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JUN 27 2012

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CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

Chief Financial Officer
Docketed by: WBR

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DIVISION OF
ADMINISTRATIVE
Case No. 11-060-1A-WC
HEARINGS

IN THE MATTER OF:

AMSTARR, INC.
_____ /

FINAL ORDER

THIS PROCEEDING came on for final agency action and Jeff Atwater, Chief Financial Officer of the State of Florida, or his designee, having considered the record in this case, including the request for administrative hearing received from AMSTARR, INC., the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, and being otherwise fully advised in the premises, hereby finds that:

1. On February 22, 2011, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department") issued a Stop-Work Order and Order of Penalty Assessment in Division of Workers' Compensation Case No. 11-060-1A to AMSTARR, INC. The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein AMSTARR, INC. was advised that any request for an administrative proceeding to challenge or contest the Stop-Work Order and Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Stop-Work Order and Order of Penalty Assessment in accordance with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

2. On February 22, 2011, the Stop-Work Order and Order of Penalty Assessment was served by personal service on AMSTARR, INC. A copy of the Stop-Work Order and Order of Penalty Assessment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. On March 24, 2011, the Department issued an Amended Order of Penalty Assessment to AMSTARR, INC. The Amended Order of Penalty Assessment assessed a total penalty of \$80,945.25 against AMSTARR, INC. The Amended Order of Penalty Assessment included a Notice of Rights wherein AMSTARR, INC. was advised that any request for an administrative proceeding to challenge or contest the Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Amended Order of Penalty Assessment in accordance with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

4. On October 27, 2011, the Amended Order of Penalty Assessment was served by personal service via a process server on AMSTARR, INC. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On November 28, 2011, AMSTARR, INC. timely filed a request for administrative hearing with the Department. The petition for administrative review was forwarded to the Division of Administrative Hearings on January 6, 2012, and the matter was assigned DOAH Case No. 12-0080. A copy of the petition is attached hereto as "Exhibit C" and incorporated herein by reference.

6. On March 8, 2012, the Department issued a 2nd Amended Order of Penalty Assessment to AMSTARR, INC. The Amended Order of Penalty Assessment assessed a total penalty of \$2,256.78 against AMSTARR, INC. The 2nd Amended Order of Penalty Assessment included a Notice of Rights wherein AMSTARR, INC. was advised that any request for an administrative proceeding to challenge or contest the 2nd Amended Order of Penalty

Assessment must be filed within twenty-one (21) days of receipt of the 2nd Amended Order of Penalty Assessment in accordance with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

7. On March 13, 2011, the 2nd Amended Order of Penalty Assessment was served by electronic mail on AMSTARR, INC. A copy of the 2nd Amended Order of Penalty Assessment is attached hereto as "Exhibit D" and incorporated herein by reference.

8. On March 26, 2012, AMSTARR, INC., entered into a Settlement Agreement with the Department. The Settlement Agreement stated that AMSTARR, INC. must accept service of the 2nd Amended Order of Penalty Assessment. The Settlement Agreement also stated that AMSTARR, INC. must pay the penalty in full, or pay a down-payment of \$1,000.00 and enter into a Payment Agreement Schedule for Periodic Payment within thirty days of the execution of the Settlement Agreement. Additionally, AMSTARR, INC. agreed that upon execution of the Settlement Agreement his Petition shall be deemed dismissed with prejudice. A copy of the Executed Settlement Agreement is attached hereto as "Exhibit E" and incorporated herein by reference.

9. On March 26, 2012, the Department filed a Notice of Settlement with the Division of Administrative Hearings. A copy of the Notice of Settlement is attached hereto as "Exhibit F" and incorporated herein by reference.

10. On April 2, 2012, the Administrative Law Judge issued an Order Closing File and Relinquishing Jurisdiction. A copy of the Order Closing File and Relinquishing Jurisdiction is attached hereto as "Exhibit G" and incorporated herein by reference.

11. As of the date of this Final Order, AMSTARR, INC. has failed to comply with the conditions of the Settlement Agreement. AMSTARR, INC. has neither paid the penalty amount

in full, nor has AMSTARR, INC. entered into a Payment Agreement Schedule for Periodic Payment.

FINDINGS OF FACT

12. The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on February 22, 2011, the Amended Order of Penalty Assessment issued on March 24, 2011, and the 2nd Amended Order of Penalty Assessment, issued on March 8, 2012, attached as "Exhibit A," "Exhibit B," and Exhibit "D" respectively, and fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

CONCLUSIONS OF LAW

13. The Department has jurisdiction over the subject matter of and the parties to this matter pursuant to Chapter 440, Florida Statutes.

14. Based upon the Findings of Fact adopted herein, the Department concludes that AMSTARR, INC. violated the specific statutes and rules alleged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, and hereby adopts the violation(s) charged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment as the Conclusions of Law in this case.

PENALTY IMPOSED

15. The Order Closing File and Relinquishing Jurisdiction from the Division of Administrative Hearings, the Executed Settlement Agreement, the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment taken together with the Findings of Fact and Conclusions of Law adopted

herein, constitute grounds for the Chief Financial Officer to impose the penalty as set forth herein.

IT IS THEREFORE ORDERED that:

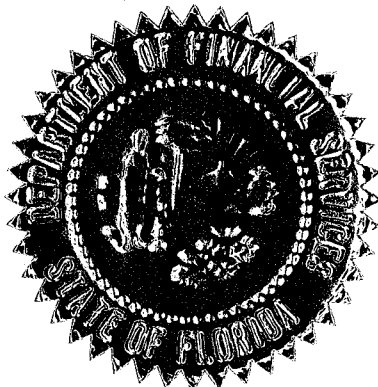
a. AMSTARR, INC. shall immediately pay the total penalty of \$2,256.78 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund;

b. AMSTARR, INC. shall immediately cease all business operations in the State of Florida until such time as the Department issues an order releasing the Stop-Work Order and Order of Penalty Assessment. The Department shall not issue an Order releasing the Stop-Work Order and Order of Penalty Assessment until AMSTARR, INC. has come into compliance with the coverage requirements of Chapter 440, Florida Statutes and has paid a total penalty of \$2,256.78 to the Department.

DONE AND ORDERED on this ~~23~~²⁷ day of June, 2012.



E. Tanner Holloman
Director, Workers' Compensation



NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.110. Review proceedings must be instituted by filing a Notice of Appeal with Julie Jones, DFS Agency Clerk, Department of Financial Services, Room 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida, 32399-0390 and a copy of the Notice of Appeal, a copy of this Order and filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished by U.S. Mail to the person(s) listed below, on this 27th day of June, 2012.

for Michael T. McSweeney
Stefan R. Grow FL BAA
881030
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Assistant General Counsel
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Copies to:
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