

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIGUEL MORA RODRIGUEZ, BY AND)
THROUGH HIS BEST FRIEND AND)
GUARDIAN MARIA MELENDEZ,)
)
Petitioner,)
)
vs.) Case No. 07-0689RX
)
DEPARTMENT OF HEALTH,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on March 8, 2007, by video teleconference, with the parties appearing in Miami, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: JoNel Newman, Esquire
Sarah O'Dea, Certified Legal Intern
Aracely Alicea-Clark, Certified Legal
Intern
Community Health Rights Education Clinic
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For Respondent: Michael A. Greif, Esquire
Department of Health
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STATEMENT OF THE ISSUE

Whether Florida Administrative Code Rule 64I-1.001(1)(c) is an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

On February 12, 2007, Miguel Mora Rodriguez, by and through his best friend and guardian Maria Melendez, filed a Petition to Determine Invalidity of Existing Rule Disqualifying Current Florida Residents from Being Considered for Services Under the Brain and Spinal Cord Injury Program pursuant to Section 120.56(1) and (3), Florida Statutes (2006),¹ in which he asserted that the definition of "legal resident" in Florida Administrative Code Rule 64I-1.001(1)(c), for purposes of eligibility for participation in Florida's Brain and Spinal Cord Injuries ("BSCI") Program, constituted an invalid exercise of delegated legislative authority pursuant to Section 120.52(8), Florida Statutes. Mr. Rodriguez alleged in the petition that he was substantially affected by Florida Administrative Code Rule 64I-1.001(1)(c), which includes in the definition of "legal resident" the requirement that an applicant have "a lawful permanent presence in the United States of America," and that the rule is an invalid exercise of delegated legislative authority under Section 120.52(8), Florida Statutes, because the Department of Health ("Department") materially failed to follow proper rulemaking procedures; because the rule modifies and

contravenes the statute implemented; and because the rule is arbitrary and capricious. Pursuant to notice, the final hearing was held on March 8, 2007.

The parties filed a Joint Pre-Hearing Stipulation in which they stipulated to most of the material facts. At the hearing, the parties jointly presented the testimony of Marilyn Larrieu, and Petitioner's Exhibits A and B were offered and received into evidence. In the Joint Pre-Hearing Stipulation, the parties noted that they disagreed about whether Mr. Rodriguez had standing to pursue this rule challenge, and, at the commencement of the hearing, the Department made an ore tenus motion to dismiss the petition for lack of standing. Brief argument was heard from Mr. Rodriguez and the Department. Ruling on the motion was withheld until entry of the final order in this case, and the parties were requested to file written argument on the issue of standing.

The transcript of the proceeding was filed with the Division of Administrative Hearings on March 26, 2007. On April 4, 2007, the Department filed a Motion to Deny Petition Due to Lack of Standing. The parties timely filed proposed findings of fact and conclusions of law in which they addressed the standing issue, and Mr. Rodriguez filed a separate memorandum of law in opposition to the motion, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

Stipulated facts

1. Mr. Rodriguez suffered a brain injury as a result of an automobile accident.

2. Mr. Rodriguez is currently residing in Florida and presently intends to remain in Florida as his permanent home.

3. Mr. Rodriguez is currently an undocumented immigrant with no federally-recognized immigration status.

4. On or about May 2004, Mr. Rodriguez's legal representative applied for BSCI program services for Mr. Rodriguez, who was then denied on the basis that he was not a legal Florida resident.

5. The Department shared all notices regarding rulemaking for the rule with Mr. Rodriguez's legal representatives throughout the original rulemaking process.

6. There were no requests for workshops or hearings on the rule.

7. The BSCI Manual instructs the case manager to determine legal residency to initiate the eligibility process.

8. The BSCI program is wholly funded by the State of Florida from state revenue sources, including appropriations, a

percentage of civil penalties received by county courts, recovery of third-party payments for medical services, and gifts. See § 381.79, Fla. Stat.

Facts established at hearing

9. The BSCI program provides rehabilitation services, such as in-patient rehabilitation services, out-patient rehabilitation services, day treatment programs, medical equipment, and home modifications, for eligible persons who have sustained traumatic brain or spinal cord injuries. The BSCI program provides funding as a last resort for services an injured person needs to integrate into the community.

10. Every person who has suffered a moderate-to-severe brain or spinal cord injury in Florida is referred to the BSCI program's central registry.

11. The BSCI program manual requires the case manager to determine legal residency in this state as the first step in determining eligibility for BSCI program services. When there is a question regarding Florida residency, the manual instructs the case manager to request proof of legal Florida residency, which, when there is a question regarding legal immigration status, must consist of a permanent resident alien card or a letter or document from the United States Immigration Department granting parolee or other status that would allow the person to remain indefinitely or permanently in the United States.

12. The BSCI program has limited financial resources, but the Department has not established an order of selection for eligible persons in order to deal with a funding shortage, as permitted by Section 381.76(2), Florida Statutes.

Rule, statutory authority, and statute implemented

13. The BSCI program, found in Sections 381.739 through 381.79, Florida Statutes, was created by the Legislature expressly

to ensure the referral of individuals who have moderate-to-severe brain or spinal cord injuries to the brain and spinal cord injury program, a coordinated rehabilitation program administered by the department. The program shall provide eligible persons, as defined in s. 381.76, the opportunity to obtain the necessary rehabilitative services enabling them to be referred to a vocational rehabilitation program or to return to an appropriate level of functioning in their community. Further, it is intended that permanent disability be avoided, whenever possible, through prevention, early identification, emergency medical services and transport, and proper medical and rehabilitative treatment.

§ 381.7395, Fla. Stat.

14. The Department is the state agency responsible for implementing and administering the BSCI program. § 381.75, Fla. Stat.

15. The eligibility criteria for the BSCI program are set forth in Section 381.76, Florida Statutes, as follows:

(1) An individual shall be accepted as eligible for the brain and spinal cord injury program following certification by the department that the individual:

(a) Has been referred to the central registry pursuant to s. 381.74;

(b) Is a legal resident of this state at the time of application for services;

(c) Has sustained a brain or spinal cord injury;

(d) Is medically stable; and

(e) Is reasonably expected to achieve reintegration into the community through services provided by the brain and spinal cord injury program.

Section 381.76(2), Florida Statutes, further provides that, "[i]f the department is unable to provide services to all eligible individuals, the department may establish an order of selection."

16. Pursuant to Section 381.011(13), Florida Statutes, the Department has the authority to "[a]dopt rules pursuant to ss. 120.56(1) and 120.54 to implement the provisions of law conferring duties upon it. This subsection does not authorize the department to require a permit or license unless such requirement is specifically provided by law."

17. In 2005, the Department adopted Florida Administrative Code Rule 64I-1.001(1)(c). Rule 64I-1.001(1)(c) added a definition of "legal resident" to a list of definitions of terms

used in Sections 381.739-.79, Florida Statutes, consistent with the definitions included in Section 381.745, Florida Statutes. Rule 64I-1.001(1)(c) defines "legal resident" as follows: "A person who currently lives in Florida, has the present intent to remain in Florida indefinitely, and has lawful permanent presence in the United States of America."

18. As part of the rulemaking procedure, the Department published in the Florida Administrative Weekly a notice of its intent to adopt Rule 64I-1.001(1)(c) containing the information required by Section 120.54(3)(a)(1), Florida Statutes. In the notice, the Department identified Section 381.011, Florida Statutes, as the specific authority for the rule and Section 381.76, Florida Statutes, as the law implemented.

19. The Department also sent the notice to the Administrative Procedures committee, together with a document that provided as follows:

STATEMENT OF FACTS AND CIRCUMSTANCES

The proposed rule implements statutory provisions of Chapter 381, Florida Statutes.

SUMMARY

Defining the term "Legal Resident" as used in section 381.76, Florida Statutes, for purposes of eligibility for the Brain and Spinal Cord Injury Program.

FEDERAL COMPARISON STATEMENT

There are no federal rules that conflict with these rules.

20. As noted above, the Department sent all notices related to the adoption of Rule 64I-1.001(1)(c) to Mr. Rodriguez's legal representative.

CONCLUSIONS OF LAW

21. 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.

Standing

22. Section 120.56(1)(a), Florida Statutes, provides that "[a]ny person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

23. The Department has taken the position that Mr. Rodriguez does not have standing to maintain this rule challenge because, regardless of the requirement in Rule 64I-1.001(1)(c) that a legal resident of Florida have lawful permanent residence in the United States, Mr. Rodriguez could not receive benefits under Florida's BSCI program.

24. The Department bases its argument on Title 8, Section 1621, United States Code, which provides in pertinent part that aliens who do not fit into three enumerated categories are "not eligible for any State or local public benefit (as defined in subsection (c))." This statute includes exceptions to state and local benefits that are covered by the prohibition; the benefits that are included in the prohibition are defined in the statute; and states may provide for the eligibility of aliens included in the prohibition "only through the enactment of a State law . . . which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d).

25. The Department's reasoning is that, as an undocumented, illegal immigrant, Mr. Rodriguez could not receive BSCI program benefits under federal law in any event and that, therefore, his eligibility to receive benefits is not substantially affected by Rule 64I-1.001(1)(c). The Department did not, however, cite any definitive statutory or legal authority holding that the prohibition in Title 8, Section 1621, United States Code, applies to BSCI program benefits. In the absence of such a definitive interpretation of the scope of Title 8, Section 1621, United States Code, it cannot be concluded that Mr. Rodriguez would be ineligible to receive BSCI program benefits by this federal law. For this reason, the Department's argument fails.

26. Under Florida law, a person is "substantially affected" by a rule if he or she shows "(1) that the rule or policy will result in a real and immediate injury in fact, and (2) that the alleged interest is within the zone of interest to be protected or regulated. See Jacoby v. Florida Board of Medicine, 917 So. 2d 358, 360 (Fla. 1st DCA 2005), citing Florida Bd. of Medicine v. Florida Acad. of Cosmetic Surgery, Inc., 808 So. 2d 243 (Fla. 1st DCA 2002).

27. Mr. Rodriguez has suffered a real and immediate injury because, even though he had an abode in Florida at the time of his application for BSCI program benefits and intends to remain in Florida permanently, he was been denied BSCI program benefits because he is an undocumented immigrant. Mr. Rodriguez's interest in obtaining BSCI program benefits is within the zone of interest to be protected by the BSCI program because he suffered a brain injury and is, therefore, a person whose interests the BSCI program is designed to serve.

28. Accordingly, it is concluded that Mr. Rodriguez has standing to challenge in validity of Rule 64I-1.001(1)(c), and the Department's Motion to Deny Petition Due to Lack of Standing is denied.

Challenge to validity of Rule 64I-1.001(1)(c)

29. In his petition, Mr. Rodriguez has challenged Rule 64I-1.001(1)(c) as an invalid exercise of delegated

legislative authority on three grounds set forth in
Section 120.52(8), Florida Statutes:

"Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislative. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

* * *

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

* * *

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.^[2]

30. Because Mr. Rodriguez is challenging an existing rule, he has the burden of proving by a preponderance of the evidence that the rule constitutes an invalid exercise of delegated legislative authority. § 120.56(3)(a), Fla. Stat.

A. Material failure to follow rulemaking procedures.

31. Section 120.54, Florida Statutes, sets forth the rulemaking procedures that must be followed by all agencies. Adoption procedures are set forth in Section 120.54(3), Florida

Statutes, and include the requirement that notice of proposed rules be published in the Florida Administrative Weekly and provided to certain specified persons and that the notice contain information. § 120.54(3)(a) 1.-3., Fla. Stat.

32. Mr. Rodriguez contends that the Department failed to follow the procedures set forth in 120.54(a)4., Florida Statutes, which provides that

[t]he adopting agency shall file with the [Administrative Procedures] committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.54; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

33. Mr. Rodriguez argues that the Department's failure to include in its statement to the Administrative Procedures Committee any justification for Rule 64I-1.001(1)(c) and the Department's failure to cite to Title 8, Section 1621, United States Code, as a federal statute on the same subject constituted material deviations from the rulemaking procedures set forth in Section 120.54(3)(a)4., Florida Statutes, which render Rule 64I-1.001(1)(c) an invalid exercise of delegated legislative authority pursuant to Section 120.52(8)(a), Florida Statutes.

34. Any deviation from the procedures set forth in Section 120.54(3), Florida Statutes, is "presumed to be material," although "the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired." § 120.56(1)(c), Fla. Stat.

35. Mr. Rodriguez relies on the presumption of materiality in arguing that Rule 64I-1.001(1)(c) should be declared invalid. Although it is the Department's burden to rebut the presumption of materiality, it appears from the stipulated facts that Mr. Rodriguez's legal representative received all notices required by Section 120.54(3)(a), Florida Statutes, and was given a full and fair opportunity to participate in the rulemaking proceedings leading to the adoption of Rule 64I-1.001(1)(c). Under these circumstances, it is concluded that the presumption of materiality has been rebutted, and Mr. Rodriguez must prove by a preponderance of the evidence that the failure of the Department to include the items required in Section 120.54(3)(a)4., Florida Statutes, constituted a material failure to follow the statutory rulemaking procedures in Section 120.54, Florida Statutes.

36. It is significant in evaluating the materiality of the deficiencies in the statement the Department provided to the Administrative Procedures Committee that the statement was

required to be sent only to the Administrative Procedures Committee for its internal use.³ Nothing in Section 120.54(3), Florida Statutes, permits comment by the general public or interested parties to the Administrative Procedures Committee with regard to the statement, nor does it appear that the public, including Mr. Rodriguez, would have been directly affected by the contents of the statement. Mr. Rodriguez failed to submit any evidence to establish that the Administrative Procedures Committee expressed any concerns about the rule to the Department through comments or inquiries, and it must be assumed that the Administrative Procedures Committee found nothing deficient in the Department's statement.

37. Mr. Rodriguez failed to submit any evidence that the deficiencies in the statement prejudiced his ability to participate in the rulemaking process or that any harm to him or the public resulted from the deficiencies. Mr. Rodriguez has, therefore, failed to prove by a preponderance of the evidence that the deficiencies in the statement submitted to the Administrative Procedures Committee constituted a material failure to follow the rulemaking procedures set forth in Section 120.54(3), Florida Statutes. Cf. Ames v. District Bd. of Trustees, 908 So. 2d 1142, 1143 (Fla. 1st DCA 2005)(Material error of procedure or failure to follow procedures as basis for

reversal on appeal under Section 120.68(7)(c), Florida Statutes, analyzed under harmless error rule).

B. Enlargement, modification, or contravention of provisions of Section 381.76(1)(b), Florida Statutes.

38. The specific law implemented by Rule 64I-1.001(1)(c) is Section 381.76(1)(b), Florida Statutes, which requires that a person be a "legal resident" of the State of Florida in order to be eligible for the BSCI program. Mr. Rodriguez contends that, by defining "legal resident" as a person who not only currently resides in Florida with the intention of staying indefinitely but also "has lawful permanent residence in the United States of America," Rule 64I-1.001(1)(c) enlarges and modifies the definition of "legal resident" in Section 381.76(1)(b), Florida Statutes.

39. Neither Mr. Rodriguez nor the Department cited a statute in which "legal resident" was defined. The only statutory definition of "legal resident" the undersigned located appears in Section 1009.21, Florida Statutes, which addresses the classification of students "as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities." Id. Section 1009.21(1)(c), provides: "A 'LEGAL resident' or 'resident' is a person who has maintained his or her residence in this state for the preceding years, has purchased a home which is occupied by him or her as his or her

residence, or has established a domicile in this state pursuant to s. 222.17." Section 222.17, Florida Statutes, sets forth the procedures for "manifesting and evidencing domicile in Florida," and provides in pertinent part that domicile may be manifested and evidenced by a person's filing with the clerk of the circuit court "a sworn statement showing that he or she resides in and maintains a place of abode in that county [in Florida] which he or she recognizes and intends to maintain as his or her permanent home." § 222.17(1), Fla. Stat.

40. It may be assumed that, in using the term "legal residence" in Section 381.76(b), Florida Statutes, the Legislature intended it to have the same meaning as in Section 1009.21(1)(c), Florida Statutes, that is, that legal residence means current residence in Florida with the intent to remain in Florida indefinitely. See State v. Hearns, 32 Fla. L. Weekly S177 (April. 26, 2007)("We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply."). This conclusion is buttressed by the definition of "legal residence" consistently used by the courts in Florida. The meaning of the term "legal resident" as used in various statutes has been addressed by several Florida courts, and the courts have uniformly held that "legal residence" requires only that a person currently reside in Florida and intend to remain

in Florida permanently. See, e.g., Perez v. Marti, 770 So. 2d 284, 289 (Fla. 3d DCA 2000)("A legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home."); Keveloh v. Carter, 699 So. 2d 285, 288 (Fla. 1st DCA 1997)("A legal residence or 'domicile' is the place where a person has fixed an abode with the present intention of making it his or her permanent home."); Nicholas v. Nicholas, 444 So. 2d 1118, 1119-20 (Fla. 4th DCA 1984)(Law is well-settled that term "residence" as used in dissolution of marriage statute refers to "legal residence" which "is synonymous with 'domicile.'" "Domicile" has long been defined in this state to mean "'a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited period of time.'").

41. In addition, it is clear from the several statutes that the Legislature distinguishes between citizenship and immigration status and legal residence in Florida. The Legislature has used the term "legal resident" in several statutes in addition to Section 381.76, Florida Statutes. The Department of Highway Safety and Motor Vehicles is required to deliver to the clerk of the circuit court a list of names of persons who are, among other things, citizens of the United States and "legal residents of Florida." § 40.011(1), Fla. Stat. A person is eligible to vote in Florida if, among other things,

that person is a citizen of the United States and a "legal resident of the State of Florida." § 97.041(1), Fla. Stat. In order to be eligible to receive temporary cash assistance a person "must be a United States citizen, or a qualified noncitizen, as defined in this section" and "a legal resident of the state." § 414.095(2), Fla. Stat. A person may be appointed a notary public in Florida if, among other things, the person is "a legal resident of the state"; "a permanent resident alien" may also be appointed under certain conditions. A person can be licensed as a private investigator in Florida if, among other things, the person is "a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services." § 493.6106(1), Fla. Stat.

42. The Department has cited no authority to support its interpretation that "legal resident," as used in Section 381.76(1)(b), Florida Statutes, incorporates the concept of immigration status. Although an agency is entitled to deference when interpreting a statute within its special area of expertise, the definition of the term "legal resident" is not within the Department's area of expertise, and its interpretation of the meaning of "legal resident" is not entitled to deference. See Doyle v. Department of Bus. Reg.,

794 So. 2d 686, 690 (Fla. 1st DCA 2001)("[A] court need not defer to an agency's construction or application of a statute if special agency expertise is not required.").

43. Based on the above cited authorities, the Department's interpretation of "legal resident" in Rule 64I-1.001(1)(c) to include the requirement that one not only must currently reside in Florida with the present intention to remain in Florida indefinitely but also that one must have "lawful permanent residence in the United States of America" impermissibly modifies, enlarges, and contravenes Section 381.76(1)(b), Florida Statutes. Florida Administrative Code Rule 64I-1.001(1)(c) is, therefore, an invalid exercise of delegated legislative authority pursuant to Section 120.52(8)(b), Florida Statutes.⁴

44. Section 120.595, Florida Statutes, provides in pertinent part:

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3).--If the court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the

court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$15,000.

45. Mr. Rodriguez is the prevailing party in this proceeding brought pursuant to Section 120.56(3), Florida Statutes, and is, therefore, entitled to an award of reasonable attorney's fees and costs, not to exceed \$15,000.00, if the Department is unable to prove "that its actions were substantially justified or special circumstances exist which would make the award unjust." § 120.595(3), Fla. Stat. Accordingly, jurisdiction is retained so that an evidentiary hearing may be conducted to determine if Mr. Rodriguez is entitled to an award reasonable attorney's fees and costs against the Department and, if so, the amount that should be awarded.

CONCLUSION

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

1. Florida Administrative Code Rule 64I-1.001(1)(c) is an invalid exercise of delegated legislative authority because it modifies and enlarges Section 381.76(1)(b), Florida Statutes, in violation of Section 120.52(8)(c), Florida Statutes.

2. Jurisdiction is retained to determine whether Miguel Mora Rodriguez is entitled to an award of attorney's fees and costs against the Department of Health and, if so, the amount of attorney's fees and costs to be awarded.

3. The parties shall file a joint status report with the Division of Administrative Hearings on or before June 14, 2007, in which they shall provide an estimate of the length of time necessary to conduct an evidentiary hearing on the entitlement to and amount of attorney's fees and costs and several dates on which the parties are available for hearing.

DONE AND ORDERED this 24th day of May, 2007, in Tallahassee, Leon County, Florida.

S

PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of May, 2007.

ENDNOTES

^{1/} All references to the Florida Statutes herein shall be to the 2006 edition unless otherwise indicated.

^{2/} Mr. Rodriguez also argued in his Proposed Final Order that the Department had no authority to promulgate Rule 64I-1.001(1)(c). This issue was not raised in the rule-challenge petition. It is not, therefore, properly raised for the first time in the Proposed Final Order and will not be addressed herein.

^{3/} The Administrative Procedures Committee is given the authority to submit comments and inquiries to an agency regarding a proposed rule, and, before the proposed rule can be adopted, the Administrative Procedures Committee must certify that the agency has responded in writing to the comments and inquiries. See § 120.54(3)((e)4., Fla. Stat.

^{4/} Because the rule has been found invalid pursuant to Section 120.52(8)(a), Florida Statutes, it is not necessary to address whether Rule 64I-1.001(1)(c) is arbitrary and capricious.

COPIES FURNISHED:

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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 the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a 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 30 days of rendition of the order to be reviewed.