

**FILED**  
Department of Business and Professional Regulation  
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Date **4/29/2009**  
File # **2009-03154**

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

vs.

ROBERT DUGGER,

Respondent.

DBPR Case No.: 2002-007094  
DOAH Case No.: 08-1211PL

FINAL ORDER

THIS MATTER came before the Secretary for the Department of Business and Professional Regulation ("Department") in accordance with the provisions of Section 120.57(1), Florida Statutes, for consideration of the Recommended Order entered by the Division of Administrative Hearings (DOAH) on January 22, 2009. The Recommended Order is attached as exhibit 1, and incorporated by reference.

On October 13 and 14, 2008, an administrative hearing was held in this matter before Larry J. Sartin, Administrative Law Judge. On January 22, 2009, Judge Sartin's Recommended Order was entered with DOAH and transmitted to the Department. On February 5, 2009, Respondent filed Respondent Robert Dugger's Exceptions to Recommended Order. On February 16, 2009, Petitioner filed Petitioner's Response to Respondent's Exceptions to Recommended Order.

On April 7, 2009, Petitioner filed Petitioner's Motion for Costs. Respondent has not filed a response.

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The parties were afforded an opportunity to present oral arguments on the exceptions and the responses thereto before the Department's informal hearing officer. The parties declined to avail themselves of the opportunity to present oral argument.

### RESPONDENT'S EXCEPTIONS & PETITIONER'S RESPONSES

1. Respondent's exceptions and Petitioner's responses thereto were both timely filed and considered for the purposes of entering this order.

2. Section 120.57(1)(k), Florida Statutes, provides:

The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. [Emphasis added.]

3. Although Respondent sets forth his exceptions as though there were only five (5) exceptions, Respondent combines exceptions to factual findings as well as conclusions of law. For the purpose of considering these exceptions, the exceptions will be addressed as if asserted separately, i.e., exceptions to the findings of fact will be addressed separately from exceptions to the conclusions of law.

#### Respondent's Exceptions to Findings of Facts

4. Respondent filed an exception to the finding of fact contained in paragraph 24 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the Administrative Law Judge's (ALJ's)

finding of fact.

5. Respondent filed an exception to the finding of fact contained in paragraph 29 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

6. Respondent filed an exception to the finding of fact contained in paragraph 42 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

7. Respondent filed an exception to the finding of fact contained in paragraph 45 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

8. Respondent filed an exception to the finding of fact contained in paragraph 46 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

9. Respondent filed an exception to the finding of fact contained in paragraph 54 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

#### Respondent's Exceptions to Conclusions of Law

10. Respondent filed exceptions to the conclusion of law contained in paragraphs 68, 69, 70, 72, 74, 75, 78 and 79 of the Recommended Order.

11. Respondent did not set forth a legal basis for the exceptions to the ALJ's conclusions of law. The Respondent's exceptions are premised on the rejection of the ALJ's findings of fact; simply put, the rejection of the findings of fact leads to a reversal of the ALJ's conclusions. The Respondent's exceptions to the ALJ's findings of fact

have been rejected.

12. Respondent's exceptions to the conclusions of law contained in paragraphs 68, 69, 70, 72, 74, 75, 78 and 79 are rejected.

#### FINDINGS OF FACT

13. The Department adopts and incorporates by reference the findings of fact contained in the ALJ's Recommended Order in toto.

14. There is competent substantial evidence to support the Department's findings of fact.

#### CONCLUSIONS OF LAW

15. The Department adopts and incorporates by reference the conclusions of law contained in the ALJ's Recommended Order in toto.

#### PETITIONER'S MOTION FOR COSTS

16. Section 455.227(3)(a), Florida Statutes, provides:

In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time.

17. In support of the Petitioner's Motion for Costs, Petitioner attached an affidavit of the Custodian of Records. The affidavit references attachments, including a LicenseEase Time Tracking Summary. LicenseEase is the department's complaint management system.

18. The affidavit is deficient.

19. Section 455.227(3)(a), Florida Statutes, clearly authorizes the department to assess Respondent the costs associated with the investigation and prosecution of

this matter. The question that must be answered is whether the affidavit submitted in support of the Petitioner's, un-challenged Motion for Costs, although deficient, sufficient to support an assessment of costs against the Respondent.

20. This question must be answered in the negative.

Having considered the pleadings, the Findings of Fact and Conclusions of Law herein, and being otherwise fully advised in the premises it is, hereby, ORDERED AND ADJUDGED:

1. Respondent shall pay an administrative penalty in the amount of \$1,500.00.

2. Respondent's licensed is suspended; the suspension is stayed and Respondent is placed on probation for a period of two (2) years under the following terms and conditions:

a. Respondent shall not violate the provisions of chapters 455 and 468, part VIII, Florida Statutes, and or the rules promulgated thereunder.

b. Respondent shall pay the administrative penalty of \$1,500.00 set forth above to the Department within sixty (60) calendar days of the date of the filing of this Final Order. Respondent shall refer to the DBPR case number and make the payment payable to the Department of Business and Professional Regulation, Revenue Unit, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida, 32399-2202. Failure to make timely payment of the administrative penalty shall constitute a violation of the terms of this probation for which Respondent could be subject to

further disciplinary proceedings.

c. Upon a finding of probable cause by the Department that Respondent has violated a provision of chapters 455 or 468, part VIII, Florida Statutes, or the rules promulgated thereunder, the Department shall lift the stay of the suspension and the Respondent's license shall be suspended for the remainder of the two (2) year probation period and thereafter until Respondent applies to the Department for reinstatement and demonstrates that Respondent can practice as CAM within the standards or professional conduct set forth in 61E14-2.002, F.A.C. (or its successor).

3. The Petitioner's Motion for Attorney's Fees is DENIED; The Petitioner has seven (7) days from the date of this order to file an amended petition; The Respondent has seven (7) days from the filing of the amended petition to file its Response. The Department shall retain jurisdiction on this matter for thirty (30) days for the sole purpose of ruling on any such motion or response.

This Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 23<sup>rd</sup> day of April, 2009.



Tim Vaccaro, Director  
Division of Professions  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0750


NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party adversely affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within 30 days of the effective date of this order, in accordance with Rule 9.110, Fla. R. App. P., and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail to Albert T. Gimbel, Esquire, Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, Florida 32308 and Robert Dugger, 7401 Beach View Drive, North Bay Village, Florida 33141, this 29<sup>th</sup> day of April, 2009.

SARAH WACHMAN, AGENCY CLERK

  
Brandon Nichols, Deputy Clerk

Copies Furnished to:  
Reginald Dixon, Acting General Counsel  
Tim Vaccaro, Division of Professions  
Philip Francis Monte, Assistant General Counsel  
Larry J. Sartin, ALJ, Division of Administrative Hearings



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