

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

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RIQUEL GONZALEZ-SALCERIO,

DOAH CASE NO. 19-0124EXE

AHCA NO. BGS_AHCA_20174828

Petitioner,

RENDITION NO.: AHCA-19-0075 -FOF-SED

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Darren A. Schwartz, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether the Agency abused its discretion when it denied Petitioner's request for an exemption from disqualification. The Recommended Order dated August 5, 2019, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Respondent filed exceptions to the Recommended Order.

In determining how to rule upon Respondent's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency must follow section 120.57(1)(l), Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it 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. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact 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. . . .

§ 120.57(1)(l), Fla. Stat. Additionally, “[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page 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.”

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on Respondent’s exceptions:

In Exception No. 1, Respondent takes exception to the conclusions of law in Paragraphs 49, 50, and 51 of the Recommended Order, arguing the ALJ erred by concluding that neither of Petitioner’s criminal offenses were disqualifying offenses under section 435.04(4)(a)1. or 4., Florida Statutes (2018). It is undisputed that Petitioner pled guilty to possession of a counterfeit driver’s license, a violation of section 322.212(1)(a), Florida Statutes (2003); and pled guilty to the unlicensed practice of health care, a violation of section 456.065(2)(d)1., Florida Statutes (2006). See the findings of fact in Paragraphs 10 and 13 of the Recommended Order. The issue is whether those two offenses 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; or 2) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct, as stated in section 435.04(4)(a)1. or 4., Florida Statutes (2018). Merriam-Webster’s Dictionary defines “create” as “to bring into existence” or “to produce or bring about

by a course of action or behavior.” Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/create> (last visited August 21, 2019). Merriam-Webster’s Dictionary defines “relating” as “to show or establish logical or causal connection between” or “to have relationship or connection” to something. Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/relating> (last visited August 21, 2019). Using those definitions, as well as the plain language of the statutes at issue, the Agency must deny Respondent’s Exception No. 1 for the following reasons:

- Petitioner’s guilty plea to a violation of section 456.065(2)(d)1., Florida Statutes (2006), does not bring into existence a criminal offense that has a logical or causal connection to “the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program” because a person does not have to provide unlicensed services in connection with a health insurance program in order to be guilty of the offense. Additionally, as Petitioner testified, he did not bill any health insurance program nor did he receive any money for the unlicensed health care services he provided. See Transcript of May 17, 2019 hearing at Page 40.
- Petitioner’s guilty plea to a violation of section 322.212(1)(a), Florida Statutes (2003), does not bring into existence a criminal offense that has any logical or causal connection to “the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program” because possession of a counterfeit driver’s license by itself constitutes the criminal offense.
- Regarding section 435.04(4)(a)4., Florida Statutes (2018), Petitioner’s criminal offenses also do not bring into existence a criminal offense that has a logical or causal connection to “financial misconduct” such as fraud, theft, embezzlement, or breach of fiduciary

responsibility. Specifically, the plain language of section 456.065(2)(d)1., Florida Statutes (2006), does not create a criminal offense that has a logical or causal connection to “financial misconduct” because there is no reference to payment or other financial remuneration being an element of the crime. So too, the plain language of section 322.212(1)(a), Florida Statutes (2003), does not create a criminal offense that has any logical or causal connection to “financial misconduct” such as fraud, theft, embezzlement, or breach of fiduciary responsibility because one does not have to engage in any conduct other than possessing the counterfeit driver’s license in order to violate the statute.

Thus, the ALJ’s conclusions of law that Petitioner’s criminal offenses did not create a criminal offense relating to “[t]he delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program,” or a criminal offense related to “[f]raud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct” under section 435.04(4)(a)4., Florida Statutes (2018), are reasonable. Therefore, the Agency denies Exception No. 1.

In Exception No. 2, Respondent takes exception to the ALJ’s conclusions of law in Paragraph 61 of the Recommended Order, arguing the ALJ erred in concluding the Agency abused its discretion when it denied Petitioner’s request for an exemption from disqualification. In making this argument, Respondent states the ALJ did not make any findings of fact that the Agency’s denial of Petitioner’s exemption request was arbitrary, fanciful, or unreasonable, which would be an abuse of discretion. See, e.g., J.D. v. Dep’t of Children & Fam., 114 So. 3d 1127, 1130 (Fla. 1st DCA 2013). In Paragraph 61 of the Recommended Order, the ALJ concludes “that it would be an abuse of discretion to deny the exemption” based on all the evidence

presented at hearing. In A.P. v. Dep't of Children & Fam., 230 So. 3d 3 (Fla. 4th DCA 2017), an ALJ reached an identical conclusion of law based on the record evidence of the case that was reversed by the Department of Children and Families (“DCF”). On appeal, the Fourth District Court of Appeal reversed the Agency’s final order because DCF’s rejection of the ALJ’s conclusion of law was not reasonable considering DCF adopted all the ALJ’s findings of fact, which demonstrated A.P. was rehabilitated and posed no danger if employed in a position of trust. Here, Respondent has not taken exception to any of the findings of fact, wherein the ALJ found Petitioner “is a responsible individual and rehabilitated from the two offenses in 2003 and 2007” (Paragraph 41), and “there is no evidence that would indicate that [Petitioner] would present a danger if granted a Medicaid provider number” (Paragraph 42). Thus, it would be unreasonable for the Agency to reject the ALJ’s conclusions of law in Paragraph 61 of the Recommended Order. Therefore, the Agency denies Exception No. 2.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.


CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

Petitioner's request for an exemption from disqualification from employment/Medicaid provider enrollment is hereby granted. The parties shall govern themselves accordingly.

DONE and ORDERED this 5 day of November, 2019, in Tallahassee, Florida.




MARY C. MAYHEW, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished to the persons named below by the method indicated on this 6th day of March, 2019.


RICHARD J. SHOOP, Agency Clerk
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