021
Date Decision Issued



Krystin J. Richardson
Administrative Law Judge

KJR/dlm
#193119

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the State Board of Social Work Examiners within fifteen (15) days after issuance of this decision. COMAR 10.42.04.06D. Within ten (10) days of the filing of exceptions, the opposing party may file an answer. *Id.* The Board will review timely exceptions prior to rendering the final agency decision. Md. Code Ann., State Gov't. §§ 10-216, 10-221 (2014 & Supp. 2020); COMAR 10.42.04.06D-E. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Kristen Allen, LCSW-C
42292 Jessica Farm Terrace
Ashburn, VA 21048

Meghan K. Casey, Esquire
Gallagher, Evelius & Jones, LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

Sarah M. Nyren, Esquire
Gallagher Evelius & Jones
218 North Charles Street, Suite 400
Baltimore, MD 21201

Kelly Cooper
Assistant Attorney General
Administrative Prosecutor
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Rosalind Spellman, Administrative Officer
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Gerard M. Farrell, Chair
Maryland Board of Social Work Examiners
4201 Patterson Avenue
Baltimore, MD 21215

Stanley E. Weinstein, Executive Director
Maryland Board of Social Work Examiners
4201 Patterson Avenue
Baltimore, MD 21215

Delia Schadt, Board Counsel
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Ron Pringle, Executive Associate
Maryland Department of Health
Office of the Secretary
Operations Administrative Support/PRGA
201 West Preston Street
Baltimore, MD 21201

Nicholas Johansson, Principal Counsel
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

RECEIVED
OFFICE OF ATTORNEY GENERAL
JUL 13 2021