FILED WITH THE CLERK OF THE CJS&T
COMMISSION THIS 26 DAY OF
February, 2009
BY Brenda S. Presnell
DEPUTY CLERK

STATE OF FLORIDA
CRIMINAL JUSTICE STANDARDS AND TRAINING
COMMISSION

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION,
Petitioner,

-vs-

CASE NUMBERS: 22842 & 21178
DOAH CASE NUMBERS: 07-3656PL
07-3657PL

LAZARO R. MORERA,
Certificate No.: 166884
Respondent.
_______________________________/

2009 FEB 27 AM 1: 51
DIVISION OF ADMINISTRATIVE HEARINGS
FILED

## FINAL ORDER

This matter came before the Criminal Justice Standards and Training Commission (the Commission) at a public meeting on January 29, 2009, in Lake Mary, Florida. It was alleged by Administrative Complaint that the Respondent had violated specified sections of Chapter 943, Florida Statutes, and Chapter 11B-27, Florida Administrative Code. In accordance with §§120.569 and 120.57(1), Florida Statutes (1996 Supp.), a formal hearing was held on this matter, and a Recommended Order was submitted by an administrative law judge from the Division of Administrative Hearings to the Commission for consideration. The Respondent filed exceptions to the Recommended Order, a copy of which is attached and incorporated herein by reference.

The Commission has reviewed the entire record of the formal hearing, has heard the arguments of the parties and is otherwise fully advised in the matter. The Commission's findings are set forth below.

### I. Standards for Review

Under §120.57(1)(j), Florida Statutes (1996 Supp.), the Commission may reject

or modify the administrative law judge's conclusions of law and interpretations of the Commission's administrative rules in the Recommended Order. The Commission, however, may not reject or modify the administrative law judge's findings of fact unless the Commission determines from a review of the entire record, and states with particularity in this Final Order, that 1) those findings of fact were not based on competent substantial evidence or 2) the proceedings on which the findings of fact were based did not comply with essential requirements of the law.

The Florida Supreme Court, in De Groot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957), defined "competent substantial evidence" to be evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

Additionally, the Commission may not reweigh the evidence, resolve conflicts in the evidence, judge the credibility of witnesses or otherwise interpret the evidence anew simply to fit its desired conclusion. Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985).

Nor may the Commission reduce or increase the recommended penalty in the Recommended Order without first reviewing the complete record and without stating with particularity its reasons therefore in the Final Order. §120.57(1)(j), Florida Statutes (1996 Supp.).

II. Rulings on Exceptions

The Respondent, through his attorney of record, filed exceptions to the Recommended Order issued by the administrative law judge. The Commission, after a full review of the record, denies the Respondents exceptions to the Recommended

Order.

III. Findings of Fact

The administrative law judge's findings of fact of the Recommended Order are approved, adopted and incorporated herein by reference.

IV. Conclusions of Law

The administrative law judge's conclusions of law in the Recommended Order are approved, adopted and incorporated herein by reference.

V. Recommended Penalty

The administrative law judge's recommendation that the Respondent's certification be revoked is hereby accepted.

It is therefore ORDERED AND ADJUDGED that the Respondent's certification is hereby REVOKED.

This Final Order will become effective upon filing with the Clerk of the Department of Law Enforcement.

SO ORDERED this 26th day of February, 2009.

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION

WILLIAM JAY ROMINE
CHAIRMAN

## NOTICE

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, FLORIDA STATUTES, BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF LAW ENFORCEMENT, P.O. BOX 1489, TALLAHASSEE, FLORIDA 32302-1489, AND BY FILING A SECOND COPY OF THE NOTICE OF APPEAL WITH THE APPROPRIATE DISTRICT COURT OF APPEAL IN ACCORDANCE WITH RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE. SUCH NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to LAZARO R. MORERA, Post Office Box 350881, Miami, Florida 33135; and the DAVID H. NEVEL, 6741 Orange Drive, Davie, Florida 33314, by U.S. Mail on or before 5:00 P.M., this 26th day of February, 2009.

Brenda S. Presnell
Deputy Clerk

cc: Miami Beach Police Department

Order.

III. Findings of Fact

The administrative law judge's findings of fact of the Recommended Order are approved, adopted and incorporated herein by reference.

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SO ORDERED this 26th day of February, 2009.

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION

WILLIAM JAY ROMINE
CHAIRMAN

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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT, CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION,

CASE No. 07-3656PL
07-3657PL

Petitioner,

vs.

LAZARO R. MORERA,

Respondent,

______________________________/

**RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER**

**COMES NOW**, Respondent Lazaro Morera, by and trough his undersigned counsel, and hereby submits the following Exceptions to the September 17, 2008, Recommended Order issued by Administrative Law Judge Linda M. Rigot:

**Exception No. 1**

Respondent's first exception is to the finding of fact on page 3, paragraph 4 of the Recommended Order stating as follows: "Every 30 days the patient signed a therapy sheet, which was a form confirming the patient has received the prescribed treatments, whether the patient had received treatment or not". According to the record and testimony of Gustavo Coutin Sr.: "The client received the therapy, supposed to get three therapies per week. He signs for therapy, once per therapy..." [Tr. p.100]. It is therefore respectfully submitted that the finding that the Respondent signed a therapy sheet "Every 30 days the patient signed a therapy sheet, which was a form confirming the patient has received the prescribed treatments, whether the patient had received treatment or not" is not supported by the record.



09/20/2008 12:39 1 PAGE 02/11

## Exception No. 2

Respondent second exception is to the finding of fact on page 5, paragraph 4 of the Recommended Order, which states as follows: "Respondent signed his therapy forms in blank." No therapy forms were admitted into evidence [Tr. pp. 101, 102, 103, 104]. Testimony regarding the therapy was introduced by the Petitioner, but was found by the Court to be hearsay [Tr. p. 108]. In administrative hearings "[H]earsay evidence may be used for the purposes of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions" § 120.57(1)(c), Fla. Stat. *See* The Florida Bar, *Florida Administrative Practice* § 4.36 (7th ed. 2004). The alleged therapy sheets were never entered as an exhibit, and therefore could not provide supporting evidence for Coutin's hearsay testimony. It is therefore respectfully submitted that the finding that the Respondent signed blank therapy forms was not supported by the record.

## Exception No. 3

Respondent's third exception is to the finding of fact on page 5, paragraph 4 of the Recommended Order as follows: "Thereafter he seldom came in for treatment, but signed more blank forms at the clinic when the clinic called to say he had to come in to sign forms so they could bill his insurance company". The record clearly shows that Jose Coutin Sr., the only witness to testify on this matter, had no personal knowledge of how many times Officer Lazaro Morera received treatment. Jose Coutin testified during the final hearing as follows:

Q. Do you know how many times he actually came in and received services?

A. No, I don't. I saw him in several occasions. [Tr. p. 110]

Mr. Coutin further testified as follows:

Q. Do you recall what services were actually performed for Mr. Morera, what type of therapy?

A. No, I was not in the therapy room. That was not my duties. [Tr. p.110].

The ALJ's finding that the respondent "seldom came in for treatment, but signed more blank forms at the clinic when the clinic called to say he had to come in to sign forms so they could bill his insurance company", which was based exclusively on testimony by Mr. Coutin, is clearly unsupported by the record, and should therefore be set aside.

## Exception No. 4

Respondent's fourth exception is to the finding of fact in page 5, paragraph 5 of the Recommended Order stating as follows: "He paid Respondent $1,932 on August 3, 2000, by check written on one of his other businesses, representing 30 percent of the approximately $6,000 which Manhattan Medical received from Respondent's insurance company". There was no clear and convincing evidence to support this finding.

The testimony introduced by the Respondent showed that in the year 2000, Officer Morera, who enjoyed cars and liked to buy and sell automobile parts [Tr. p. 305], bought a set of fancy wheels (rims) after seeing an advertisement in a supermarket offering the rims at a discount price [Tr. p.285]. After buying the rims, Officer Morera placed them on the balcony of the townhouse in which he lived with his then-wife, Ladys Pla Morera, and their children [Tr. pp. 285, 304, 305]. Ladys Pla Morera's testimony corroborated Officer Morera's testimony that the rims were on the balcony of their townhouse for several months [Tr. p.305]. Officer Morera was no longer married to Ladys Pla Morera at the time of the administrative hearing, and her credibility as a witness was unquestioned. The Respondent vehemently denied that the check received

from Coutin was unlawful compensation, and testified that he saw that Jose Arturo Coutin ("Jose Coutin Jr."), the son of the owner of the clinic, had a car to which the rims would fit, and offered to sell Jose Coutin Jr. the rims [Tr. p. 285]. After negotiating the sale of the rims for $2,000, Jose Coutin Sr. paid Officer Morera for the rims with a check from one of his businesses in the total amount of $1,932 after deducting $68 corresponding to the amount of money that it would cost to replace a center piece that was missing from one of the rims [Tr. pp. 283, 284]. Officer Morera testified that he delivered the rims and Jose Coutin, Jr put them on his car [Tr. p. 290].

Jose Coutin's credibility as a witness was shown at the final hearing to be extremely low, and his testimony inherently unreliable. It was unrebutted that Jose Coutin was arrested on 25 felony counts of insurance fraud and three felony gun charges [Tr. p. 25]. Previous to that, Jose Coutin had been convicted for cocaine trafficking [Tr. pp. 116, 117, 120]. Agreeing to tell the authorities what they wanted to hear was the only way Coutin could stay out of jail. Jose Coutin testified as follows:

> Q: What was your understanding of what would happen if you didn't cooperate with them after making the deal?
>
> A: I don't know, go to jail, I guess.
>
> [Tr. 127]

Jose Coutin, a convicted drug dealer, pled guilty to 20 felony charges in the insurance fraud case. Following his agreement to point the finger at Officer Morera, however, he received only five years probation and restitution as a sentence for the fraud case [Tr. p. 126]. Mr. Coutin's testimony that he paid a kick-back to Officer Morera was rewarded by a remarkably lenient sentence. Coutin's testimony, during which he was impeached on a number of occasions (including as to the percentage he allegedly paid Officer Morera [Tr. p. 132], was uncorroborated.



PAGE 05/11

09/20/2008 12:39 1

Jose Coutin testified that Officer Morera had told him that he had no pain after his accident [Tr. p. 138], and that he advised Officer Morera to tell the doctor that he did have pain [Tr. pp. 130, 131]. Said testimony was refuted by the testimony of Arnaldo Buggalo, a Miami Beach parking officer who testified that he came into contact with Officer Morera at work after Officer Morera's accident. Arnaldo Buggala, who was called as a witness by the Petititioner, testified that he noticed that Officer Morera was favoring his back, and said that Officer Morera told him that his back was "killing him" as a result of a car accident [Tr. p. 74]. Arnaldo Buggalo's recollection of Officer Morera's suffering was clear and unequivocal:

Q. Was there any doubt in your mind that his back hurt, from your observation of him, and the way he was moving and talking?

A. *There was no doubt.*

[Tr. p. 82, emphasis added.]

Ladys Pla Morera, Officer Morera's ex-wife, also testified that Officer Morera frequently complained of pain in his back after the accident. [Tr. p. 304].

Finally, Jose Coutin testified that he usually paid his patients with cash [Tr. p. 112], as he did Arnaldo Bugallo for referring Officer Morera [Tr. p. 131]. However, according to his testimony, he decided to give Officer Morera a check.

Apart from the many contradictions in Jose Coutin's testimony and his obvious motive to lie to get a light sentence for his conviction of multiple felonies, there is a stark comparison to be drawn between what the testimony showed to be Officer Morera's career as a diligent and honest police officer and Coutin's criminal history as a convicted drug dealer and perpetrator of insurance fraud.

Officer Morera's supervisor at the Miami Beach Police Department for five years, Patrick Devaney, testified as follows:

Q: And what where the observations that you made of Lazaro Morera's performance as a police officer and as a human being?

A: As an officer his performance was always satisfactory and above. Always, I never had a problem with his work performance.

Q: Did you ever have any problem with his character, his veracity, truthfulness?

A: No, never had a problem.

Q: Did you find him to be trustworthy?

A: I found him to be trustworthy.

[Tr. p. 267, 268].

Based on the record, it is respectfully submitted that the ALJ departed from the essential requirements of the law in finding that Officer Morera was guilty of signing false therapy forms or receiving unlawful compensation based exclusively on the inherently unreliable testimony of Jose Coutin. Said findings were not based on clear and convincing evidence, and should therefore be set aside.

**Exception No. 5**

Respondent's fifth exception is to the finding of fact in page 8, paragraph 4of the Recommended Order stating as follows: "On February 18, 2004, Respondent called Rodriguez at work and asked if she would play a prank on someone for him. She agreed to do so. He gave her a telephone number and asked her to call that number and tell Dale Twist's wife that Rodriguez was Dale Twist's mistress.", and finding/conclusion of law in page 12, paragraph 3 as follows: "The evidence is clear and convincing that Respondent under oath during the statement he gave to internal affairs, falsely denied

PAGE 07/11

09/20/2008 12:39 I

giving Twist's phone number to Rodriguez and asking her to call Twist's wife and pretend she was Twist's mistress."

This finding is based exclusively on the testimony of Eldris Rodriguez, whose testimony was impeached or shown to be self-contradictory on numerous occasions [Tr. pp. 190, 191, 180, 193, 191, 192, 212, 213]. Furthermore, Ms. Rodriguez's recollection of pertinent facts was often uncertain, and her testimony was influenced by the actions of her interrogators.

During the first statement given to two officers from the internal affairs division of the Miami Beach Police Department, Ms. Rodriguez testified that Officer Morera did not tell her why he wanted her to make the phone call to Officer Twist, and that he told her that it was just a prank [Tr. pp 190, 191]. However, during a second interview by the same police officers, she stated that Officer Morera had mentioned that he wanted her to make the phone call to get back at Officer Twist [Tr. p. 180, 193].

When asked during cross examination if the Miami Beach police officers who interviewed her about the phone call asked her to not to talk to Officer Morera about the investigation, Ms. Rodrigez replied "No." [Tr. p. 212]. However, in a deposition taken on March 18, 2008, when asked the same question, Ms. Rodriguez testified that she *was* warned by the officers not to talk to Officer Morera [Tr. p. 213]. Ms. Rodriguez also testified that she was afraid that "something might happen [to her]" with the police if she failed to cooperate with them in implicating Officer Morera [Tr. p. 214], that she "might get in trouble" for making the phone calls [T. p. 189], and that it could affect her job if she didn't cooperate with the state investigator, Violeta Serrano, whose department regulated the insurance industry in which Ms. Rodriguez was employed [Tr. p. 215].

09/20/2008 12:33 1 PAGE 08/11

It is also very significant that, while Ms. Rodriguez insisted that she recalled a conversation during which Officer Morera asked her to call Officer Twist, she failed to recall important details of the alleged conversation when she testified at the final hearing:

Q: And he [Officer Morera] told you he was upset with Twist, he didn't tell you he was upset with Dale Twist, did he?

A: I can't recall.

Q: You don't recall? Wouldn't you recall something like that, if he was doing it for revenge, I'm upset with this guy, I want to get him?

A: I don't remember, sir.

[Tr, p. 199].

Officer Morera's testimony denying his alleged involvement in the phone call was clear and unimpeached, while that of Ms. Rodriguez is fuzzy as to key details and often inconsistent with prior statements made by her. The record also shows that Ms Rodriguez, whose recollection of pertinent facts was often uncertain, drank alcohol frequently and in excess, sometimes to the point of passing out [Tr. p. 245], further diminishing her credibility as a witness..

It is well-settled that in a decertification case such as the case at bar it is the ALJ's function to consider all of the evidence presented and reach ultimate conclusions of fact by resolving conflicts and judging the credibility of witnesses, and that the standard to be applied is proof by clear and convincing evidence. In applying this standard, it is clear that the record does not support the ALJ's findings, which inexplicably weigh the conflicting, unreliable testimony of Eldris Rodriquez more heavily than the unimpeached testimony of Officer Morera.

It is revealing that the Miami Dade County State Attorney, after an exhaustive police investigation by two agencies, declined to prosecute Officer Morera on any



09/20/2008 12:39 1 PAGE 09/11

charges [tr. 41 & 42]. Officer Morera was regarded as a trustworthy and competent police officer prior to the uncorroborated accusations, consisting largely of hearsay, of a convicted drug dealer seeking to avoid prison time on insurance fraud and weapons charges. Likewise, the often self-contradictory and uncertain testimony of Eldris Rodriquez about an alleged conversation with Officer Morera, the details of which she cannot remember, did not provide clear and convincing evidence that Officer Morera lied during an internal affairs investigation when he denied asking her to make a prank phone call. The ALJ's finding that there was clear and convincing evidence that Officer Morera lacks good moral character is clearly unsupported by the record. It should take much more than the uncorroborated and frequently contradictory testimony of two unreliable witnesses, a convicted drug dealer and a hard-drinking prankster with erratic behaviors and a spotty memory, to end the career of a veteran police officer.

**WHEREFORE** Respondent LAZARO MORERA respectfully requests that The Department of Law Enforcement, Criminal Justice Standards and Training Commission find that Administrative Law Judge Linda M. Rigot's Recommended Order finding Officer Lazaro Morera guilty of the allegations contained in the administrative complaints, and recommending that he be permanently stripped of his certification as a law enforcement officer in the State of Florida, departed from the essential requirements of the law.

Respectfully submitted,

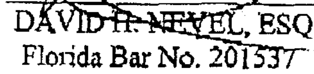
David H. Nevel, Esquire

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that Respondent's Exceptions to Recommended Order has been faxed and mailed to Donna Hunt, Government Operations Consultant, Florida

Department of Law Enforcement/Criminal Justice Standards and Training Commission, Post Office Box 1489, Tallahassee, Florida 32302-1489, and faxed and mailed to Sharon Traxler, Esquire, Assistant General Counsel, Florida Department of Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302, this 1st day of October, 2008.


Nevel & Greenfield, P.A.
6741 Orange Drive
Davie, Florida 33314
Telephone: 954-321-7701
Facsimile: 954-791-3024

By: 
DAVID H. NEVEL, ESQ
Florida Bar No. 201537

STATE OF FLORIDA
CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION,

Petitioner,

vs.

LAZARO R. MORERA,

Respondent.

CJSTC CASE NO.: 21178, 22842
DOAH CASE NO.: 07-3656PL
07-3657PL

______________________________/

**PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER**

**COMES NOW**, the Petitioner, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, by and through undersigned counsel, submits this Response to Respondent's Exceptions to the Recommended Order, and states:

1. On September 17, 2008, Administrative Law Judge Linda M. Rigot issued a Recommended Order in this case, finding that clear and convincing evidence that Respondent had committed one count of Grand Theft and one count of Insurance Fraud when he signed blank therapy forms verifying he had received treatments which he had not actually received in order to support insurance claims that the medical clinic filed on his behalf in order to wrongfully obtain insurance payments for himself and the medical clinic; and that he committed one count of False Statement when he gave an internal affairs statement under oath and falsely denied giving Twist's phone number to Anna Rodriguez and asked her to call Dale Twist's wife and pretend she was

Twist's mistress. Judge Rigot recommends the Respondent's certification be revoked.

2. On September 30, 2008, Counsel for the Respondent, David H. Nevel, filed exceptions to the Recommended Order with the Commission. In his exceptions, the Respondent asked the Commission to reject certain findings of fact and conclusions of law in the Recommended Order.
3. In Respondent's Exception #1, he claims that the record does not support the Court's finding of fact that the respondent signed a therapy sheet, (a form confirming the patient has received medical treatments) once every 30 days. However, the owner of Manhattan Medical Clinic, Mr. Jose G. Coutin (Coutin) testified at the formal hearing that the respondent did in fact knowingly sign said blank therapy notes in order to receive his share of the insurance proceeds as part of their insurance fraud scheme. See transcript pages 100 – 107. Therefore, evidence does exist for the Court to base her findings and the Respondent's exception should be dismissed.
4. In Exception #2, the Respondent argues that because therapy notes were not admitted into evidence, there is no support for the Court's ruling that the respondent signed blank therapy forms. However, the Court's findings of fact are supported by the evidence, the direct testimony of Coutin. Direct testimony is not hearsay as the Respondent claims. Hearsay is legally defined, as an ***out of court statement offered for the truth of the matter asserted.*** Chapter 90.801, Florida Statutes. Contrary to the Respondent's argument, direct testimony of a witness as to what they personally did, saw or said is not hearsay. On pages 107 (lines 1 & 2) and 109 (lines 8-24) of the record Mr. Coutin, Sr., the clinic owner, stated that the Respondent signed the blank therapy sheets or notes (indicating Respondent had received therapy, when in actuality he had not) in order to receive payment from the insurance

company of which Respondent would receive 30 percent. Thus, the direct testimony regarding Coutin's personal knowledge, actions and observations need not be supported by any additional evidence documentation or exhibits, but may be considered and weighed on its own merits by the trier of fact. Therefore, the Court did in fact receive evidence that the Respondent knowingly signing blank therapy sheets in order to receive a 30% cut of the ongoing insurance scheme. Any statement by the Court regarding hearsay was directed to the potential admission of the exhibits; not the direct testimony of the witness.

5. In Exception #3, the Respondent attacks the Court's finding of fact that a telephone call was made to the Respondent informing him that he had to return to the clinic to sign more blank therapy forms in order for the clinic to receive the insurance payments of which the Respondent would receive his 30 percent share. The Respondent argues that Coutin testified that he had no knowledge of <u>how many times</u> or <u>what services were performed</u> and that the Court's finding of fact should be set aside. The respondent's argument is misplaced, as the number of times the Respondent was at the clinic and/or the services performed have nothing to do with the telephone call(s) that were made to the Respondent informing him that he needed to come to the clinic to sign more blank therapy forms. Therefore, evidence did in fact exist for the Court's finding and the Respondent's exception should be dismissed.
6. Respondent's Exception #4 states there is no clear and convincing evidence to support the Court's finding of fact that the clinic owner gave Respondent a 30 percent cut of the insurance fraud, corroborated by a check for $1,932. This is clearly incorrect as the transcript reflects in numerous places that the Respondent was given a check in exchange for signing blank therapy forms

and the check itself was in fact entered into evidence as Petitioner's exhibit 7.

Testimony specific to this issue begins on page 111 as follows:

Line 8 A: I received, I think it was somewhere around
9 five or six thousand dollars. Maybe a little bit
10 over six thousand dollars.
11 Q: Did you at any time give Mr. Morera any
12 money?
13 A: Yes, I wrote him a check.

and on page 112:

4 A: Yes, ma'am. This is my check issued to Mr.
5 Lazaro Morera from my own personal account in the
6 amount of $1932.00.

and

17 … I told him, I said, you don't mind if
18 I give you a check, he says, no, so I give him a
19 check.
20 Q: Okay. But what's the name on that check?
21 A: Lazaro Morera.
22 Q: That's his name. What is the name at the
23 top, what's the name of the account?
24 A: Number One Investigation Services Inc.
25 Q: Is that one of your companies, do you

Continuing on page 113:

1 have--
2 A: That was one of my companies. I opened up
3 a corporation that going to, going to private
4 investigations, but I never did so I just let it go,
5 you know, I had the checks already made.

6 Q: Did Mr. Morera ever pursue any work for

7 Number One Investigations?

8 A: No.

9 Q: At any time did you pay for any automotive

10 parts that your son wanted to buy from Mr. Morera?

11 A: No, ma'am.

12 Q: Did you write that check?

13 A: Yes, I did.

14 Q: And what is that check for?

15 A: The therapies that Mr. Morera received from

16 Manhattan Medical...

The Respondent argues via his own testimony that the check was for the purchase of rims for a vehicle owned by the clinic owner's son and that the Court should not have found the clinic owners testimony more credible than that of the Respondent.

However, the Respondent's argument fails to consider that Coutin Sr.'s testimony was also supported by the testimony of Jose A. Coutin. As demonstrated on pages 156 & 157 of the transcript, Coutin's son testified to the following:

25 Q: Did you ever purchase anything from Mr.

1 Morera?

2 A: Nothing.

3 Q: No auto parts, no rims?

4 A: Nothing.

Continuing,

9 Q: Okay. Did your father buy you rims from

10 Mr. Morera?

11 A: No.

So, while the Respondent might not like that the Court found Petitioner's witnesses more credible, that cannot be a basis to overturn her decision. Weighing the credibility of witnesses is solely the responsibility of the trier of fact. And in this case, the trier of fact is the Administrative Law Judge, Linda Rigot. Thus evidence did in fact exist for the Court's finding and the Respondent's exception should be dismissed.

7. In Exception #5, the Respondent objects to the Court's findings regarding the charge of False Statement and asks that the finding of the Court be disregarded. Evidence was presented to the Judge through direct testimony, and she weighed the testimony, determined the credibility of the witnesses and determined that the evidence presented proved all charges clearly and convincingly. As noted in the above section, weighing the credibility of witnesses and determining facts is solely the purview of the trier of fact.

Section 120.57(1)(l), Florida Statutes restricts an agency's ability to reject an administrative law judge's findings of fact. The law provides in relevant part, that:

> The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

At the formal hearing in this case, each party called witnesses and contrary to the Respondent's argument, Judge Rigot weighed the credibility of the witness testimony and properly performed her role as fact finder in this case. In *Gross v. Department of Health*, 819 So.2d 997 (Fla. 5th DCA 2002), the court provided the standard, which is applicable in this case:

> When determining whether to reject or modify findings of fact in a recommended order, the agency is not permitted to weigh the evidence, judge the credibility of the witnesses, or interpret the evidence to fit its ultimate conclusions.

Accord: *Strickland v. Florida A&M University*, 799 So.2d 276 (Fla. 1st DCA 2001); *Schumacher v. Department of Professional Regulation*, 611 So.2d 75 (Fla. 4th DCA 1992). Here, the Commission should refuse to grant the Respondent's exceptions to the findings of fact as he is asking the Commission to improperly reweigh the evidence and reassess the credibility of the witnesses.

Section 120.57(1)(l), Florida Statutes also provides the controlling law for the agency's ability to reject an administrative law judge's conclusions of law. The law states:

> The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

Accordingly, the Respondent's exceptions are contrary to the requirements of the cited statute in arguing that the Commission should reject the noted administrative law judge's conclusions of law as "not being based on competent, substantial clear and convincing evidence." In effect, the

Respondent has argued that the noted conclusions of law should be rejected because they were based upon the judge's improperly reached facts. In McGann *v. Florida Elections Commission*, 803 So.2d 763 (Fla. 1st DCA 2001), the court said:

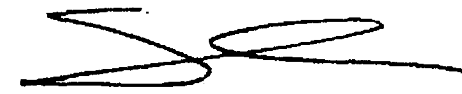
> A reviewing agency...cannot evade statutory restrictions on its ability to reject an ALJ's findings of fact by denominating such findings conclusions of law.

**WHEREFORE**, the undersigned requests that the Commission reject the Respondent's Exceptions as to findings of fact and conclusions of law. The Commisson is respectfully requested to adopt the recommendation of Judge Rigot and revoke the Respondent's law enforcement certification.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to David Nevel, Attorney for Respondent, 6741 Orange Drive, Davie, Florida 33314, this 3rd day of October, 2008 via facsimile and U.S. Mail.

Respectfully submitted,



SHARON S. TRAXLER
Assistant General Counsel
Fla. Dept of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302
(850) 410-7676
Fla. Bar No. 225681