

By: *Amey L. Carr*  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF PHYSICAL THERAPY PRACTICE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

MARLY DELIS CUETO, P.T.,

Respondent.

Case No.: 2008-1984  
2009-23150  
License No.: PT 15759

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

2011 DEC -6 A 11:49

FILED

**FINAL ORDER BY RECOMMENDED ORDER WITH EXCEPTIONS**

This matter appeared before the Board of Physical Therapy Practice ("Board") at a duly-noticed public meeting on November 4, 2011, in Tampa, Florida, for consideration of the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, Petitioner's Exceptions to the Recommended Order, Petitioner's Response to Respondent's Exceptions, Respondent's Opposition to Department's Exceptions (copies of which are attached hereto as Exhibits A, B, C, D, and E respectively) in the above-styled cause. Petitioner was represented by Manshi Shah, Assistant General Counsel. Respondent was present and represented by counsel, James M. Barclay.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

**RULINGS ON EXCEPTIONS**

1. The Respondent's Exceptions are REJECTED as the Administrative Law Judge's findings of fact are based on competent substantial evidence.
2. Petitioner's Exception to the Recommended Penalty is REJECTED.

### FINDINGS OF FACT

1. The finding of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 468, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

### PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED, and shall be as follows:

1. The Respondent shall be assessed an administrative fine of fourteen thousand dollars (\$14,000.00).
2. The Respondent's license shall be suspended for two (2) years to be followed by two (2) years of probation, the terms which are as follows:
  - a. The Respondent must be directly supervised by a Physical Therapist approved by the Board.
  - b. The Respondent, through the probation supervisor, must report to the Department (compliance) on a monthly basis regarding proper utilization and documentation related to the Medicaid program. These reports must be in affidavit form and must include why the Respondent is on probation, where she is practicing, type of patients treated, whether the Respondent is compliant with any restrictions, relationship with the supervisor, and review of

billing practices.

c. The Respondent shall submit three (3) CV's to the Board Chair for temporary approval of the proposed probation supervisor. The Respondent and her supervisor shall appear before the next available Board meeting for formal approval of the probation and supervision.

3. The Respondent must take and pass the Florida Laws and Rule Examination prior to the conclusion of the probationary period.

**MOTION FOR RECUSAL**

At the hearing upon this matter, Respondent made a motion to recuse the full Board. Upon argument of the parties and being otherwise advised of the premises, IT IS HEREBY ORDERED AND ADJUDGED:

Respondent's Motion for Recusal is hereby DENIED.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

**DONE AND ORDERED** this 2 day of December, 2011.

BOARD OF PHYSICAL THERAPY PRACTICE

*Allen Hall*

ALLEN HALL,  
Executive Director, *for*  
MADELEINE HELLMAN, PT, MHM, Ed.D, Chair  
Board of Physical Therapy Practice

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to MARLY DELIS CUETO, 17864 SW 47<sup>th</sup> St., Miramar, FL 33029; JAMES M. BARCLAY, 106 E. College Ave., Ste. 600, Tallahassee, FL 32301; and by interoffice mail to DROR LEWY, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; MANSI SHAH, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this 2 day of December, 2011.

  
**Deputy Agency Clerk**

7011 1150 0001 4538 1046

PS F  
City  
State  
or Pr  
Sent  
Tel  
Res  
(End)  
End  
FC