

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

FILED
AHCA
AGENCY CLERK

APEX LABORATORY INC.,

2009 JUL -8 P 3: 05

Petitioner,

DOAH No: 09-3498

v.

AHCA No: 2009006594

**STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,**

RENDITION NO.: AHCA-09- 589 -S-OLC

Respondent.

_____ /

FINAL ORDER

Having reviewed the Notice of Intent dated June 10, 2009, attached hereto and incorporated herein (Ex. 1), and all other matters of record, the Agency for Health Care Administration ("the Agency") has entered into a Settlement Agreement (Ex. 2) with the parties to these proceedings, and being otherwise well-advised in the premises, finds and concludes as follows:

ORDERED:

1. The attached Settlement Agreement is approved and adopted as part of this Final Order, and the parties are directed to comply with the terms of the Settlement Agreement.
2. The Agency's Notice of Intent to Deem Application Incomplete and Withdrawn from Further Review is rescinded.
3. The Petitioner's request for formal administrative proceedings is

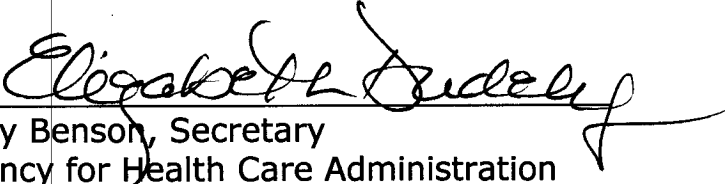
withdrawn.

4. Each party shall bear its own costs and attorney's fees.

5. The above-styled case is hereby closed.

DONE and **ORDERED** this 8 day of July, 2009,

in Tallahassee, Leon County, Florida.


Holly Benson, Secretary
Agency for Health Care Administration

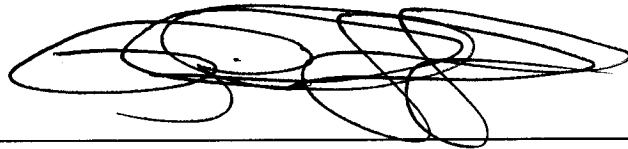
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY, ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW OF PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Jan Mills Agency for Health Care Admin. 2727 Mahan Drive, Bldg #3, MS #3 Tallahassee, Florida 32308 (Interoffice Mail)	Thomas M. Hoeler, Esquire Agency for Health Care Admin. 2727 Mahan Drive, Bldg. #3, MS # 3 Tallahassee, Florida 32308 (Interoffice Mail)
Karen Rivera, Manager Laboratory Licensure Unit Agency for Health Care Administration 2727 Mahan Drive, MS #32 Tallahassee, Florida 32308	James P. Early Apex Laboratory 170 Finn Court Farmingdale, NY 117035 (U.S. Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the above-named person(s) and entities by U.S. Mail, or the method designated, on this 8th day of July, 2009.



Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Building #3
Tallahassee, Florida 32308-5403
(850) 922-5873

2009006594



CHARLIE CRIST
GOVERNOR

HOLLY BENSON
SECRETARY

June 10, 2009

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

ANTHONY T GAROFALO
APEX LABORATORY INC
170 FINN CT
FARMINGDALE, NY 11735

RECEIVED
GENERAL COUNSEL
JUN 16 2009
**Agency for Health
Care Administration**

LICENSE NUMBER: 800022307

CASE #: 2009006594

NOTICE OF INTENT TO DEEM APPLICATION INCOMPLETE AND WITHDRAWN FROM FURTHER REVIEW

Your application for license is deemed incomplete and withdrawn from further consideration pursuant to Section 408.806(3)(b), Florida Statutes, which states that "Requested information omitted from an application for licensure, license renewal, or change of ownership, other than an inspection, must be filed with the agency within 21 days after the agency's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited".

You were notified by correspondence dated March 23, 2009 to provide further information addressing identified apparent errors or omissions within twenty-one days from the receipt of the Agency's correspondence. Our records indicate you received this correspondence by certified mail on April 06, 2009. As this requested information was not timely received by the Agency, your application is deemed incomplete and withdrawn from further consideration. The outstanding issues remaining for licensure are:

Failure to submit corrections upon request for RENEWAL application:

1. On Page 5 of 9 of the Renewal application form 3170-2004, the Owner Name and Federal Tax ID number do not match current files.
2. Test menu lists panels, not individual tests.
3. Section 2A of the Health Care Licensing Application does not match section 2A of the Health Care Licensing Application Addendum.
4. Affidavit of Compliance with Background Screening Requirements form 3100-0008 for the Laboratory Director.

EXPLANATION OF RIGHTS

Pursuant to Section 120.569, F.S., you have the right to request an administrative hearing. In order to obtain a formal proceeding before the Division of Administrative Hearings under Section 120.57(1), F.S., your request for an administrative hearing must conform to the requirements in Section 28-106.201, Florida Administrative Code (F.A.C), and must state the material facts you dispute.

SEE ATTACHED ELECTION AND EXPLANATION OF RIGHTS FORMS.

Certified Article Number

7160 3901 9848 3738 2137

SENDERS RECORD

2727 Mahan Drive, MS#32
Tallahassee, Florida 32308



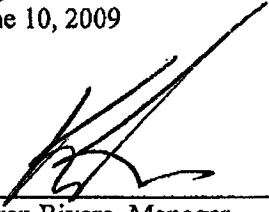
Visit AHCA online at
<http://ahca.myflorida.com>

EXHIBIT

tabbles

1

Apex Laboratory Inc
Page 2
June 10, 2009



Karen Rivera, Manager
Laboratory Licensure Unit

cc: Agency Clerk, Mail Stop 3
Legal Intake Unit, Mail Stop 3

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

APEX LABORATORY, INC.,

Petitioner,

vs.

Case No.: 09-3498
FRAES No.: 2009006594

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

SETTLEMENT AGREEMENT

Respondent, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Petitioner, APEX LABORATORY, INC. (hereinafter "Petitioner"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

WHEREAS, the Petitioner is a clinical laboratory licensed pursuant to Chapter 483, Part I, Florida Statutes and the Chapter 59A-7, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over licensure of Petitioner; and



WHEREAS, the Agency served the Petitioner with a Notice of Intent dated June 10, 2009, notifying the Petitioner of its intent to withdraw its application from further review; and

WHEREAS, the Petitioner requested a formal administrative hearing by filing an election of rights form or by petition; and

WHEREAS, the parties have agreed that a fair, efficient, and cost effective resolution of this dispute would avoid the expenditure of substantial sums to litigate the dispute; and

WHEREAS, the parties stipulate to the adequacy of considerations exchanged; and

WHEREAS, the parties have negotiated in good faith and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals are true and correct and are expressly incorporated herein.
2. Both parties agree that the "whereas" clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Petitioner agrees to waive any and all proceedings and appeals to which it may be entitled including, but not limited to, an Informal proceeding under Subsection 120.57(2), a

formal proceeding under Subsection 120.57(1), appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court (DOAH) of competent jurisdiction; and further agrees to wave compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled. Provided, however, that no agreement herein, shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.

4. Upon full execution of this Agreement, the parties agree to the following:

- a. The Notice of Intent to Deem Application Incomplete and Withdrawn From Further Review is withdrawn.
- b. The Petitioner's request for formal administrative proceedings is withdrawn.

5. Venue for any action brought to interpret, challenge or enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie solely in the Circuit Court in Leon County, Florida.

6. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case(s).

7. Each party shall bear its own costs and attorney's fees.

8. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

9. The Petitioner for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the Agency and its agents, representatives, and attorneys of all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this Agreement, by or on behalf of the Petitioner or related or resulting organizations.

10. This Agreement is binding upon all parties herein and those identified in the aforementioned paragraph of this Agreement.

11. In the event that Petitioner is or was a Medicaid provider, this settlement does not prevent the Agency from seeking Medicaid overpayments or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

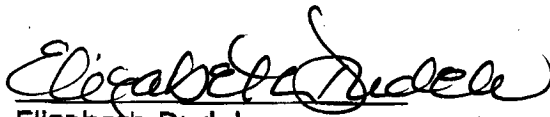
12. The undersigned have read and understand this Agreement and have authority to bind their respective principals to it.

13. This Agreement contains the entire understandings and agreements of the parties.

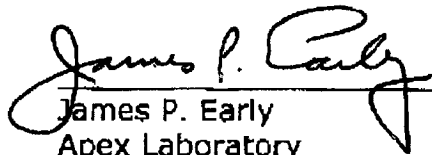
14. This Agreement supersedes any prior oral or written agreements between the parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

15. All parties agree that a facsimile signature suffices for an original signature.

16. The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.



Elizabeth Dudek
HQA, Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive, Bldg #1
Tallahassee, Florida 32308



James P. Early
Apex Laboratory
170 Finn Court
Farmingdale, NY 11735

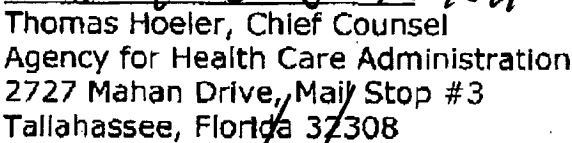
DATED: 6/18/09

DATED: 6-29-09



Justin Senior, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 7/2/09



Thomas Hoeler, Chief Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 7/2/09