

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Petitioner,

vs.

Case No. 13-3237MPI

ROBERT J. MEEK, D.O.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on December 4, 2013, in Tallahassee, Florida, with Respondent and his attorney participating by telephone from separate locations, before Administrative Law Judge (ALJ) Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Douglas James Lomonico, Esquire  
Agency for Health Care Administration  
Mail Stop 3  
2727 Mahan Drive  
Tallahassee, Florida 32308

For Respondent: John Daniel Strohsahl, Esquire  
Bradford J. Beilly, PA  
1144 Southeast Third Avenue  
Fort Lauderdale, Florida 33316

STATEMENT OF THE ISSUE

What administrative sanction should be imposed on the participation of Robert J. Meek, D.O., (Respondent), in the Florida Medicaid program.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (Petitioner) is responsible for administering the Florida Medicaid program. On July 17, 2013, Petitioner issued an amended sanction letter against Respondent which seeks to terminate Respondent's participation in the Florida Medicaid program as a provider. Respondent timely challenged the proposed action, the matter was referred to DOAH, and this proceeding followed.

On September 4, 2013, Petitioner filed an "Unopposed Request for Official Recognition," which requested that the undersigned take official recognition of the following court documents related to the case of United States of America v. Robert Meek: a certified copy of the criminal judgment, a certified copy of the plea agreement, and a certified copy of the stipulated statement of facts. On September 5, 2013, the undersigned granted the motion.

On September 12, 2013, Petitioner filed a Motion to Relinquish Jurisdiction, contending that there were no disputed issues of material fact because of the matters that had been officially recognized. Following a response by Respondent and a

motion hearing, the undersigned, on October 16, 2013, entered an "Order Denying Motion to Relinquish, but Limiting Issues," which, for the reasons stated therein and discussed below, ruled that Petitioner had established grounds to discipline Respondent's participation in the Florida Medicaid program, but that Respondent was entitled to a formal hearing on the issue of the appropriate penalty to be imposed on that participation.

Prior to the hearing, the parties entered into a "Joint Prehearing Stipulation," by which the parties stipulated that the appropriate sanction was a termination of Respondent's participation as a Medicaid program provider for a period of time between 8 and 20 years.<sup>1/</sup>

At the final hearing, Petitioner presented the testimony of Michael West (an administrator in Petitioner's Office of Inspector General, Medicaid Program Integrity) and offered 15 consecutively-numbered exhibits, 14 of which were admitted into evidence. Respondent testified (by telephone from prison) on his own behalf and offered five consecutively-numbered exhibits, each of which was admitted into evidence.

A Transcript of the hearing, consisting of one volume, was filed January 2, 2014. On Respondent's unopposed motion, the deadline for filing of proposed recommended orders was extended to January 20, 2014. On January 16, Respondent moved to supplement the record. Following a response by Petitioner and a

motion hearing, the motion to supplement was denied and the deadline for the filing of proposed recommended orders was extended to close of business on February 5. Each party timely filed a Proposed Recommended Order. Those orders have been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2013).

#### FINDINGS OF FACT

1. Petitioner is the agency of the State of Florida charged with the responsibility of administering the Florida Medicaid program.

2. At all times relevant to this proceeding, Respondent has been a provider with the Florida Medicaid program and has had a Medicaid provider number that was issued pursuant to a Medicaid Provider Agreement with Petitioner.

3. "Medicaid" is the medical assistance program authorized by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., and regulations thereunder.

4. Respondent holds a doctor of osteopathic medicine degree and was licensed to practice medicine in Florida, Virginia, and Ohio. Because of his criminal conviction, which will be discussed below, his license to practice medicine in Ohio has

been revoked and the licenses issued by Virginia and Florida have been suspended.

5. At the time of the formal hearing, Respondent was incarcerated in a federal prison and his license to practice medicine in Florida was suspended. Respondent's testimony at the formal hearing was taken by telephone.

6. Respondent first became licensed in Florida in 2005. After completing a residency in proctologic surgery, Respondent worked at Colorectal and GI Specialists of South Florida from July 2006 until February 2007. Respondent then worked at The Hemorrhoid Relief Center from April 2007 through June 2009. Respondent practiced proctology five days a week during those periods. In addition to his regular jobs, from the fall of 2007 through the summer of 2009, Respondent worked some weekends at Physicians Immediate Care.

7. Prior to May 2009, Respondent had no background, experience, or training in pain management.

8. Between the middle of May 2009 until the end of February 2010, Respondent worked between one and three days a week at Executive Pain Clinic in Palm Beach County, purportedly in the practice area of pain management.

9. Respondent's employment at Executive Pain Clinic led to the federal grand jury indictment, dated August 12, 2011, against Respondent and 30 other defendants for multiple charges.

Succinctly stated, Executive Pain Clinic was a pill mill. Among the charges brought against Respondent were a count for conspiracy to unlawfully distribute and dispense and possess with intent to distribute a controlled substance in violation of the Controlled Substance Act and a count for conspiracy to commit money laundering.

10. The federal grand jury indictment was related to Respondent's practice of medicine at Executive Pain Clinic.<sup>2/</sup>

11. Of the 31 persons named in the indictment, 13 were licensed to practice medicine in Florida. Of those 13 doctors, 11, including Respondent, entered into a plea agreement to resolve the charges.

12. By his plea agreement, Respondent pled guilty to conspiracy to commit money laundering in exchange for the United States agreeing to dismiss the other charges against him. As part of the plea agreement, Respondent agreed to testify on behalf of the United States in its prosecution of the two medical doctors who were charged by the indictment, but who refused to enter into a plea agreement to resolve the charges. As of the formal hearing, Respondent had so testified, thereby satisfying his obligation under the plea agreement.

13. In addition to the plea agreement, Respondent entered into a "Stipulated Statement of Facts," (Petitioner's Exhibit 4)

which contained the following, which are hereby adopted by the undersigned as findings of fact:

Had this case proceeded to trial, the government would have presented evidence by way of witness testimony, Court authorized wire interceptions of coconspirators and documentary evidence. The evidence would establish that the defendant was a physician licensed to practice medicine in Florida and maintained a Drug Enforcement Administration registration number which enabled him to order and purchase Schedule II-V controlled substances. The evidence would establish that from in or about 2009 through in or about April 2010, the defendant conspired and agreed with coconspirators to receive monetary compensation from Executive Pain clinic [sic] and to deposit such monetary compensation into a financial institution. The monetary compensation was the proceeds of specific unlawful activity, that is, the illegal distribution of oxycodone pills, a Schedule II controlled substance. The defendant and conspirators [sic] participated in the operation of illegal "pill mills" wherein individuals seeking controlled substances paid for examinations by the defendant and coconspirator physicians based upon alleged complaints of pain. The defendant and coconspirator physicians illegally prescribed large quantities of oxycodone, 30 mg. pills and other controlled substances without a legitimate medical purpose and outside the usual course of professional practice. The defendant and coconspirator physicians prescribed controlled substances without reviewing prior medical records, referring individuals to medical specialists, or recommending alternative treatment modalities. The defendant and coconspirator physicians prescribed a predetermined "cocktail" of controlled substances which contained oxycodone 30 mg. and 15 mg. xanax and/or soma. No individualized or particularization

of treatment of care was used, other than to vary the quantity of drugs prescribed in the "cocktail." The evidence established that the pain management clinics wherein the defendant and coconspirator physicians were employed were, in fact, facilities used for the illegal distribution of controlled substances. The defendant and coconspirators engaged in the above-described criminal conduct for a profit motive. The monetary compensation received by the defendant had a value of more than \$10,000.

14. During Respondent's tenure at Executive Pain Clinic, approximately 628,200 dosage units of oxycodone were ordered under his name. Respondent was assigned a large safe at Executive Pain Clinic, in which the dosage units were deposited. Many of the prescriptions written at Executive Pain Clinic were filled on-site. Patients paid cash for the prescriptions filled at Executive Pain Clinic.

15. Respondent was not paid by Medicaid for his work at Executive Pain Clinic. Executive Pain Clinic was not a Medicaid provider.

16. Respondent saw an average of 40 patients per day at Executive Pain Clinic, spending as few as five minutes with some before prescribing pain medication. A very high percentage of those patients left with a prescription for a controlled substance.

17. Respondent prescribed large quantities of oxycodone or other controlled substances in complete disregard to whether the



patient was or was not a Medicaid recipient and without knowing whether Medicaid would pay for the prescription.

18. Respondent was not qualified to practice pain management when he practiced at Executive Pain Clinic, and he practiced beyond the scope of his expertise.

19. Respondent testified that in the month of August 2009, he began to question the legality of what he was doing at Executive Pain Clinic. Nevertheless, he did not leave that employment until the end of the following February.

20. As a result of his plea, Respondent was sentenced to be incarcerated for a period of 66 months. As reflected by the plea agreement, that sentence may be adjusted following Respondent's cooperation in testifying against two of his codefendants.

21. On April 20, 2012, the Florida Department of Health (DOH) filed an Administrative Complaint before the Board of Osteopathic Medicine against Respondent alleging certain facts pertaining to his plea in the federal proceeding. DOH designated that Administrative Complaint as Case No. 2011-15165. The Administrative Complaint alleged that Respondent pled guilty to a crime that "relates to the practice of, or the ability to practice, osteopathic medicine." Respondent did not challenge the factual allegations of the Administrative Complaint.

22. On March 5, 2013, the Board of Osteopathic Medicine entered a Final Order in Case No. 2011-15165. The Final Order

found Respondent guilty of the alleged violations, reprimanded his license, administered a fine in the amount of \$5,000, restricted his practice, and suspended his license for a period of six years. The Final Order found as a mitigating factor that Respondent had provided free medical services to the underserved community.

23. The restriction on his practice, as set forth in the Final Order under the heading "Permanent Practice Restriction," is as follows:

Respondent shall not own, operate, or work in a Pain Management Clinic as defined by Section 459.0137, Florida Statutes. Further, Respondent is permanently restricted from prescribing or dispensing any schedule II controlled substance as defined by Chapter 893, Florida Statutes.

24. The suspension of his license, as set forth in the Final Order under the heading "Suspension," is as follows:

Respondent's license to practice osteopathic medicine in the State of Florida is hereby suspended for a period of six (6) years and until such time as he appears before the Board and can demonstrate that he is clinically safe to practice osteopathic medicine by: 1) submitting evaluations by either the University of Florida CARES program; the Center for Personalized Education for Physicians (CPEP) clinical assessment, or by other Board-approved equivalent, and comply with the prerequisite recommendations of the evaluation. The Board reserves jurisdiction to set terms and conditions, including probation, at the time of reinstatement; or 2) be accepted into and practice only in a residency program and

appear before the Board after successful completion of the residency program. The Board reserves jurisdiction to set terms and conditions, including probation, at the time Respondent appears before the Board.

25. Respondent worked part-time at East West Physicians in Broward County from June 2009 to October 2010. Although Respondent prescribed pain medication while employed at East West Physicians, there was no evidence that East West Physicians was a pill mill.

26. Respondent worked at Palm Beach Wellness and Rejuvenation after federal authorities closed Executive Pain Clinic. Respondent testified, credibly, that he worked at Palm Beach Wellness and Rejuvenation for 22 days over a period of five and one-half months. Palm Beach Wellness and Rejuvenation was a pill mill.

27. On September 20, 2011, prior to the Administrative Complaint involving the federal proceeding, DOH filed an Administrative Complaint before the Board of Osteopathic Medicine against Respondent alleging certain facts pertaining to his practice at Palm Beach Wellness and Rejuvenation. DOH designated that Administrative Complaint as Case No. 2011-02478. Respondent did not challenge the factual allegations of the Administrative Complaint.

28. On March 14, 2012, the Board of Osteopathic Medicine entered a Final Order that contained the following under the

heading "FINDINGS OF FACT":

The allegations of fact set forth in the Administrative Complaint are approved, adopted, and incorporated herein by reference as the findings of fact of the Board. There is competent, substantial evidence to support the Board's findings and conclusions.

29. The Final Order imposed against Respondent an administrative fine in the amount of \$10,000.00; ordered him not to own, operate, or work in a pain management clinic; and suspended his license to practice for a period of one year.

30. The Administrative Complaint in Case No. 2011-02478<sup>3/</sup> included the following factual allegations in paragraphs 5-76, which were incorporated in DOH's Final Order as findings of fact:

5. At all times material to this Complaint, the Respondent was a dispensing practitioner.

6. At all times material to this Complaint, the Respondent was practicing at Total Medical Express of Boca Raton, which was also known as Palm Beach Pain and Rejuvenation (clinic).

7. The Respondent was practicing pain management while he was at the clinic.

8. The Respondent prescribed controlled substances such as Ambien, Ativan, Flexeril, Lisinopril, oxycodone (also known as Roxicodone), Percocet, Valium and Xanax to his patients.

9. Ambien is the brand name for zolpidem, which is prescribed to treat insomnia. According to Title 21, Section [sic] 1308.14, Code of Federal Regulations, zolpidem is a Schedule IV controlled substance. Zolpidem can cause dependence and is subject to abuse.

10. Ativan is the brand name for lorazepam, which is a benzodiazepine, and is prescribed to treat anxiety. Lorazepam can decrease mental alertness and affect judgment. According to Section [sic] 893.03(4), Florida Statutes, lorazepam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of lorazepam may lead to limited physical or psychological dependence relative the substances in Schedule III.

11. Flexeril is the brand name for cyclobenzaprine hydrochloride. Flexeril is prescribed as an adjunct to rest and physical therapy for relief of muscle spasms associated with acute, painful musculoskeletal conditions. Flexeril is not a scheduled drug.

12. Lisinopril is the brand name for a drug of the same name. Lisinopril is prescribed to treat hypertension. Lisinopril is not a scheduled drug.

13. Oxycodone is an opioid commonly prescribed to treat pain. According to Section [sic] 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

14. Opiate, or opioid, drugs have similar actions as the drug opium and are typically prescribed to treat pain. Opioid drugs are synthetically manufactured, while opiate drugs are naturally occurring, but the terms opioid and opiate are often used interchangeably. Opioid drugs are addictive and subject to abuse.

15. Percocet is the brand name for a drug that contains oxycodone and is prescribed to treat pain. According to Section [sic] 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

16. Roxicodone is the brand name for an immediate release formulation of oxycodone.

17. Valium is the brand name for diazepam and is prescribed to treat anxiety. According to Section [sic] 893.03(4), Florida Statutes, diazepam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of diazepam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

18. Xanax is the brand name for alprazolam and is prescribed to treat anxiety. According to Section [sic] 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use treatment in the United States. Abuse of alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

Facts Specific to Patient J.W.

19. J.W. was a resident of Irvine, Kentucky.

20. On or about February 24, 2010, J.W. presented to the clinic for the first time with complaints of lower back pain.

21. On or about March 26, 2010, the Respondent saw J.W. and diagnosed him with lower back pain, lumbar spine stenosis, lumbar disk displacement, and chronic pain secondary to trauma.

22. On or about March 26, 2010, the Respondent prescribed 180 tablets of Roxicodone 30 mg, 90 tablets of Roxicodone 15 mg, and 60 tablets of Xanax 1 mg to the patient.

23. People who travel from out-of-state to Florida for pain management are associated with aberrant drug behavior, such as drug abuse or diversion, and are considered high risk patients.

24. The Respondent did not evaluate the patient for drug abuse or drug diversion despite the fact that the patient was from Kentucky.

25. The Respondent inappropriately prescribed multiple immediate release opioids to treat J.W.

26. The Respondent placed J.W. at risk of a drug overdose by prescribing multiple release opioids in conjunction with a benzodiazepine.

Facts Specific to Patient W.T.

27. W.T. was a resident of Louisa, Kentucky.

28. On or about January 25, 2010, W.T. presented to the clinic for the first time with complaints of lower back and left shoulder pain.

29. On or about March 25, 2010, W.T. presented to the Respondent, who diagnosed the patient with lower back pain, lumbar disk displacement, chronic pain, and pain in the left shoulder.

30. On or about March 25, 2010, the Respondent failed to perform an adequate physical examination of the patient, or the Respondent failed to document that he performed an adequate physical examination.

31. On or about March 25, 2010, the Respondent failed to offer the patient pain management techniques other than stretching.

32. On or about March 25, 2010, the Respondent prescribed 180 tablets of Roxicodone 30 mg, 90 tablets of Roxicodone 15 mg, and 60 tablets of Xanax 2 mg to the patient.

33. The Respondent inappropriately prescribed multiple immediate release opioids to W.T.

34. The Respondent put W.T. at risk of a drug overdose by prescribing multiple immediate release opioids in conjunction with a benzodiazepine.

35. People who travel from out-of-state to Florida for pain management treatment are associated with aberrant drug behavior, such as drug abuse or diversion, and are considered high risk patients.

36. The Respondent did not evaluate the patient for drug abuse or drug diversion despite the fact that the patient was from Kentucky.

#### Facts Specific to Patient M.P

37. M.P. was a resident of Hancock, Maine.

38. On or about December 30, 2009, M.P. presented to the clinic for the first time with complaints of lower back pain.

39. On or about December 30, 2009, the patient tested positive for tetrahydrocannabinols (THC).



40. THC is the psychoactive ingredients in marijuana, or cannabis. According to Section [sic] 893.03(1), Florida Statutes, THC is a Schedule I controlled substance that has a high potential for abuse and has no currently accepted medical use in treatment in Florida. Its use under medical supervision does not meet accepted safety standards.

41. THC is a central nervous system depressant.

42. On or about March 26, 2010, M.P. presented to the Respondent, who diagnosed the patient with lumbar disk degeneration, chronic lower back pain, degenerative disk disease of the lumbar spine and lumbosacral root lesions.

43. On or about March 26, 2010, the Respondent failed to perform a physical examination of the patient or the Respondent failed to document that he had performed a physical examination of the patient.

44. On or about March 26, 2010, the Respondent prescribed 60 tablets of Valium 10 mg, 30 tablets of Lisinopril 20 mg, 30 tablets of Flexeril 10 mg, 180 tablets of Roxicodone 30 mg, and 60 tablets of Roxicodone 15 mg to the patient.

45. The Respondent inappropriately prescribed multiple immediate release opioids to the patient.

46. The Respondent put the patient at risk of an overdose by prescribing a benzodiazepine and opioids.

47. The Respondent compounded the patient's risk of an overdose by prescribing Flexeril in addition of a benzodiazepine and opioids.

48. On or about March 26, 2010, the patient tested positive for THC again.

49. The Respondent did not send the patient's sample out to a laboratory for confirmation to verify that the patient had been positive for THC.

50. The Respondent failed to address the patient's use of illegal substances in the medical records.

51. The Respondent put the patient at high risk for a drug overdose by prescribing 60 tablets of Valium 10 mg, 30 tablets of Lisinopril 20 mg, 30 tablets of Flexeril 10 mg, 180 tablets of Roxicodone 30 mg, and 60 tablets of Roxicodone 15 mg to the patient while the patient was taking THC.

52. People who travel from out-of-state to Florida for pain management treatment are associated with aberrant drug behavior, such as drug abuse or diversion, and are considered high risk patients.

53. The Respondent did not evaluate the patient for drug abuse or drug diversion despite the fact that the patient was from Maine.

#### Facts Specific to Patient D.S.1

54. D.S.1 was a resident of Florida, and lived approximately 130 miles away from the clinic.

55. D.S.1 first presented to the clinic on or about March 2, 2010, with a primary complaint of upper, middle and lower back pain and shoulder pain.

56. On or about April 1, 2010, D.S.1 presented to the Respondent, who diagnosed the patient with cervical, thoracic and lumbar disk degeneration, lumbar root lesions, chronic pain and muscle spasms.

57. On or about April 1, 2010, the Respondent prescribed 30 tablets of Flexeril

10 mg, 180 tablets of Roxicodone 30 mg and 60 tablets of Roxicodone 15 mg to the patient.

58. The Respondent inappropriately prescribed the patient two immediate release opioids.

Facts Specific to Patient D.S.2

59. Patient D.S.2 was a resident of Middlesboro, Kentucky.

60. On or about March 11, 2010, D.S.2 presented to the clinic for the first time with complaints of lower back pain.

61. On or about April 8, 2010, D.S.2 presented to the Respondent, who diagnosed the patient with thoracic and lumbar disk displacement, chronic lower back pain, degenerative disk disease and lumbar and thoracic spinal stenosis.

62. On or about April 8, 2010, the Respondent prescribed 30 tablets of Ativan 2 mg, 30 tablets of Ambien 10 mg, 180 tablets of Roxicodone 30 mg, and 90 tablets of Roxicodone 15 mg to the patient.

63. The Respondent inappropriately prescribed the patient two immediate release opioids.

64. The Respondent put the patient at risk of overdose by prescribing the patient a combination of Ambien, Ativan, and oxycodone.

65. People who travel from out-of-state to Florida for pain management treatment are associated with aberrant drug behavior, such as drug abuse or diversion, and are considered high risk patients.

66. The Respondent did not evaluate the patient for drug abuse or drug diversion despite the fact that the patient was from Kentucky.

Facts Specific to Patient S.F.

67. S.F. was a resident of Florida and lived approximately 24 miles from the clinic.

68. On or about March 10, 2010, S.F. went to the clinic for the first time but his intake form does not indicate what his chief complaint was.

69. On or about April 9, 2010, S.F. presented to the Respondent, who diagnosed the patient with chronic lower back pain, degenerative disk disease and lumbar spinal stenosis.

70. On or about April 9, 2010, the Respondent prescribed 180 tablets of Roxicodone 30 mg and 60 tablets of Roxicodone 15 mg to the patient.

71. On or about April 9, 2010, the Respondent wrote in the medical records that the patient drank a six pack of alcohol a day, five days a week and the patient was "drinking excessively."

72. The Respondent prescribed high doses of opiates to S.F. despite the patient's excessive use of alcohol.

73. The Respondent put the patient at risk of an overdose by prescribing 180 tablets of Roxicodone 30 mg and 60 tablets of Roxicodone 15 mg when the patient was using alcohol excessively.

74. The Respondent failed to counsel the patient about the dangers of using oxycodone with the levels of alcohol that the patient was imbibing or he failed to document that he counseled the patient.

75. S.F.'s medical records include a magnetic resonance imaging (M.R.I.) study, dated March 20, 2010. S.F.'s M.R.I. indicated that he had an abdominal aortic

aneurysm that would be adverse to hypertension.

76. The Respondent failed to refer S.F. to an in-patient detoxification center despite the patient's use of alcohol and abnormal M.R.I.

31. If his license to practice osteopathic medicine is reinstated in Florida, Respondent intends to practice in South Florida in a practice area other than pain management.

32. Section 409.913(17) contains the factors that Petitioner must consider in determining the length of time a Medicaid provider, such as Respondent, should be terminated from the Medicaid program. Mr. West considered those factors in reaching the conclusions that a termination lasting 20 years is the appropriate sanction to be imposed against Respondent. Petitioner considers the seriousness of the misconduct to be the strongest factor to be considered.

33. Pill mills cause serious problems in the State of Florida, and have been the focus of both regulatory agencies and law enforcement agencies on the state and federal level for several years.

34. Medicaid patients in South Florida are not underserved, and there will be little or no impact on access by recipients to Medicaid services if Respondent is terminated as a provider.

35. The United States Department of Health and Human Services, through its Office of Inspector General, has suspended

Respondent's participation in all federally funded health care programs for a period of eight years.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569, 120.57(1), and 409.913(31).

37. As the agency responsible for administering the Florida Medicaid program, Petitioner's interpretation of the statutes it is charged with enforcing is entitled to great deference though a court need not defer to an agency's construction if its special expertise is not required or if the interpretation conflicts with the plain and ordinary meaning of the statute. See Fla. Hosp. v. Ag. For Health Care Admin., 823 So. 2d 844, 847-848 (Fla. 1st DCA 2002).

38. Section 409.913(13) provides as follows:

(13) The agency shall immediately terminate participation of a Medicaid provider in the Medicaid program and may seek civil remedies or impose other administrative sanctions against a Medicaid provider, if the provider has been:

(a) Convicted of a criminal offense related to the delivery of any health care goods or services, including the performance of management or administrative functions relating to the delivery of health care goods or services;

(b) Convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession  
. . . .

39. Petitioner has grounds to terminate Respondent's participation in the Florida Medicaid program based on this criminal conviction and the foregoing provisions of section 409.913(13). The only remaining issue is to determine the length of that termination.

40. Petitioner is required to terminate Respondent's participation in the Florida Medicaid program for a minimum of eight years because of the eight-year suspension by the United States Department of Health and Human Services and the provisions of section 409.913(14), which provides:

(14) If the provider has been suspended or terminated from participation in the Medicaid program or the Medicare program by the Federal Government or any state, the agency must immediately suspend or terminate, as appropriate, the provider's participation in this state's Medicaid program for a period no less than that imposed by the Federal Government or any other state, and may not enroll such provider in this state's Medicaid program while such foreign suspension or termination remains in effect. This sanction is in addition to all other remedies provided by law.

41. Pursuant to section 409.913(16) termination of a provider from the Florida Medicaid program can be for a specific period of time between 1 year to 20 years. Consequently, the parties stipulated that Respondent's suspension from the Florida

Medicaid program should be a minimum of eight years and a maximum of 20 years. Petitioner asserts that the termination should be for 20 years, while Respondent argues that the termination should be for eight years.

42. Section 409.913(17) provides, in relevant part, as follows:

(17) In determining the appropriate administrative sanction to be applied, or the duration of any suspension or termination, the agency shall consider:

(a) The seriousness and extent of the violation or violations.

(b) Any prior history of violations by the provider relating to the delivery of health care programs which resulted in either a criminal conviction or in administrative sanction or penalty.

(c) Evidence of continued violation within the provider's management control of Medicaid statutes, rules, regulations, or policies after written notification to the provider of improper practice or instance of violation.

(d) The effect, if any, on the quality of medical care provided to Medicaid recipients as a result of the acts of the provider.

(e) Any action by a licensing agency respecting the provider in any state in which the provider operates or has operated.

(f) The apparent impact on access by recipients to Medicaid services if the provider is suspended or terminated, in the best judgment of the agency.



43. In support of his position that the termination should be for a period of eight years, Respondent argues that his cooperation with the federal prosecution of his two co-conspirators should be considered a mitigating factor. That argument is rejected, because Respondent's cooperation was required by his plea agreement. The fact that Respondent entered into a plea agreement is also not considered to be a mitigating factor because the plea agreement itself was an obvious effort to minimize his prison time.

44. Respondent correctly argues that the federal conviction is Respondent's only criminal conviction. However, the Board of Osteopathic Medicine has disciplined Respondent in two separate administrative proceedings based on his conduct at two separate pill mills. Once the federal government shut down Executive Pain Management Clinic, Respondent found employment at a second pain mill (Palm Beach Wellness and Rejuvenation clinic), where he continued his pill mill practice.

45. Respondent correctly argues that the actions in Ohio and Virginia to revoke or suspend his license were based on his plea of guilty in the federal proceeding. Consequently, those actions have been given little weight by the undersigned in reaching the recommendations that follow.

46. Respondent argues that the length of time of his suspensions of his license in the two administrative proceedings

before the Board of Osteopathic Medicine (1 year and 6 years, respectively) and the length of time he has been disqualified from participating in all federally funded medical programs by the United States Department of Health and Human Services (eight years) should guide Petitioner in determining the length of time to terminate him from the Florida Medicaid program.

47. In determining the recommendation that follows, the undersigned has considered the restrictions the Board of Osteopathic Medicine has placed on Respondent's practice if he is re-licensed and the conditions of his re-instatement, which may include probation. Petitioner has no ability to place Respondent on probation as a Medicaid provider. Likewise, Petitioner has no ability to place special conditions on Respondent's participation as a Medicaid provider.

48. Petitioner established the seriousness of Respondent's misconduct, which was motivated by profit and in complete disregard to the well-being of his patients. Respondent did not know, and he did not care, whether Medicaid would be required to pay for the pills he prescribed. In making the recommendation that follows, the undersigned has considered factors listed in section 409.913(17) and the arguments of Petitioner and Respondent. The undersigned concludes that a termination from the Medicaid program for a period of ten years is reasonable. Because the federally imposed suspension from all federally

funded medical programs will end after eight years, a termination from the Florida Medicaid program for ten years will provide a period of approximately two years during which Petitioner can evaluate Respondent's medical practice and his participation in federally funded medical programs other than Medicaid.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Agency for Health Care Administration enter a final order adopting the findings of fact and the conclusions of law set forth in this Recommended Order. It is further RECOMMENDED that the final order terminate Robert J. Meek, D.O., as a Florida Medicaid provider for a period of ten years.

DONE AND ENTERED this 28th day of February, 2014, in Tallahassee, Leon County, Florida.



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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of February, 2014.

ENDNOTES

<sup>1/</sup> As will be discussed below, the minimum and maximum periods for the termination were set by the suspension, imposed by the United States Department of Health and Human Services, of Respondent's participation in all federally funded healthcare programs for a period of eight years (the minimum period) and section 409.913(16) (b), Florida Statutes, which provides that a termination from participation in the Medicaid program shall be from between 1 and 20 years (which makes 20 years the maximum period).

<sup>2/</sup> This finding of fact reiterates the determination made in the "Order Denying Motion to Relinquish, but Limiting Issues" entered October 16, 2013, which found that Petitioner had established grounds to discipline Respondent's participation in the Medicaid program. An issue in making that determination was whether Respondent's misconduct related to the practice of his profession. The misconduct was directly related to Respondent's practice at Executive Pain Clinic.

<sup>3/</sup> The Administrative Complaint and the Final Order in Case 2011-02478 constitute Respondent's Exhibit 1.

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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.