

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS AND)
TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case Nos. 07-3656PL
) 07-3657PL
LAZARO R. MORERA,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on April 10 and 11, 2008, by video teleconference with sites in Miami and in Tallahassee, Florida.

APPEARANCES

For Petitioner: Sharon S. Traxler, Esquire
Department of Law Enforcement - 7100
Post Office Box 1489
Tallahassee, Florida 32302-1489

For Respondent: David H. Nevel, Esquire
Nevel & Greenfield, P. A.
6741 Orange Drive
Davie, Florida 33314

STATEMENT OF THE ISSUE

The issue presented is whether Respondent is guilty of the allegations in the two Administrative Complaints filed against

him, and, if so, what disciplinary action should be taken against him, if any.

PRELIMINARY STATEMENT

By two separate Administrative Complaints, the Criminal Justice Standards and Training Commission alleged that Respondent Lazaro R. Morera had violated several statutes and rules regulating his conduct as a law enforcement officer. Respondent requested an administrative hearing regarding each Administrative Complaint, and both requests were transmitted to the Division of Administrative Hearings to conduct the evidentiary proceeding. Upon being advised in the Commission's Unilateral Response to the Initial Order in each case that these cases were related, the cases were consolidated by Order of Consolidation entered September 4, 2007.

Petitioner Department of Law Enforcement, Criminal Justice Standards and Training Commission, presented the testimony of Violeta Serrano, Arnaldo Bugallo, Jose Gustavo Coutin, Jose Arturo Coutin, Eldris Rodriguez, and Cornelious T. O'Regan. Respondent Lazaro R. Morera testified on his own behalf and presented the testimony of Ana Ruiz, Patrick Devaney, and Leidys Plas-Morera. Additionally, Petitioner's Exhibits numbered 1, 7, and 8 and Respondent's Exhibit numbered 1 were admitted in evidence.

The four-volume Transcript of the final hearing was filed on June 11, 2008. The exhibits were filed July 21, 2008. Respondent filed his proposed recommended order on September 4, 2008, and Petitioner filed its proposed recommended order on September 5, 2008.

FINDINGS OF FACT

1. On September 24, 1996, Respondent Lazaro R. Morera was certified by Petitioner Department of Law Enforcement, Criminal Justice Standards and Training Commission, and was issued law enforcement certificate number 166884.

2. At all times material hereto, Respondent was employed as a police officer by the City of Miami Beach.

3. Jose G. Coutin (hereafter referred to as "Coutin, Sr.") owned and operated a business in Miami known as Manhattan Medical Center, a medical clinic providing therapy for persons injured in auto accidents. The procedure at Manhattan Medical was the same for all patients. When a new patient came in, the patient filled out a form. Thereafter, the patient was scheduled for 34 therapy sessions, starting with three sessions a week. Every 30 days the patient signed a therapy sheet, which was a form confirming the patient had received the prescribed treatments, whether the patient had received treatment or not.

4. Manhattan Medical billed the patient's insurance company every 30 days. After the usual 34 therapy sessions,

Manhattan Medical then sent a final bill to the patient's insurance company.

5. The patient made no payments or co-payments to Manhattan Medical for treatment. Manhattan Medical accepted whatever amounts the insurance company paid and then gave the patient a percentage of the money Manhattan Medical received. Coutin, Sr., who was not a medical doctor and had no medical training, privately advised the patients coming to Manhattan Medical that in addition to giving them part of the money Manhattan Medical received from that patient's insurance company, Manhattan Medical would also pay patients for referring others to the clinic.

6. Arnaldo Bugallo is a "meter maid" for the City of Miami Beach Parking Department. He frequently spoke with Respondent when they saw each other during work activities. They were not personal friends.

7. Bugallo was treated at Manhattan Medical for a back injury received in an auto accident. He never paid any monies related to his numerous treatments. Although he testified that he thought he could get additional free treatments for referring patients to Manhattan Medical, he denied knowing that he would receive from Manhattan Medical a portion of the money the clinic received from Bugallo's insurance company.

8. When Coutin, Sr., quietly slipped a check for approximately \$350 into Bugallo's backpack, Bugallo simply cashed it without questioning the reason he was receiving a check from Manhattan Medical.

9. In early 2000 Respondent was involved in an auto accident. Some time later, Respondent complained at work to Bugallo that his back hurt, and Bugallo gave Respondent the address and telephone number of Manhattan Medical.

10. When Respondent went to Manhattan Medical, Coutin, Sr., explained to him how the billings to Respondent's insurance company would work. Since Respondent had not come to the clinic shortly after his auto accident, Coutin, Sr., explained to Respondent that they would back-date the dates of his treatments in order to relate his treatments to his car accident. Respondent signed his therapy forms in blank. 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.

11. The percentage that Manhattan Medical would pay each patient out of the monies received from that patient's insurance company varied. The usual amount was twenty percent. Coutin, Sr., paid Respondent thirty percent, however, because he knew Respondent was a police officer. He paid Respondent \$1,932 on August 3, 2000, by check written on one of his other businesses,

representing thirty percent of the approximately \$6,000 which Manhattan Medical received from Respondent's insurance company.

12. Based upon information received in 2000 from insurance companies, the Department of Financial Services initiated an investigation of Manhattan Medical. Violeta Serrano, one of the Department's insurance fraud investigators, reviewed insurance claim files and interviewed patients who gave sworn statements that they were paid money to treat at Manhattan Medical even though they received no treatments. She also interviewed runners who brought accident participants to Manhattan Medical and were paid by the clinic to do so.

13. Based upon her investigation, she concluded that the clinic was billing for services not rendered and was paying alleged patients for treatments not received by them. She also discovered that doctors were not even present at the clinic every day.

14. She participated in the execution of a search warrant, interviewed clinic employees, and took records from the clinic. The clinic owner, Coutin, Sr., was arrested. Serrano subsequently presented evidence to the State Attorney's Office, and Respondent was arrested.

15. Coutin, Sr., already a convicted felon, was charged with insurance fraud (state charges) and possession of three guns by a convicted felon (a federal charge). Serrano arrested

Coutin, Sr., for insurance fraud a second time when he attempted to collect more money while he was out on bond following his first arrest by her.

16. Following his guilty plea, Coutin, Sr., received a sentence of two years in a federal prison for 20 counts of insurance fraud concurrent with two years for the weapons charge.

17. Prior to Coutin, Sr., entering into his plea agreement, Serrano questioned him regarding the information she had on Respondent allegedly being treated at the clinic. He agreed to cooperate in her investigation and told her about Respondent's lack of treatments and about the check that he gave to Respondent.

18. Coutin, Sr., has completed his prison term, has paid \$137,000 in restitution, and has completed five years of probation.

19. The charges against Respondent were dropped by the State Attorney's Office after he gave a sworn statement.

20. Also arrested about the same time as Coutin, Sr., were Jose A. Coutin (hereinafter "Coutin, Jr.") and Coutin, Jr.'s, wife. Coutin, Jr., operated a similar clinic near Manhattan Medical. He also worked for Manhattan Medical, and Manhattan Medical processed the billing and claims forms for his clinic.

21. Respondent never sold Luxor gold wire automobile rims to Coutin, Jr., and Coutin, Sr., never gave Respondent any money to pay for those rims.

22. An investigation regarding Respondent was commenced by the internal affairs division of the City of Miami Beach Police Department. On November 12, 2003, the case was re-assigned to Officer Dale Twist.

23. Eldris Rodriguez is a claims processor for Allstate Insurance. One of her co-workers is Ana Ruiz, who is currently Respondent's fiancé. Rodriguez and Ruiz were very good friends, who socialized together. Rodriguez' children and Respondent's children played together.

24. 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. After work, Rodriguez called the telephone number, but received no answer. She called Respondent to report that, and he told her to try again. Rodriguez waited for a few moments and placed the call again. This time a woman answered, and Rodriguez told the woman what Respondent had instructed her to say, including where Rodriguez and the woman's husband allegedly met each other. When that

telephone call was completed, Rodriguez called Respondent and told him what had been said.

25. Rodriguez did not know Dale Twist and did not know that he was a police officer with the City of Miami Beach Police Department. When Respondent gave Rodriguez the name Dale Twist, Respondent did not tell her that Twist was a police officer. He merely told Rodriguez that Twist worked for the City.

26. Before long, Rodriguez was contacted by Cornelious O'Regan of the City of Miami Beach Police Department internal affairs division regarding her telephone call. She gave statements to internal affairs twice during the month of March.

27. On May 21, 2004, Respondent gave a sworn statement as part of the internal affairs investigation. He denied giving Dale Twist's telephone number to Rodriguez and denied asking her to make the telephone call to Twist's wife claiming to be Twist's mistress.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

29. Petitioner seeks to take disciplinary action against Respondent in this proceeding. The burden of proof, therefore, is on Petitioner, and Petitioner must prove the allegations in each of its Administrative Complaints by clear and convincing

evidence. Dept. of Banking & Finance, Division of Securities & Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). Petitioner has met its burden as to the allegations in both Administrative Complaints.

30. The Administrative Complaint against Respondent in Case No. 21178 (DOAH Case No. 07-3656PL), essentially, alleges that between March 31 and July 31, 2000, Respondent, with the intent to defraud or deceive an insurance company, presented statements in support of a claim for payment pursuant to an insurance policy knowing that such statements contained false or misleading information. The Administrative Complaint further alleges that between those same dates Respondent knowingly obtained or endeavored to obtain money valued at \$300 or more, which was the property of an insurance company, with the intent to deprive the owner of that property or to appropriate the property to his own use or to the use of any person not entitled thereto. The Administrative Complaint alleges, therefore, that Respondent violated Sections 817.234, 812.014, and 943.1395(7), Florida Statutes, and Florida Administrative Code Rule 11B-27.0011(4)(a), in that Respondent has failed to maintain the qualifications established in Section 943.13(7), Florida Statutes, which requires that a law enforcement officer in the State of Florida have good moral character.

31. The evidence is clear and convincing that Respondent signed blank therapy forms verifying that he had received treatments which he had not received to support claims that Manhattan Medical was filing on his behalf in order to wrongfully obtain insurance benefits for himself and for Manhattan Medical. Section 817.234(11), Florida Statutes, makes the filing of false and fraudulent insurance claims a felony of the third degree if the value of the property involved is less than \$20,000. Similarly, Section 812.014(1) and (2), Florida Statutes, defines as theft the knowing obtaining or endeavoring to obtain another's property with the intent to appropriate the property to the use of any person not entitled to the use, and classifies such conduct as a felony of the third degree.

32. Section 943.1395(7), Florida Statutes, authorizes Petitioner to take disciplinary action against a law enforcement officer who has not maintained good moral character, the definition of which is adopted by rule and is established as a statewide standard. Florida Administrative Code Rule 11B-27.0011(4)(a), includes within the definition of failure to maintain good moral character the perpetuation by an officer of an act that would constitute any felony offense, whether criminally prosecuted or not. Despite the fact that at least one of the witnesses against Respondent regarding Respondent's insurance fraud is a convicted felon, Petitioner has proven by

clear and convincing evidence that Respondent has failed to maintain good moral character.

33. The Administrative Complaint against Respondent in Case No. 22842 (DOAH Case No. 07-3657) alleges that Respondent made a false statement under oath in an official proceeding on May 21, 2004. The Administrative Complaint further alleges that Respondent, therefore, violated Sections 837.02(1) and 943.1395(7), Florida Statutes, and Florida Administrative Code Rule 11B-27.0011(4)(a).

34. Section 837.02(1), Florida Statutes, prohibits making a false statement, which the person does not believe to be true, under oath in an official proceeding with regard to a material matter and classifies such conduct as a felony of the third degree. The evidence is clear and convincing that Respondent, under oath during the statement he gave to internal affairs, falsely denied giving Twist's phone number to Rodriguez and asking her to call Twist's wife and pretend she was Twist's mistress.

35. Petitioner has, therefore, proven that Respondent violated Section 837.02(1), Florida Statutes, by committing perjury in an official proceeding. Petitioner has also proven, therefore, that Respondent violated Florida Administrative Code Rule 11B-27.0011(4)(a), and, therefore, Section 943.1395(7), Florida Statutes.

36. Section 943.1395(7), Florida Statutes, authorizes the Commission to discipline an officer who fails to maintain good moral character, using a wide range of penalties. One of those is revocation. Signing false statements and lying under oath during an official investigation are very serious offenses for a law enforcement officer and severely undermine the public's trust in its law enforcement officers. No credible mitigating evidence has been offered to offset the serious nature of Respondent's conduct. Revocation of Respondent's certification as a law enforcement officer is the appropriate penalty in this case.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding Respondent guilty of the allegations contained in both Administrative Complaints and revoking Respondent's certification as a law enforcement officer.

DONE AND ENTERED this 17th day of September, 2008, in
Tallahassee, Leon County, Florida.

Linda M. Rigot

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of September, 2008.

COPIES FURNISHED:

David H. Nevel, Esquire
Nevel & Greenfield, P. A.
6741 Orange Drive
Davie, Florida 33314

Sharon S. Traxler, Esquire
Department of Law Enforcement - 7100
Post Office Box 1489
Tallahassee, Florida 32302-1489

Michael Crews, Program Director
Division of Criminal Justice
Professionalism Services
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

Michael Ramage, General Counsel
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

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.