

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2014 APR 15 P 2: 38

STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

DAVID M. KENTON,

Respondent,

CASE NO.: 12-193PH

PROVIDER No.: 049207800

C.I.: 12-1060-000

License No. ME37023


NPI No. 1932127495

RENDITION NO.: AHCA- 14 - 0321 -S-MDO

FINAL ORDER

THE PARTIES resolved all disputed issues and executed a Settlement Agreement. The parties are directed to comply with the terms of the attached settlement agreement, attached as Exhibit "1." Based on the foregoing, this file is CLOSED.

DONE and ORDERED on this the 15th day of April, 2014, in Tallahassee, Florida.


ELIZABETH DUDEK, SECRETARY
Agency for Health Care Administration

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHING 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Horace Dozier
Field Office Manager
2727 Mahan Drive, MS 6
Tallahassee, Florida 32308
(Via Interoffice Mail)

Agency for Health Care Administration
Bureau of Finance and Accounting
2727 Mahan Drive
Building 2, MS 14
Tallahassee, Florida 32308
(Via Interoffice Mail)

Julie Gallagher, Esquire
Akerman Senterfitt
106 East College Avenue
Suite 1200
Tallahassee, Florida 32301
(Via US Mail)

Rick Zenuch, Chief Medicaid Program Integrity
2727 Mahan Drive
Building 2, MS 6
Tallahassee, Florida 32308
(Via Interoffice Mail)

Shena Grantham, Esquire
Agency for Health Care Administration
2727 Mahan Drive, MS 3
Tallahassee, Florida 32308
(Via Interoffice Mail)

Bureau of Health Quality Assurance
2727 Mahan Drive, MS 9
Tallahassee, Florida 32308
(Via Interoffice Mail)

Eric Miller, Inspector General
Agency for Health Care Administration
2727 Mahan Drive
Building 2, MS 4
Tallahassee, Florida 32308
(Via Interoffice Mail)

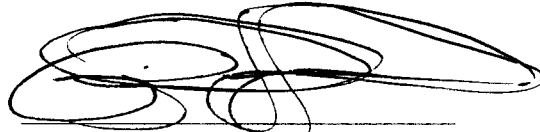
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(Via US Mail)

Katherine B. Heyward, Esquire
Agency for Health Care Administration
2727 Mahan Drive, MS 3
Tallahassee, Florida 32308
(Via Interoffice Mail)

Shawn McCauley, Medicaid Contract Manager
Agency for Health Care Administration
2727 Mahan Drive, MS 22
Tallahassee, Florida 32308
(Via Interoffice Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addresses by U.S. Mail on this the 15th day of April, 2014.



Richard Shoop, Esquire
Agency Clerk
State of Florida
Agency for Health Care Administration
2727 Mahan Drive, Building #3
Tallahassee, Florida 32308-5403

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

**STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,**

Petitioner,
v.

**Case No.: 12-193PH
Provider No.: 049207800
C.I. No.: 12-1060-000**

DAVID M. KENTON,

Respondent.
_____ /

SETTLEMENT AGREEMENT

The STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION (hereinafter "AHCA" or "the Agency"), and DAVID M. KENTON (hereinafter "Dr. Kenton"), by and through the undersigned, hereby stipulate and agree as follows:

RECITALS

- A. These Recitals are true and correct to the best knowledge of the parties.
- B. AHCA is the single state agency responsible for Medicaid in the state of Florida.
- C. A Medicaid provider must enter into an agreement with AHCA in order to receive payments for services rendered under the Medicaid program.
- D. DAVID M. KENTON is a Medicaid provider in the State of Florida, provider number 049207800.
- E. On August 20, 2010, Dr. Kenton entered a plea of guilty to one count of conspiracy in violation of 18 U.S.C. Sec. 371; and on November 10, 2010, Dr. Kenton was found guilty of the charge in the United States District Court, Southern District of Florida, Case No. 09-60344-CR-MARRA.

- F. On November 30, 2011, AHCA sent Dr. Kenton a letter notifying him of AHCA's intent to terminate for cause, pursuant to Florida Statute 409.913(13) and Rule 59G-9.070 Florida Administrative Code, his participation in the Medicaid program as a result of his conviction in the federal court action described above.
- G. On June 13, 2012, the State of Florida Board of Medicine (hereinafter "the Board") entered a Final Order in DOH Case No. 2010-22219, Department of Health v. David Mitchell Kenton, M.D. pursuant to a Settlement Agreement.
- H. The Settlement Agreement provides, *inter alia*, that Dr. Kenton would be permitted to continue to practice medicine under certain terms and conditions; the Board allowed Dr. Kenton to renew his Florida medical license; and the Board recognized that Dr. Kenton was placed on the List of Excluded Individuals and Entities (LEIE) maintained by the Office of Inspector General with the Federal Department of Health and Human Services before that law, which would disqualify him from license renewal, became effective.
- I. On June 21, 2012, Dr. Kenton filed a request for hearing in this matter.
- J. The Parties have agreed to settle the matter addressed in the recitals.
- K. By execution of this Settlement Agreement, the parties affirm, warrant and represent that they have full and complete authority to enter into this Settlement Agreement and settle the matters addressed herein.

AGREEMENT

In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows

1. The parties agree that Dr. Kenton shall be immediately terminated from the Florida Medicaid program and that the termination shall be for "no cause."
2. Dr. Kenton agrees that the thirty (30) day notice period from the date of the November 30, 2011 termination letter has run.
3. Dr. Kenton agrees that he will never again apply to the Florida Medicaid program regardless of his status with the Office of the Inspector General with the Federal Department of Health and Human Services.
4. Dr. Kenton agrees that, regardless of his status with the Office of the Inspector General with the Federal Department of Health and Human Services, AHCA has full discretion to deny any application Dr. Kenton submits to the Florida Medicaid program regardless of the reason for such denial.
5. Dr. Kenton agrees to reimburse AHCA five thousand (\$5,000.00) dollars for costs incurred in this matter.
6. Dr. Kenton agrees to pay the costs within sixty (60) days of the date of the Final Order herein.
7. This Agreement is expressly contingent upon the condition that neither Dr. Kenton nor anyone in his immediate family (to include any spouse, child, or parent of Dr. Kenton) shall own a health care facility within the State of Florida.
8. Payment shall be made to:

AGENCY FOR HEALTH CARE ADMINISTRATION
Medicaid Accounts Receivable
2727 Mahan Drive, M.S. #14
Tallahassee, Florida 32308-5403

9. Failure to pay the costs within the said sixty (60) days shall result in this Settlement Agreement being null and void and the case shall return to its pre-settlement status.
9. AHCA reserves the right to enforce this Agreement under the laws of the State of Florida, the rules of the Medicaid Program, and all other applicable rules and regulations.
10. Other than the cost reimbursement provided for herein, each party shall bear its own attorney's fees and costs.
11. This settlement does not constitute an admission of wrongdoing or error by either party with respect to this case or any other matter. The costs reimbursed by Dr. Kenton are not a sanction or penalty.
12. The signatories to this Agreement, acting in a representative capacity, represent that they are duly authorized to enter into this Agreement on behalf of the respective parties.
13. This Agreement shall be construed in accordance with the provisions of the laws of Florida. Venue for any action arising from this Agreement shall be the Circuit Court located in Leon County, Florida.
14. This Agreement constitutes the entire agreement between Dr. Kenton and AHCA, including anyone acting for, associated with or employed by them, concerning all matters, and this Agreement supersedes any prior discussions, agreements or understandings; there are no promises, representations or agreements between Dr. Kenton

and AHCA other than as set forth herein. No modification or waiver of any provision shall be valid unless a written amendment to the Agreement is completed and properly executed by the parties.

15. This is an Agreement of Settlement and Compromise, made in recognition that the parties may have different or incorrect understandings, information, and contentions as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to facts and law, so that no misunderstanding or misinformation shall be a ground for rescission hereof.

16. Dr. Kenton expressly waives in this matter his right to any hearing pursuant to Sections 120.569 or 120.57, Florida Statutes, any making of findings of fact and conclusions of law by the Agency, and all further and other proceedings to which he may be otherwise entitled to under the law or the rules of the Agency regarding this proceeding and the issues raised herein. Dr. Kenton further agrees that he shall not challenge or contest any Final Order entered in this matter which is adopts the terms of this Settlement Agreement in any forum available to it now or in the future, including its right to any administrative proceeding, circuit or federal court action, or any appeal.

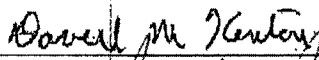
17. This Agreement is and shall be deemed jointly drafted and written by all parties to it, and shall not be construed or interpreted against the party originating or preparing it.

18. To the extent that any provision of this Agreement is prohibited by law for any reason, such provision shall be effective to the extent not so prohibited, and such prohibition shall not affect any other provision of this Agreement.

19. This Agreement shall inure to the benefit of and be binding on each party's successors, assigns, heirs, administrators, representatives and trustees.

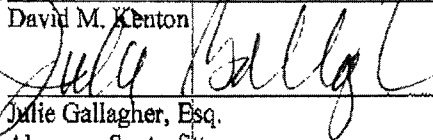
20. All times stated herein are of the essence in this Agreement.

21. This Agreement shall be in full force and effect upon execution by the respective parties.



David M. Kenton

Dated: December 5, 2013

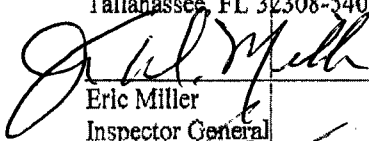


Julie Gallagher, Esq.
Akerman Senterfitt
106 East College Avenue, Ste. 1200
Tallahassee, FL 32301
Attorney for Respondent

Dated: 4/4/14, 2013

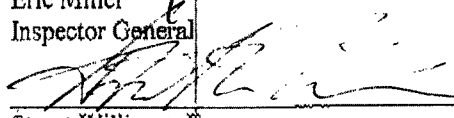
**AGENCY FOR HEALTH CARE
ADMINISTRATION**

2727 Mahan Drive, Bldg. 3, Mail Stop #3
Tallahassee, FL 32308-5403



Eric Miller
Inspector General

Dated: 4/15/14 ^{Final}, 2013



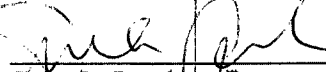
Stuart Williams, Esq.
General Counsel

Dated: 4/5, 2013 ⁴⁵



Kim Kellum, Esq.
Chief Medicaid Counsel

Dated: 4/8, 2013 ⁴



Shena L. Grantham, Esq.
Assistant General Counsel

Dated: April 8, 2013 ²⁰¹⁴