

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AARON JAY GOODRUM, M.D.,

Petitioner,

vs.

Case No. 19-0643

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

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RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018),^{1/} on April 9, 2019, and June 17 and 18, 2019, by video teleconference at sites in Tallahassee and Tampa, Florida.

APPEARANCES

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STATEMENT OF THE ISSUES

The issues in this matter are whether Petitioner has shown that he is rehabilitated from his disqualifying offense; and, if so, whether a decision by the Agency for Health Care Administration to deny Petitioner's request for an exemption from disqualification for Medicaid provider enrollment would constitute an abuse of discretion.

PRELIMINARY STATEMENT

On April 11, 2018, Petitioner submitted a Request for Exemption from Disqualification for Employment/Medicaid Provider Enrollment to Respondent, Agency for Health Care Administration ("AHCA").

By correspondence dated June 15, 2018, AHCA notified Petitioner that it denied his Request for Exemption.

On October 26, 2018, Petitioner timely requested an administrative hearing challenging AHCA's action. On February 5, 2019, AHCA referred the matter to the Division of Administrative Hearings ("DOAH") and requested assignment to an Administrative Law Judge ("ALJ") to conduct a chapter 120 evidentiary hearing.

The final hearing began on April 9, 2019. The hearing was continued to June 17 and 18, 2019, at which time it was

completed. Petitioner testified on his own behalf. Petitioner (and AHCA) presented the testimony of Vanessa Risch, Shanita Council, Samantha Heyn, and Justin Senior. Petitioner also offered the testimony of Greg Carney, M.D., Lina Goodrum, Brent Price, M.D., and Cheryl Wieder. In rebuttal, AHCA offered the testimony of Taylor Haddock. Petitioner's Exhibits 1 through 25 were admitted into evidence.^{2/} AHCA's Exhibits 1 through 9 were admitted into evidence.

A three-volume Transcript of the final hearing was filed with DOAH on May 10 and July 8, 2019. At the close of the hearing, the parties were advised of a ten-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. After the final hearing, Petitioner filed an unopposed request to extend the filing deadline, which was granted.^{3/} Both parties timely filed Proposed Recommended Orders, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a licensed radiologist seeking to reenroll as a Medicaid provider in Florida. To participate in the Medicaid program, health care providers apply to AHCA and must comply with the background screening standards set forth in section 435.04, Florida Statutes.

2. AHCA is designated as the single state agency responsible for administering and overseeing the Medicaid program in the State

of Florida. See §§ 409.902 and 409.913, Fla. Stat. AHCA is responsible for conducting background screenings for employees who provide specific types of services in health care facilities. This responsibility includes approving individuals who desire to enroll as Medicaid providers in order to render services to Medicaid recipients. See §§ 409.907 and 435.04(4), Fla. Stat.

3. Petitioner has been licensed with the Florida Department of Health, Board of Medicine, since May 2005 (license number ME93275), and has remained in good standing since that date. Petitioner practices at Price, Hoffman and Stone, a radiological group located in St. Petersburg, Florida. Petitioner is part-owner of their radiology practice.

4. From 2008 through December 2017, Petitioner was admitted into the Medicaid program through a ten-year Medicaid provider agreement with AHCA. Accordingly, Petitioner was authorized to receive reimbursement for covered services rendered to Medicaid recipients.

5. During this time period, Petitioner treated Medicaid recipients in Florida. At the final hearing, AHCA did not express any concerns with Petitioner's level of care during his decade long participation in the Medicaid program. Neither did AHCA present any evidence of complaints of abuse or negligence from the Medicaid patients Petitioner served.

6. Petitioner's Medicaid provider status expired in the fall of 2017. To continue his participation in the Medicaid program, Price, Hoffman and Stone applied to AHCA to renew Petitioner's Medicaid provider credentials. Petitioner's application required him to undergo the Level 2 background screening process established in section 435.04. See §§ 409.907(8) and 435.02, Fla. Stat.

7. Petitioner's background screening revealed a criminal offense. Specifically, on August 11, 2007, Petitioner was arrested for and charged with false imprisonment and battery. On or about September 26, 2007, Petitioner pled guilty to one charge of false imprisonment in violation of section 787.02, Florida Statutes (2007) (a felony of the third degree), as well as misdemeanor battery in violation of section 784.03, Florida Statutes (2007). The court accepted Petitioner's guilty plea to battery and entered a verdict of guilty. The court withheld adjudication on the charge of false imprisonment. In September 2007, Petitioner was sentenced to three years of probation. He was also ordered to pay court costs, as well as perform 50 hours of community service. Petitioner completed his probation in January 2010.

8. The Florida Board of Medicine also reviewed Petitioner's criminal incident. Ultimately, after appearing before a disciplinary hearing, the Board of Medicine formally reprimanded

Petitioner. Petitioner was also ordered to pay a \$11,000 fine, as well as complete 100 hours of community service. In addition, Petitioner was directed to receive treatment from a psychiatrist in the Professionals Resource Network Program for a period of five years. However, the Board of Medicine allowed Petitioner to retain his medical license and continue the active practice of radiology in Florida.

9. The fact that Petitioner is not currently an enrolled Medicaid provider does not prevent him from treating Medicaid recipients. Petitioner's medical license is clear and active with the Florida Board of Medicine. Therefore, he may render radiological services to anyone in the State of Florida. However, because AHCA will not authorize Petitioner to participate in the Medicaid program, he cannot bill Medicaid for his medical services. See § 409.907, Fla. Stat.

10. Under section 435.04(2)(m), Petitioner's guilty plea to false imprisonment disqualifies him from participating as a Medicaid provider in any AHCA regulated facility. Consequently, in order to serve the Medicaid population, Petitioner requested an exemption from disqualification as authorized under section 435.07.^{4/} Petitioner submitted his application for exemption to AHCA on April 11, 2018.

11. On June 15, 2018, after considering Petitioner's Request for Exemption, AHCA issued a letter notifying him that it

denied his application. As quoted in the letter, AHCA considered several factors, 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;
- a history of the employee since the incident; and any other evidence or circumstances indicating that the employee will not present a danger if continued employment is allowed.

The letter did not contain any other details explaining the denial except to state that, based on these factors, AHCA found that Petitioner did not provide clear and convincing evidence of his rehabilitation.

12. At the final hearing, Petitioner testified regarding how he is rehabilitated from his criminal background, and why he should be granted an exemption from disqualification.

13. Petitioner initially described his current medical practice. He is a board-certified radiologist, with a subspecialty in musculoskeletal imaging. He works out of two offices in St. Petersburg and serves the greater Tampa Bay area. A large part of Petitioner's practice is devoted to women's diagnostic breast imaging, including mammographic, ultrasound, and MRI detection of breast cancer. Petitioner spends the majority of his time reading films and images. However, his practice occasionally calls for personal patient contact

including the performance of biopsies, aspirations, and injections.

14. Regarding the 2007 criminal offense, Petitioner described the facts and circumstances leading to his arrest and guilty plea to false imprisonment. Petitioner testified that the incident involved a woman he was dating at the time. One day, in his apartment, she revealed to him that she was actually married. Petitioner became intensely angry. He reacted physically. He "grabbed her and held her down on the bed and restrained her." He cut off her clothes with scissors. He "got on top of her and wouldn't let her go." He yelled at her and tried to get answers from her. Petitioner then bound her hands and legs with tape. She remained confined on his bed for up to five hours. She eventually managed to free herself. She escaped his apartment and alerted law enforcement. Petitioner was promptly confronted and arrested.

15. In asserting that he is rehabilitated from his disqualifying offense, Petitioner described a number of steps he has taken to better himself. Petitioner initially explained that, as part of his Professional Resource Network treatment for the Florida Board of Medicine, he twice traveled to Kansas to be evaluated by several psychologists and psychiatrists. Thereafter, he was required to attend weekly meetings with a local therapist for five straight years. In total, Petitioner

has been assessed by at least four psychiatrists and mental health professionals since 2007. Petitioner represented that all have concluded that he presents no danger to the public or his patients.

16. Petitioner further expressed that he has participated in (and continues to seek out) a number of continuing education courses focused on domestic violence and anger management issues. Petitioner declared that he has made a constant and determined effort to address how he responds to anger and controls his emotional impulses, as well as how he must respect others' boundaries.

17. In addition to his ongoing professional education, Petitioner testified that he has devoted significant energy to becoming a better person. For several years, he has volunteered every Saturday morning at The Spring of Tampa Bay, a domestic violence center for Hillsborough County. Petitioner also volunteers as a Little League coach, as well as with his church, which he attends regularly with his family.

18. At the final hearing, Petitioner openly discussed the regret and shame he feels for his prior conduct. He readily acknowledged the emotional and physical impact his actions had on his former girlfriend. Petitioner stressed that he is extremely remorseful for his behavior. Petitioner urged that he takes full responsibility for his crime.

19. Petitioner further testified that he has fully explained his criminal background on numerous occasions, including to his wife, at least four mental health counselors, the Florida Board of Medicine, the Missouri Medical Board, the Nevada Medical Board, numerous private insurance companies, the American Board of Radiology, as well as his partners at his radiologic clinic. Petitioner insisted that he has always been candid and honest with AHCA when describing the incident.

20. No evidence indicates that Petitioner has been arrested, charged, convicted, or otherwise involved in any criminal activity since 2007.

21. At the final hearing, Petitioner offered the testimony of several individuals to support his Request for Exemption. Petitioner first called Brent Price, M.D., with whom Petitioner practices at Price, Hoffman and Stone in St. Petersburg. Dr. Price also specializes in radiology. Dr. Price hired Petitioner at their radiology clinic in 2007.

22. Dr. Price testified that Petitioner is an intelligent and skilled doctor. He has never seen Petitioner act unprofessionally or endanger a patient in the 12 years they have worked together. On the contrary, Dr. Price described Petitioner's interactions with patients as "impeccable."

23. Dr. Price relayed that Petitioner personally informed him of his criminal history shortly after Petitioner started

working at their clinic. Dr. Price stated that he could have fired Petitioner at that moment (or, at any time thereafter), but he believes in second chances. Therefore, he decided to provide Petitioner a path to partnership. Dr. Price maintained that he has never seen Petitioner not be remorseful for his past criminal conduct.

24. Dr. Price also articulated that Petitioner's inability to bill Medicaid for his services places a significant burden on their practice. Currently, their clinic must schedule Medicaid recipients in a manner that allows them to see a doctor who can charge for his or her treatment. This process can delay medical care for the patient.

25. Petitioner presented the testimony of Dr. Gregory Carney, a fellow radiologist, as well as a close personal friend. Dr. Carney has known Petitioner for about 14 years. Dr. Carney supervised Petitioner during his fellowship at the University Diagnostic Institute through the University of South Florida.

26. Dr. Carney described Petitioner as an "excellent," "even-keeled," "insightful," and "very competent" doctor. He further relayed that he has watched Petitioner interact with many, many patients. He is not aware of anyone who was ever in danger in Petitioner's care. On the contrary, Dr. Carney asserted that Petitioner is extremely good with patients and adept at making them feel at ease.

27. Cheryl Wieder testified in support of Petitioner. Ms. Wieder is a radiologic technologist who has worked for Petitioner's radiology clinic for 32 years. She first met Petitioner when he joined the clinic, 12 years ago. Petitioner is her supervisor. Ms. Wieder estimated that she and Petitioner have treated approximately 3,000 patients together.

28. Regarding Petitioner's character and demeanor, Ms. Wider expressed that Petitioner is "amazing" with patients. She described him as "calming," "reassuring," and "very caring." She has never seen Petitioner angry or act unprofessionally at the clinic. On the contrary, Ms. Wider voiced that Petitioner's compassion and empathy towards his patients has helped numerous women navigate their fight against breast cancer. Ms. Wieder declared that Petitioner is the best radiologist in their community.

29. Ms. Wieder learned of Petitioner's criminal incident from Dr. Price shortly after he started with Price, Hoffman and Stone. However, she insisted that she has never seen any patient placed at risk in Petitioner's care. Ms. Wieder further stated that whenever Petitioner meets with a patient, without exception, he has a technologist present in the room with him.

30. Finally, Ms. Wieder disclosed that Petitioner personally diagnosed and treated her for breast cancer. She proclaimed that Petitioner saved her life.

31. Finally, Petitioner's wife, Lina Goodrum, testified on behalf of her husband. Ms. Goodrum stated that she met Petitioner in 2009, and they have been happily married since 2012. They have two children.

32. Ms. Goodrum expressed that Petitioner fully explained his past to her. He never hid the details of his crime from her, and he is very remorseful for his actions. Ms. Goodman further conveyed that she has never felt threatened by him.

33. Ms. Goodrum urged that her husband is a kind, patient, and good father. She believes that he has learned from his mistakes. Ms. Goodrum also relayed that Petitioner is involved in a strong peer group.

34. At the final hearing, AHCA presented several individuals who were involved in its review of Petitioner's application to explain AHCA's procedures for background screenings and requests for exemptions for enrollment in the Medicaid program. AHCA first called Vanessa Risch who currently serves as AHCA's Operations and Management Consultant Manager. As part of her duties, Ms. Risch supervises AHCA's background screening unit. Her unit reviews background screenings for all persons seeking eligibility to become Medicaid providers. The background screening unit handles approximately 150 files at any one time, per month.

35. Ms. Risch initially relayed that the Secretary of AHCA, as its agency head, is the sole approval authority for all requests for exemption submitted to AHCA. (Justin Senior was AHCA Secretary at the time Petitioner submitted his request for exemption.) However, before the Secretary grants or denies a request for exemption, Ms. Risch's section reviews and gathers information on each application.

36. Ms. Risch explained that when a background screening reveals that an applicant has a "disqualifying offense" under section 435.04, AHCA's first step is to issue a disqualification letter notifying the applicant that he or she is not eligible for Medicaid provider enrollment. The letter also informs the applicant of their right to request an exemption from the disqualifying offense. Regarding Petitioner, AHCA sent him a disqualifying letter in or around October 2017.

37. Thereafter, AHCA offers to conduct a telephonic hearing during which the applicant has the opportunity to explain the facts and circumstances surrounding the disqualifying offense. In this matter, at Petitioner's request, AHCA conducted a teleconference on June 12, 2018. Ms. Risch led the discussion using a standard set of questions. She was joined by Shanita Council, a Health Care Services and Facilities Consultant for AHCA, as well as Antonia Lozada, an AHCA attorney. Petitioner's legal counsel participated with Petitioner over the phone.

38. Although Ms. Risch did not offer a recommendation to Secretary Senior regarding Petitioner's application, at the final hearing she disclosed that, after speaking with Petitioner during the teleconference, she believed that he was remorseful for his past criminal conduct.

39. Shanita Council testified regarding her role in AHCA's review of Petitioner's request for exemption. Ms. Council was the exemption analyst AHCA assigned to process Petitioner's application.

40. Ms. Council explained that Petitioner's request for exemption was initially received through the AHCA clearinghouse, and assigned for processing. After she received Petitioner's application, she reviewed it to ensure that his documentation was complete. Thereafter, because Petitioner's crime was considered a "serious offense," she personally set up the teleconference with Petitioner and his legal counsel.

41. After the teleconference, Ms. Council completed an Exemption Decision Summary. Ms. Council described this document as a summary of the application information, which could later be reviewed by the AHCA Secretary. Thereafter, she forwarded Petitioner's entire exemption case file, through Samantha Heyn, to Secretary Senior for final determination. Ms. Council expressed that she made no recommendation on the Exemption

Decision Summary regarding whether Petitioner's application should be granted or denied.

42. As with Ms. Risch, following the teleconference, Ms. Council did not have the impression that Petitioner was not remorseful for his past actions, or that he was not honest or forthcoming during the teleconference.

43. Samantha Heyn, AHCA's Senior Management Analyst Supervisor, "staffed" Petitioner's request for exemption application with Secretary Senior. Ms. Heyn explained that Petitioner's case file included a number of documents for Secretary Senior to review. This information included Ms. Council's Exemption Decision Summary, worksheets from the teleconference, as well as written notes from the background screening staff.

44. Ms. Heyn, in line with Ms. Risch and Ms. Council, was careful to explain that AHCA's background screening staff does not make any recommendations whether to approve or deny an application. The Secretary is the sole decision-maker regarding whether a request for exemption is granted.

45. Ms. Heyn met with Secretary Senior weekly to review pending exemption requests. Each meeting was scheduled to last an hour during which the Secretary would review approximately 30 to 35 applications on average.

46. Ms. Heyn took Petitioner's request for exemption to Secretary Senior in June 2018. During their meeting, Ms. Heyn recalled that Secretary Senior reviewed the Exemption Decision Summary and asked her several questions about Petitioner's application. Ms. Heyn also relayed that, although the teleconference was recorded, Secretary Senior did not listen to the audio recording. Thereafter, Secretary Senior informed Ms. Heyn that he was denying Petitioner's request. Secretary Senior did not explain the basis for his decision. He commented, however, that Petitioner could reapply with the next AHCA Secretary.

47. Justin Senior was Secretary of AHCA in June 2018. (He departed AHCA in January 2019.) As Secretary, he made the decision to deny Petitioner's application for exemption from disqualification.

48. At the final hearing, Mr. Senior testified that, to the best of his recollection, he denied Petitioner's exemption request based on "a combination of factors." These factors included the lack of time that had elapsed between the offense and the date of review (approximately ten years). Mr. Senior was also alarmed at the seriousness of Petitioner's crime. Mr. Senior expressed that the fact that Petitioner "kidnapped a woman and bound her to a bed, [had] taken her clothes off and

held her for an . . . undetermined period of time" was a significant factor in his consideration.

49. Mr. Senior further stated that Petitioner included several remarks on his application which indicated to him that Petitioner did not regard "his offense as particularly serious." Mr. Senior based this conclusion on Petitioner's comments that he did not "serve any jail time" and paid a "nominal" fine, as well as a psychological evaluation wherein Petitioner described his crime as "a mild degree of physical assault that he shouted at her for an hour." Pet. Ex. 23 and 25. To Mr. Senior, Petitioner seemed to be making light of the crime. Neither did Petitioner appear adequately remorseful based on his written application.

50. In describing his standard practice, Mr. Senior explained that he had no set criteria for approving or denying a request for exemption. However, the two most noteworthy factors he considered were the seriousness of the offense and the time that had passed since the offense. Mr. Senior added that he considered himself fairly lenient in granting exemption requests. He rarely denied an application.

51. In Petitioner's case, however, the circumstances surrounding Petitioner's particularly "memorable" crime cast serious doubts on his rehabilitation. Consequently, after reviewing Petitioner's explanation, as well as the information included in the application, Mr. Senior determined that

Petitioner had failed to present clear and convincing evidence of rehabilitation.

52. After denying Petitioner's request for exemption, Mr. Senior returned Petitioner's application to Ms. Heyn for processing. On June 15, 2018, AHCA issued a letter notifying Petitioner that it denied his Request for Exemption.

53. Upon careful consideration of the evidence presented at the final hearing, the undersigned finds that Petitioner demonstrated, by clear and convincing evidence, that he is rehabilitated from his disqualifying offense. The credible and earnest testimony from Petitioner, Dr. Price, Dr. Carney, Ms. Wieder, and Ms. Goodrum unquestionably establishes that Petitioner is now a responsible person who is rehabilitated from his 2007 criminal offense. Further, Petitioner has provided radiologic services to his community for over 12 years (ten of those years as a Medicaid provider) without any evidence of abuse or unprofessionalism. Petitioner clearly proved that he will not present a danger to any Medicaid recipients he treats.

54. Further, as more fully addressed below, the undersigned concludes that if AHCA were to deny Petitioner's Request for Exemption on this record, and refuse to allow Petitioner to reenroll as a Medicaid provider, such denial would constitute an abuse of discretion. Therefore, Petitioner has met his burden of

demonstrating that AHCA should grant his Request for Exemption from Disqualification under section 435.07.

CONCLUSIONS OF LAW

55. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 435.07(3)(c), Florida Statutes.

56. Petitioner seeks to reenroll as a Medicaid provider in the State of Florida. To qualify for this certification, Petitioner must undergo the background screening process as provided in chapter 435. See §§ 409.907(8)(b), 408.809(1)(a), and 435.04(4), Fla. Stat.

57. Section 409.907, Florida Statutes, states, in pertinent part:

Medicaid provider agreements. — [AHCA] may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency

* * *

(8) Each provider . . . seeking to participate in the Medicaid program must submit a complete set of his or her fingerprints to [AHCA] for the purpose of conducting a criminal history record check.

* * *

(b) Background screening shall be conducted in accordance with chapter 435 and s. 408.809.

58. Section 408.809, Florida Statutes, states, in pertinent part:

(1) Level 2 background screening pursuant to chapter 435 must be conducted through [AHCA] on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:

(a) The licensee, if an individual.

59. Section 435.04 establishes the Level 2 screening standards and states, in pertinent part:

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

* * *

(m) Section 787.02, relating to false imprisonment.

60. Thereafter, section 409.907 instructs that:

(9) Upon receipt of a completed, signed, and dated application, and completion of any necessary background investigation and criminal history record check, [AHCA] must:

(a) Enroll the applicant as a Medicaid provider upon approval of the provider application . . . ; or

* * *

(b) Deny the application if [AHCA] finds that it is in the best interest of the Medicaid program to do so.

61. Petitioner's criminal history investigation revealed his guilty plea in 2007 to the offense of false imprisonment (a felony) in violation of section 787.02, Florida Statutes (2007). Petitioner's crime is a "disqualifying offense" under section 435.04(2)(m). As a result, AHCA disqualified Petitioner from participating in the Medicaid program per its authority in section 409.907(9)(b).^{5/}

62. AHCA, however, may grant an exemption from disqualification for individuals who are otherwise disqualified by past criminal offenses as provided in section 435.07. See also Fla. Admin. Code R. 59A-35.090(4). Section 435.07 states, in pertinent part:

Exemptions from disqualification. — Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1)(a) The head of the appropriate agency may grant to any employee otherwise disqualified from employment 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;

* * *

(3) (a) In order for the head of an agency to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth clear and convincing evidence of rehabilitation, 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 employment or continued employment is allowed.

* * *

(c) The decision of the head of an agency regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the administrative law judge is whether the agency's intended action is an abuse of discretion.

63. In reviewing a request for an exemption from disqualification, the ALJ is charged with making the factual determination whether, based on the evidence adduced in a de novo hearing conducted pursuant to chapter 120, Petitioner has shown rehabilitation by clear and convincing evidence. See § 435.07(3) (a) and (c), Fla. Stat.

64. Clear and convincing evidence is a heightened standard that requires more proof than a mere preponderance of the evidence. Clear and convincing evidence demands that the evidence "must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts at 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).

65. The undersigned finds that Petitioner met his burden of proving, by clear and convincing evidence, that he is rehabilitated from his 2007 disqualifying offense. Initially, at the final hearing, Petitioner credibly attested that he fully acknowledges and understands the seriousness of his crime. Petitioner earnestly regrets his actions and displayed genuine remorse.

66. Further, Petitioner compellingly testified that he has worked extremely hard to address the unacceptable behavior that resulted in his criminal offense. Towards this end, Petitioner underwent extensive psychological counseling over the five years following his 2007 crime. He successfully completed all the

terms of probation imposed in his criminal case, as well as the conditions levied by the Florida Board of Medicine. In addition to participating in weekly counseling sessions, Petitioner voluntarily pursued continuing education courses relating to domestic violence and anger management. He also took part in a domestic violence intervention course. At the final hearing, Petitioner convincingly represented that he has learned how to handle stressful situations with positive coping skills.

67. Finally, since 2007, Petitioner has conducted an active and successful radiologic practice in Florida treating thousands of patients in his community. Testimony at the final hearing established that Petitioner is considered a highly competent, caring, and well-respected physician. No evidence was presented indicating that Petitioner presents a danger or threat to those he treats. On the contrary, the evidence in the record demonstrates that persons in his local community and elsewhere have benefited, and will continue to benefit, from Petitioner's radiologic services. Therefore, based on the evidence adduced at the final hearing, Petitioner proved, by clear and convincing evidence, that he is rehabilitated from his disqualifying offense.

68. Because Petitioner met his burden of proving that he is rehabilitated from his past criminal offense, the next determination is whether the agency head's intended action to

deny Petitioner's Request for Exemption is an abuse of discretion. § 435.07(3)(c), Fla. Stat.; see also J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127, 1132 (Fla. 1st DCA 2013).

69. An agency abuses its discretion "when the . . . 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." Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980); see also J.D. v. Dep't of Child. & Fams., 114 So. 3d at 1130 (stating that under the abuse of discretion standard, "[i]f reasonable men could differ as to the propriety of the action taken by the [lower tribunal], then the action is not unreasonable and there can be no finding of an abuse of discretion"). Accordingly, if reasonable persons could differ as to the appropriateness of AHCA's decision to deny Petitioner's Request for Exemption, AHCA's decision is not unreasonable and, thus, not an abuse of discretion.

70. In determining the ultimate legal issue of whether the agency head's intended action is an "abuse of discretion," the ALJ is to evaluate that question based on the facts determined from the evidence presented at the de novo hearing. However, even if the ALJ determines that the agency head's proposed action constitutes an abuse of discretion, the agency is not bound by the ALJ's determination, although the agency's review is circumscribed by the standards in section 120.57(1)(1). J.D. v.

Dep't of Child. & Fams., 114 So. 3d at 1132, 1133. Further, the agency head "must articulate the rationale for doing so in order to facilitate judicial review." J.D., 114 So. 3d at 1131; see also A.P. v. Dep't of Child. & Fams., 230 So. 3d 3, 6 (Fla. 4th DCA 2017).

71. The undersigned concludes that AHCA's intended action to deny Petitioner's Request for Exemption is an abuse of discretion on this record. Based on the competent substantial evidence presented at the final hearing, denying Petitioner the opportunity to reenroll in the Medicaid program is not reasonable.

72. The first of two primary bases for this conclusion is the fact that when (Secretary) Senior considered Petitioner's application in June 2018, he did not have access to Petitioner's live testimony. (Mr. Senior did not take advantage of the option to listen to the audiotape of Petitioner's teleconference.) Consequently, when Mr. Senior formulated his decision, he did not have the benefit of hearing Petitioner's compelling and heartfelt personal testimony. Neither did Mr. Senior have the opportunity to study Petitioner's composure and demeanor when describing his criminal behavior, the shame he feels at his actions, and his commitment to becoming a better person. In addition, Mr. Senior did not observe the mitigating, sworn testimony from Petitioner's four supporting witnesses.^{6/}

73. Based on the compelling and credible testimony received at the final hearing, the undersigned finds that any hesitation by the AHCA Secretary to grant Petitioner's exemption due to a perceived lack of candor or remorse in the written application is unwarranted and unreasonable.

74. Secondly, after Petitioner's criminal act in 2007, he participated in the Medicaid program for over ten years (2008-2017). During this time, he provided radiology services to Medicaid recipients. At the final hearing, however, AHCA did not present any evidence that (Secretary) Senior, or any AHCA analysts, considered Petitioner's extended history as a Medicaid provider in determining whether Petitioner should be allowed to reenroll in the Medicaid program.

75. Further, AHCA did not introduce any evidence at the final hearing remotely suggesting that Petitioner posed a risk or threat to the Medicaid recipients he treated from 2008 through 2017. On the contrary, Petitioner has practiced professionally and propitiously for 12 years in a radiology group where he has been closely observed, on a day-to-day basis, by other physicians and technologists. The evidence in the record uniformly shows that Petitioner provided meaningful, quality, and skilled medical care to all of his patients.

76. Based on this record, it is not reasonable for AHCA to conclude that, at this date, Petitioner's criminal offense from

2007 now renders him unfit to participate in the Medicaid program. AHCA did not offer any justification, nor can the undersigned find one, why, after over ten years of effectively treating Medicaid recipients without incident, Petitioner would now endanger his patients if he was reimbursed for his services to Medicaid patients. Petitioner's resolute efforts to rehabilitate himself, together with the exemplary manner in which he has conducted his personal and professional life over the past 12 years, should alleviate any reasonable concerns AHCA maintained about Petitioner's criminal history.

77. Accordingly, with no evidence showing that Petitioner poses a risk to the Medicaid population AHCA is tasked to protect, it would be unreasonable for AHCA to maintain its position that Petitioner should not be allowed to reenroll as a Medicaid provider.

78. In light of his compelling and credible testimony, the undersigned finds that Petitioner met his burden of demonstrating, by clear and convincing evidence, that he is rehabilitated from his 2007 disqualifying offense. Further, upon careful consideration of the competent substantial evidence in the record, the undersigned concludes that no reasonable person would take the view that Petitioner should be denied an exemption from disqualification. Consequently, if AHCA were to deny

Petitioner's exemption request, that action would constitute an abuse of discretion.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Agency for Health Care Administration, enter a final order granting Petitioner's request for an exemption from disqualification from enrollment in the Medicaid program.

DONE AND ENTERED this 9th day of September, 2019, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of September, 2019.

ENDNOTES

^{1/} All statutory references are to the 2019 Florida Statutes, unless otherwise noted.

^{2/} Petitioner's Exhibit 23 is the video deposition of Dr. Brian Gadbois, which was offered in lieu of live testimony. Petitioner's Exhibit 25 is a transcript of that deposition.

^{3/} By requesting to extend the deadline for filing a post-hearing submission beyond ten days after the transcript was filed at DOAH, the 30-day time period for filing the recommended order was waived. See Fla. Admin. Code R. 28-106.216(2).

^{4/} Prior to this matter, Petitioner submitted an initial Request for Exemption from Disqualification to AHCA on October 27, 2017. AHCA denied this request on or about November 20, 2017.

^{5/} The undersigned notes that section 435.04(4) specifically addresses "screening applicability to participate in the Medicaid program." Section 435.04(4)(a) lists six categories of disqualifying offenses including "moral turpitude." In this matter, however, AHCA reviewed Petitioner's application for reenrollment as a Medicaid provider using the offenses found in section 435.04(2). Neither party addressed the appropriateness of using one subsection of section 435.04 over the other in considering an application to participate in the Medicaid program. Consequently, the undersigned did not review this issue in this administrative proceeding.

^{6/} It is well-settled that in a fact-driven case, "great weight is given to the findings of the administrative law judge, who has the opportunity to hear the witnesses' testimony and evaluate their credibility." Yerks v. Sch. Bd. of Broward Cty., 219 So. 3d 844, 848 (Fla. 4th DCA 2017); see also Walker v. Fla. Dep't of Bus. & Prof'l Reg., 705 So. 2d 652, 655 (Fla. 5th DCA 1998) (J. Dauksch, concurring specially) ("There is no substitute for seeing and hearing persons testify. There is also scant substitute for the experience hearing officers, trial judges and professional-board members have in ferreting out the truth in testimony."); and Ft. Myers Real Estate Holdings, LLC v. Dep't of Bus. & Prof'l Reg., 146 So. 3d 1175 (Fla. 1st DCA 2014) (J. Wetherell concurring) ("[I]t is solely the function of the ALJ to assess the persuasiveness of the evidence as a whole.").

Whether the competent substantial evidence establishes that AHCA's intended action is an "abuse of discretion" in this "de novo" administrative proceeding is based on and measured by all the evidence and testimony adduced during the final hearing. See § 120.57(1)(1), Fla. Stat. Therefore, the undersigned's analysis may include evidence and observations AHCA did not previously contemplate. Similarly, the undersigned may disregard unproven or unsupported evidence that AHCA considered in making its denial. See J.D. v. Dep't of Child. & Fams., 114 So. 3d at 1132-33; and Citrus Cent. v. Gardner, 569 So. 2d 936, 937 (Fla. 1st DCA 1990) ("a hearing de novo may encompass the presentation

of new and additional evidence, by which the matter might be determined as if it had not been previously addressed.”).

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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.