

By: Angelo Saucedo
Deputy Agency Clerk

FILED
STATE OF FLORIDA
DEPARTMENT OF HEALTH
11 NOV -9 PM 2:15

Marly Delis Cueto

Petitioner,

v.

Department of Health,

Division of Medical

Quality Assurance,

Respondent.

DOAH proceeding no.: 11-1728

PT license no.: 15759

FINAL ORDER

This matter is before the Department of Health (Department) for consideration of the recommended order¹ filed in this proceeding. Marly Delis Cueto is referred to herein as the Petitioner.

At issue is the Department's "Notice of Intent to Deny Renewal²" of the Petitioner's license to practice physical therapy³. The basis of the intent to deny renewal of licensure is termination for cause as a Medicaid provider. See *Medicaid fraud; disqualification for license, certificate, or registration*, section 456.0635(2)(b), Florida Statutes. The Administrative Law Judge (hereinafter the ALJ) recommends that the Department decline to deny renewal as Petitioner has not applied for license renewal.

Exceptions⁴

The Petitioner filed an exception to the Administrative Law Judge's conclusion that the Petitioner did not demonstrate an entitlement to award of attorney's

¹ The Recommended Order of September 29, 2011, by Administrative Law Judge Stuart M. Lerner, is attached as exhibit A.

² The "Notice of Intent to Deny Renewal" filed December 17, 2009, is attached as exhibit D.

³ See *Physical Therapy Practice*, chapter 486, Florida Statutes.

⁴ The Petitioner's exception and the Department's response are attached as exhibits B and C, respectively.

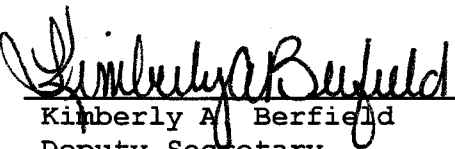
fees and costs, and follows with a request that the Department award attorney's fees and costs to the Petitioner pursuant to section 57.105, Florida Statutes. The exception and request are denied as the Department lacks the authority to adjudicate the requested attorney's fees and costs. See section 57.105(5), Florida Statutes; and *Department of Health and Rehabilitative Services v. S.G.*, 613 So.2d 1380, (Fla. 1st DCA 1993).

I concur with the ALJ's recommendation that the Department decline to deny the renewal of the Petitioner's license to practice physical therapy in the absence of a renewal application. Accordingly, the recommended order entered September 29, 2011 is adopted and incorporated by reference.

Based on the foregoing, the "Notice of Intent to Deny Renewal" filed herein on December 17, 2009, and attached as exhibit D, is withdrawn.

DONE and **ORDERED** this 07 day of November 2011 in Tallahassee, Leon County, Florida.

H. Frank Farmer, Jr., MD, PhD, FACP
State Surgeon General

By: 

Kimberly A. Berfield
Deputy Secretary

NOTICE

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A REVIEW PROCEEDING IS GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH A PROCEEDING IS COMMENCED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE REQUIRED BY LAW WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE MUST BE FILED WITHIN 30 DAYS OF FILING DATE OF THIS FINAL ORDER.

Copy furnished to each of the following:

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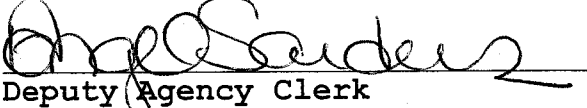
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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing FINAL ORDER has been served by ordinary mail via the United States Postal Service, inter-office mail, electronic transmission, or by hand delivery to each of the above-named persons this 8th day of November 2011.


Deputy Agency Clerk
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