

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, STATE
BOXING COMMISSION,

Petitioner,

vs.

Case No. 12-0142

AMERICAN AMATEUR MIXED MARTIAL
ARTS, INC., a/k/a UNITED STATES
AMATEUR MIXED MARTIAL ARTS,
INC.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before the Honorable Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings, on August 21 through 23 and December 19 through 20, 2012, in Pensacola Florida.

APPEARANCES

For Petitioner: Cristin Erica White, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent, American Amateur Mixed Martial Arts, Inc.'s (AAMMA), license as an amateur mixed martial arts sanctioning organization, should be disciplined and, if so, the penalty therefore.

PRELIMINARY STATEMENT

On December 19, 2011, Petitioner, State Boxing Commission (Commission), through the Department of Business and Professional Regulation (DBPR) filed a Second Amended Administrative Complaint^{1/} against Respondent alleging that Respondent's license as an amateur mixed martial arts sanctioning organization should be disciplined for alleged violations of chapter 548, Florida Statutes (2010-2011). Specifically, Petitioner alleged that Respondent's license should be disciplined for violating sections 548.071(1) (violation of Commission rules) and 548.071(4) (unprofessional and unethical conduct) for failure to enforce the health and safety standards in the International Sport Kickboxing Association (ISKA) amateur rules overview (Overview), by permitting minors to compete in amateur mixed martial arts (MMA) matches sanctioned by Respondent on January 29, 2011, February 26, 2011, May 6, 2011, July 16, 2011, and August 13,

2011; by allowing fighters to engage in MMA matches outside of the ISKA Overview's weight classes on July 16, 2011; and violating section 548.071(4) by allowing one of its volunteer members to mislead the American Legion Post #75 into signing a letter that incorrectly stated the American Legion was the sole sponsor of Respondent's May 6, 2011, amateur event.

Respondent disputed the allegations of the Administrative Complaint and timely requested a formal administrative hearing on January 10, 2012. Thereafter, the case was referred to the Division of Administrative Hearings (DOAH) for formal hearing.

At the hearing, Petitioner presented the testimony of ten witnesses. Petitioner also offered 18 exhibits numbered 19, 23, 24, 25, 28, 31, 42, 44, 46, 56, 76, 77, 78, 79, 83, 95, and 98; and Respondent's Exhibit 86, which were admitted into evidence except for Petitioner's Exhibit 25 which was admitted into evidence for a limited purpose.

Respondent presented the testimony of eight witnesses and offered nine exhibits numbered Respondent's Exhibits 61, 64, 65, 66, 67, 162, 191, 194, and 201, which were admitted into evidence. Further, Respondents Exhibits 64, 65, 66, and 67 were admitted into evidence for a limited purpose.

The parties also stipulated to the admissibility of Respondent's Exhibits 58, 59, 62, 63; and Petitioner's Exhibits 8, 9, 12, 26, 27, 43, 62, 63, 64, 65, and 66. Petitioner's

Composite Exhibit 43 was admitted into evidence with the exception of the attached flyer, which is the last page of Petitioner's Composite Exhibit 43. Further, Official Recognition was taken of Florida Administrative Code Rule 61K1-1; Petitioner's Exhibits 1 through 6, 8, 9, and 11; and Respondent's Exhibits 104, 129, and 130.

Eight volumes of Transcripts were filed at DOAH on October 11, 2012, and February 6, 2013. Volumes I-VI were for testimony taken on August 23, 2012. The volumes filed for testimony taken on December 12, 2012, were incorrectly identified by the court reporter as Volumes VI and VII.

After the hearing, Petitioner filed a Proposed Recommended Order on March 6, 2013. Similarly, Respondent filed a Proposed Recommended Order on March 8, 2013.

FINDINGS OF FACT

1. Mixed Martial Arts (MMA) is a form of combat that grew out of Mui Thai. MMA combines two or more forms of martial arts (grappling, boxing, karate, etc.) and involves throws and strikes with the feet, hands and knees. Over the years, such combat has also been known by a variety of names, such as, Brazilian kickboxing, No Holds Barred fighting, or Ultimate Fighting, etc. Additionally, MMA schools and training have grown significantly in popularity. Further, as with most sports, MMA competition developed in both the professional and amateur arenas, with some

states regulating amateur and/or professional competition and some states not regulating such competition. Additionally, MMA competitions and related items have grown into a significantly large market in the sports industry.

2. Prior to July 1, 2008, the State of Florida in chapter 548, Florida Statutes, the law governing the State Boxing Commission and certain pugilistic events, prohibited sanctioning or holding amateur mixed martial arts matches in Florida. In 2008, chapter 2008-240, Laws of Florida, was enacted and, among other things, amended section 548.008, to eliminate the state's prohibition of amateur mixed martial arts matches. The Act also provided that the Commission could summarily suspend "the approval of an amateur sanctioning organization" and/or suspend one or more sanctioned amateur matches or events for violation of to be established health and safety standards. Ch. 2008-240, § 41, at 32, Laws of Fla., amending § 548.0065(4). Oddly, the Act did not appear to provide for the licensure or regulation of amateur MMA sanctioning organizations. Finally, the Act provided that professional MMA fighters, known as "participants," could not be licensed if the fighter was under 18 years of age and had not participated in a minimum number of amateur MMA matches. Ch. 2008-240, § 43 at 33, Laws of Fla., amending § 548.041(1).

3. In 2009, chapter 2009-195, Laws of Florida, amended section 548.003(k), to permit the regulation and licensure of

amateur mixed martial arts sanctioning organizations in Florida. In general, the regulation of such matches was placed under the auspices of the State Boxing Commission, which was granted the authority to adopt health and safety rules for amateur mixed martial arts matches and license amateur sanctioning organizations for mixed martial arts. More importantly, the Commission was given the authority to:

"adopt by rule, or incorporate by reference into the rule, . . . the health and safety standards of the International Sport Kickboxing Association as the . . . minimum health and safety standards for an amateur mixed martial arts sanctioning organization."

§ 548.003(k), Fla. Stat.

4. However and confusingly, the International Sport Kickboxing Association does not exist, but is a name sometimes used by the International Sport Karate Association, Inc., which has moved into the area of kickboxing and MMA. The Association uses the initials "ISKA" to reference its organization by either name; and, it is the International Sport Karate Association that appears to be the organization to which the legislature was referring when it enacted chapter 2009-195, Laws of Florida.

5. On March 15, 2010, Florida Administrative Code Rule 61K1-1.0031(1)(c), which previously governed only amateur boxing and kickboxing sanctioning organizations, was amended to add amateur MMA sanctioning organizations. The result is a rule, as

it is now composed, that is very confusing partly due to the addition of amateur MMA sanctioning organizations to a rule that was originally written for boxing and kickboxing sanctioning organizations. The rule states:

(1) Criteria for Approval. An amateur sanctioning organization seeking approval from the . . . Commission to sanction and supervise matches involving amateur boxers or kickboxers shall meet the following criteria: (emphasis supplied)

(a) For amateur boxing

(b) For amateur kickboxing

(c) For amateur mixed martial arts, a statement of agreement to adopt and enforce the health and safety Standards of the International Sport Kickboxing Association (ISKA) as provided in the ISKA Amateur Rules Overview, incorporated by reference, effective July 2008. (emphasis added).

* * * *

The remainder of the rule addresses required agreements by the amateur sanctioning organizations which, among other things, address health and safety issues involving required minimum ambulance service; emergency health equipment at matches; "on-call" ambulance service; event physicians and their qualifications; approval of applications; and disciplinary actions against a licensed amateur sanctioning organization. Because of the wording of the rule, it is unclear whether any of these other subsections of the rule apply to amateur MMA

organizations or only to amateur boxing and kickboxing organizations. Evidence suggests that these provisions apply to amateur MMA organizations. The disciplinary subsection of the rule refers to violation "of the provisions of section 578.041, Florida Statutes." However, chapter 578, Florida Statutes, titled "The Florida Seed Law," does not relate to boxing, kickboxing or MMA, but involves agriculture. In fact, section 578.041 does not exist within that chapter and the reference appears to be a typographical error with the intended Commission statute being referenced left unclear.^{2/} Unfortunately, the statutory reference to a non-existent statute has not been corrected in the more than two years since the rule's adoption and serves to highlight the problems the Commission has in its regulatory rules and their enforcement.

6. As indicated, the 2010 amendment to Rule 61K1-1.0031 incorporated by reference only the health and safety rules contained in the 2008 version of the ISKA Rules Overview. In fact, the ISKA Rules Overview is a general document that contains a variety of sections and requirements related to running "ISKA" amateur MMA events consisting of individual matches with "ISKA" officials and certifications. Such "ISKA"-related references create confusion as to what part of the ISKA Overview applies at non-ISKA events and/or to sanctioning organizations, such as Respondent, who are not affiliated with ISKA.

7. More importantly, the ISKA Overview addresses a variety of things necessary to put on an ISKA amateur MMA event and come to a valid and fair decision in the matches. As such, the document contains rules related to fees, proceeds and ticket sales that are clearly unrelated to the health and safety of fighters. Other sections relate to the equipment, ring, personnel (referees, timekeepers, etc.) and scoring requirements for an event, as well as, a section on legal techniques and fouls. None of the sections in the ISKA Overview are specifically identified as health related. In fact, there is only one section, Section VI, titled "Physical Examinations and Safety Regulations," that appears to contain the identifiable minimal health and safety regulations that the Commission has the authority to adopt. This section does not contain any restrictions on age or weight. The section does contain health and safety rules regarding required physical examination of fighters, attending physicians, ringside physicians, activities of seconds during a fight and presence of an emergency mobile unit. However, the section also contains rules related to fees to be provided to the physician and rules related to who is responsible for paying such fees. Such fee provisions do not appear to relate in any way to the health and safety of a fighter, but have been incorporated by reference in rule 61K1-1.0031. The section also contains language that prohibits a

ringside physician or second from treating a fighter's injury. Again, these provisions do not appear to be related to the health and safety of a fighter, but are incorporated by reference.

8. Apart from Section VI described above, Section III(6) of the ISKA Overview prohibits a person who is under the age of 18 from competing in an "ISKA MMA event." The rule does not address non-ISKA events leaving it open to interpretation whether this "prohibition" is applicable to Respondent.

9. Moreover, the evidence did not show that the Commission issued an official statement interpreting the age prohibition as a minimal health standard prior to the events at issue in this case. The claim that DBPR staff or investigators told Respondent about any Commission policy related to the age of a fighter or the ISKA Overview was not supported by the evidence and was not credible. In fact, the evidence demonstrated that ISKA itself did not interpret the age prohibition as a minimal health standard when it included matches for fighters under age 18 in at least one of its events and developed a "sport" MMA program in which minors could and did compete in MMA tournaments sanctioned by ISKA. Notably, ISKA was not disciplined for these matches. Further, the evidence showed that whether an age prohibition of 18 is viewed as a health issue depended on the martial arts background of the individuals interpreting the ISKA Overview, since, as with the individuals in Respondent's organization, some

martial arts, such as boxing, permit fighters under the age of 18 to compete in either junior matches or compete as adults depending on the fighter's level of skill. Indeed, the age prohibition appears to be a physical standard and not a health standard for purposes of matchmaking at ISKA events.

10. Similarly, Section III(2) of the ISKA Overview sets forth modifiable weight classes for fighters competing in its matches. Unless modified, the weight classes for male mixed martial arts contained in the ISKA Overview are:

- (a) Flyweight 124.9 lbs and less;
- (b) Featherweight 125 lbs - 134.9 lbs;
- (c) Bantamweight 135 lbs - 144.9 lbs;
- (d) Lightweight 145 lbs - 154.9 lbs;
- (e) Welterweight 155 lbs - 169.9 lbs;
- (f) Middleweight 170 lbs - 184.9 lbs;
- (g) Light-Heavyweight 185 lbs - 204.9 lbs;
- (h) Heavyweight 205 lbs - 234.9lbs;
- (i) Super Heavyweight 236 lbs and up.

11. However, such modifiable criteria do not constitute minimal health standards, but only establish variable physical standards used in efficient matchmaking at an ISKA event and are dependent on differing interpretations that can be given to the ISKA Overview. Moreover, the evidence showed that such weight classifications would be inappropriate in smaller non-tournament, MMA events, such as those involved here, where matchmaking is based more on a fighter's level of skill than on a fighter's weight.

12. Significantly, since the Commission incorporated the entire ISKA Rules Overview into Rule 61K1-1 without identifying specific parts of that document that it considered to be the minimal health and safety ISKA rules it intended to adopt, it created an unintelligible set of rules that result in differing interpretations as to the minimal health and safety standards it contains and fails to put individuals on notice as to the minimal health and safety standards required by the Commission.

13. In 2010 and 2011, Respondent was licensed and regulated by Petitioner as an amateur sanctioning organization, holding license numbers AMAT 8 (boxing), AMAT 9 (kickboxing), and AMAT 10 (MMA), with only the MMA license as the direct subject of the Administrative Complaint at issue here.^{3/} In fact, Respondent's amateur MMA license was issued to it on July 7, 2010.

14. In order to become licensed, Respondent, using the ISKA rules as its model, developed a set of rules for its events which it submitted to the Commission with its licensure application. As a consequence, Petitioner approved Respondent's license based on its application; agreement to enforce, "at a minimum," unspecified health and safety standards contained in ISKA rules; and the rules Respondent adopted for its sanctioning organization. The license was issued with the condition that any changes to Respondent's rules or standards be submitted to the Commission. Notably, the Commission has no authority to approve

the rules or standards adopted by Respondent for its sanctioning body, but only has authority to license an amateur sanctioning organization or discipline an organization for failing to comply with licensure requirements.

15. The first iteration of Respondent's rules prohibited minors from engaging in mixed martial arts matches and provided for weight classes with corresponding weight differentials to be used in tournament (larger) types of events. Respondent's original rules provided tournament weight classes with weight differentials as follows:

(a) Light Flyweights	106 lbs.	differential 8 lbs.;
(b) Flyweights	112 lbs.	differential 8 lbs.;
(c) Bantamweights	119 lbs.	differential 8 lbs.;
(d) Featherweights	125 lbs.	differential 8 lbs.;
(e) Lightweights	132 lbs.	differential 10 lbs.;
(f) Light Welterweights	141 lbs.	differential 10 lbs.;
(g) Welterweights	152 lbs.	differential 10 lbs.;
(h) Middleweights	165 lbs.	differential 10 lbs.;
(i) Light heavyweights	178 lbs.	differential 15 lbs.;
(j) Heavyweights	201 lbs.	differential 15 lbs.;
(k) Super Heavyweights	Over 215 lbs.	differential none;

16. However, Respondent, around July 20, 2010, modified its rules to permit minors to compete in mixed martial arts events under a program of "modified martial arts." The amended rules regarding minors were modeled after Olympic rules and USA Boxing rules which permit minors to compete at their events and permit sufficiently skilled 17-year-olds to compete against adults. These modified rules were sent to the Commission as required.

17. Further, the rules provided for "junior athletes" to wear headgear and stated in paragraph 6 under the section titled "Student Athlete Eligibility":

All student athletes must be 18 years of age or older. In states where Junior MMA is approved, student athletes must be 13 years of age or older with no more than a 24 month age difference between the competing students.

The modified rules also contained weight classes for tournament-type events; however, the number of classes was reduced with the weight differentials for the new classes adjusted.

18. Later, at some point prior to December 2011, the Respondent amended its rules for a third time and provided the amended rules to the Commission. Again, the amended rules were modeled after Olympic rules and USA Boxing rules. Although not stated, the amended rules indicate and tried to clarify that 17-year-olds may be considered adults or juniors depending on the match. The amended rules also provided that junior athletes wear headgear and stated in paragraph 6 under Student Athlete Eligibility:

Student athletes must be 13-16 years of age with no more than a 24-month age difference between the competing student athletes. There will be no more than a 10 lb. weight difference between competitors and in all circumstances, the experience of the competitors must be taken into consideration.
A 15- or 16-year-old may compete against a 17-year-old as long as the Junior MMA rules are followed.

19. The amended rules also modified the tournament weight classes and weight differentials for each class, as well as removed weight class names. Respondent's amended rules provided tournament weight classes with weight differentials as follows:

- (a) 70 lbs. differential 5 lbs.;
- (b) 75 lbs. differential 5 lbs.;
- (c) 80 lbs. differential 5 lbs.;
- (d) 85 lbs. differential 5 lbs.;
- (e) 90 lbs. differential 5 lbs.;
- (f) 95 lbs. differential 5 lbs.;
- (g) 100 lbs. differential 5 lbs.;
- (h) 106 lbs. differential 9 lbs.;
- (i) 115 lbs. differential 10 lbs.;
- (j) 125 lbs. differential 10 lbs.;
- (k) 135 lbs. differential 10 lbs.;
- (l) 145 lbs. differential 10 lbs.;
- (m) 155 lbs. differential 10 lbs.;
- (n) 165 lbs. differential 10 lbs.;
- (o) 175 lbs. differential 15 lbs.;
- (p) 200 lbs. differential 15 lbs.;
- (q) over 201 lbs differential no limit.

20. On February 21, 2011, Representatives of Respondent appeared at the Commission meeting to discuss the changes to its rules. It was unclear in the evidence which set of Respondent's amended rules was being considered by the Commission. Further, the evidence was not clear as to the details of what occurred at this meeting. However, the focus of the meeting regarding these amended rules seemed to be on allowing strikes known as "ground and pound" to be used in amateur MMA matches and that DBPR staff did not approve of the Respondent's modified rules. Such staff opinion does not establish Commission policy. However, after a break in the proceedings, Respondent withdrew its modified

martial arts rules from further consideration at the meeting since Respondent's representatives believed the Commission had no authority to approve or disapprove a sanctioning organization's rules.

21. This withdrawal created some confusion within DBPR as to which set of rules were in effect for Respondent, with DBPR investigator's incorrectly insisting that the only valid rules "approved by the Commission" that Respondent could use were the rules Respondent had initially adopted when it was licensed. Further, DBPR's position would cause confusion between the investigators and Respondent during the time period of this case since Respondent believed it had established a valid junior MMA program and utilized appropriate matchmaking criteria for setting matches. In short, because these rules were the adopted rules of Respondent, the organization sanctioned and conducted matches pursuant to the "modified martial arts" rules and allowed minors to compete in "modified martial arts" or the "junior MMA program." Seventeen-year-old fighters could compete as either a junior or an adult, depending on the fighter's skills.

22. Kody Downs is a well-trained MMA fighter who has competed in MMA events in Florida and other states for a number of years. His birthday is August 5, 1993. In 2011, at the age of 17, Mr. Downs had sufficiently high MMA skills to qualify for

competition against adults at MMA events and had competed as an adult in other states.

23. On January 29, 2011, Respondent sanctioned an amateur pugilistic event, at the Pensacola Beach Hilton hotel. In that event, Respondent matched Mr. Downs, who was a little over six months away from turning 18, with 23-year-old Chris Hart in an MMA match. The opponents were evenly matched based on their fighting skills and the match proceeded to a decision with Mr. Downs winning the match against Chris Hart.

24. On February 26, 2011, Respondent sanctioned an amateur pugilistic event, entitled "Gulf Coast Fight Fest 6," at 1621 Dog Track Road in Pensacola, Florida. Respondent matched Mr. Downs, who was a little over five months away from turning 18, with 23-year-old Edwin Ladley in an MMA match. Again, the opponents were evenly matched on their fighting skills, with Mr. Downs winning the match.

25. The evidence showed that all of the fights involving Kody Downs were matched according to Respondent's rules which were intended to provide, however inarticulately, that fighters under the age of 18 could compete under certain circumstances and at certain skill levels. Moreover, as discussed earlier, the evidence did not demonstrate that the ISKA Overview regarding age was a minimum health and safety requirement. More importantly, the Commission's carte blanche incorporation of the ISKA Overview

and lack of official policy on the issue made it impossible for a reasonable person to determine whether the ISKA age restriction was a health or safety requirement in amateur MMA events and left interpretation of such requirements open to varying interpretations depending on an organization's or individual's martial arts background. Respondent followed the lead of the U.S. Olympic committee and the U.S.A. Boxing association which permitted matches similar to those involving Kody Downs. In fact, Respondent's matchmaking based on a fighter's skills was shown by the evidence to be professional and ethical. Given these facts, no violations of the Commission's rules or unprofessional/unethical conduct under chapter 548, Florida Statutes, was shown by the evidence and the allegations of the Administrative Complaint related to Kody Downs should be dismissed.

26. On July 16, 2011, Respondent sanctioned an amateur pugilistic event at Bay Banquet Hall, 5420 Hickory Street, in Panama City, Florida. Respondent matched 17-year-old Jacob Owens with 21-year-old Brandon Grooms in an MMA match. Like all of Respondent's matches involving age issues, the opponents were appropriately matched based on their fighting skills. Mr. Owens won the match against Brandon Grooms. Notably, as with the underage allegations involving Kody Downs, there were no violations of the Commissions' rules or unethical/unprofessional

conduct shown by the evidence and the allegations of the Administrative Complaint relative to Mr. Owens should be dismissed.

27. Additionally, at the July 16 event in Panama City, Respondent matched heavyweight Robert Birge, weighing 206 pounds, with super heavyweight Travis Grooms, weighing 267 pounds in an MMA match. Whether either fighter is labeled a heavyweight or a super heavyweight depends on whether the weight classes set forth in the ISKA Overview which contained named weight classes, or the Respondent's rules which did not contain named weight categories, is used. In either case, Robert Birge and Travis Grooms competed outside the weight requirements articulated in the ISKA Overview, but within the weight requirements adopted in Respondent's rules. These contestants were matched appropriately according to their level of skill, with the lighter weight fighter winning the match. More importantly, as indicated earlier, the ISKA weight rules are subject to modification and were not shown to be minimum health requirements within the ISKA Overview. However, even assuming the very unclear ISKA weight rules are minimum health and safety requirements, the evidence showed that these rules were appropriately modified by Respondent based on the skills of the fighters involved and non-tournament nature of the event being held. Given these facts, there were no violations of the Commission's rules or chapter 548 and the allegations

regarding violations of the ISKA weight rules should be dismissed.

28. On August 13, 2011, Respondent sanctioned an amateur pugilistic event, at the North Florida Fairgrounds, 441 Paul Russell Road, Tallahassee, Florida. During the event, 15-year-old Josh Douglas competed in an exhibition mixed martial arts match against 17-year-old Jonathan Tyler Dew. Both contestants wore protective headgear as provided in Respondent's rules and were appropriately matched. Again, as indicted earlier, no violations of the Commission's rules or unethical/unprofessional conduct by Respondent was demonstrated by the evidence and the allegations of the Administrative Complaint related to Dew and Douglas should be dismissed.

29. On May 6, 2011, Respondent sanctioned an amateur pugilistic event at Hooters Restaurant, located at 180 Cracker Barrel Road in Crestview, Florida. The event was put on by Sammy Collingwood, who operated an MMA school in Crestview.

30. Mr. Collingwood's school was an "affiliated" school of Respondent's organization. As an affiliated school, Mr. Collingwood agreed to abide by the rules of Respondent. However, such affiliation did not make Mr. Collingwood or his school a representative of Respondent. In fact, the evidence was clear that Mr. Collingwood did not represent Respondent and that Respondent only sanctioned the event under its rules. It was

Mr. Collingwood who set up the venue, purchased insurance, obtained the announcer for the event, and advertised the May 6, 2011, event. Respondent was not involved in the business details of running the event and was not responsible for advertising the event. Further, there was no credible or substantive evidence that showed Respondent had any knowledge regarding the content of any of the advertisements for the Crestview event.

31. Just prior to the event, Sammy Collingwood, who did not testify at the hearing, reported to Respondent that he "hooked up" with the American Legion. Thereafter, Respondent's officials discussed obtaining an exemption based on the American Legion's sponsorship. Towards that end, Respondent requested Sammy Collingwood to obtain a written statement from the American Legion Post regarding their sponsorship. Mr. Collingwood provided a letter on Respondent's letterhead from the Post indicating that the Post was the sole sponsor of the event.

32. There was no credible or substantive evidence, as to who drafted the American Legion letter or how it came to be on Respondent's letterhead. However, the evidence was clear that no official from Respondent drafted the letter or issued it as Respondent's official statement.

33. On the day of the Crestview event and prior to its start, Larry Downs Jr., who was then a volunteer with AAMMA, argued with DBPR investigator Jami McClellan Molloy, regarding

whether the May 6, 2011, event was exempt from state regulation since it was his belief that the American Legion was the sole sponsor of the event. Ultimately, the Post letter was not utilized by the Respondent and not relied upon by the Commission.

34. Unfortunately and unknown to Respondent, the American Legion Post was not the sponsor of Respondent's May 6, 2011, amateur pugilistic event. In fact, former Post Commander, Rob Davis, testified the Post did not sponsor the event. However, the Crestview event was not held as an event exempt from the Commissions' regulations under section 548.007, Florida Statutes, and the evidence did not demonstrate any fraud on the part of Respondent. As such, these facts related to the letter provided by Mr. Collingwood do not demonstrate that Respondent engaged in unethical or unprofessional conduct relative to the Crestview event and the allegations of the Administrative Complaint regarding the same should be dismissed.

35. At the Crestview event, Respondent matched Kody Downs, who was three months away from turning 18, with 23-year-old Erik Register in an MMA match. However, the undisputed evidence showed that the official match did not occur as scheduled; but, that the two individuals engaged in a sparring match after the Crestview event had ended.

36. Sparring matches are practice matches and are not subject to regulation by the Commission. In fact, Mr. Downs and

Mr. Register were going to use protective gear during their sparring. Mr. Register declined to use such equipment, desiring instead to practice as if the match was a real fight. The fact that the practice match was similar to a regular match does not change the characterization of the match as a sparring match especially since both participants described the match as such and both participants wanted to practice their competition skills, a legitimate goal in sparring matches. Given that no official MMA match regulated by the Commission occurred between Mr. Downs and Mr. Register, no violations of the Commissions' rules or unethical/unprofessional conduct occurred on Respondent's part. Therefore, the allegations of the Administrative Complaint relative to this match should be dismissed.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57, Fla. Stat. (2010-2011).

38. Petitioner licenses amateur sanctioning organizations and inspects sanctioned pugilistic events in Florida as part of its duties pursuant to chapters 548 and 120, Florida Statutes, and the rules promulgated thereto.

39. Section 548.003(2)(k), Florida Statutes, grants the Commission the authority and responsibility for:

Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule . . . the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization.

40. Florida Administrative Code Rule 61K1-1.0031 adopted the health and safety standards contained in the ISKA Overview and required amateur sanctioning organizations to agree to enforce the health and safety standards provided in that Overview.

41. Because Respondent's license is at risk, Petitioner has the burden to establish by clear and convincing evidence the allegations of the Administrative Complaint. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

42. "Clear and convincing" evidence was described by the court in Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112, 116. n.5 (Fla. 1st DCA 1989), as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

43. Petitioner's interpretation of the statutes it administers and over which it has jurisdiction, is afforded wide discretion. Cone. v. State, Dept. of Health, 886 So. 2d 1007, 1009 (Fla. 1st DCA 2004). Likewise, as the court stated in Republic Media, Inc. v. Dept. of Transp., 714 So. 2d 1203, 105 (Fla. 5th DCA 1998):

an agency is afforded wide discretion in the interpretation of a statute which it is given the power and duty to administer. Its construction of the statute will not be overturned on appeal unless its clearly erroneous.

Moreover, even if a Court takes issue with the agency's interpretation of a statute, "it shall not substitute its judgment for that of the agency on an issue of discretion." section 120.68(7), Fla. Stat. Natelson v. Dep't of Ins., 454

So.2d 31 (Fla. 1st DCA 1984). See Chevron U.S.A. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 844-845 (1984). See also Bowles, Price Adm'r v. Seminole Rock and Sand, Co., 325 U.S. 410, 413-414 (1945); Legal Envtl. Assistance Fund, Inc., v. Bd. of Cnty. Comm'rs of Brevard Cnty., 642 So. 2d 1081, 1083 (Fla. 1994); and Pan Am. Airways, Inc. v. Fla. Pub. Serv. Comm'n, 427 So. 2d 716, 719-20 (Fla. 1984).

44. In disciplinary proceedings, however, the statutes and rules for which a violation is alleged must be strictly construed in favor of Respondent. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 2d 782, 784 (Fla. 1st DCA 1988).

45. In this case, Count I of the Administrative Complaint involved alleged violations of the age restriction contained in the ISKA Overview. As noted earlier, the Commission incorporated the entire ISKA Rules Overview into Rule 61K1-1 without identifying specific parts of that document that it considered to be the minimal health and safety ISKA rules it intended to adopt. While this case is not a rule challenge, an agency must have rules which are intelligible and not subject to varying interpretations. In this case, the Commission's carte blanche incorporation of the ISKA Overview created an unintelligible rule that was subject to varying interpretations. Moreover, the evidence did not establish that the Commission had any official

policy regarding whether the age restriction or weight classes contained in the ISKA Overview were minimum health and safety standards. As such, the Commission's rule, under the facts of this case, fails to put individuals on notice as to the minimal health and safety standards required by the Commission.

Moreover, the evidence did not demonstrate that the Overview's age restriction was a health or safety standard. Given these facts, Petitioner has not established by clear and convincing evidence that Respondent violated rule 61K1-1.0031, or section 548.006(4), 548.071(1), or 548.071(4), Florida Statutes, by allowing minors to compete in MMA matches. Therefore, Count I of the Administrative complaint should be dismissed.

46. Count II of the Administrative Complaint involved alleged violations of Respondent's original rules regarding weight classifications of fighters. However, the clear evidence demonstrated that the Respondent had amended its rules and submitted them to the Commission. Such rule amendments did not have to be approved by the Commission since the Commission has no statutory authority to approve such amendments. Further, the evidence showed that the Birge-Grooms fight complied with Respondent's amended weight rules. Moreover, as with the ISKA age restriction, the ISKA modifiable weight classes were not shown to be minimum health and safety standards within the ISKA Overview. Given these facts, Petitioner failed to establish by

clear and convincing evidence that Respondent violated rule 61K1-1.0031(1)(c), or sections 548.006(4), 548.071(1), or 548.071(4), Florida Statutes, and Count II of the Administrative Complaint should be dismissed.

47. Count III of the Administrative Complaint involved the allegation that Respondent engaged in unethical or unprofessional conduct by misleading American Legion Post #75 into signing a letter that incorrectly stated the American Legion was the sole sponsor of Respondent's May 6, 2011, amateur event. However, the evidence did not establish that Respondent issued or composed the American Legion letter. Additionally, there was no evidence that Respondent engaged in any unprofessional or unethical conduct in relation to this letter. Given these facts, Petitioner failed to establish by clear and convincing evidence that Respondent violated section 548.071(4), Florida Statutes. Therefore, Count III of the Administrative Complaint should be dismissed.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, State Boxing Commission enter a final order finding Respondent not guilty of violating Florida Administrative Code Rule 61K1-1.0031(1)(c), sections 548.006(4), 548.071(1), or 548.071(4), Florida Statutes, and, and dismiss the Administrative Complaint.

DONE AND ENTERED this 20th day of June, 2013, in
Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of June, 2013.

ENDNOTES

^{1/} The original Administrative Complaint was voluntarily dismissed prior to hearing by the Petitioner in DOAH Case No. 11-5102 due to significant inaccuracies in its allegations which were based on investigative reports of the same matches by the same investigator involved in this action. Jurisdiction was relinquished to the Petitioner in case No. 11-5102.

^{2/} There appear to be two statutory possibilities within chapter 548 that might be the intended statutory reference in rule 61K1-1.0031(4)(a), sections 548.041 or 548.071. Section 548.041 relates to qualifications for licensure of professional "participants." These qualifications, especially as to restrictions regarding age (under 18), could possibly be what the Commission intended to incorporate in the rule. However, the more likely statutory candidate is section 578.071. That statute relates to licensure discipline in general and also could possibly be what the Commission intended to incorporate in the rule.

^{3/} Although the Administrative Complaint is not clear as to which licenses it is seeking to discipline, Respondent's licenses for boxing and kickboxing are not involved in the violations involved in this Administrative Complaint since such allegations related

to MMA matches. Further the complaint seeks discipline only as to "Respondent's license," in the singular form. As such, Respondent's licenses related to boxing and kickboxing could only be involved in this action vicariously.

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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.

