

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
)
 Petitioner,)
)
 vs.) Case No. 98-0203
)
 FRANK CRIMI d/b/a A. LAMPSON)
 SEPTIC TANK COMPANY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a Section 120.57(1) hearing was held in this case on May 8, 1998, by video teleconference at sites in Fort Lauderdale and Tallahassee, Florida, before Stuart M. Lerner, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kimberly A. Tendrich, Esquire
Department of Health
2421-A Southwest 6th Avenue
Fort Lauderdale, Florida 33315

For Respondent: No Appearance

STATEMENT OF THE ISSUES

1. Whether Respondent committed the violations alleged in the Administrative Complaint.
2. If so, what action should be taken against him.

PRELIMINARY STATEMENT

On May 15, 1995, the Department of Health (Department), through its predecessor, the Department of Health and Rehabilitative Services¹, issued an Administrative Complaint against Respondent, a Florida-registered septic tank contractor, alleging that Respondent had committed the following violations:

(a) Violation of s. 10D-6.075(4)(b)2, FAC. On or about January 24, 1994, the Respondent installed an onsite sewage treatment and disposal system at 2425 Riverlane Terrace, Ft. Lauderdale, Broward County, Florida. The work was performed without the required construction permit or final inspections and approval from the department. Such actions are a violation of s. 10D-6.075(4)(b)2, FAC. . . .

(b) Violations of s. 10D-6.075(4)(l)2, FAC. Within six months of the illegal installation, the system had failed. The Respondent's gross negligence, incompetence, or misconduct caused the customer monetary harm in the amount of \$875.00 (eight hundred seventy-five dollars) and created a sanitary nuisance injurious to health as defined in chapter 386, Florida Statutes. . . .

The Department further asserted in the Administrative Complaint that "[t]he above facts, as alleged, are grounds upon which the Respondent's septic tank contracting registration and authorization must be suspended² and an administrative fine must be imposed."

Respondent requested an informal hearing on the matter. In a letter dated July 26, 1995, that he sent to the Department, which read as follows, Respondent explained why he was requesting a hearing:

The reason why I am requesting an informal hearing is because I am not in agreement with Mrs. Gibson's statement in reference to the job which was performed at her residence.

An informal hearing was held and a final order issued by the Department, from which Respondent appealed to the Fourth District Court of Appeal. The appeal was dismissed pursuant to a Stipulation for Dismissal entered into by the parties, which read as follows:

COMES NOW, the Appellant, Frank Crimi d/b/a Lampson Septic Tank Company, and the Appellee, State of Florida Department of Health and Rehabilitative Services, by and through their undersigned counsel[] [and] hereby file[] this Stipulation for Dismissal pursuant to Rule 9.350(a), Fla. R. App. P. and in support thereof state the following:

1. That the parties to this action have amicably agreed to dismiss this appeal.
2. That this appeal has been settled to the satisfaction of all parties.
3. That upon receipt of an Order of this Honorable Court dismissing this appeal, that this case will be referred to the Agency Clerk for the Department of Health, whereby a request for a formal administrative hearing will be made.

WHEREFORE, Appellant and Appellee pray that an Order be entered Dismissing this Appeal.

Such an order was issued by the Fourth District Court of Appeal on March 14, 1997. On January 13, 1998, the Department referred the matter to the Division of Administrative Hearings (Division) for the assignment of a Division Administrative Law Judge to conduct a Section 120.57(1) hearing.

The Section 120.57(1) hearing was scheduled for May 8, 1998. The Department and Respondent were provided with written notice of the hearing in accordance with Section 120.569(2)(b), Florida Statutes.³

The Department appeared at the hearing, which was held as scheduled on May 8, 1998, through one of its Senior Attorneys, Kimberly A. Tendrich, Esquire. Respondent did not make an appearance at the hearing, either in person or through counsel or an authorized representative.

At the hearing, the Department presented the testimony of four witnesses (Gayle Gibson, Margaret Chamberlain, Jay Morgenstern, and Howard Rosen). It also offered six exhibits (Petitioner's Exhibits 1 through 4, 6, and 7) into evidence. All six of these exhibits were received by the undersigned.

At the conclusion of the evidentiary portion of the hearing, the undersigned, on the record, advised that the deadline for the filing of proposed recommended orders was 14 days from the date of the Division's receipt of the transcript of the hearing. The hearing transcript was filed with the Division on June 5, 1998. On June 15, 1998, the Department filed a proposed recommended order, which the undersigned has carefully considered. To date, Respondent has not filed any post-hearing submittal.

FINDINGS OF FACT

Based upon the evidence adduced at hearing and the record as a whole, the following findings of fact are made:

1. The Department is a state government licensing and regulatory agency.

2. Respondent is registered with the Department as a septic tank contractor.

3. Gayle Gibson owns and resides in a three-bedroom, two-bath single-family home located at 2425 Riverlane Terrace in Fort Lauderdale, Florida (Gibson's property).

4. In late 1993 or early 1994, Gibson was experiencing problems with the septic system on her property (in the form of sewage backup and resultant unpleasant odors).

5. Gibson contacted Respondent (who is the son of Gibson's former mailman) and asked him to come to her property to ascertain what was wrong and to take whatever remedial action was necessary.

6. Respondent complied with Gibson's request and went to her property.

7. After examining the situation, he told Gibson that she needed to have the septic tank on the property pumped and a new drainfield installed. Respondent recommended that the new drainfield be installed on the side of Gibson's home, instead of in the front yard (where the existing drainfield was located).

8. Gibson made arrangements for Respondent to perform these services in exchange for money and art work. These arrangements between Gibson and Respondent were not reduced to writing.

9. On or about January 20, 1994, Respondent pumped out the septic tank on Gibson's property and Gibson paid him \$200.00, by check, for having performed such work.

10. In late February of 1994, Respondent installed a new drainfield on the side of Gibson's home and Gibson paid him \$500.00, by check, for having performed such work.

11. At no time did Respondent obtain a permit to install the drainfield.

12. The heavy equipment that Respondent used to perform the work was unloaded in Gibson's front yard. The unloading of the heavy equipment damaged the front yard. It cost Gibson a total of \$175.00 to have the damage repaired.

13. The drainfield that Respondent installed was an EEE ZZZ Lay Drain system comprised of Styrofoam material.

14. Considering the size of Gibson's home, the drainfield was grossly undersized, as Respondent should have realized. It was approximately one-third the size it should have been.

15. Predictably, shortly after this undersized drainfield was installed, Gibson again experienced sewage backup and related problems on her property.

16. Gibson informed Respondent of the reoccurrence of these problems.

17. Respondent told Gibson that he would take remedial action if Gibson paid him another \$500.00.

18. Gibson refused to make any additional payments to Respondent.

19. Respondent never returned to Gibson's property to correct the error he had made in installing an undersized drainfield.

20. Gibson contacted the Department and advised it of the problems she was experiencing with her septic system.

21. Following an investigation of the matter, the Department issued the Administrative Complaint described in Preliminary Statement of this Recommended Order.

22. Subsequently, on January 13, 1998, in an unrelated case, the Department issued and served on Respondent a citation imposing a \$500.00 fine against Respondent for abandoning, without good cause, a septic system installation project he was contractually obligated to complete. The citation contained a "Notice of Appellate Rights," which indicated that "[t]his citation becomes a Final Order of the Department if you have not contested the Citation within thirty (30) days of the date which the Citation was served upon you."

23. Respondent has neither "contested" the citation, nor paid the \$500.00 fine it directed him to pay.

CONCLUSIONS OF LAW

24. The Department is statutorily empowered, pursuant to Sections 381.0065 through 381.0067, Florida Statutes, and Chapter 489, Part III, Florida Statutes, to regulate the installation of

septic systems, such as Gibson's, and those persons, like Respondent, who install such systems.

25. Section 381.0065, Florida Statutes, provides, in pertinent part, as follows:

381.0065 Onsite sewage treatment and disposal systems; regulation.-

(1) LEGISLATIVE INTENT.-It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

(2) DEFINITIONS.-As used in ss. 381.0065-381.0067, the term:

(i) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a dosing tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.-The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, or repair of an onsite sewage treatment and disposal system for a residence or establishment with an estimated domestic sewage flow of 10,000 gallons or less per day which is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, repaired, modified, abandoned, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the Division Director for Environmental Health of the department, or his or her designee, shall timely assign a staff person to resolve the dispute. . . .

(h) Conduct enforcement activities, including imposing fines, issuing citations, suspensions, revocations, injunctions, and emergency orders for violations of this section, part I of chapter 386, or part III of chapter 489 or for a violation of any rule adopted under this section, part I of chapter 386, or part III of chapter 489. . . .

(4) PERMITS; INSTALLATION; AND CONDITIONS.-A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section. . . . A person

may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. . . .

(o) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership. . . .

(5) ENFORCEMENT; RIGHT OF ENTRY;
CITATIONS. . . .

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

26. Pursuant to Section 381.0065(3)(a), Florida Statutes, the Department has "[a]dopt[ed] rules to administer ss. 381.0065-381.0067." These rules include Rule 64E-6.008 (formerly numbered 10D-6.048), Florida Administrative Code, which imposes size requirements for septic systems.

27. Chapter 489, Part III, Florida Statutes, provides in pertinent part, as follows:

SEPTIC TANK CONTRACTING

489.551 Definitions.-

As used in this part:

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a dosing tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Septic tank contractor" means a contractor who has the experience, knowledge, and skill to install, maintain, repair, alter, perform site evaluations for repairs, when determined to meet site-evaluation expertise established by rule, and use material and items used in the installation and maintenance of all kinds of onsite sewage treatment and disposal systems.

489.552 Registration required.-

A person shall not hold himself or herself out as a septic tank contractor . . . in this state unless he or she is registered by the department in accordance with the provisions of this part. . . .

489.553 Administration of part; registration qualifications; examination.-

(1) Each person desiring to be registered pursuant to this part shall apply to the department in writing upon forms prepared and furnished by the department.

(2) The department shall administer, coordinate, and enforce the provisions of this part, provide qualifications for applicants, administer the examination for applicants, and be responsible for the granting of certificates of registration to qualified persons.

(3) The department shall adopt reasonable rules, including, but not limited to, rules which establish ethical standards of practice, and may amend or repeal the same in accordance with the Administrative Procedure Act. . . .

489.556 Suspension or revocation of registration.-

A certificate of registration may be suspended or revoked upon a showing that the registrant has:

(1) Violated any provision of this part.

(2) Violated any lawful order or rule rendered or adopted by the department. . . .

(4) Been found guilty of gross misconduct in the pursuit of his or her profession. . . .

489.558 Penalties and prohibitions.-

(1) Any person who violates any provision of this part commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. . . .

28. Proof greater than a mere preponderance of the evidence must be submitted in order for the Department to take action against a septic tank contractor's registration or to impose a fine upon the contractor. Clear and convincing evidence is required. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Section 120.57(1)(h), Florida Statutes ("Findings of fact shall be based on a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute."). "[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.'" In re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting, with approval, from Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

29. Any punitive action taken against the contractor may be based only upon those violations specifically alleged in the administrative complaint or citation issued by the Department. See Cottrill v. Department of Insurance, 685 So. 2d 1371 (Fla.

1st DCA 1996); Kinney v. Department of State, 501 So. 2d 129, 133

(Fla. 5th DCA 1987); Hunter v. Department of Professional Regulation, 458 So. 2d 842, 844 (Fla. 2d DCA 1984).

30. Furthermore, such action may not be more severe than the punishment that the Department warned the accused, in the administrative complaint or citation, might be imposed for these violations. See Cobas v. State, 671 So. 2d 838, 839 (Fla. 3d DCA 1996)("Finally, the trial court erred in imposing a habitual offender sentence in lower court case 89-33369, where Cobas was not given prior notice of the intent to seek enhanced penalties before the plea was accepted."); Williams v. Turlington, 498 So. 2d 468 (Fla. 3d DCA 1986)("Since Williams was not given notice by either the complaint or later proceedings that he was at risk of having his license permanently revoked, the Commission's imposition of the non-prayed-for relief of permanent revocation, even if justified by the evidence, was error.").

31. In addition, the Department must act in accordance with its "disciplinary guidelines." Cf. Williams v. Department of Transportation, 531 So. 2d 994, 996 (Fla. 1st DCA 1988)(an agency is required to comply with its disciplinary guidelines in taking disciplinary action against its employees). These "disciplinary guidelines" are currently set forth in Rule 64E-6.022, Florida Administrative Code, which provides, in pertinent part, as follows:

(1) The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances and subject to other provisions of this section. . . .

(b) Permit violations. . .

2. Contracted work is completed without a permit having been issued . . . repeat violation, revocation. . . .

(1) Gross negligence, incompetence, or misconduct which:

2. Causes monetary or other harm to a customer, or physical harm to any person . . . repeat violation, \$500 fine and revocation. . . .

(2) Circumstances which shall be considered for the purposes of mitigation or aggravation of penalty shall include the following:

(a) Monetary or other damage to the registrant's customer, in any way associated with the violation, which damage the registrant has not relieved, as of the time the penalty is to be assessed.

(b) Actual job-site violations of this rule or conditions exhibiting gross negligence, incompetence or misconduct by the contractor, which have not been corrected as of the time the penalty is being assessed.

(c) The severity of the offense.

(d) The danger to the public.

(e) The number of repetitions of the offense.

(f) The number of complaints filed against the contractor.

(g) The length of time the contractor has practiced . . .

(h) The actual damage, physical or otherwise, to the customer.

(i) The effect of the penalty upon the contractor's livelihood.

(j) Any efforts at rehabilitation.

(k) Any other mitigating or aggravating circumstances.

(3) As used in this rule, a repeat violation is any violation on which disciplinary action is being taken where the same licensee had previously had disciplinary action taken against him or received a letter of warning in a prior case. This definition applies regardless of the chronological relationship of the violations and regardless of whether the violations are of the same or different subsections of this rule. The penalty given in the above list for repeat violations is intended to apply only to situations where the repeat violation is of a different subsection of this rule than the first violation. Where the repeat violation is the very same type of violation as the first violation, the penalty set out above will generally be increased over what is shown for repeat violations.

(4) Where several of the above violations shall occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive. . . .

Rule 10D-6.0751, Florida Administrative Code, which was in effect at the time of the alleged violations in the instant case, contained substantially the same provisions.

32. The Administrative Complaint issued in the instant case charges that Respondent violated Rule 10D-6.075(4)(b)2, Florida Administrative Code, by "install[ing] an onsite sewage treatment and disposal system at 2425 Riverlane Terrace, Ft. Lauderdale, Broward County, Florida. . . . without the required construction

permit or final inspections and approval from the department"; and Rule 10D-6.075(4)(1)2, Florida Administrative Code, by committing "gross negligence, incompetence, or misconduct [in connection with such installation], caus[ing] the customer monetary harm in the amount of \$875.00 (eight hundred seventy-five dollars) and creat[ing] a sanitary nuisance injurious to health as defined in chapter 386, Florida Statutes." Rule 10D-6.075(4)(b)2 and (4)(1)2, Florida Administrative Code, provided, in pertinent part, as follows:

(4) The following actions by a person included under this rule shall be deemed unethical and subject to penalties:

(b) Permit violations. . . .

2. Contracted work is completed without a permit having been issued

(1) Gross negligence, incompetence, or misconduct which:

2. Causes monetary harm to a customer

Rule 10D-6.075, Florida Administrative Code, was repealed effective May 14, 1996, approximately a year after the Administrative Complaint in this case was issued. Nonetheless, as a review of the existing statutory and rule provisions cited above reveals, it is still the law (as it has been since before the time Respondent engaged in the conduct alleged in the Administrative Complaint) that "install[ing] an onsite sewage treatment and disposal system . . . without the required construction permit or final inspections and approval from the

[D]epartment" and committing "gross negligence, incompetence, or misconduct [in connection with such installation], caus[ing] the customer monetary harm," as Respondent is alleged to have done, are violations for which a septic tank contractor may be disciplined. Accordingly, the Department may prosecute and discipline Respondent for having engaged in such conduct, notwithstanding that the particular rule provisions cited in the Administrative Complaint have been repealed. Cf. Drury v. Harding, 461 So. 2d 104, 108 (Fla. 1984)("It is a well-settled rule under Florida law that when a statute is repealed and then substantially re-enacted by the legislature its operation is deemed to be continuous and uninterrupted. . . . Likewise, when an agency substantially re-adopts the provisions of its prior regulations the application of those provisions to actions which arose before their re-adoption is not destroyed or interrupted."); McKibben v. Mallory, 293 So. 2d 48, 53 (Fla. 1974)("[W]here a statute has been repealed and substantially re-enacted . . . , the re-enacted provisions are deemed to have been in operation continuously from the original enactment"); Childers v. Department of Environmental Protection, 696 So. 2d 962, 964 n.4 (Fla. 1st DCA 1997)("[T]he substantial restatement of an old ground in a new statute authorizes disciplinary action on the preexisting ground under the new statute."); Solloway v. Department of Professional Regulation, 421 So. 2d 573, 574 (Fla. 3d DCA 1982)("An amendment and re-enactment of a statute

constitutes a continuation of those provisions which are carried into the new act and permits a prosecution under the original act irrespective of its nominal repeal.").

33. The record evidence in the instant case clearly and convincingly establishes that, as alleged in the Administrative Complaint, Respondent acted in violation of the law by installing a drainfield on Gibson's property without having obtained the requisite permit from the Department and, in addition, was guilty of committing gross negligence, gross incompetence, or gross misconduct in connection with such project and thereby causing Gibson monetary harm inasmuch as the drainfield he installed was substantially undersized and, as a result, Gibson's septic system malfunctioned. Disciplinary action against Respondent is therefore warranted.

34. In its proposed recommended order, the Department suggests that "Respondent's septic tank contractor's registration be revoked, or in the alternative, suspended for 90 days, and that a fine of \$1,000.00 be imposed."

35. The Department may not revoke Respondent's registration because it did not warn Respondent in the Administrative Complaint or at any other time prior to the final hearing that he was at risk of having his registration revoked.

36. It appears, however, that, considering the facts of the instant case in light of the applicable provisions of the Department's "disciplinary guidelines," it would be appropriate

to impose upon Respondent, who is a "repeat violat[or]" under these "disciplinary guidelines,"⁴ the "alternative" disciplinary action proposed by the Department: a 90 day suspension of Respondent's registration and a fine in the amount of \$1,000.00.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department enter a final order finding Respondent guilty of the unlawful conduct alleged in the Administrative Complaint and disciplining him therefor by suspending his septic tank contractor's registration for 90 days and fining him in the amount of \$1,000.00.

DONE AND ENTERED this 29th day of June, 1998, in
Tallahassee, Leon County, Florida.

STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of June, 1998.

ENDNOTES

¹ Hereinafter the Department of Health and Rehabilitative Services will also be referred to as the "Department" to reflect that, for purposes of the instant case, its actions are to be considered those of its successor, the Department of Health.

² No mention was made in the Administrative Complaint that the Department was seeking to revoke Respondent's registration.

³ Such notice was in the form of a Notice of Hearing by Video Teleconference mailed on February 9, 1998.

⁴In the unilateral proposed prehearing stipulation that it filed in the instant case, the Department put Respondent on notice that it was seeking to discipline him as a "repeat violat[or]."

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.

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