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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

DOAH CASE NO. 19-6585F

Petitioner,

RENDITION NO.: AHCA-21 - 078 -FOF-MDO

v.

ALLEN A. LENOIR, M.D.,

Respondent.

FINAL ORDER

This case was referred to the Division of Administrative Hearings (“DOAH”) where the assigned Administrative Law Judge (“ALJ”), Robert E. Meale, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding the amount of investigative, legal, and expert witness costs Petitioner is entitled to recover from Respondent pursuant to section 409.913(23), Florida Statutes (2017). The Recommended Order dated December 3, 2020, 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)(I), 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 his first exception, Respondent takes exception to the findings of fact in Paragraph 3 of the Recommended Order, arguing the ALJ erred in finding there were three Final Audit Reports (“FARs”) issued in the underlying overpayment case. The Agency disagrees. The ALJ’s finding in Paragraph 3 of the Recommended Order that there were 3 FARs issued in the underlying overpayment case is supported by the record of DOAH Case No. 17-0598MPI. Therefore, the Agency denies Respondent’s first exception.

In his second exception, Respondent takes exception to the findings of fact in Paragraph 4 of the Recommended Order, arguing the ALJ erred by finding Respondent owed the Agency over \$210,000. The finding of fact in Paragraph 4 of the Recommended Order is based on the final order in DOAH Case No. 17-0598MPI. See Page 7 of the November 13, 2019 final order in DOAH Case No. 17-0598MPI. Therefore, The Agency denies Respondent’s second exception.

In his third exception, Respondent takes exception to the findings of fact in Paragraph 9 of the Recommended Order, arguing Dr. Stovall's testimony in the underlying overpayment case was misleading and inadmissible under the Daubert test. Respondent is raising the same arguments the ALJ rejected in the underlying overpayment case, which has already been finalized. Additionally, the findings of fact in Paragraph 9 of the Recommended Order are based on competent, substantial record evidence. See Petitioner's Exhibit 2; and the transcript of the January 9, 2018, February 1, 2018, February 2, 2018, February 20, 2018, April 27, 2018, May 3, 2018, May 4, 2018, May 23, 2018, and May 24, 2018 hearings in DOAH Case No. 17-0598MPI. Therefore, Respondent's third exception is denied.

In his fourth exception, Respondent takes exception to the findings of the fact in Paragraph 10 of the Recommended Order, arguing Dr. Huffer's testimony was based on invalid assumptions. Respondent is raising the same arguments that were addressed and rejected by the ALJ in DOAH Case No. 17-0598MPI. Additionally, the findings of fact in Paragraph 10 of the Recommended Order are based on competent, substantial record evidence. See the transcript of the August 15, 2018 hearing in DOAH Case No. 17-0598MPI. Therefore, Respondent's fourth exception is denied.

In his fifth exception, Respondent takes exception to the conclusions of law in Paragraphs 17 and 18 of the Recommended Order, arguing the ALJ ignored facts in reaching his conclusions of law in these paragraphs. The conclusions of law in Paragraphs 17 and 18 of the Recommended Order deal with evidentiary issues that are outside the Agency's substantive jurisdiction. See Barfield v. Dep't of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2002). Therefore, the Agency must deny Respondent's fifth exception.

FINDINGS OF FACT

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

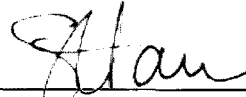
CONCLUSIONS OF LAW

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

IT IS THEREFORE ADJUDGED THAT:

Respondent is hereby required to repay the Agency \$45,101.42 in investigative, legal, and expert witness costs. Respondent shall make full payment of the overpayment and fine to the Agency for Health Care Administration within 30 days of the rendition date of this Final Order unless other payment arrangements have been agreed to by the parties. Respondent shall pay by check payable to the Agency for Health Care Administration and mailed to the Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Mail Stop 14, Tallahassee, Florida 32308.

DONE and ORDERED this 3rd day of February, 2021, in Tallahassee, Florida.



SHEVAUN L. HARRIS, ACTING 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 designated on this 4th day of February, 2021.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
(850) 412-3630

COPIES FURNISHED TO:

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