

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PETER R. GARCIA,)
)
 Petitioner,)
)
 vs.) Case No. 09-5888
)
 HEART OF FLORIDA MEDICAL)
 CENTER,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on April 16, 2010, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Peter Garcia, pro se
2030 Stone Cross Circle
Orlando, Florida 32828

For Respondent: Denise Wheeler, Esquire
Fowler, White, Boggs, P.A.
Post Office Box 1567
Fort Myers, Florida 33902

STATEMENT OF THE ISSUE

The issue in this case is whether the Florida Commission on Human Relations (Commission) has jurisdiction over Petitioner's claims of discrimination.

PRELIMINARY STATEMENT

Petitioner, Peter Garcia, M.D. (Dr. Garcia), filed an Employment Complaint of Discrimination with the Commission on April 8, 2009. In the complaint, he alleged that he "began working for respondent [Heart of Florida Medical Center] and Preferred Emergency Physicians in March 2007" and that Respondent, Heart of Florida Medical Center, had discriminated against him based on a disability. On September 30, 2009, the Commission issued a Determination: No Jurisdiction, stating that the Commission lacked jurisdiction to consider the complaint because Heart of Florida Medical Center was not an employer as defined in Subsection 760.02(7), Florida Statutes (2008).¹

Dr. Garcia filed a Petition for Relief (Petition) with the Commission, alleging that Heart of Florida Medical Center had committed an unlawful employment practice and a public accommodation discriminatory practice. The Petition was forwarded to the Division of Administrative Hearings on October 26, 2009, for assignment to an Administrative Law Judge.

The case was originally assigned to Administrative Law Judge J.D. Parrish, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing. The final hearing was originally scheduled for February 12, 2010, but was continued and rescheduled for April 16, 2010.

At the final hearing, Dr. Garcia testified in his own behalf. Heart of Florida Medical Center called Trudie Kramer and John Finnegan as its witnesses. Neither party submitted any exhibits.

No transcript of the final hearing was ordered. Dr. Garcia filed his proposed recommended order on April 26, 2010, and Heart of Florida Medical Center filed its proposed recommended order on April 27, 2010. Both proposed recommended orders have been given consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Dr. Garcia is board-certified in emergency medicine and family medicine.

2. Beginning on or about March 2007, Dr. Garcia had been given hospital privileges by Heart of Florida Medical Center to practice in its emergency department. Dr. Garcia was not employed by Heart of Florida Medical Center.

3. His privileges came up for renewal in 2009. Because of unresolved concerns regarding Dr. Garcia's ability to appropriately assess and treat emergency room patients as a result of a hearing deficiency, Dr. Garcia's privileges with Heart of Florida Medical Center were not renewed.

4. The non-renewal of his privileges at Heart of Florida Medical Center did not preclude Dr. Garcia from practicing

medicine. It precluded Dr. Garcia from practicing medicine at Heart of Florida Medical Center. Dr. Garcia has practiced medicine in Texas since his privileges at Heart of Florida Medical Center were not renewed. There are other physicians in Florida who do not have privileges at Heart of Florida Medical Center and who practice medicine in Florida.

5. The Board of Medicine licenses physicians in the State of Florida. Heart of Florida Medical Center does not license physicians.

6. The non-renewal of his privileges at Heart of Florida Medical Center does not preclude Dr. Garcia from billing third-party insurance companies in connection with medical services he provides to insured individuals.

CONCLUSIONS OF LAW

7. The only issue considered in this proceeding is whether the Commission has jurisdiction over Dr. Garcia's claims of discrimination. Dr. Garcia is claiming that Heart of Florida Medical Center has committed an unlawful employment practice as set forth in Subsection 760.10(5), Florida Statutes, and a public accommodation discriminatory practice in violation of Section 760.08, Florida Statutes.

8. Subsection 760.10(5), Florida Statutes, provides:

Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license,

certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, national origin, age, handicap, or marital status.

9. Dr. Garcia contends that the language of Subsection 760.10(5), Florida Statutes, means that "any person, not just an employer, who discriminates against Petitioner while he is attempting to engage in his profession as an Emergency Physician at Heart of Florida Medical Center commits an unlawful employment practice." Dr. Garcia is correct that a person does not have to be an employer to be guilty of violating Subsection 760.10(5), Florida Statutes. However, his contention that the granting of hospital privileges is covered by Subsection 760.10(5), Florida Statutes, is incorrect.

10. The language of Subsection 760.10(5), Florida Statutes, is clear and unambiguous. Dr. Garcia is attempting to add additional language to the statute in order to modify the statute to include actions which preclude a doctor from practicing at a particular facility. "When interpreting a statute, courts are not at liberty to add words to the statute

that were not placed there by the legislature. State v. J.M., 824 So. 2d 105, 111 (Fla. 2002). This is precisely what Appellant's interpretation of the statute would do." University of Florida Board of Trustees v. Andrews, 961 So. 2d 375 (Fla. 1st DCA 2007).

11. Subsection 760.10(5), Florida Statutes, is referring to the requirements that are necessary to engage in a profession. Such as those licenses, certifications, credentials, or memberships that are required for a physician to practice medicine in Florida. It is not a necessary requirement that, in order to practice medicine in Florida, a physician has to have hospital privileges at any hospital, much less a specific hospital.

12. Section 760.08, Florida Statutes, provides:

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this chapter, without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion.

13. Subsection 760.02(11), Florida Statutes, defines "public accommodations" as follows:

"Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered

establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

14. The definition of public accommodation does not include medical facilities. See Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1204 (11th Cir. 2007).

15. Dr. Garcia has failed to establish that the Commission has jurisdiction to determine his claims of discrimination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing the Petition for lack of jurisdiction.

DONE AND ENTERED this 21st day of May, 2010, in Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of May, 2010.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2008 version.

COPIES FURNISHED:

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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.