

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF OCCUPATIONAL THERAPY PRACTICE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-23257
DOAH CASE NO.: 05-0005PL
LICENSE NO.: OT 6480

JVL
closed

MILTON KAUFMAN,

Respondent.

AP

FINAL ORDER

THIS CAUSE came before the BOARD OF OCCUPATIONAL THERAPY PRACTICE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on May 16, 2005, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, in the above-styled cause. Petitioner was represented by Paula Willis, Assistant General Counsel, Department of Health. Respondent was represented by Robert Rappel, Esquire and Craig M. Rappel, Esquire.

Upon review of the Recommended Order, the statements made by the parties, The Exception filed by Petitioner, Respondent's response thereto and after a review of the complete record in this case, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 468 Part III, Florida Statutes.
2. Except as modified below the conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference. The Petitioner's

exception is granted. This results in a new paragraph 28 being added to the conclusions of law in the Recommended Order. Former paragraph 28 of the Recommended Order is renumbered as paragraph 29 and is repeated below after the new paragraph 28.

28. The conclusions in paragraph 21 and footnote 13 to the Recommended Order are rejected to the extent that they are legal conclusions. They are replaced by the following conclusions of law that the Board finds are as reasonable or more reasonable conclusions of law:

Section 468.217 (1) (t) Florida Statutes does not require the Petitioner to prove that a Respondent can not or has not been able to practice at that level of care, deviation from which is prohibited by Section 468.217 (1) (q) Florida Statutes. Under subsection 468.217 (1) (t), Florida Statutes, an occupational therapist could be disciplined by reason of inability to practice with reasonable skill and safety to patients by reason of use of alcohol, drugs, narcotics, chemicals, or any other type of material if the expert testimony established that such usage, given the historical facts relevant to the occupational therapist, renders the therapist unable to practice with reasonable skill and safety. Even recreational usage of an illegal controlled substance, such as marijuana may under certain conditions render the licensee unable to practice with reasonable skill and safety, regardless of whether a specific incident of substandard care has been established. To interpret the standard of proof otherwise would render subsection (t) indistinguishable from subsection (q).

29. The findings of fact set forth hereinabove, which followed from the application of Section 468.217 (1) (t), Florida Statutes, to the evidence of record as viewed through the above-stated standard of proof, are dispositive.

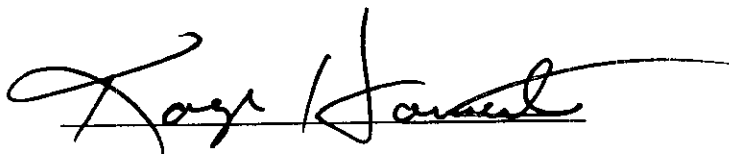
DISPOSITION

Upon a complete review of the record in this case, the Board hereby adopts the recommendation made by the Administrative Law Judge to dismiss the Administrative Complaint .

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED that the Administrative Complaint in this case is DISMISSED.

DONE AND ORDERED this 6 day of June, 2005.

BOARD OF OCCUPATIONAL THERAPY PRACTICE



Kaye Howerton, Executive Director, For
Michelle Watson, Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: Craig M. Rappel, Esquire, Attorney for Respondent at 1515 North Indian River Boulevard, Suite A-210, Vero Beach, Fl 32960-7103; to John G. Van Laningham Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; by interoffice delivery to Paula Willis, Assistant General Counsel, Department of Health 4052 Bald Cypress Way, Bin C-65, Tallahassee, Fl 32399-3265; and to Gary L. Asbell, Assistant Attorney General, Department of Legal Affairs, The Capitol PL-01, Tallahassee Florida 32399-1050, this 7th day of June, 2005.

Shalonda Lue

Deputy Agency Clerk