

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2008

06-0664PL

JAMES E. HETHER, D.C.,

Appellant,

v.

Case No. 5D06-3775

DEPARTMENT OF HEALTH,

Appellee.

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE A REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

FILED
2008 MAY 21 P 1:11
DIVISION OF
ADMINISTRATIVE
HEARINGS

Opinion filed March 14, 2008

Administrative Appeal from the
Department of Health.

Michael R. D'Lugo, of Wicker, Smith,
O'Hara, McCoy & Ford, P.A., Orlando,
for Appellant.

Wings S. Benton, Assistant General
Counsel, Prosecution Services Unit,
Department of Health, Tallahassee, for
Appellee.

PLEUS, J.

James Hether, D.C., appeals the Department of Health, Board of Chiropractic Medicine's ("Department") final order finding him guilty of sexual misconduct with a chiropractic patient. He raises three arguments on appeal. We reverse and remand with respect to Dr. Hether's third argument, that the Department impermissibly increased the penalties recommended by the ALJ when it added five hours of

new final order in this cause which either (a) accepts the penalty recommendation of the hearing examiner, or (b) reimposes the penalty under review stating, with particularity, the reasons for increasing the penalty recommended by the hearing examiner.

Lazarus v. Dep't of Prof. Regulation, Bd. Of Med. Exam'rs, 461 So. 2d 1022, 1023 (Fla. 3d DCA 1985).

In the instant case, the Department failed to state with particularity the reasons for the increased punishment consisting of the additional CE requirements. The penalty increase simply stated:

Respondent shall document the completion of **five (5) hours** of continuing education in the areas of boundary issues and ethics within **one (1) year** from the date that this Final Order is filed. These hours shall be in addition to those hours required for license renewal. Said continuing education courses must be pre-approved by the Board and shall consist of a formal live lecture format.

There are no reasons stated in the final order for the additional CE penalty. Although it is true that the Department discussed the reasons for the CE requirement and reviewed the record at its own hearing, the plain language of section 120.57 requires that the reasons for the increase be stated in the order and citation be made to the record. Because the final order failed to do so, we remand with directions that the Department either accept the recommended penalty or reimpose the current penalty, stating with particularity the reasons for the increase. *Lazarus*, 461 So. 2d at 1023.

AFFIRMED IN PART, REVERSED IN PART and REMANDED.

PALMER, C.J. and EVANDER, J., concur.