

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
HEARING AID SPECIALISTS,)
)
Petitioner,)
)
vs.) Case No. 03-3452PL
)
KENT A. BROY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, in West Palm Beach, Florida, on November 5, 2003.

APPEARANCES

For Petitioner: Steven Graham, Esquire
Qualified Representative
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and

Lee Ann Gustafson, Esquire
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For Respondent: E. Raymond Shope, II, Esquire
1404 Goodlette Road, North
Naples, Florida 34102

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Kent A. Broy, committed the violations alleged in an Administrative Complaint filed with by Petitioner, the Department of Health, on April 11, 2003, and, if so, what disciplinary action should be taken against him.

PRELIMINARY STATEMENT

On or about April 11, 2003, a five-count Administrative Complaint against Kent A. Broy, a Florida-licensed hearing aid specialist was filed with the Department of Health. On or about July 2, 2003, Mr. Broy, through counsel, filed a Request for Formal Hearing with Petitioner, indicating that he disputed the allegations of fact contained in the Administrative Complaint and requesting a formal administrative hearing pursuant to Section 120.569(2)(a), Florida Statutes (2003). On September 22, 2003, the matter was filed with the Division of Administrative Hearings, with a request that the case be assigned to an administrative law judge. The matter was designated DOAH Case No. 03-3452PL and was assigned to the undersigned.

The final hearing was scheduled by Notice of Hearing entered October 2, 2003, for November 5, 2003.

At the commencement of the final hearing Petitioner dismissed Count IV of the Administrative Complaint. Petitioner then presented the testimony of G.H., J.H., Neil Bailes, and Respondent.¹ Petitioner offered nine exhibits for identification. Petitioner's Exhibits 1, 2, 3, and 8 were admitted.² Petitioner's Exhibit 9 was used for demonstrative purposes only. Petitioner's other exhibits were not offered. Respondent offered no evidence.³

By Notice of Filing of Transcript issued December 17, 2003, the parties were informed that the one-volume Transcript of the final hearing had been filed on December 17, 2003. The parties, pursuant to agreement, therefore, had until January 6, 2004, to file proposed recommended orders. On January 5, 2004, Respondent filed an Amended Motion for Enlargement of Time seeking an extension until February 5, 2004, to file proposed recommended orders. The Amended Motion was granted, in part, by an Order entered January 5, 2004, giving the parties until January 16, 2004, to file their proposed recommended orders. On January 6, 2004, Petitioner filed a Motion to Vacate Order Granting Enlargement of Time. Petitioner suggested that the basis given by Respondent for his requested extension of time was incorrect and that any extension should be limited to January 12, 2004. Having failed to explain any prejudice caused by allowing the parties an additional four days to file their

proposed orders, the parties were informed that the Motion to Vacate was denied.

Respondent filed Respondent's Proposed Recommended Order on January 16, 2004. Respondent filed Petitioner's Proposed Recommended Order on January 20, 2004.⁴ A Motion to Accept Late Filing of Petitioner's Proposed Recommended Order was filed by Petitioner and a Motion to Strike Petitioner's Proposed Recommended Order was filed by Respondent on January 20, 2004. On January 21, 2004, Respondent filed a Notice of Withdrawal of Motion to Strike. Petitioner's Motion to Accept Late Filing of Petitioner's Proposed Recommended Order is hereby granted.

The post-hearing submittals of both parties have been fully considered in entering this Recommended Order.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, the Department of Health (hereinafter referred to as the "Department"), is the agency of the State of Florida charged with the responsibility for the investigation and prosecution of complaints involving hearing aid specialists licensed to practice in Florida.

2. Respondent, Kent A. Broy, is, and was at the times material to this matter, a hearing aid specialist licensed to practice in Florida, having been issued license number AS2169 on April 13, 1989.⁵

B. The Administrative Complaint.

3. On April 11, 2003, an Administrative Complaint, DOH Case No. AS 2001-19941, was filed with the Department against Mr. Broy. Mr. Broy disputed the issues of fact alleged in the Administrative Complaint and requested a formal administrative Hearing by a Request for Formal Hearing filed with the Department on Mr. Broy's behalf by counsel.

4. The remaining four counts of the Administrative Complaint, Counts I, II, III, and V, allege violations of subsections of Section 484.056(1), Florida Statutes: Section 484.056(1)(g) (Count I); (j) (Count II); (w) (Count III); and (m) (Count V).

5. All four counts include the following introductory sentence: "Petitioner realleges and incorporates herein by reference the facts alleged in paragraphs 1-16 [of the Administrative Complaint]." Paragraphs 1 through 6 are general allegations which were admitted by Mr. Broy.

C. Patient G.H.

6. Patient G.H., who was 88 years of age at the time, visited a business known as Audibel Hearing Care Center (hereinafter referred to as "Audibel")⁶ and located at 1620 North U.S. Highway 1, Jupiter, Florida, on October 24, 2001, a Tuesday. G.H. was accompanied by his wife, J.H.

7. G.H. went to Audibel to determine whether he needed hearing aids.

8. Mr. Broy, who G.H. assumed was a licensed hearing aid specialist, assisted G.H.⁷

9. As alleged in the Administrative Complaint, G.H. agreed to purchase a pair of "in the ear" hearing aids for \$6,810.00.

10. Mr. Broy attempted to make molds of the G.H.'s ear canals so that the hearing aids G.H. had agreed to purchase could be ordered. Molding material was placed in G.H.'s ear, but when it was removed it was found to be covered with wax.

11. Mr. Broy attempted to remove the wax from G.H.'s ear with some type of instrument. This caused pain in G.H.'s ear, so the effort was discontinued. Mr. Broy then gave G.H. some oil to use to attempt to soften the wax, and he scheduled G.H. to return the next week.

12. In furtherance of the sale and purchase of the hearing aids, G.H. signed a Purchase Agreement. The Agreement states that G.H. was purchasing 2 "Merc CIC Dig" hearing aides at \$4,200.00 each (\$8,400.00 total) less a 20% discount, leaving a discounted price of \$6,720.00 plus a \$90.00 administration fee.

13. The Purchase Agreement includes, in part, the following regarding return of the hearing aids:

Return Policy - Purchaser may return the hearing aid(s), so long as the hearing aid(s) is returned to the seller

within the 30 day trial period in good working condition. A return claim form may be obtained from the distributor at the location checked on the face of this agreement. A request for return must be submitted in writing, within 30 days. . . .

14. The distributor identified on the face of the Purchase Agreement was Audibel. The Purchase Agreement did not identify the guarantor for the refund. No hearing aids, however, were delivered to G.H. at the time he signed the Purchase Agreement or anytime subsequent thereto.

15. G.H. paid the full purchase price, charging the full price to a credit card.

16. Shortly after executing the Purchase Agreement, G.H. decided that he did not want the hearing aids⁸ and he returned to Audibel. He told Mr. Broy that he no longer wanted the hearing aids.⁹

17. G.H., not receiving satisfaction from Mr. Broy, ultimately challenged the amount he paid for the hearing aids with his credit card company. He was refunded the \$6,810.00 charge. On January 9, 2002, Mr. Broy charged \$630.00 to G.H.'s credit card. That amount has not been refunded.

18. During the investigation of this matter, Neil Bailes, an investigator for the Agency for Health Care Administration, who had never met or spoken to Mr. Broy in person, spoke to someone whom he believed was Mr. Broy. The individual he spoke

with told him that records relating to G.H.'s purchase and subsequent return of hearing aids were in G.H.'s possession, and, therefore, he could not provide those records.¹⁰

CONCLUSIONS OF LAW

A. Jurisdiction.

19. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

B. The Charges of the Administrative Complaint.

20. The grounds proven in support of the Department's assertion that Mr. Broy's license should be revoked or suspended are limited to those specifically alleged in the Administrative Complaint. See, e.g., Hamilton v. Department of Business and Professional Regulation, 764 So. 2d 778 (Fla. 1st DCA 2000); Cottrill v. Department of Insurance, 685 So. 2d 1371 (Fla. 1st DCA 1996); Kinney v. Department of State, 501 So. 2d 129 (Fla. 5th DCA 1987); and Hunter v. Department of Professional Regulation, 458 So. 2d 842 (Fla. 2nd DCA 1984).

21. Not only are the statutory grounds upon which the Department may discipline Mr. Broy's license limited to those specifically alleged in the Administrative Complaint, but the factual grounds are also so limited. This principle was

explained by the court in Luskin v. Agency for Health Care Administration, 731 So. 2d 67, 68-69 (Fla. 4th DCA 1999):

We hold, as this court did in *Wood*, that, "It is clear from the record that [appellant] did not and could not know with any reasonable degree of certainty the nature of any alleged violations or grounds for revocation of his license until after [appellee] had offered its evidence at the hearing." *Wood*, 325 So.2d at 26. While appellant may have had some "insight" as to the grounds upon which the appellee would seek revocation, this "cannot substitute for reasonable notice of the charges against which [appellant] was ultimately expected to defend." *Id.*; see also *Cottrill v. Department of Ins.*, 685 So.2d 1371, 1372 (Fla. 1st DCA 1996)("Predicating disciplinary action against a licensee on conduct never alleged in an administrative complaint or some comparable pleading violates the Administrative Procedure Act."); *Delk v. Department of Prof'l Regulation*, 595 So.2d 966, 967 (Fla. 5th DCA 1992)("the proof at trial or hearing [must] be that conduct charged in the accusatorial document....").

22. The two principles were summarized in Delk v. Department of Professional Regulation, 595 So. 2d 966, 967 (Fla. 5th DCA 1992):

It is a basic tenet of common law pleading that "the allegata and probata must correspond and agree." See, *Rose v. State*, 507 So.2d 630 (Fla. 5th DCA 1987). This is basic due process of law and means that not only must the proof at trial or hearing be that conduct charged in the accusatorial document, but also that the conduct proved must legally fall within the statute or rule claimed to have been violated. Conduct

occurring before the effective date of the prohibition does not meet this standard.

23. The statutory authority for disciplining Mr. Broy's license is found in Section 484.056(1), Florida Statutes, which proscribes certain conduct which "constitute grounds for . . . disciplinary action, as specified in s. 456.072(2)", of a licensed hearing aid specialist. The specific portions of Section 484.056(1), Florida Statutes, the Department has alleged in its Administrative Complaint that Mr. Broy violated are Section 484.056(1)(g), (j), (m), and (w), Florida Statutes. The alleged violation of Section 484.056(1)(w), Florida Statutes, is based upon an alleged violation of Florida Administrative Code Rule 64B6-7.002. It is these provisions and no others that the Department was required to prove Mr. Broy violated.

24. In support of its allegation in the Administrative Complaint as to each of the four statutory violations, the Department states that it "realleges and incorporates herein by reference the facts alleged in paragraphs 1-16." Paragraphs 1 through 6 are general allegations, to which Mr. Broy has stipulated. Therefore, in order to concluded that Mr. Broy violated any of the alleged statutory proscriptions of Section 484.056(1), Florida Statutes, the Department was limited to these alleged facts.

25. Paragraphs 7 through 11 of the Administrative Complaint allege the following facts pertaining to the treatment of G.H. on October 24, 2001:

7. On October 24, 2001, patient G.H. visited Respondent at an Audibel Hearing Care Center located at 1620 North U.S. Highway 1, Jupiter, Florida.

8. On October 24, 2001, Respondent sold the patient a pair of "in the ear" hearing aids for \$6,810.00.

9. On October 24, 2001, the patient paid the full purchase price by having it charged on a credit card.

10. Respondent was unable to make a mold for the hearing aids on October 24, 2001, because the patient had impacted ear wax in his right ear.

11. Respondent attempted to remove the wax with a metal probe but could not, provided the patient with some oil to soften the wax, and rescheduled the patient to return the next week.

26. Paragraphs 12 and 13 of the Administrative Complaint allege the following facts pertaining to the Purchase Agreement:

12. The sales receipt Respondent provided the patient at the time of sale advised the patient concerning the patient's right to a refund that "A return claim form may be obtained from the distributor at the location checked on the face of this agreement. A request for return must be submitted in writing, within 30 days."

13. As a matter of law, a written request for a refund was not required for a hearing aid sold in the establishment on the date of sale.

27. Paragraph 14 of the Administrative Complaint alleges the following pertaining to the use of a fictitious name:

14. Respondent used an unregistered fictitious name "Audibel Hearing Care Centers" on the sales receipt provided to the patient as the business from which the patient was buying the hearing aids.

28. Paragraph 15 of the Administrative Complaint, which alleged facts that related primarily to Count IV of the Administrative Complaint, alleges the following:

15. The sales receipt provided by Respondent did not contain or identify the guarantor for the 30 day refund privilege.

29. Finally, paragraph 16 of the Administrative Complaint alleges facts pertaining to the investigation by the Department of G.H.'s purchase:

16. During the investigation of the complaint, Respondent advised the Agency for Hearing Care Administrator (AHCA) investigator that Respondent would not and could not provide AHCA with the patient G.H.'s patient records because Respondent had given them all to the patient.

C. The Burden and Standard of Proof.

30. The Department seeks to impose penalties against Mr. Broy through the Administrative Complaint that include suspension or revocation of his license and/or the imposition of an administrative fine. Therefore, the Department has the burden of proving the specific allegations of fact that support

its charges against Mr. Broy by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998); and §120.57(1)(j), Fla. Stat. (2003).

31. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), as follows:

. . . [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 evidence 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 the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652 (Fla. 5th DCA 1998)(Sharp, J., dissenting).

D. Fraud or Deceit, or Negligence, Incomptency, or Misconduct in the Practice of Dispensing Hearing Aids.

32. Count I alleges that Mr. Broy violated Section 484.056(1)(g), Florida Statutes, which allows disciplinary action of a licensee upon:

(g) Proof that the licensee is guilty of fraud or deceit or of negligence incompetency, or misconduct in the practice of dispensing hearing aids.

33. In Petitioner's Proposed Recommended Order, the Department has alleged that Mr. Broy violated Section 484.056(1)(g), Florida Statutes, "for the following reasons, individually, collectively, or in any combination thereof:"

(A) Inserting the molding material into G.H.'s ear before inspecting the ear for wax and thereby causing the ear wax to become more impacted; or by inspecting the ear first, discovery the ear wax, attempting unsuccessfully to remove the wax, and then still going ahead with inserting the molding material into G.H.'s ear to try to make a mold, without regard for the fact that doing this would cause the ear wax to become more impacted;

(B) Failing to refer G.H. to a physician to have the ear wax properly removed;

(C) Relying on the results of a hearing test to recommend what particular type of hearing aids to sell patient G.H., even after discovering that G.H. had too much wax in his ears for the hearing test to be reliable;

(D) Failing to maintain the patient's records for 4 years, or falsely telling

AHCA's investigator that the had given all of the patient records to the patient;

(E) Cursing at patient G.H. and treating G.H. in a highly unprofessional manner when patient G.H. attempted to cancel the purchase, as it was the patient's right to do under Section 484.0512, Florida Statutes.

(F) Refusing to refund any amount of money to G.H.'s credit card after G.H. cancelled the price for the hearing aids that he never received.

(G) Placing an unauthorized charge in the amount of \$630.00 to the patient's credit card, with an additional aggravating factor being that even if Respondent were entitled to the maximum 5% cancellation fee and fitting fee allowed by law, such amount would have been less than \$630.00.

34. The Department's assertion that the foregoing "facts" support a finding that Mr. Broy violated Section 484.056(1)(g), Florida Statutes, is rejected. For the Department to take action against Mr. Broy based upon these alleged facts would be, as stated in Cottrill, to take "disciplinary action against a licensee on conduct never alleged in an administrative complaint." None of the "facts", many of which are not even supported by the record in this case,¹¹ were alleged in the Administrative Complaint. They cannot, therefore, form the basis for disciplinary action against Mr. Broy.

35. As to the specific factual allegations of the Administrative Complaint, although those allegations were

proved, none support a conclusion that Mr. Broy violated Section 484.056(1)(g), Florida Statutes.¹²

E. Misleading, Deceiving, or Untruthful Information.

36. Count II alleges that Mr. Broy violated Section 484.056(1)(j), Florida Statutes, which allows disciplinary action of a licensee for:

(j) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful.

37. The facts alleged in the Administrative Complaint, most of which were proved, do not support a conclusion that Mr. Broy violated Section 484.056(1)(j), Florida Statutes.¹³

38. In Petitioner's Proposed Recommended Order, the Department merely alleges that "Respondent is guilty of causing or promoting the use of representations which are misleading, deceiving, or untruthful . . ." without suggesting which facts alleged in the Administrative Complaint support this assertion.

F. Violations of Chapters 456 or 484, Florida Statutes, or the Rules Adopted Pursuant Thereto.

39. Count III alleges that Mr. Broy violated Section 484.056(1)(w), Florida Statutes, which authorizes disciplinary action for "[v]iolating any provision of [chapter 484] or chapter 456, or any rules adopted pursuant thereto." Count III

goes on to alleged that Mr. Broy violated Florida Administrative Code Rule 64B6-7.005, which provides:

A hearing aid specialist shall not make or permit to be made a false or misleading communication about the hearing aid specialist or the hearing aid specialist's services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Is likely to create an unjustified expectation about results the hearing aid specialist can achieve.

40. The facts alleged in the Administrative Complaint support a conclusion that Mr. Broy violated the Rule and, thereby, Section 484.056(1)(w), Florida Statutes.¹⁴

41. In Petitioner's Proposed Recommended Order, the Department has merely asserted that "Count III of the Administrative Complaint has been proven" without any suggestion as to how Mr. Broy violated Florida Administrative Code Rule 64B6-7.005.

G. Failure to Provide Full Disclosure.

42. Count V alleges that Mr. Broy violated Section 484.056(1)(m), Florida Statutes, which allows disciplinary action of a licensee upon:

(m) Representation, advertisement, or implication that a hearing aid or its repair is guaranteed without providing full disclosure of the identity of the guarantor; the nature, extent, and duration of the guarantee; and the existence of conditions or limitations imposed upon the guarantee

43. The facts alleged in the Administrative Complaint do not support a conclusion that Mr. Broy violated Section 484.056(1)(m), Florida Statutes. The only fact which apparently relates to Count V is the allegation of paragraph 15 of the Administrative Complaint. Section 484.051(2), Florida Statutes, requires that a receipt with guarantor identification is to be provided "at the time of delivery" of the hearing aid. No such delivery was made in this case.

44. In Petitioner's Proposed Recommended Order, the Department has merely asserted that "Count V of the Administrative Complaint has been proven" without any suggestion as to how Mr. Broy violated Section 484.056(1)(m), Florida Statutes.

RECOMMENDATION

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

RECOMMENDED that the a final order be entered by the Board of Hearing Aid Specialist dismissing the April 11, 2003, Administrative Complaint against Kent A. Broy.

DONE AND ENTERED this 5th day of February, 2004, in
Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of February, 2004.

ENDNOTES

1/ Other than giving his name, Respondent invoked his Fifth Amendment rights under the Florida and United States Constitutions in response to all other questions, on advice of counsel.

2/ At the commencement of the hearing, Petitioner offered all of its exhibits for identification and as evidence. Petitioner's Exhibit 1 was accepted into evidence and a ruling was reserved on the other exhibits until they were properly identified and authenticated. Petitioner subsequently offered Petitioner's Exhibits 2 and 3, used Petitioner's 5 to refresh a witness's memory, and the author of Petitioner's Exhibit 8, which is a page out of Petitioner's Exhibit 1, was separately identified. Petitioner's Exhibits 4 through 7 were not authenticated or identified. Nor were they not offered into evidence.

3/ Respondent requested that judicial notice be taken of prior Board of Hearing Aid Specialist opinions concerning the definition of the sale of hearing aids and specific sections of

Chapter 484, Florida Statutes. The request as to the opinions was denied, with leave for the parties to file memoranda addressing the issue, which neither of the parties have done. The request for judicial notice of sections of Chapter 484, Florida Statutes, identified in the Transcript of the final hearing, was granted.

4/ Petitioner's Proposed Recommended Order was faxed to, and received by the Division of Administrative Hearings on January 16, 2004, a Friday, six minutes after 5:00 p.m. Therefore, it was treated as having been filed on the next business day, January 20, 2004, a Monday.

5/ Mr. Broy stipulated to the correctness of the allegations of paragraphs 1 through 6 of the Administrative Complaint and those paragraphs are hereby accepted and incorporated into this Recommended Order to the extent not otherwise specifically included.

6/ Although the evidence proved that Mr. Broy used the name "Audibel Health Care Center," the evidence failed to prove that the name was not registered. The only proof concerning registration of the name (Petitioner's Exhibit 4) was not offered into evidence, was not authenticated or identified, and, even if admitted, constitutes hearsay.

7/ The Department included a number of proposed findings of fact concerning what transpired between Mr. Broy and G.H. Those proposed findings, which are found in 10, 11, 15, 16, and 17 of Petitioner's Proposed Recommended Order, however, are not facts alleged in the Administrative Complaint and, therefore, are not relevant.

8/ The evidence failed to prove why G.H. decided to cancel the Purchase Agreement. Nor is this a relevant fact. Respondent's suggestion that G.H. decided to cancel the agreement because he discovered he could acquire them cheaper elsewhere is based upon hearsay evidence and, therefore, rejected.

9/ The Department included proposed findings of fact concerning Mr. Broy's reaction to G.H.'s decision to cancel the Purchase Agreement. Those findings of fact, found in paragraphs 27, 28, and 29 of Petitioner's Proposed Recommended Order are not facts alleged in the Administrative Complaint and, therefore, are not relevant.

10/ The Department's suggestion in its Proposed Recommended Order that Mr. Broy's statement concerning the records requested by Mr. Bailes was "misleading, deceiving, or untruthful" is not a fact alleged in the Administrative Complaint and is not supported by the evidence.

11/ Some of the "facts" relied upon by the Department in Petitioner's Proposed Record were not proved by clear and convincing evidence because there was not sufficient evidence on the matter or because there was a lack of expert testimony to support them.

12/ The Department, having failed to suggest in Petitioner's Proposed Recommended Order that the facts it actually alleged in the Administrative Complaint support a finding that Mr. Broy violated Section 484.052(1)(g), Florida Statutes, apparently concedes this conclusion.

13/ Mr. Broy addresses the only possible facts alleged in the Administrative Complaint which could support a finding that Mr. Broy violated Section 484.056(1)(j), Florida Statutes, and why those facts do not support a finding that a violation occurred in paragraph 23 of Respondent's Proposed Recommended Order. The arguments contained in that paragraph are hereby accepted and incorporated into this Recommended Order by this reference.

14/ Again, Mr. Broy has addressed the only possible facts alleged in the Administrative Complaint which could support this alleged violation and why those facts do not support a finding a violation occurred in paragraph 24 of Respondent's Proposed Recommended Order. The arguments contained in that paragraph are hereby accepted and incorporated into this Recommended Order by this reference.

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.