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IN THE SUPREME COURT OF FLORIDA

JUDITH SHARON ABRAMSON,

Petitioner,

vs. CASE NO. 81,230

THE FLORIDA PSYCHOLOGICAL ASSOCIATION and PARKE FITZHUGH,

Respondents.

CAROL SEIDMAN,

Petitioner,

vs. CASE NO. 81,248

THE FLORIDA PSYCHOLOGICAL ASSOCIATION and PARKE FITZHUGH,

Respondents.

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RESPONDENTS' ANSWER BRIEF

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INTRODUCTION

Carol Seidman, a Defendant below, and Judith Sharon Abramson, a Defendant below, will be referred to collectively as Petitioners and, alternatively, by name. The State of Florida, Department of Professional Regulation, a Defendant below, will be referred to herein as D.P.R. The Board of Psychological Examiners, a Defendant below, will be referred to herein as the Board. The Florida Psychological Association and Parke Fitzhugh, the Plaintiffs below, will be referred to collectively as Respondents and alternatively, by name.

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STATEMENT OF THE CASE AND OF THE FACTS

Because Petitioners' statement of the case and of the facts omitted certain material facts and misstated others, it is necessary for Respondents to present their own statement.

This action was instituted by the Florida Psychological Association, an association composed of licensed psychologists, to require Petitioners and others to meet the minimum educational requirements set forth in Section 490.005 (1)(b), Florida Statutes (1989) before being licensed as psychologists (R. 86). The Florida Psychological Association brought this action on behalf of its collective and individual membership. Fitzhugh, a licensed psychologist, was later joined as a plaintiff. (R. 86)

Seidman obtained her Ph.D. in psychology from Heed University in 1978. The Board turned down her application to take the licensure examination in 1982 (R. 238) on the grounds that she did not meet the educational requirements set forth in Section 490.005 (1)(b), Florida Statutes (1981). (R. 234)[1]

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[1]Subsection (1)(b) states:

> (b) Submitted proof satisfactory to the board that he has received a doctoral degree with a major in psychology from a university or professional school that has a program approved by the American Psychological Association; has received a doctoral degree in psychology from a university or professional school maintaining a standard of training comparable to those universities having programs approved by the American Psychological Association or the doctoral psychology programs of the state universities; or has complied with the requirements for eligibility to take the Florida examination as set by the Florida State Board of Examiners of Psychology in a final order issued prior to July 1, 1979.

In 1981, Petitioners (and others) who had earned their degrees from non-accredited institutions filed the federal action against DPR and the Board seeking, in part, a declaratory judgment that Chapter 490, Florida Statutes, was unconstitutional on its face or as applied, and further, that certain grandfathering provisions which permitted persons to receive the benefit of licensure were invalid. (R. 234) Finally, in April and May of 1990, DPR and the Board offered a settlement to Petitioners (and others) which would grant licensure in exchange for withdrawal from the federal suit. (R. 234)

The Settlement Agreement between Petitioners and the Board provided that Petitioners' applications for the licensure examination would not be denied on the basis of educational qualifications. (R. 135) The Respondents alleged, and the trial court found that Respondents have standing as protectors of the public interest to enjoin D.P.R. and the Board from violating their statutory duty by failing to review minimum educational requirements. (R. 233)

The issue of Respondents' standing to litigate via mandamus the issue concerning the Board's statutory duty to conduct a review of Petitioners' minimum educational requirements was orally conceded by D.P.R. and the Board at the trial court level. (R. 233) No issue of Respondents' standing to litigate this action is before this Court. Furthermore, D.P.R. and the Board conceded at the trial court level that Petitioners have not met the minimum educational requirements set forth in Section 490.005 (1)(b),

Florida Statutes (1989).

In addition to prohibiting Petitioners from holding themselves out as licensed psychologists until they meet statutory educational requirements, the final order of the trial court also commanded D.P.R. and the Board by writ of mandamus to require Petitioners to meet statutory educational requirements before being licensed as psychologists. (R. 234) D.P.R. and the Board are not parties to this appeal. Petitioners are only two of the original seven Defendants at the trial level.

SUMMARY OF THE ARGUMENT

By allowing Petitioners to be licensed as psychologists without regard to their educational qualifications, the Board abused its power, and disregarded its legal responsibility to enforce the law, to protect the public health, safety and welfare, and to ensure that only qualified persons hold themselves out as licensed psychologists. The trial court and district court properly recognized and ordered that the Board does not have the legal authority to ignore minimum educational requirements established by the legislature. No evidence was presented to the trial court that the Board offered the settlement because of a concern that the practice of psychology would be without regulation. Any concern that D.P.R. and the Board may have had over the continued validity of the grandfather provision, or of no regulation at all, is an insufficient basis and grants no authority for administratively waiving minimum educational requirements established by the legislature. By failing to consider educational qualifications set by the legislature, the Board breached its duty and rendered Section 490.005(1)(b), Florida Statutes (1989) unenforceable by administrative fiat.

Estoppel applies against the State only in rare and exceptional circumstances, and then, only if the agency's action is legal. The doctrine of equitable estoppel does not apply in this case because the settlement agreement is illegal and void as against public policy. Since the Board and Petitioners entered

into the illegal settlement agreement at arm's length, this Court should leave them as it finds them, and that is, without an agreement.

The Attorney General of the State of Florida has no legal authority to settle a lawsuit between a state board or agency and a private individual under terms of conditions that are either: a) not expressly authorized by the Board's legislative grant of power; or b) that are expressly prohibited by the Board's legislative grant of power or in violation of statute. The Attorney General lacks authority to settle on behalf of a Board or state agency under terms or conditions that are beyond the authority of the Board or agency. To empower the Attorney General with such authority to settle under such terms or conditions would violate the separation of powers doctrine.

ARGUMENT

I. THE BOARD HAS NO LEGAL AUTHORITY TO IGNORE THE MINIMUM EDUCATIONAL REQUIREMENTS IN SECTION 490.005, FLORIDA STATUTES AND TO ALLOW PETITIONERS TO BE LICENSED WITHOUT REGARD TO THEIR EDUCATIONAL QUALIFICATIONS.

As the trial court correctly found, this case is about an agency following clear legislative mandates. (R. 237) The legislative mandate at issue here is Section 490.005(1)(b), Florida Statutes (1989). Section 490.005(1)(b), Florida Statutes (1989) requires that persons desiring to be licensed as psychologists submit proof satisfactory to the Board that they have satisfied the following minimum educational requirements:

> 1. Received a doctoral degree with a major in psychology from a program which at the time the applicant was enrolled and graduated was accredited by the American Psychological Association;
>
> 2. Received a doctoral degree with a major in psychology from a program which at the time the applicant was enrolled and graduated maintained a standard of training comparable to the standards of training of those programs accredited by the American Psychological Association. Education and training in psychology must have been received in an institution of higher education fully accredited by a regional accrediting body recognized by the Council on Postsecondary Accreditation or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada.

With the exception of Petitioners, and the other private Defendants below, every person who sat for the psychology licensure examination from 1983 until May of 1990 presented educational qualifications for the Board and its executive director to review (R. 264), and every applicant, to be licensed in the State of Florida, has been required to meet the minimum educational

requirements established by the legislature. (R. 286-289) With the exception of Petitioners, and the other private Defendants below, no graduate of Heed University has been allowed to sit for the psychology examination. (R. 262) Here, Petitioners were allowed to apply for licensure without any review of minimum educational requirements (R. 239) even though D.P.R. and the Board agreed that they do not meet the minimum educational requirements set forth above. (R. 80-81)

By allowing Petitioners to be licensed as psychologists without regard to their educational qualifications, the Board abused its power, and disregarded its legal responsibility to enforce the law as clearly delineated by the legislature, to protect the public health, safety and welfare, and to ensure that only qualified persons hold themselves out as licensed psychologists. The lower court and district court properly recognized that the Board does not have the legal authority to ignore minimum educational requirements established by the legislature and to allow Petitioners to hold themselves out as licensed psychologists without regard to their educational qualifications.

Petitioners concede that an agency has only such power as expressly or by necessary implication is granted by enactment, and that an agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power. Petitioners contend, however, that the above language gave the Board implied authority to waive minimum educational

requirements. None of the cases relied on by Petitioners involve a fact situation where an administrative agency waived statutory criteria. Numerous decisions have declared agency decisions illegal because they were contrary to statute.

In *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (Fla. 5th DCA 1985) the Division attempted to impose a $10,000.00 penalty on a land/vendor based on sales of subdivided lands even though it was clear under the statute that the sales were exempt from the Uniform Land Sales Practices Law. The fifth district set aside the Division's action, holding that the Division could not contract away the exemption. 474 So.2d at 284. In another case, *Context Development Co. v. Dade County*, 374 So.2d 1143 (Fla. 3rd DCA 1977), a county official attempted to require a landowner to submit an environmental impact statement even though the county code did not require any type of environmental impact statement. In declaring the official's act invalid, the third district stated:

> . . . However laudable or commendable the actions of the [County], it is well settled that a statutory agency does not possess any inherent powers; such agency is limited to the powers granted, either expressly or by necessary implication, by the statutes [here the Dade Code] creating them.

374 So.2d 1149-1150.

Two cases even more analogous to the present care are *Palm Harbor SP. Fire Control District v. Kelly*, 516 So.2d 249 (Fla. 1987) and *Florida Dairy Farmers Federation v. Borden Company*, 155 So.2d 699 (Fla. 1st DCA 1963).

In *Palm Harbor*, Kelly, a non-citizen, applied for a license to act as a business agent for the Palm Harbor Fire Fighters Union. The Palm Harbor special Fire District and others opposed the application on the grounds of Kelly's lack of citizenship. 516 So.2d at 250. The Florida Department of Labor and Employment Security granted Kelly a license, citing Section 455.10, Florida Statutes[2] as grounds for this action. In effect, the Department's final order held that Section 455.10 implicitly had repealed the alienage restriction contained in Section 447.04 (1)(a) which provided:

> (1) No person shall be granted a license or a permit to act as a business agent in this state:
>
> (a) Who is not a citizen of the United States.

This Court held that the Department had no power to declare Section 447.04(1)(a) void or otherwise unenforceable by administrative fiat. 516 So.2d at 250. Here, by failing to consider educational qualifications, the Board rendered Section 490.005(1)(b), Florida Statutes (1989) void and unenforceable by administrative fiat. The Board cannot waive statutory requirements. The Board is obligated to adhere to the statute and review minimum educational qualifications so long as the statute is deemed the law of the State. Any determination of whether or not a statute is constitutional is for the courts, not the Board. *Florida Dairy Farmers Federation v. Borden Company*, 155 So.2d 699,

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[2] Section 455.10 provided: No person shall be disqualified from practicing an occupation or profession regulated by the State solely because he is not a United States citizen.

702 (Fla. 1st DCA 1963).

In *Florida Dairy Farmers Federation v. Borden Company*, 155 So.2d 699 (Fla. 1st DCA 1973), an agricultural marketing cooperative association brought an action to enjoin two dairy product distributors from marketing certain dairy products in violation of a statute making it unlawful for distributors to market recombined or reconstructed dairy products without labeling the products as such. The administrative agency charged with the responsibility of enforcing the statute determined that the process of combining water with powdered milk or powdered skimmed milk and other substances was not in violation of the statutory prohibition against recombining or reconstructing milk. In refusing to defer to the agency's action, the court stated the general rule as follows:

> The general rule is that an administrative construction of a statute by the agency charged with the enforcement of the act and authorized to make reasonable rules and regulations, while not binding upon the courts, is accorded great persuasive force and efficacy, especially when established by long usage, *provided the same is not repugnant to the clear intent of the act or in conflict with the constitution*. (emphasis supplied)

See also, 1 Fla. Jur. 2d Section 38 (Administrative agencies have only such powers as are conferred on them by statutes and action taken by them pursuant to statutes must accord with the provision thereof) (The intent of a statute is the gist of the enactment, and a material disregard of the statutory intent by an agency is a violation of the enactment).

In *Florida Dairy Farmers*, the agency disregarded the clear language of the statute which positively stated that ". . .it is

unlawful to sell recombined and reconstructed milk in this state - recombined milk is defined as combining milk products with other milk products. [i.e. powdered milk] or any other substance [i.e. water]." 155 So.2d at 702.

In refusing to defer to the agency the court stated:

> The conclusion is inescapable that the distributors are violating the provision of the statute making it unlawful to sell "recombined and reconstructed" milk and until same is amended, repealed or held unconstitutional, such violation should and must be enjoined.

Id.

In the present case, the statutory language is just as clear, requiring that Petitioners must submit proof to the Board that they have met the minimum educational requirements set forth in Section 490.005(1)(b), Florida Statutes (1989). By specifically ignoring minimum educational requirements, and by allowing Petitioners to be licensed as psychologists without regard to their educational qualifications, the Board breached its duty to administrate the law. The settlement agreement is inconsistent with the clear intention of the legislature that applicants for licensure meet specific minimum educational requirements. The clear expression by the legislature as set forth in Section 490.002 Florida Statutes, requires that the Board follow the law, and not act contrary to the legislature's mandate. The settlement agreement shows that the Board acted contrary to the directions of the legislature by allowing Petitioners to be licensed without regard to their educational qualifications.

A settlement agreement is a contract, and as such its

construction and enforcement are governed by principles of general contract law. See, *Don L. Tullis & Associates v. Benge*, 473 So.2d 1384 (Fla. 1st DCA 1985). Any contract that in full operation will be injurious to the public welfare is void as against public policy. *Rush v. City of St. Petersburg*, 205 So.2d 11, 13 (Fla. 2nd DCA 1967). In addition to *Rush*, a case illustrative of this point is *Local No. 234, ETC v. Henley & Beckwith, Inc.*, 66 So.2d 818 (Fla. 1953). In that case, a contract between an employer and union providing for closed shop practices was declared null and void by this Court because it was contrary to the law, and thus violative of public policy. In declaring the contract void, this Court stated:

> An agreement that is violative of a provision of a valid statute, or any agreement which cannot be performed without violating such a constitutional or statutory provision, is illegal and void. . . For courts have no right to ignore or set aside a public policy established by the legislature or the people. Indeed, there rests upon the courts the affirmative duty of refusing to sustain that which by the valid statutes of the jurisdiction, or by the constitution, has been declared repugnant to public policy.

Local No. 234, 66 So.2d at 821; see also, *Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. 2nd DCA 1986) (A contract between a dentist and hospital for performance of nondental anesthesia services by dentist was declared illegal and unenforceable because the dentist was not qualified to practice nondental anesthesia).

In another case, *State v. Lechner*, 197 So.2d 512 (Fla. 1967), the holder of a permit to operate dog racing brought an action against the State Racing Commission seeking a Writ of Mandamus.

The petition commanded that the Commission revoke and rescind its action taken in issuing a permit contrary to law. 197 So.2d at 513. The statute in *Lechner* required the Commission to grant no more than one hundred and five days of operation to any one permittee. In the case, the Commission issued a second permit that resulted in a single permittee having hours of operation in excess of the statutory mandate. *Id.* This Court recognized that the statute did not expressly prohibit the issuance of more than one permit for use at the same fronton, but granted the Writ of Mandamus because "the whole statutory design would be nullified if what was attempted here were to be sanctioned." *Lechner*, 197 So.2d at 514.

Here, as in *Lechner*, the whole statutory design of Chapter 490 would be nullified if Petitioners are determined by this Court to be eligible to hold themselves out as licensed psychologists without having first met the minimum educational requirements established by the legislature, and without regard to their educational qualifications.

A requirement that applicants for licensure meet certain minimum educational standards established by the legislature before they may demonstrate their competency to use a title in a given profession was upheld recently by the First District Court of Appeal as a legitimate exercise of this state's police power. See, *Clark v. Department of Professional Regulation*, 584 So.2d 59 (Fla. 1st DCA 1991). In 1980, this Court held certification requirements for those who wish to practice as certified public accountants in

Florida was a legitimate exercise of the police power. The Court stated that it is entirely within the legislature's prerogative to require a year's employment with a Florida or out-of-state practitioner as one of the conditions precedent to certification. *Junco v. State Bd. of Accountancy*, 390 So. 2d 329 (Fla. 1980). More recently, in *Abramson v. Gonzalez*, 949 F.2d 1567 (11th Cir. 1992), the federal case wherein the instant settlement agreement was conceived, the Eleventh Circuit recognized and reaffirmed the principle that Petitioners must meet the minimum educational requirements in Section 490.005(1)(b), Florida Statutes (1989) before they may lawfully hold themselves out as "licensed professionals." 949 F.2d at 1567

By allowing Petitioners to be licensed as psychologists without regard to their educational qualifications, the Board abused its power, and disregarded its legal responsibility to enforce the law, to protect the public health, safety and welfare, and to ensure that only qualified persons hold themselves out as licensed psychologists. The lower court and district court properly recognized that the Board does not have the legal authority to ignore minimum educational requirements established by the legislature and to allow Petitioners to hold themselves out as licensed psychologists without regard to their educational qualifications.

II. EQUITY DOES NOT COMPEL ENFORCEMENT OF THE SETTLEMENT AGREEMENT BECAUSE THE SETTLEMENT AGREEMENT IS ILLEGAL.

In a final attempt to demonstrate reversible error, Petitioners contend that equity requires reversal of the trial and district court's orders. The doctrine of equitable estoppel does not apply under the circumstances of this cause because the settlement agreement is illegal. See, *Department of Revenue v. Anderson*, 403 So.2d 397, 400 (Fla. 1981); *Godson v. Town of Surfside*, 8 So.2d 497 (Fla. 1942).

It is well-established that estoppel applies against the state only in rare and exceptional circumstances, and then, only if the agency's action is legal. A case illustrative of this point is *P.C.B. Partnership v. City of Largo*, 549 So.2d 738 (Fla. 2nd DCA 1989). In that case, the City of Largo (City) entered into a land disposition agreement with a landowner. When the City attempted to renege on its part of the bargain, the landowner's successor brought an action against the City for specific performance.

In refusing to apply estoppel and in refusing to enforce the contract, the court stated:

> A party entering into a contract with a municipality is bound to know the extent of the municipality's power to contract, and the municipality will not be estopped to assert the invalidity of a contract which it had no power to execute. . . Where the parties to such a contract are in pari delicto, the law will leave them where it finds them, and relief will be refused in the courts because of the public interest.

549 So.2d at 742.

Here, since the parties were represented by counsel at all stages of the federal litigation, including and up to the time in which Petitioners accepted the Board's settlement offer (R. 85-146, Exhibit H to amended complaint), this Court should leave Petitioners where it finds them, and that is, without an agreement.

Even in light of the Florida decisional law discussed above, Petitioners contend that the decisions of a California appellate court in *Garrison v. California Employment Stabilization Commission*, 149 P.2d 711 (Cal. App. 2d 1944) and a 9th Circuit decision in *United States v. Lazy FC Ranch*, 481 F.2d 985 (9th Cir. 1973) require the application of the doctrine of equitable estoppel to the facts of this case. Petitioners' reliance on these two decisions is misplaced. Neither case involves the application of the doctrine of equitable estoppel to a situation where a government agency waives statutory requirements in an effort to settle a lawsuit.

Petitioners argue that the public's interest would not be damaged by the imposition of estoppel. They contend that the Board had the authority to determine, in its discretion, what would constitute "minimal educational requirements." They go on to conclude that the Board determined that passage of the licensure examination would demonstrate competence to such an extent that there would be no detriment to the public. Petitioners' argument is contrary to the Second District's holding in *P.C.B. Partnership*, wherein the Court refused to enforce an illegal agreement. The Court in *P.C.B. Partnership* cited the public interest as its reason

for not applying estoppel. 549 So.2d at 742.

The duty of setting forth the minimum requirements for demonstration of competence for licensure by examination and the determination of what is in the public's interest rests with the legislature. In Section 490.005(1)(b), Florida Statutes, (1989), the legislature *expressly* set forth those minimum requirements for licensure by examination, including educational requirements. The detriment to the public interest exists by virtue of the Board's flagrant attempt to ignore legislative requirements and attempting to allow Petitioners to be licensed without regard to their educational backgrounds. The Board acted illegally in entering into the settlement agreement under the terms and conditions as offered, and therefore, the doctrine of equitable estoppel does not apply.

III. THE ATTORNEY GENERAL OF THE STATE OF FLORIDA HAS NO LEGAL AUTHORITY TO SETTLE A LAWSUIT BETWEEN A STATE BOARD OR AGENCY AND A PRIVATE INDIVIDUAL UNDER TERMS OR CONDITIONS THAT ARE EXPRESSLY PROHIBITED BY THE BOARD'S LEGISLATIVE GRANT OF POWER.

This Court has declined to answer a certified question on the grounds that it is not germane to the case. See *Lawton v. Alpine Engineered Products, Inc.*, 498 So. 2d 879 (Fla. 1986); *Cleveland v. City of Miami*, 263 So. 2d 573 (Fla. 1972). Although the question certified as being of great public importance by the District Court of Appeal conferred jurisdiction of this case upon this Court, Respondents contend that this Court should decline to answer the

question certified because it is not germane to this case.

The question posed to this Court by the District Court of Appeal relates to a hypothetical situation where the Attorney General and a private individual settle a lawsuit under terms or conditions "that are not expressly authorized by the Board's legislative grant of power." That is not what happened here. The record reflects that the terms and conditions of the settlement agreement were in fact expressly prohibited by the Board's legislative grant of power. The stipulation between Petitioners and the Board clearly shows that Petitioners do not meet the minimum educational requirements set forth in Section 490.005(1)(b), Florida Statutes (1989). (R. 80-81) Thus, it cannot be said that the terms of the settlement were not expressly authorized. Rather, it must be stated that the terms of the settlement agreement were in fact expressly prohibited by Section 490.005(1)(b), Florida Statutes (1989).

Should this Court decide to accept this case for review, however, Respondents suggest that the certified question be restated as follows to more accurately reflect the disposition of the case below:

> WHEN IS IT LAWFUL FOR THE ATTORNEY GENERAL OF THE STATE OF FLORIDA, AS THE LEGISLATIVELY APPOINTED COUNSEL FOR A STATE BOARD OR AGENCY, TO SETTLE A LAWSUIT BETWEEN SAID BOARD OR AGENCY AND A PRIVATE INDIVIDUAL UNDER TERMS OR CONDITIONS THAT ARE EXPRESSLY PROHIBITED BY THE BOARD'S LEGISLATIVE GRANT OF POWER?

Whether this case is analyzed in terms of the question certified by the District Court of Appeal or the alternative question suggested by Respondents, the answer to either question

must be answered in the negative.

Although the Board clearly lacked the legal authority to settle under the terms and conditions offered based on the legal argument presented above, Petitioners nevertheless contend that the Attorney General had the legal authority to do so on behalf of the Board.

The Attorney General lacks authority to settle on behalf of a Board under terms and conditions that are beyond the authority of the Board. It is well-established that an attorney is an agent of his client. *In re Estate of Brugh*, 306 So.2d 599 (Fla. 2nd DCA 1975). An attorney has no general authority, because of his status as attorney, to settle litigation. The employment of an attorney does not, of itself, give an attorney authority to settle a client's claim. *Columbia County Sheriff's Office v. Fla. Dept. of Law Enforcement*, 574 So.2d 234 (Fla. 1st DCA 1991). In the present case, Petitioners cannot claim that the Board had the authority to settle under the guise of the Attorney General where the Board lacked authority to do so in the first place. While the Attorney General is the chief law officer of the state, he remains, as a member of the Governor's cabinet, an officer of the Executive Branch. Article IV, Section 4, Florida Constitution. As with the Board, the Attorney General has a duty to enforce and follow the law. *State v. Love*, 126 So. 374 (Fla. 1930) No authority exists in the Attorney General's office, express or implied, to pass upon the constitutionality of a statute. The Attorney General must presume its validity and cannot advise any officer to disregard a

legislative direction or mandate. See, Atty. Gen. Op 78-64; 91-7. Article II, Section 3, of the Florida Constitution states that "the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

To empower the Attorney General to settle a lawsuit under the terms and conditions as offered and to determine that this is in the public's interest would violate the separation of powers doctrine. In *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260 (Fla.1991), this Court held that the legislature violated the separation of powers doctrine by assigning to the Executive Branch the broad discretionary authority to reapportion the state budget. This Court opined that "the legislature cannot provide by statute for the Governor and Cabinet to do at a later date what is forbidden by constitution during the initial appropriations process." 589 So.2d 265. In applying the separation of powers doctrine, this Court stated:

> [t]o permit the Commission to reduce specific appropriations in general appropriations bills would allow the legislature to abdicate its lawmaking function and would enable another branch to amend the law without resort to the constitutionally prescribed lawmaking process. This delegation strikes at the very core of the separation of powers doctrine. . .

589 So.2d at 266.

In the present case, as in *Chiles*, to empower the Attorney General to waive statutory requirements and to determine that the terms of the settlement agreement are in the public's interest

would amount to the Attorney General amending the law in violation of the separation of powers doctrine. The Attorney General cannot be given such broad authority as Petitioners suggest. As stated by this Court in *Chiles*:

> There would be an end of everything, were the same. . . body . . to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

Chiles, 589 So.2d at 263; *quoting*, Charles de Montesquieu, *L'Esprit des Lois 70* (Robert M. Hutchins ed., William Benton 1952) (1748).

The legislature has mandated that certain minimum educational requirements be satisfied before one may be licensed as a psychologist. If the Attorney General and the Board are given the authority to waive the educational requirements in the interest of settling a lawsuit in this case, what would prohibit the Dentistry Board, Medical Board, or the Attorney General from waiving educational requirements in another case wherein that Board's requirements are challenged. Certainly, the Attorney General and the D.P.R. Boards are not afforded such broad and unbridled authority to act in direct contravention of legislative mandates.

In sum, the Attorney General lacks authority to settle on behalf of a Board or state agency under terms or conditions that are beyond the authority of the Board or agency. To empower the Attorney General with such authority to settle under such terms or conditions would violate the separation of powers doctrine.

CONCLUSION

Based upon the foregoing legal argument and citations of authority, the decision of the District Court of Appeal, First District and the decision of the trial court should be affirmed.

Respectfully submitted this 21st day of May, 1993.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United State mail to:

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