

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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DEPARTMENT OF HEALTH,

Petitioner,

Rendition No.: DOH-14-0870-FOF-HSE

DOH Case No.: 2014-0140

v.

DOAH Case Nos.: 14-0875

14-1479

EMPIRE INK,

Respondent.

FILED
2014 JUN 19 PM 1:13:44
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS MATTER came before the Department of Health ("Department") for the consideration of a Recommended Order and entry of a Final Order. On May 15, 2014, Administrative Law Judge Darren A. Schwartz issued a Recommended Order following an administrative hearing conducted at the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes. The Recommended Order is attached as Exhibit A. On May 30, 2014, Respondent timely filed a statement identified as Respondent's "recommendation/exception," requesting that the recommended penalty be decreased by half. Respondent's recommendation/exception is attached as Exhibit B. Petitioner did not file a response to Respondent's exception. Upon review of the Recommended Order, the entire record, and the exception filed by Respondent, the Department makes the following findings and conclusions.

STANDARD OF REVIEW FOR RULING ON
EXCEPTIONS TO A RECOMMENDED ORDER

1. Section 120.57(k), Florida Statutes, directs the Department to include in its Final Order an explicit ruling on each exception, but need not rule on an exception

that does not clearly identify the disputed portion of the Recommended Order by number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

2. An agency may not reject or modify findings of fact in a Recommended Order unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *See* section 120.57(1), Florida Statutes.

3. In the Final Order, an agency may reject or modify the conclusions of law over which the agency has substantive jurisdiction and interpretation of administrative rules over which the agency has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. *See* section 120.57(1), Florida Statutes.

RULING ON EXCEPTIONS

4. In the Respondent's statement, identified by Respondent as its "recommendation/exception," and attached as Exhibit B, Respondent makes references to a Department inspection and prior citations issued against Respondent, but Respondent does not clearly identify any disputed portion of the Recommended Order by number or paragraph, does not identify any legal basis for an exception, and does not include any citations to the record. To the extent Respondent's statement is intended as

an exception to any finding of fact or conclusion of law, the Department declines to reject or modify any finding of fact or conclusion of law in the Recommended Order.

5. With regard to Respondent's request to decrease the recommended penalty, that request is denied. The recommended penalty of \$1,000.00 for each violation, totaling \$2,000.00, is reasonable and consistent with section 381.0075(9)(b) and (c), Florida Statutes, as described in paragraphs 19 and 21 of the Recommended Order.

FINDINGS OF FACT

1. The Findings of Fact contained in the Recommended Order are based on competent, substantial evidence in the record and the proceedings on which the findings were based complied with the essential requirements of law.

2. The Findings of Fact set forth in the Recommended Order, attached as Exhibit A, are adopted and incorporated by reference in this Final Order.

CONCLUSIONS OF LAW

3. A review of the record indicates that the Conclusions of Law are a reasonable and correct interpretation of the law based on the Findings of Fact.

4. The Conclusions of Law set forth in the Recommended Order are adopted and incorporated by reference in this Final Order.

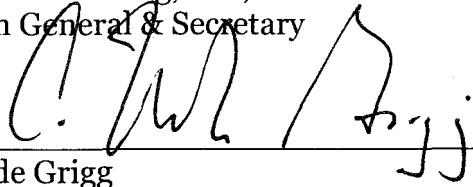
PENALTY

Based on the foregoing, the Recommendation of the Administrative Law Judge is adopted in this Final Order. Respondent, Empire Ink, is ordered to pay an administrative fine of \$2,000.00 within thirty (30) days of this Final Order. Payment shall be made payable to the Department of Health and submitted to the Palm Beach

County Health Department, P.O. Box 29, 800 Clematis Street, West Palm Beach, Florida
33402-0029. This proceeding is closed.

DONE AND ORDERED in Tallahassee, Leon County, Florida this 16th day of
June 2014.

John H. Armstrong, MD, FACS
Surgeon General & Secretary

By: 
C. Meade Grigg
Deputy Secretary for Statewide Services
Florida Department of Health

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS ORDER.

Copies furnished to:

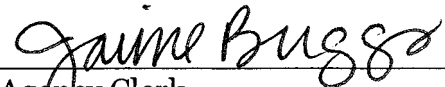
Telsula C. Morgan, Esquire
Department of Health
Suite 5-545
800 Clematis Street
West Palm Beach, Florida 33401

Darren A. Schwartz
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Steve Santacruz, pro se
Empire Ink
22773 State Road 7
Boca Raton, Florida 33428

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been sent by regular U.S. mail and/or by inter-office mail to each of the above-named persons this 17 day of June 2014.



Agency Clerk
Department of Health
4052 Bald Cypress Way, BIN A-02
Tallahassee, Florida 32399-1703