

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PROFESSIONAL PAIN MANAGEMENT,)
INC., LICENSE NO. PMC 296,)
)
Petitioner,)
)
vs.) Case No. 11-2661
)
DEPARTMENT OF HEALTH,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Administrative Law Judge, John D. C. Newton, II, of the Division of Administrative Hearings, heard this case, as noticed, on August 3, 2011, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael S. Hoffman, Esquire
Hoffman, Larin and Agnetti, P.A.
909 North Miami Beach Boulevard
Suite 201
Miami, Florida 33162

For Respondent: Morris Shelkofsky, Esquire
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1703

STATEMENT OF THE ISSUE

Should the certificate of registration of Petitioner, Professional Pain Management, Inc., License No. PMC 296, as a privately-owned pain management clinic, be revoked?

PRELIMINARY STATEMENT

Respondent, Department of Health (Department), by Notice of Intent dated December 9, 2010, gave Petitioner, Professional Pain Management, Inc., License No. PMC 296 (PMC 296), notice that it intended to revoke PMC 296's certificate of registration as a privately-owned pain management clinic. PMC 296 requested a hearing, and the Department referred the matter to the Division of Administrative Hearings on May 25, 2011. The matter was scheduled for the hearing to commence on August 3, 2011. On August 1, 2011, PMC 296 moved to continue the hearing. The motion was denied, and the hearing was held as scheduled.

The Department's Exhibits 1 and 2 were accepted into evidence. The Department offered the testimony of Joanne Trexler. PMC 296's Exhibit 1 was accepted into evidence. Erez Cohen testified on behalf of PMC 296.

The Transcript of the final hearing was filed on August 22, 2011. The parties were provided an opportunity to submit proposed recommended orders. The Department timely submitted a Proposed Recommended Order; PMC 296 did not submit a proposed recommended order.

FINDINGS OF FACT

1. Petitioner, Professional Pain Management, Inc., License No. 296, is a pain management clinic (PMC) subject to the

requirements of sections 458.3265 and 459.0137, Florida Statutes (2010).^{1/}

2. PMC 296 is not wholly-owned by medical doctors (M.D.s), osteopathic physicians (D.O.s), or a combination of M.D.s and D.O.s.

3. PMC 296 is not a health care clinic licensed under chapter 400, part X, Florida Statutes.

4. PMC 296 has three equity shareholders. Their names and percentages of ownership interests are: Robert Ciceles (20 percent); Terra Hom (40 percent), and Erez Cohen (40 percent). None of the three equity shareholders is a physician, M.D. or D.O.

5. Erez Cohen is, and at all pertinent times, has been president of PMC 296. He is not an M.D. or a D.O.

6. Since at least August 2010, the owners and officers of PMC 296 were aware of the requirement that it be wholly physician-owned, effective October 1, 2010.

7. PMC 296 was, at all times pertinent to this proceeding, not wholly-owned by physicians, M.D.s, D.O.s, or a combination of M.D.s and D.O.s.

8. A dispute among the shareholders arising out of a dissolution of marriage proceeding has prevented PMC 296 from establishing ownership by a M.D., a D.O. or a combination of M.D.s and D.O.s. Management of PMC 296 plans to transfer

ownership to physicians at an unspecified future date once the shareholder dispute is resolved.

9. There was no evidence of any exemption from the operation of sections 458.3265 and 459.0137 presented at the hearing.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearing (DOAH) has jurisdiction over this matter pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011).

11. The Department must prove the material allegations of its notice by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern and Co., Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

12. Sections 458.3265 and 459.0137 require that a PMC be wholly-owned by physicians (M.D.s, D.O.s, or a combination for M.D.s and D.O.s).

13. Alternatively, a PMC can obtain registration under sections 458.3265 and 459.0137 by obtaining licensure as a Health Care Clinic Standard from the Florida Agency for Health Care Administration under chapter 400, part X.

14. The Department proved by clear and convincing evidence that PMC 296 is not wholly-owned by M.D.s, D.O.s, or some combination of them and that PMC 296 does not hold a Health Care Clinic Standard license. Therefore, PMC 296 does not satisfy

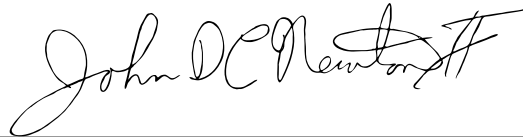
the requirements for registration as a pain management clinic established by sections 458.3265 and 459.0137.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusion of Law, it is

RECOMMENDED that the Department of Health issue a final order revoking the certificate of registration of Professional Pain Management, Inc., License No. PMC 296.

DONE AND ENTERED this 30th day of September, 2011, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2011.

ENDNOTE

^{1/} All statutory references to the Florida Statutes are to the 2010 edition, unless noted otherwise.

COPIES FURNISHED:

H. Frank Farmer, MD., Ph.D, Secretary
State Surgeon General
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701

Nicholas Romanello, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1703

R. S. Power, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1703

Morris Shelkofsky, Esquire
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1703

Michael S. Hoffman, Esquire
Hoffman, Larin and Agnetti, P.A.
909 North Miami Beach Boulevard
Suite 201
Miami, Florida 33162

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.