

Final Order No. DOH-19-0907-<sup>PDF</sup>-MQA  
FILED DATE - JUN 10 2019  
Department of Health  
By Angela Saunders  
Deputy Agency Clerk

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,  
BUREAU OF EMERGENCY MEDICAL  
OVERSIGHT,

Petitioner,

v.

WILLIAM LITSCH, PMD,

Respondent.

DOH Case No.: 18-2891PL  
DOAH Case No.: 17-10610

2019 JUN 13 PM 1:34  
DIVISION OF  
ADMINISTRATIVE HEARINGS

FILED

**FINAL ORDER**

THIS MATTER is before the Department of Health ("Department") for the consideration of a Recommended Order and entry of a Final Order. On September 12, 2018, Administrative Law Judge ("ALJ") E. Gary Early issued a Recommended Order following a final administrative hearing in this matter. On September 26, 2018, the Respondent filed exceptions to the Recommended Order. On October 8, 2018 Petitioner filed a response to Respondent's Exceptions to the Recommended Order<sup>1</sup>. Petitioner has filed no exceptions to the Recommended Order. Upon review of the Recommended Order, the entire record, and the exceptions filed by the Respondent, the Department makes the following findings and conclusions.

**RULING ON EXCEPTIONS**

<sup>1</sup> The record shows that Respondent faxed his exceptions to the recommended order to Rose Garrison on September 26, 2018, by faxing them to the fax number of the Agency Clerk. The Petitioner's Response to the Respondent's Exceptions were not filed until October 8, 2018, by Garrison's co-counsel of record. The record does not show when Garrison or her co-counsel were aware of or received a copy of Respondent's exceptions, but they were faxed to the Petitioner "by facsimile only" to the fax number for the Agency Clerk, and not to any address associated with Petitioner's Counsel. Therefore, the Petitioner's Response to Respondent's Exceptions were considered as part of the record in this matter.

Section 120.57(1)(l), Florida Statutes, directs that 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. "Competent substantial evidence is such evidence that is 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'" *Comprehensive Medical Access, Inc. v. Office of Ins. Regulation*, 983 So. 2d 45, 46 (Fla. 1st DCA 2008) (quoting *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)).

Further, the Agency cannot make modifications to Conclusions of Law over which it does not have substantive jurisdiction. §120.57 (1) (l) *Fla. Stat.* (2018).

**Ruling on Respondent's Exception Number 1:** Respondent's first exception is to the findings of fact in paragraphs 20., 21., of the Recommended Order. In those paragraphs the Administrative Law Judge (ALJ) found that the Department of Health and the Division of Administrative Hearings have jurisdiction in this proceeding. To the extent that those are findings of fact they are supported by competent substantial evidence in the record. That includes the findings in paragraphs 1. and 2. that the Respondent is a licensed paramedic and subject to the jurisdiction of the Department. To the extent that the findings in these 4 paragraphs are conclusions of law they are more reasonable than the proposals put forward by Respondent. Concerning the Respondent's constitutionality argument in exception 1., the Department is not authorized to rule on the constitutionality of any law, including whether the Department's or the Department of Education's exercise of jurisdiction is federally preempted and unconstitutional. *See, Lennar Homes v. Dept. of Bus. and Prof. Reg.*, 888 So. 2<sup>nd</sup> 50, at 53 (Fla. 1<sup>st</sup> DCA 2004). Exception # 1. is denied.

**Ruling on Respondent's Exception Number 2:** The Respondent's second exception is to the ALJ's conclusion of law in paragraph 21. that DOH has regulatory authority over paramedics under Section 456.072 Florida Statutes. The 2012 legislature placed paramedics and E.M.T.'s under regulatory authority of The Division of Medical Quality Assurance within the Department. *See*, Ch. 2012-184 § 1, at 11, *Laws of Fla.*; § 20.43 (3) (g) (30) *Fla. Stat. (2012)*. Although E.M.T.'s and paramedics are and were not generally defined as "Health care practitioners" in chapter 456, existing provisions of chapter 456, in conjunction with the Florida Session Law referenced above, as of 2012 made them subject to chapter 456.072, 456.073 Florida Statutes. *See*, §§456.001(4) (6) (7), 456.002 *Fla. Stat. (2012)*. *See also*, §456.024(3)(a),3. *Fla. Stat. (2018)* (E.M.T.'s and paramedics are defined as "health care practitioners" only for implementation of sub-section 456.024 (3) Florida Statutes). The Respondent's proposed Conclusion of Law is not as reasonable as the Conclusion of Law in paragraph 21. of the Recommended Order. Exception # 2 is denied.

**Ruling on Respondent's Exception Number 3:** This exception is a repeat of exception number 2 above. Exception number #3 is denied for the same reasons as exception # 2.

**Ruling on Respondent's Exception Number 4:** This exception seeks a modification or reversal of a Conclusion of Law made by the ALJ in paragraph 28. of the Recommended Order regarding the admissibility of evidence. The Respondent's proposed conclusion of law is less reasonable than the conclusion of law made by the ALJ. The Department does not have substantive jurisdiction over the conclusion of law and cannot modify or reverse it. Exception # 4 is denied.

**Ruling on Respondent's Exception Number 5:** This exception seeks a modification or reversal of the ALJ's ruling admitting various loan application and

promissory note records into evidence as business records. The Respondent's proposed conclusions of law are less reasonable than the conclusions of law made by the ALJ at paragraph 29. The Department does not have substantive jurisdiction over the conclusions of law and cannot modify or reverse them. Exception # 5 is denied.

**Ruling on Respondent's Exception Number 6:** Respondent takes exception to the ALJ's conclusion of law in paragraph 30. in which the ALJ held that portions of Petitioner's Exhibit 1 were admissions by Respondent. The records were properly authenticated and Respondent's proposed conclusion of law is less reasonable than the conclusion of law in paragraph 30. of the ALJ's Recommended Order. Again, the Department does not have substantive jurisdiction over this evidentiary conclusion of law and cannot reverse or modify it. Exception #6 is denied.

**Ruling on Respondent's Exception Number 7:** Respondent takes exception to paragraph 31. of the Recommended Order which contains conclusions of law that hold Respondent's community college records are admissible public records under Section 90.803 (8) Florida Statutes and were properly authenticated. Section 456.073 Florida Statutes provides the Department with investigative authority to investigate complaints against licensees regulated under chapter 456 Florida Statutes. Section 456.071 Florida Statutes provides authority for the department to subpoena records that have relevance to the possible violations that are the subject of those investigations. *See, §§ 456.071, 456.073 Fla. Stat. (2016).* The discussion above regarding Respondent's exception number 2. explains how paramedics are and were made subject to the Department's regulatory powers in Chapter 456 Florida Statutes. This exception proposes conclusions of law that are not as reasonable as those made by the ALJ in paragraph 31. of the Recommended

Order. Again, the Department does not have substantive jurisdiction to modify or reverse the conclusions of law made by the ALJ. Exception # 7. is denied.

**Ruling on Respondent's Exception Number 8:** Respondent made an exception to the Conclusion of law in paragraph 33. of the Recommended Order where the ALJ held that Respondent's assertion of the fifth amendment privilege against self-incrimination permitted the ALJ to draw adverse inferences against him where the Respondent invoked the privilege in response to probative evidence offered against him. The ALJ's conclusion of law is more reasonable than the one proposed by Respondent. *See, Omulepu v. Dep't of Health, Bd. of Medicine*, 249 So.3d 1278 (Fla. 1<sup>st</sup> DCA 2018). To the extent that this exception is to the ALJ's fact finding in paragraph 34. of the Recommended Order both findings are supported by competent substantial evidence in the record. Examples of such evidence include the following DOAH filed pleadings or orders: Respondent's Motion/Objection to Petitioner's Discovery, filed July 18, 2018; The ALJ's Order Denying Motion to quash and Granting Motion to Compel, filed on July 17, 2018; The ALJ's Order Denying Petitioner's Motion to Compel, filed July 19, 2018. Exception #8 is denied.

**Ruling on Respondent's Exception Number 9:** Respondent's exception number nine is to the conclusions of law made by the ALJ in paragraphs 36 through 40. The department does not have substantive jurisdiction to reverse or modify any of these conclusions of law. The conclusions of law made in paragraphs 36 through 40 are more reasonable than conclusions indicating that the Petitioner did not prove the existence of the reiterated facts by clear and convincing evidence. To the extent that these conclusions

of law reiterate findings of fact made elsewhere in the recommended order, they are supported by competent substantial evidence in the record. Exception #9 is denied.

**Ruling on Respondent's Exception Number 10:** Respondent takes exception to paragraphs 20. through 23. of the Recommended Order, which are conclusions of law. The ALJ's conclusions of law in paragraphs 20. through 22. are more reasonable than the conclusions of law that are the opposite of those made by the ALJ. The Department's discussion above regarding Respondent's Exceptions 2. and 7. set forth the basis for the Department's jurisdiction and authority to proceed in this matter. Concerning paragraph 23. of the Recommended Order, the conclusions of law therein are accurate and reasonable. The Department does not have substantive jurisdiction to modify or reverse them.

The Department does not have the authority to make, modify or reverse conclusions of law or opinions regarding the constitutionality of a Florida Statute. Those decisions are the province of the Courts. The department has acted lawfully in the handling of this matter. Exception #10 is denied.

All of Respondent's exceptions to the Recommended Order are therefore denied.

#### Attachments

1. The Recommended Order from the ALJ is attached to this Order as exhibit A and incorporated herein.
2. The Administrative Complaint is attached to this Order as exhibit B and incorporated herein.
3. The Respondent's exceptions to the Recommended Order are attached to this Order as exhibit C and incorporated herein.

FINDINGS OF FACT

1. 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

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

RETAINED JURISDICTION

3. Petitioner filed a Motion to assess costs of investigation and prosecution on November 15, 2018. The Respondent filed a pleading challenging the costs. Given the present state of the record, resolution of the costs issues will require a hearing.

4. On March 9, 2019 the Petitioner filed a Motion to Bifurcate the proceeding and retain Jurisdiction to assess costs in a separate proceeding, allowing the Department to proceed with this Final Order while separating the costs issues to possibly be dealt with later. On May 14, 2019 the Department granted the motion. Jurisdiction is retained to assess costs of investigation and prosecution should such action become appropriate.

ORDER

Based on the foregoing findings of fact and conclusions of law the Respondent has violated Section 456.072 (1) (k) Florida Statutes. The Respondent failed to repay a student loan issued or guaranteed by the State or the Federal Government in accordance with the terms of the loan. The Respondent's certification as a paramedic is hereby suspended until such time as new loan payment terms are agreed on; should suspension of the certificate be lifted through the entry of such agreement, the Respondent will be on probation for the duration of the student loan; the Respondent shall pay a fine in the

amount of ten percent of the outstanding loan amount itemized as the defaulted loan amount in paragraph 18. of the Recommended Order, i.e., \$2,229.06.<sup>2</sup> The fine of \$2, 229.06 shall be paid to the Department of Health Compliance Management Unit, P.O. Box 632, Bin # C-76 within 30 days of the date of this Final Order.

DONE AND ORDERED in Tallahassee, Leon County, Florida this 6 day of June 2019.

Surgeon General & Secretary



Michele Tallent  
Deputy Secretary for Operations  
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.**

<sup>2</sup> The department has reviewed the entire record, more specifically the quoted disciplinary text at paragraph 22. and the outstanding amounts identified at paragraph 18. of the Recommended Order to arrive at a lower fine amount than that recommended by the ALJ. The statutory formula is 10 percent of the defaulted loan amount, calculated by the department at the time of default rather than at the time of issuing the final order. No other liquidated outstanding loan balance is provided by the ALJ through findings of fact in the Recommended Order.



Copies furnished to:

E. Gary Early,  
Administrative Law Judge  
Division of Administrative Hearings  
The Desoto Building  
1230 Apalachee Parkway  
Tallahassee Florida 32399-3060

*Reg. US Mail*

|||||  
E. Gary Early, Administrative Law Judge  
Division of Administrative Hearings  
The Desoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

Respondent

William J. Litsch P.M.D.  
763 Tumblebrook Drive  
Port Orange, Florida 32127

|||||  
William J. Litsch, P.M.D.  
763 Tumblebrook Dr.  
Port Orange, FL 32127

**Certified Article Number**

9414 7266 9904 2140 1172 85

**SENDER'S RECORD**

Petitioner

Rose Garrison  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin #C65  
Tallahassee Florida 323999  
[Rose.Garrison@flhealth.gov](mailto:Rose.Garrison@flhealth.gov)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been sent by Certified Mail to Respondent and the Administrative Law Judge and by e-mail and interoffice mail to the Attorney for the Petitioner this 10<sup>th</sup> day of June 2019.

*Wanda Young*

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