

Final Order No. DOH-20-1302 ^{FOF}-MQA
FILED DATE - 9.2.2020
Department of Health
By: Bridget Coates
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2017-13142
DOAH CASE NO.: 19-4144PL
LICENSE NO.: ME0088108

JUSTIN C. K. DAVIS, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 14, 2020, via a duly noticed video conference meeting, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to the Recommended Order, copies of which are attached hereto as Exhibits A, and B, respectively) in the above-styled cause. Written response to Petitioner's exceptions were filed. Petitioner was represented by Kristen Summers, Assistant General Counsel. Respondent was present and represented by Mark S. Thomas, Esquire.

RULING ON MOTION FOR CONTINUANCE

The Board reviewed the Respondent's request for a continuance in this matter and denied the continuance.

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DIVISION OF
ADMINISTRATIVE HEARINGS

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULING ON EXCEPTIONS

The Board reviewed and considered the Petitioner's Exceptions to the Recommended Order and ruled as follows:

1. Petitioner's Exception to Paragraph 60 of the Recommended Order is denied based upon the Board's agreement with the Administrative Law Judge's reasoning, analysis, and finding set forth in paragraph 60 of the Recommended Order.

2. Petitioner's Exception to Paragraph 62 of the Recommended Orders is granted for the reasons set forth by the Petitioner in its written exceptions and stated orally at the hearing.

3. Petitioner's Exception to Paragraphs 64-66 of the Recommended Orders is granted in part and denied in part. The Board grants the exception regarding the ALJ's reading of Section 458.331(1)(k), F.S. The Board declines to affirm the ALJ's finding that one must demonstrate an element of fraud when finding that a respondent committed any of the prohibited actions set forth Section 458.331(1)(k), F.S. While the Board acknowledges that some of the prohibitions set forth in this section contain an element of fraud, to read fraud into each prohibition is not a reasonable reading of the statute because

would be contrary to the clear language set forth therein and prior findings made by the Board. The Board, however, denies Petitioner's exception asking the Board to find that Respondent violated Section 458.331(1)(k), F.S. by engaging in a trick or scheme. The findings of fact set forth in the Recommended Order do not support such a finding.

4. Petitioner's Exception to Paragraphs 68 and 69 of the Recommended Order is granted for the reasons set forth by the Petitioner in its written exceptions and stated orally on the record. The Board, however, finds that the findings of fact in the Recommended Order do not support a finding that Respondent had a direct or indirect economic interest in the medical marijuana treatment center.

5. The Board did not rule on the Department's exception to the penalty because its rulings in the prior exceptions did not support a violation of any of the charges in the administrative complaint.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference, with the amendments outlined in the ruling on exceptions above.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

The Administrative Complaint filed in this matter is hereby DISMISSED.

DONE AND ORDERED this 1 day of September, 2020.

BOARD OF MEDICINE



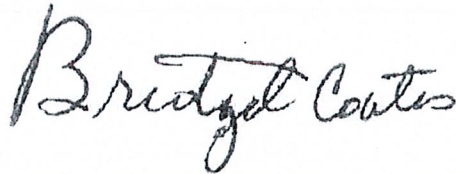
Claudia Kemp, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF 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 provided by U.S. Mail to JUSTIN C. K. DAVIS, M.D., 12515 SW 154th Street, Archer, Florida 32618; to Marks S. Thomas, Esquire, Thomas Health Law Group, P.A., Suite 101-B, 5200 SW 91st Terrace, Gainesville, Florida 32608; to G. W. Chisenhall, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; by email to Louise Wilhite-St. Laurent, Deputy General Counsel, Department of Health, at Allison.Dudley@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 2 day of September, 2020.



Deputy Agency Clerk