

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RIQUEL GONZALEZ-SALCERIO,

Petitioner,

vs.

Case No. 19-0124EXE

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing by video teleconference on March 18 and May 17, 2019, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Barry M. Wax, Esquire  
Law Offices of Barry M. Wax  
701 Brickell Avenue, Suite 1550  
Miami, Florida 33131

For Respondent: Susan Sapoznikoff, Esquire  
Kimberly S. Murray, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308

STATEMENT OF THE ISSUES

Whether Petitioner, Riquel Gonzalez-Salcerio ("Dr. Gonzalez"), has disqualifying offenses under section 435.04(4), Florida Statutes; if so, whether Dr. Gonzalez has

demonstrated rehabilitation by clear and convincing evidence; and, if so, whether Respondent, Agency for Health Care Administration's ("AHCA"), intended action to deny Dr. Gonzalez's request for an exemption from disqualification constitutes an abuse of discretion.

PRELIMINARY STATEMENT

In a letter dated October 19, 2018, AHCA notified Dr. Gonzalez that his request for an exemption from disqualification as a Medicaid provider was denied. Dissatisfied with the decision, Dr. Gonzalez timely requested a formal administrative hearing. Subsequently, on January 7, 2019, AHCA referred this matter to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing. On January 16, 2019, the undersigned set the final hearing for March 18, 2019.

The final hearing commenced on March 18, 2019, and concluded on May 17, 2019, with both parties present. At the hearing, Dr. Gonzalez testified on his own behalf and presented the additional testimony of Dr. Mario Cala, Paula Camacho, Anthony Kirchner, and Estefany Garcia. Dr. Gonzalez's Exhibits 1a through 1r were received in evidence based on the stipulation of the parties. AHCA presented the testimony of Vanessa Risch and James Gaddis. AHCA's Exhibits 1a through 1g and 2 through 11 were received in evidence based on the

stipulation of the parties. AHCA's unopposed motion for official recognition was granted. The one-volume final hearing Transcript from the March 18, 2019, hearing was filed on May 10, 2019. The one-volume final hearing Transcript from the May 17, 2019, hearing was filed on July 8, 2019.

AHCA timely submitted a proposed recommended order on July 18, 2019. However, Dr. Gonzalez's proposed recommended order was not received at DOAH until after 5:00 p.m. on July 18, 2019. As a result, pursuant to Florida Administrative Code Rule 28-106.104(3), Dr. Gonzalez's proposed recommended order was not deemed filed at DOAH until 8:00 a.m. on July 19, 2019. On July 22, 2019, Dr. Gonzalez filed a motion to accept the proposed recommended order as timely. Although the motion indicates that AHCA objects to the motion, no response has been filed in opposition to the motion, and the deadline to file a response pursuant to rule 28-106.204(1) has expired. In any event, there is no prejudice to AHCA because of the late-filed proposed recommended order. Accordingly, Dr. Gonzalez's motion is granted, and the parties' proposed recommended orders have been considered in the preparation of this Recommended Order.

The stipulated facts in the parties' Amended Joint Pre-hearing Stipulation have been incorporated herein. Unless otherwise indicated, references to the Florida Statutes are to the 2018 version.

## FINDINGS OF FACT

1. Dr. Gonzalez is a 53-year-old licensed podiatric physician seeking to qualify, pursuant to section 435.07, to re-enroll as a Medicaid provider, which requires compliance with background screening standards set out in section 435.04(4).<sup>1/</sup>

2. AHCA is the state agency responsible for administration of the Medicaid program in Florida, including the issuance of a Medicaid provider number for which Dr. Gonzalez seeks to qualify.

3. In 1990, Dr. Gonzalez, who is of Cuban descent, received a medical degree from Central University in Las Villas, Cuba. Following graduation, Dr. Gonzalez entered a three-year residency program in invasive cardiology at the Cardiac Institute in Havana, Cuba. Upon completion of the residency program, Dr. Gonzalez practiced cardiology at the Central Institute of Cardiology in Las Villas.

4. In 1997, Dr. Gonzalez traveled from Cuba to Uruguay and worked at Sanatorio Americano Hospital as the Chief of Cardiology. While in Uruguay, Dr. Gonzalez became the chief of Cardiology for the entire country of Uruguay, and he obtained a doctorate in diagnostic radiology.

5. In 1999, Dr. Gonzalez decided to leave Uruguay, defect from Cuba, and live in the United States. In order for Dr. Gonzalez to be permitted to leave Uruguay and travel

directly to the United States, it was necessary for him to conceal his Cuban descent. In order to conceal his Cuban descent, Dr. Gonzalez obtained a fake Florida driver's license in a fictitious name.

6. In 1999, Dr. Gonzalez traveled from Uruguay to the United States by airline and entered the United States at Miami International Airport. Once he arrived in Miami, Dr. Gonzalez did not use the fake driver's license at the airport. Dr. Gonzalez presented to immigration in his own name and announced his intent to defect to the United States. Dr. Gonzalez was immediately accepted as a Cuban refugee, paroled into the United States, and he is now a permanent resident of the United States.

7. Following his receipt of a work permit, Dr. Gonzalez remained in Miami and obtained a job as a medical assistant at Gables Medical Center, a clinic owned by one of his cousins. As a foreign doctor, Dr. Gonzalez was able to obtain certification authorizing him to work as a medical assistant. Dr. Gonzalez worked at the clinic as a medical assistant from 1999 to 2001.

8. In 2001, Dr. Gonzalez began working at Echofet Diagnostic Center as an ultrasound technician, which was within the scope of his medical assistance certification. On October 14, 2003, while working as an ultrasound technician, Dr. Gonzalez used his fake driver's license in an attempt to

cash a check as a favor for Dr. Guillermo Achon, who also worked at the facility. Dr. Achon wrote a check made payable to the fictitious name on the driver's license and gave the check to Dr. Gonzalez to cash for him.

9. Dr. Gonzalez took the check and went to a bank. Dr. Gonzalez presented the check and fake driver's license to the bank teller in an effort to obtain cash. Upon presentment of the check and the fake driver's license to the bank teller on October 14, 2003, Dr. Gonzalez was immediately arrested for one count of violating section 831.01, Florida Statutes (2003) (forgery); one count of violating section 812.014, Florida Statutes (2003) (grand theft); and one count of violating section 322.212(1) (a), Florida Statutes (2003) (possession of a counterfeit driver's license).

10. Dr. Gonzalez was ultimately charged with only a single count of violating section 322.212(1) (a), possession of a counterfeit driver's license, a third-degree felony. Dr. Gonzalez pled guilty to the charge. Adjudication was withheld and he was sentenced to two years of probation and was required to complete community service and an anti-theft course. Dr. Gonzalez completed his probation early, and he completed the community service and anti-theft course requirements.<sup>2/</sup>

11. In 2006, Dr. Gonzalez left Echofet Diagnostic Center and decided to enroll in podiatry school. In 2007, Dr. Gonzalez

was accepted to podiatry school at Barry University. During this time period, Dr. Gonzalez was also working for Dr. Roberto Rivera, a radiologist in Miami.

12. While working for Dr. Rivera, Dr. Gonzalez read and interpreted radiological scans, such as X-rays and CT scans. At that time, Dr. Gonzalez was not legally authorized to read and interpret radiological scans because he was not licensed by the State of Florida as a physician. As a result of his conduct, on June 13, 2007, Dr. Gonzalez was arrested for 36 counts of violating section 817.234, Florida Statutes (2006) (false/fraudulent insurance claims); three counts of violating section 812.014 (2006) (grand theft, third degree); and 36 counts of violating section 456.065(2)(d)1., Florida Statutes (2006) (unlicensed practice of health care).

13. Dr. Gonzalez was ultimately charged with only a single count of violating section 456.065(2)(d)1. (unlicensed practice of health care), a third-degree felony. Dr. Gonzalez pled guilty. Adjudication was withheld and he was sentenced to five years of probation, required to complete community service, and ordered to pay restitution of \$6,875.00 and costs of \$1,557.60. Dr. Gonzalez also agreed to cooperate with the investigation and prosecution of two other defendants. Dr. Gonzalez completed his probation early, and he completed the community service and restitution requirements.

14. Dr. Gonzalez contends that the October 14, 2003, criminal offense of possession of a counterfeit driver's license and June 13, 2007, criminal offense of unlicensed practice of health care are not disqualifying criminal offenses.

15. As discussed in more detail below in the Conclusions of Law, the October 14, 2003, criminal offense of possession of a counterfeit driver's license, in violation of section 322.212(1)(a), and the June 13, 2007, criminal offense of unlicensed practice of health care, in violation of section 456.065(2)(d), are not disqualifying criminal offenses. However, even if these two offenses are disqualifying, Dr. Gonzalez has demonstrated rehabilitation by clear and convincing evidence.

16. At hearing, Dr. Gonzalez accepted full responsibility for the two criminal offenses that AHCA considered disqualifying.

17. Dr. Gonzalez has had no arrests or other criminal history since his arrest on June 13, 2007, and the resulting offense of unlicensed practice of health care.

18. In 2011, Dr. Gonzalez completed the podiatry program at Barry University that he began in 2007 and obtained a medical degree in podiatric medicine. After graduation, Dr. Gonzalez entered a residency program in foot and ankle reconstructive surgery at Mercy Hospital in Miami, which he completed in 2014.



19. In 2014, Dr. Gonzalez applied for his medical license with the State of Florida, Department of Health, Board of Medicine. During the application process, Dr. Gonzalez disclosed all of his criminal history. The Board of Medicine initially denied the license. However, Dr. Gonzalez appeared before the Board of Medicine, and following a hearing, he was granted a license. Since that time, Dr. Gonzalez has continuously maintained his license to practice podiatric medicine in Florida.

20. Since becoming licensed in 2014, Dr. Gonzalez has specialized in foot and ankle surgeries. He is well-known and an active and respected member of the Miami and south Florida communities.

21. Dr. Gonzalez has privileges at Mercy Hospital and Larkin Community Hospital, Palm Springs campus. Dr. Gonzalez is only one of three podiatric physicians in Miami who perform total ankle replacements.

22. Dr. Gonzalez's office practice, Dr. Riquel Gonzalez DPM, PA, is located at 1435 West 49th Place, Suite 604, Hialeah, Florida 33012. In his practice, he has approximately 6,000 patients, seeing 40 to 50 patients a day. More than 70 percent of his practice is surgical and 30 percent of his patients are covered under the Medicaid program.

23. In addition to his medical practice, Dr. Gonzalez is a professor at Barry University, teaching podiatric surgery, foot and ankle surgery, and radiology. While at Barry University, Dr. Gonzalez has received the honor of Professor of the Year. Dr. Gonzalez has also received a national award from the Foot and Ankle Society as one of the top ten podiatrists in the United States.

24. Dr. Gonzalez is also the current director of the residency program at Larkin Community Hospital, Palm Springs campus. As director, Dr. Gonzalez supervises nine residents, who also train in his office and assist in surgeries under his supervision.

25. Dr. Gonzalez also spends substantial time as a volunteer in his local community and elsewhere on behalf of various charitable causes. He treats the homeless at Camillus House, a homeless shelter in the Miami area. Dr. Gonzalez brings his residents to the shelter, and they perform basic podiatric care, such as cleaning feet and clipping nails.

26. Dr. Gonzalez travels to Mexico with other physicians and residents for medical missions, providing podiatric surgical services for patients, particularly children, who have no medical insurance or ability to pay. Since 2011, Dr. Gonzalez has travelled annually to different locations where he provides

free podiatric services. Presently, Dr. Gonzalez is planning a trip to Columbia to conduct similar medical mission work.

27. In addition, Dr. Gonzalez donates podiatric medical equipment to new podiatric school graduates.

28. From 2014 until April 2019, Dr. Gonzalez treated Medicaid patients under a Medicaid provider number issued by AHCA. In April 2019, AHCA terminated Dr. Gonzalez's Medicaid provider number and agreement. As a result of not having a Medicaid provider number, insurance companies providing Medicaid coverage have also terminated Dr. Gonzalez as a Medicaid provider.

29. Nevertheless, Dr. Gonzalez continues to treat Medicaid patients in his office free of charge. However, Dr. Gonzalez is not permitted to perform surgery on Medicaid patients at a hospital because he is no longer a Medicaid provider.

30. Since 2014, Dr. Gonzalez has never had an issue with Medicaid billing for services performed. He has never received an overpayment notice, none of his billings have been questioned, and he has complied with the Medicaid provider requirements.

31. At hearing, Dr. Gonzalez presented the testimony of Dr. Mario Cala, a fellow podiatric surgeon in Miami. In 2008, Dr. Cala received his degree in podiatric medicine from Barry University, and he has practiced in Miami for the past eight

years. He has known Dr. Gonzalez for approximately 15 years. Until recently, Dr. Cala was the chief of Podiatry at Jackson Memorial Hospital in Miami.

32. When Dr. Cala was a fellow at Mercy Hospital, Dr. Gonzalez was a first-year resident. Dr. Cala testified that Dr. Gonzalez is one of the best podiatric surgeons in Miami. Dr. Cala regularly consults with Dr. Gonzalez and refers patients to Dr. Gonzalez for total ankle replacement surgery. Dr. Cala and Dr. Gonzalez have traveled together on medical mission trips. Dr. Cala is aware of Dr. Gonzalez's prior legal problems. Dr. Cala credibly and persuasively attested to Dr. Gonzalez's good character and great reputation in the community. He described Dr. Gonzalez as compassionate, kind, thoughtful, and humble. There was no cross-examination of Dr. Cala by AHCA.

33. Dr. Gonzalez also presented the testimony of Paula Camacho. For the past ten years, Ms. Camacho has been a medical sales distributor for Generation X Technologies, a company which sells medical devices to assist physicians who treat patients with lymphedema. She has known Dr. Gonzalez for the past five years, having met him at his office when she was scheduling a training session on the use of lymphedema pumps. Dr. Gonzalez is a client of Ms. Camacho and she has observed him interacting with patients. Ms. Camacho is also a member of the

Miami-Dade Podiatric Medical Association, where Dr. Gonzalez has lectured at association meetings on trends and developments involving podiatric medicine.

34. Ms. Camacho described Dr. Gonzalez as a "pillar of the medical community, very well-respected" throughout Miami-Dade County. Ms. Camacho credibly and persuasively attested to Dr. Gonzalez's good character and great reputation in the community. She described Dr. Gonzalez as trustworthy, compassionate, kind, thoughtful, and humble. There was no cross-examination of Ms. Camacho by AHCA.

35. Dr. Gonzalez also presented the testimony of Anthony Kirchner, a sales representative for Generation X Technologies. Mr. Kirchner has known Dr. Gonzalez for almost seven years. As a sales representative, Mr. Kirchner has been present during surgeries performed by Dr. Gonzalez and other podiatrists. He also observes Dr. Gonzalez interacting with residents. Mr. Kirchner described Dr. Gonzalez as "[p]robably one of the best surgeons I've ever seen in the whole City of Miami. Hands down." Mr. Kirchner further testified that Dr. Gonzalez "puts the patient first" and that he is "professional" and "hands-on" with residents. Mr. Kirchner credibly and persuasively attested to Dr. Gonzalez's good character, great reputation in the community, and how he is

trustworthy, compassionate, kind, thoughtful, and humble. There was no cross-examination of Mr. Kirchner by AHCA.

36. Dr. Gonzalez also presented the testimony of his step-daughter, Estefany Garcia. Ms. Garcia has known Dr. Gonzalez for the past 15 years. She has also worked at Dr. Gonzalez's medical office for the past two years as an office manager. As office manager, Ms. Garcia has had the opportunity to observe Dr. Gonzalez interact with patients. She described Dr. Gonzalez as a "great person," and her "second father," and she testified that patients are very fond of him. Ms. Garcia credibly and persuasively attested to Dr. Gonzalez's trustworthiness and great reputation in the community. There was no cross-examination of Ms. Camacho by AHCA.

37. After the presentation of Dr. Gonzalez's witnesses, AHCA recalled Ms. Risch as a witness. Ms. Risch, an AHCA operations management consultant manager for the past year, testified that there was information presented for the first time at the hearing bearing on Dr. Gonzalez's rehabilitation, such as his involvement in the community, mission work, and provision of podiatric treatment to patients free of charge. Ms. Risch acknowledged that this additional information presented at hearing could have affected AHCA's decision to deny the exemption.

38. In addition to the live testimony presented by Dr. Gonzalez, he provided letters of support from other friends and colleagues. These letters explain or supplement the substantial testimony at hearing regarding Dr. Gonzalez's good character.

39. In one of the letters dated September 5, 2018, Ramon Hechavarria, M.D., stated that he has known Dr. Gonzalez as both a close friend and colleague. Dr. Hechavarria first met Dr. Gonzalez in 1999. Dr. Hechavarria described Dr. Gonzalez as "one of the most disciplined, intelligent, and dedicated people I've ever known." According to Dr. Hechavarria, Dr. Gonzalez's

ability to work efficiently under stressful conditions and nerve-wracking deadlines speaks volumes about his hard work, determination, and composed demeanor. During all this time he has demonstrated excellent leadership skills and morale. I would also like to add that, Riquel is a compassionate human being with praiseworthy perseverance and ambition. I believe that he is an indispensable asset for the Podiatric profession and he has all my support and admiration.

40. In another letter dated September 6, 2018, Iris Berges, who is the chief executive officer of Larkin Community Hospital, Palm Beach campus, stated that she has known Dr. Gonzalez for over three years. Ms. Berges stated that her relationship with Dr. Gonzalez "has been one of mutual professional respect along with friendship." Ms. Berges further

stated that Dr. Gonzalez "is a highly respected and skilled Foot and Ankle Surgeon. He is admired and relied upon by our physicians. His patients trust and rely on him."

41. It is abundantly clear, from the credible and heartfelt testimony of Dr. Gonzalez, Dr. Cala, Ms. Camacho, Mr. Kirchner, and Ms. Garcia, that Dr. Gonzalez is a responsible individual and rehabilitated from the two offenses in 2003 and 2007. The incidents in question occurred over a decade ago. Since 2007, Dr. Gonzalez has lived as a model law-abiding citizen.

42. Dr. Gonzalez has operated a successful podiatric medicine practice providing medical treatment to underserved and underprivileged persons within his community. He has provided pro bono medical services to patients within his medical practice and in other communities and other countries on medical mission trips. Dr. Gonzalez has been an upstanding, well-respected physician and member of his community who has contributed greatly to his profession, the development of those aspiring to join his profession, and the underserved in need of his highly skilled professional services. Under the particular circumstances of this case, there is no evidence that would indicate that Dr. Gonzalez would present a danger if granted a Medicaid provider number. To the contrary, the evidence presented at hearing demonstrates that patients and persons



within Dr. Gonzalez's community and elsewhere have benefited, and will continue to benefit, from Dr. Gonzalez's podiatric services through Medicaid. The only danger evident here would be that the Medicaid population would not be able to obtain medical surgical services if Dr. Gonzalez were not granted a Medicaid provider number.

43. Based on the clear and convincing evidence presented at hearing, the undersigned finds that Dr. Gonzalez is rehabilitated from the two disqualifying criminal offenses in 2003 and 2007, and that he presents no danger if approved to re-enroll as a Medicaid provider and issued a Medicaid provider number.<sup>3/</sup>

#### CONCLUSIONS OF LAW

44. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 435.07, Florida Statutes.

45. For the purpose of screening to participate in the Medicaid program, individuals, such as Dr. Gonzalez, who are seeking to be a Medicaid provider and obtain a Medicaid provider number, are required to undergo background screening. § 435.04(4), Fla. Stat.

46. The purpose of the background screening is to:

[E]nsure that a person subject to screening under this section has not been arrested for and is not awaiting final disposition of; has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to; and has not been adjudicated delinquent and the record sealed or expunged for, any of the following offenses:

(a) Violation of a federal law or a law in any state which creates a criminal offense relating to:

1. The delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program, including the performance of management or administrative services relating to the delivery of goods or services under any such program;

\* \* \*

4. Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;

5. Moral turpitude, if punishable by imprisonment of a year or more; . . .

§ 435.04(4)(a)1., 4., and 5., Fla. Stat. (2018). (emphasis added).

47. Dr. Gonzalez's initial contention is that the October 14, 2003, criminal offense of possession of a counterfeit driver's license, in violation of section 322.212(1)(a), and the June 13, 2007, criminal offense of unlicensed practice of health care, in violation of

section 456.065(2)(d), are not disqualifying criminal offenses. Because they are not disqualifying offenses, Dr. Gonzalez contends that he does not even need to apply for an exemption.

48. The question of whether these two offenses are disqualifying turns on a question of law and statutory interpretation. The undersigned's analysis must begin with the question of whether section 435.04(4)(a)1., 4., and 5., enacted by the Florida Legislature effective July 1, 2018, is clear and unambiguous. As recognized by the First District Court of Appeal in Levey v. Detzner, 146 So. 3d 1224, 1225 (Fla. 1st DCA 2014):

Legislative intent is the polestar that guides a court's interpretation of a statute. A court must endeavor to construe a statute to effectuate the Legislature's intent. In discerning legislative intent, a court must look to the actual language used in the statute. When a statute is clear and unambiguous, a court will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. It is not the prerogative of a court to construe an unambiguous statute differently from the plain language of the words employed, nor is the wisdom of the statute within the ambit of the court's authority.

Levey, 146 So. 3d at 1225. (citations omitted).

49. Section 435.04(4)(a)1., 4., and 5. is clear and unambiguous. The underlying statutes giving rise to the

purported disqualifying offenses, sections 322.212(1)(a) and 456.065(2)(d), must, pursuant to section 435.04(4)(a):

[Create] a criminal offense relating to:

1. The delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program, including the performance of management or administrative services relating to the delivery of goods or services under any such program

\* \* \*

4. Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;

5. Moral turpitude, if punishable by imprisonment of a year or more; . . .

50. Sections 322.212(1)(a) and 456.065(2)(d) do not create a criminal offense relating to the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program, including the performance of management or administrative services under any such program. Nor do sections 322.212(1)(a) and 456.065(2)(d) create a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, other financial misconduct, or moral turpitude. Accordingly, the October 14, 2003, criminal offense of possession of a counterfeit driver's license, in violation of section 322.212(1)(a), and the June 13, 2007, criminal offense of

unlicensed practice of health care, in violation of section 456.065(2)(d), are not disqualifying criminal offenses.

51. In its proposed recommended order, AHCA ignores the plain and unambiguous language in section 435.04(4)(a) requiring that the underlying law create a criminal offense relating to the delivery of any goods or services under Medicaid or Medicare or any other public or private health care insurance program, or create a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, other financial misconduct, or moral turpitude.

52. Rather, AHCA contends, on page 20 of its proposed recommended order, that section 435.04(4)(a) simply disallows employment as a Medicaid provider for a guilty plea for a criminal offense relating to the delivery of goods or services under any public or private health care or health insurance program, or for a guilty plea relating to fraud, theft, embezzlement, breach of fiduciary responsibility, other financial misconduct, or moral turpitude.

53. Had the Legislature not intended to require that the underlying law create a criminal offense relating to the delivery of goods or services under any public or private health care or health insurance program, or create a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, other financial misconduct, or moral turpitude,

it would have said so. However, the Legislature chose to use a specific phrase requiring that the underlying law create a criminal offense. Courts must presume that a Legislature says in a statute what it means and means what it says. Jefferson v. State, 264 So. 3d 1019, 1024 (Fla. 2d DCA 2018). Moreover, a statutory provision will not be construed in such a way that it renders meaningless any other statutory provision. Fla. Virtual Sch. v. K12, Inc., 148 So. 3d 97, 101-104 (Fla. 2014). To accept AHCA's interpretation ignores the plain and unambiguous phrase requiring that the underlying law create a criminal offense and would render this language meaningless.<sup>4/</sup>

54. Even if the October 14, 2003, criminal offense of possession of a counterfeit driver's license, in violation of section 322.212(1)(a), and the June 13, 2007, criminal offense of unlicensed practice of health care, in violation of section 456.065(2)(d), are disqualifying criminal offenses, individuals who have disqualifying offenses may request, as Dr. Gonzalez has done here, an exemption from disqualification from the head of the appropriate agency, which in this case is the secretary of AHCA. § 435.07(1), Fla. Stat.

55. Turning to the issue of rehabilitation from a disqualifying criminal offense, pursuant to section 435.07(1)(a)1., the agency head may grant to any person

otherwise disqualified from being a Medicaid provider an exemption from disqualification for:

1. Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony; . . .

56. To be eligible for an exemption, Dr. Gonzalez must demonstrate by clear and convincing evidence that he should not be disqualified from being a Medicaid provider because he is rehabilitated. § 435.07(3)(a), Fla. Stat.; J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013) ("the ultimate issue of fact to be determined in a proceeding under section 435.07 is whether the applicant has demonstrated rehabilitation by clear and convincing evidence."). This is a heavy burden. Smith v. Dep't of Health and Rehab. Servs., 522 So. 2d 956, 958 (Fla. 1st DCA 1988). Dr. Gonzalez has the burden of setting forth clear and convincing evidence of:

[R]ehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if [Medicaid provider status] is allowed.

§ 435.07(3)(a), Fla. Stat.

57. The "clear and convincing evidence" standard requires that the evidence must be found credible, the facts to which the witnesses testify be distinctly remembered, the testimony 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 a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. In re Davey, 645 So. 2d 398, 404 (Fla. 1994); Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

58. Pursuant to section 435.07, even if rehabilitation is shown, the applicant is only eligible for an exemption, not entitled to one. AHCA retains discretion to deny the exemption, provided its decision does not constitute an abuse of discretion. J.D., 114 So. 3d at 1127. Discretion, in this sense, is abused when the proposed agency action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the agency. If reasonable persons could differ as to the propriety of the proposed agency action taken, then the action is not unreasonable, and there can be no finding of an abuse of discretion. Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980).



59. Because section 435.07 represents an exemption from a statute enacted to protect the public welfare, it must be "strictly construed against the person claiming the exemption." Heburn v. Dep't of Child & Fams., 772 So. 2d 561, 563 (Fla. 1st DCA 2000).

60. As detailed in the Findings of Fact contained herein, Dr. Gonzalez met his heavy burden in this de novo chapter 120 proceeding of presenting clear and convincing evidence of rehabilitation, in large part based on the compelling and heartfelt testimony of Dr. Gonzalez and his four witnesses at the final hearing. At hearing, the undersigned had the distinct opportunity to observe the demeanor and credibility of Dr. Gonzalez and his four witnesses. AHCA did not have the benefit of this testimony when it formulated its proposed action to deny Dr. Gonzalez's exemption request.

61. Consideration of the compelling testimonial evidence presented at the final hearing, which was not available to AHCA at the time it proposed to deny Dr. Gonzalez's exemption request, leads the undersigned to conclude that it would be an abuse of discretion to deny the exemption, and that AHCA should exercise its discretion in favor of granting Dr. Gonzalez's exemption from disqualification.<sup>5/</sup>

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order granting Dr. Gonzalez's renewal application as a Medicaid provider because of a lack of disqualifying criminal offenses or, in the alternative, an exemption from disqualification as a Medicaid provider.

DONE AND ENTERED this 5th day of August, 2019, in Tallahassee, Leon County, Florida.



---

DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of August, 2019.

ENDNOTES

<sup>1/</sup> Dr. Gonzalez previously underwent a background screening in 2013 to be a Medicaid provider. On June 14, 2013, AHCA mailed a letter to Dr. Gonzalez indicating that the agency had received and reviewed the criminal history results from a background screening he submitted as part of the process to become a Medicaid provider. The letter indicated that during the review, the agency noted an offense "Felony Practice Health Care w/o License," that disqualified him from being a Medicaid provider in accordance with sections 435.04 and 409.907, Florida

Statutes. Dr. Gonzalez was denied an exemption at that time pursuant to section 435.07 because three years had not elapsed since he had "completed probation or the sanction(s) imposed for" the specific disqualifying offense. Nevertheless, Dr. Gonzalez was granted a Medicaid provider number in 2013. According to Mr. Gaddis, operations and management consultant manager for AHCA, the granting of this Medicaid provider number was a mistake.

On July 18, 2018, Dr. Gonzalez requested an exemption from disqualification and submitted a Background Screening Application for Exemption that included documents such as reference letters, additional documentation regarding his criminal history, and police reports. On October 1, 2018, AHCA mailed a letter to Dr. Gonzalez, indicating that the agency had received and reviewed the criminal history results from a background screening he submitted as part of the process to be a Medicaid provider. The letter indicated that during the review, the agency noted an offense that disqualified him from being a Medicaid provider in accordance with sections 435.04 and 409.907. On October 3, 2018, AHCA conducted a teleconference with Dr. Gonzalez regarding his request for exemption from disqualification.

<sup>2/</sup> Petitioner was previously arrested on February 26, 2003, in Florida for three counts of violating section 817.234, Florida Statutes (false/fraudulent insurance claims); three counts of violating section 812.014 (grand theft, third degree); and three counts of violating section 458.327(1)(a), Florida Statutes (practicing medicine without a license). He was charged with three counts of violating section 817.234 (false/fraudulent insurance claims); one count of violating section 812.014 (grand theft, third degree); and one count of violating section 458.327(1)(a) (practicing medicine without a license). Petitioner pled "not guilty" to all charges. The charges were "nolle prossed" after completion of a pretrial diversion program.

Petitioner was also arrested on May 9, 2003, in Florida for four counts of violating section 817.234(1) (false/fraudulent insurance claims); one count of violating section 812.014 (grand theft, second degree); and 37 counts of violating section 458.327(1)(a) (practicing medicine without a license). He was charged with four counts of violating section 817.234 (false/fraudulent insurance claims); one count of violating section 812.014 (grand theft, second degree); one count of violating section 458.327(1)(a) (practicing medicine without a

license); and three counts of violating section 812.014 (grand theft, third degree). Petitioner pled "not guilty" to all charges. The charges were "nolle prossed" after completion of a pretrial diversion program.

<sup>3/</sup> In an effort to show a lack of rehabilitation, AHCA relies on certain comments made by Dr. Gonzalez during an October 19, 2018, telephone conference as part of the application for exemption process. Having listened to the recording of the telephone conference and also observed the demeanor of Dr. Gonzalez and his witnesses at the final hearing, the undersigned is unpersuaded by AHCA's argument that Dr. Gonzalez's comments during the telephonic conference demonstrate a lack of rehabilitation.

AHCA further relies on Dr. Gonzalez's answers of "no" to a question regarding his prior criminal history that was included within two 2018 provider enrollment online application submissions. Again, the undersigned is unpersuaded by AHCA's argument. The signatures of Dr. Gonzalez on these applications are typed because the applications were generated through a web portal and filed online. They were prepared by Mary Lugo, an individual hired by Dr. Gonzalez's wife. At hearing, Dr. Gonzalez credibly and persuasively testified that he never saw these documents before the final hearing on March 18, 2019; that he never instructed anyone to answer the question about the criminal history incorrectly; and that it would not have made any sense for him to answer the question "no." Notably, these applications differ from Dr. Gonzalez's prior submission in 2013, which contained his handwritten signature and answer of "yes" to a question regarding his prior criminal history. Moreover, in 2013, Dr. Gonzalez fully disclosed his criminal history to AHCA, and AHCA was fully aware of Dr. Gonzalez's criminal history during the process of his 2018 application for an exemption from disqualification.

<sup>4/</sup> Although section 435.04(4) is clear and unambiguous, and resort to legislative history is not warranted, the intent of the bill was to "[provide] more specificity as to which offenses are disqualifying." Fla. S. Comm. on Rules, CS for CS for SB 622 (2018), Staff Analysis 17 (March 1, 2018) (available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2018s00622.rc.DOCX&DocumentType=Analysis&BillNumber=0622&Session=2018>).

<sup>5/</sup> Even assuming that the October 14, 2003, criminal offense of possession of a counterfeit driver's license is a disqualifying

felony offense, and that the 2007 criminal offense is not a disqualifying felony, the 2007 criminal offense could still be considered by AHCA as part of its deliberations of Dr. Gonzalez's rehabilitation pursuant to section 435.07(3)(b). However, Dr. Gonzalez's February 26, 2003, and May 9, 2003, arrests cannot be considered by AHCA because they are not disqualifying offenses; the charges were "nolle prossed" and, in any event, they occurred before either of the purported two disqualifying felony offenses of October 4, 2003, and June 13, 2007. Rivera v. Ag. for Pers. with Disab., Case No. 15-5039EXE, 2015 Fla. Div. Adm. Hear. LEXIS 426, \*14 (Fla. DOAH Nov. 10, 2015).

COPIES FURNISHED:

Susan Sapoznikoff, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(eServed)

Barry M. Wax, Esquire  
Law Offices of Barry M. Wax  
701 Brickell Avenue, Suite 1550  
Miami, Florida 33131  
(eServed)

Kimberly S. Murray, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308-5407  
(eServed)

Richard J. Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(eServed)

Stefan Grow, General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(eServed)

Mary C. Mayhew, Secretary  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(eServed)

Kim Kellum, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(eServed)

Thomas M. Hoeler, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(eServed)

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.