

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

Case No. 20-1580

vs.

RONALD M. MARINI, D.M.D., P.A.,

Respondent.

_____ /

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 (2019),¹ on May 29, 2020, by video teleconference at sites in Tallahassee and Altamonte Springs, Florida.

APPEARANCES

For Petitioner: Kimberly Murray, Esquire
 Agency for Health Care Administration
 2727 Mahan Drive, Mail Stop 3
 Tallahassee, Florida 32308

For Respondent: Ronald Marini, D.M.D, P.A., pro se
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¹ All statutory references are to Florida Statutes (2019), unless otherwise noted.

STATEMENT OF THE ISSUE

Whether the Agency for Health Care Administration is authorized to terminate the participation of Respondent, Ronald M. Marini, D.M.D., P.A., in the Medicaid program.

PRELIMINARY STATEMENT

On January 29, 2020, Petitioner, Agency for Health Care Administration (“AHCA”), served Respondent, Ronald M. Marini, D.M.D., P.A., with notice that it intended to terminate Respondent’s participation in the Medicaid program in accordance with section 409.913(30), Florida Statutes, and Florida Administrative Code Rule 59G-9.070(7)(s).

This termination action is based on Respondent’s failure to comply with an AHCA Final Order entered on October 27, 2017, which requires Respondent to reimburse certain Medicaid overpayments, as well as pay an administrative fine. *See Ag. for Health Care Admin. v. Ronald M. Marini, D.M.D., P.A.*, Case No. 16-5641MPI (Fla. DOAH Aug. 29, 2017; Fla. AHCA Oct. 27, 2017).

Dr. Ronald M. Marini, on behalf of Respondent, challenged AHCA’s intended action by timely filing an Amended Petition for Formal Hearing on March 2, 2020. On March 26, 2020, AHCA referred this matter to the Division of Administrative Hearings (“DOAH”) for assignment of an Administrative Law Judge (“ALJ”) to conduct a chapter 120 evidentiary hearing.

The final hearing was held on May 29, 2020. At the final hearing, AHCA called Shelby Sauls and Katrina Derico-Harris as witnesses. AHCA’s Exhibits 1 through 3 and 6 through 10 were admitted into evidence.

Dr. Marini testified on behalf of Respondent. Respondent's Exhibit 1 was admitted into evidence.

A one-volume Transcript of the final hearing was filed with DOAH on June 10, 2020. At the close of the hearing, the parties were advised of a ten-day timeframe following DOAH's receipt of the hearing transcript to file post-hearing submittals. Both parties timely submitted post-hearing submittals, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. AHCA is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act, otherwise known as the Medicaid program. *See* §§ 409.902(1) and 409.901(2) and (14), Fla. Stat. AHCA is responsible for administering and overseeing the Medicaid program in the State of Florida. *See* § 409.913, Fla. Stat.

2. AHCA's Bureau of Medicaid Program Integrity ("MPI") is the unit within AHCA that oversees the activities of Florida Medicaid providers and recipients. MPI ensures that providers abide by Medicaid laws, policies, and rules. MPI is responsible for conducting audits, investigations, and reviews to determine possible fraud, abuse, overpayment, or neglect in the Medicaid program. *See* §409.913, Fla. Stat.

3. Dr. Ronald M. Marini established his dental practice, Ronald M. Marini, DMD, PA (Respondent), in 2002. Dr. Marini's practice focuses primarily on the treatment of children who have dental coverage through Medicaid.

4. Respondent holds an active Medicaid provider agreement with AHCA, and is assigned Medicaid Provider No. 076031500. At all times relevant to this proceeding, Respondent was an enrolled Florida Medicaid provider authorized to provide dental care to Medicaid beneficiaries and receive reimbursement for covered services rendered to Medicaid recipients.

5. A Medicaid provider agreement is a voluntary contract between AHCA and the provider. As an enrolled Medicaid provider, Respondent is subject to the duly-enacted federal and state statutes, regulations, rules, policy guidelines, and Medicaid handbooks incorporated by reference into rule. *See* § 409.907, Fla. Stat.

6. For services rendered to Medicaid recipients, AHCA pays Medicaid providers under an honor system. AHCA is authorized to monitor the activities of Medicaid providers and to recover “overpayments.” *See* §§ 409.913 and 409.9131(5), Fla. Stat. An “overpayment” includes “any amount that is not authorized to be paid by the Medicaid program, whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.” § 409.913(1)(e), Fla. Stat. AHCA is also empowered to impose sanctions against offending Medicaid providers. § 409.9131, Fla. Stat.

7. The dispute between AHCA and Respondent originated in 2014 when AHCA’s MPI unit initiated a review of Respondent’s claims for Medicaid reimbursement for the period of March 1, 2010, through August 31, 2012. Following the MPI unit review, AHCA issued a Final Audit Report on September 19, 2014, informing Dr. Marini that Respondent was overpaid for claims not covered by Medicaid in the amount of \$590,008.15. In accordance with section 409.913 and rule 59G-9.070, AHCA notified Respondent that it intended to collect the full amount of the overpayment, plus an administrative fine. Respondent responded by requesting a formal administrative hearing to contest AHCA’s action.

8. Respondent’s overpayment proceeding was eventually heard in DOAH as *Agency for Health Care Administration v. Ronald M. Marini, D.M.D., P.A.*, Case No. 16-5641MPI (the “MPI Hearing”). The matter was assigned to Administrative Law Judge Linzie F. Bogan who conducted a formal administrative hearing on June 28 and 29, 2017.

9. During the MPI Hearing, AHCA presented the testimony (via deposition) of Mark Kuhl, D.M.D. AHCA requested Judge Bogan accept Dr. Kuhl as an expert in the area of rendering dental care and dental medical necessity with respect to Medicaid overpayment. AHCA also offered Dr. Kuhl as a “peer reviewer” pursuant to section 409.9131.

10. On August 29, 2017, Judge Bogan issued a Recommended Order in the MPI Hearing siding with AHCA. Judge Bogan specifically concluded:

As determined in the Findings of Facts, [AHCA] met its burden of proof and established for those claims identified herein that Respondent was paid for claims that failed to comply with the laws, rules, and regulations governing Medicaid providers.

Marini, Case No. 16-5641MPI, RO at 38.

Thereafter, Judge Bogan recommended that AHCA enter a final order that:

1. Revises the Final Audit Report consistent with the Findings of Fact and Conclusions of Law set forth herein;
2. Recalculates the total overpayment consistent with the Findings of Fact and Conclusions of Law set forth herein;
3. Requires Respondent to pay interest at the statutorily mandated rate on the recalculated overpayment; and
4. Requires Respondent to pay a fine in the amount of 20 percent of the recalculated overpayment.

Marini, Case No. 16-5641MPI, RO at 39.

11. In reaching his decision, Judge Bogan specifically noted that he accepted Dr. Kuhl as an expert “in the areas of rendering dental care and dental medical necessity with respect to Medicaid overpayment cases.” Judge Bogan further accepted Dr. Kuhl “as a peer reviewer pursuant to section 409.9131, Florida Statutes.” Judge Bogan also noted that Dr. Kuhl operates a

general dentistry practice where he treats pediatric patients. However, he is not board-certified in any specialty. *Marini*, Case No. 16-5641MPI, RO at 8.

12. AHCA issued its Final Order on October 27, 2017. In its Final Order, AHCA adopted Judge Bogan's findings of fact as set forth in his Recommended Order without modification. AHCA also adopted Judge Bogan's conclusions of law without modification. *Marini*, Case No. 16-5641MPI, FO at 16.

13. Per Judge Bogan's recommendations, AHCA calculated that Respondent must repay an overpayment of \$424,031.64. AHCA further imposed a fine on Respondent of \$84,806.33. *Marini*, Case No. 16-5641MPI, FO at 16.²

14. Dr. Marini appealed AHCA's Final Order to the Fifth District Court of Appeal on November 27, 2017. On April 16, 2019, the Fifth District affirmed the Final Order in a per curiam affirmed decision.³

15. On May 15, 2019, Dr. Marini appealed the Fifth District's decision to the Florida Supreme Court. On May 23, 2019, the Supreme Court dismissed Dr. Marini's appeal stating that the Court:

lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court.⁴

16. As of the date of the final hearing, Respondent has not paid to AHCA the full amount of either the overpayment or the fine ordered by the Final

² Pursuant to section 409.913(25)(c), Respondent was also responsible to pay interest on the overpayment amount of ten percent per year from the date of the Final Order. *Marini*, Case No. 16-5641MPI, FO at 16.

³ *Ronald M. Marini, D.M.D., P.A. v. Ag. for Health Care Admin.*, 269 So. 3d 558 (5th DCA 2019), review dismissed sub nom. *Ronald M. Marini, D.M.D., P.A. v. Ag. for Health Care Admin.*, No. SC19-843, 2019 WL 2238725 (Fla. May 23, 2019).

⁴ *Ronald M. Marini, D.M.D., P.A. v. Ag. for Health Care Admin.*, No. SC19-843, 2019 WL 2238725 (Fla. May 23, 2019).

Order (a total of \$508,837.97). Neither has Respondent entered into an agreement with AHCA to repay the overpayment.

17. Based on Respondent's failure to reimburse the overpayment or enter into a repayment agreement, on or about January 29, 2020, AHCA initiated this action to terminate Respondent's participation as a provider in the Medicaid program. AHCA pursues this action based on section 409.913(30), which directs that AHCA:

[S]hall terminate a provider's participation in the Medicaid program if the provider fails to reimburse an overpayment or pay an agency-imposed fine that has been determined by final order, not subject to further appeal, within 30 days after the date of the final order, unless the provider and the agency have entered into a repayment agreement.

See also Fla. Admin. Code R. 59G-9.070(7)(s).

18. In support of its case, AHCA called Shelby Sauls, a Management Review Specialist for AHCA's MPI unit. As part of her responsibilities, Ms. Sauls supervises AHCA's issuance of suspension and termination notices for Medicaid provider agreements.

19. During the hearing, Ms. Sauls reviewed AHCA's case financial history notes recording all Respondent's Medicaid payment activity following the MPI Hearing in 2017. Ms. Sauls testified that Respondent still owes over \$500,000 of the overpayment and fine ordered in AHCA's Final Order.

20. Ms. Sauls further relayed that AHCA and Dr. Marini have not entered into a repayment agreement to address the amount Respondent owes to AHCA per the 2017 Final Order.

21. Katrina Derico-Harris also testified for AHCA. Ms. Derico-Harris is an Accounting Services Supervisor II and supervises the Medicaid Accounts Receivable Unit section of AHCA's Bureau of Financial Services, which handles the majority of Medicaid overpayment collections.

22. Ms. Derico-Harris stated that, as of the date of the final hearing, AHCA has received only one payment from Respondent in the amount of \$24.49 on March 5, 2020. Ms. Derico-Harris declared that Respondent owes a current balance of \$468,512.54 to AHCA to satisfy the full amount of the overpayment.⁵

23. Ms. Derico-Harris also confirmed that Respondent and AHCA have not entered into an agreement to repay the overpayment.

24. Dr. Marini, in challenging AHCA's decision to terminate Respondent from the Medicaid program, vigorously asserts that the calculation of an overpayment of \$424,031.64 in AHCA's 2017 Final Order was "spoiled fruit" from the beginning. Dr. Marini's predominant argument is his strenuous objection to AHCA's presentation of, and the presiding ALJ's reliance upon, Dr. Kuhl's testimony at the MPI Hearing. Dr. Marini asserts that the \$424,031.64 overpayment amount was based on the testimony of an unqualified dental expert who used "an outrageous formula that turned a supposed overpayment of \$3,500 into \$590,000."

25. To support his position, Dr. Marini points to the fact that when Dr. Kuhl rendered his opinion, he was not a Medicaid Dental Provider, he never worked with a Medicaid Dental Provider, and he was not well versed in the use of the Florida Medicaid Dental Services Coverage and Limitations Handbook. Further, Dr. Marini contends that Dr. Kuhl should never have been considered an expert in Medicaid dentistry or children's dentistry due to the fact that his exposure to children's dentistry was limited to one to two children per week as compared to the 60-80 children seen per day in Dr. Marini's practice. Finally, Dr. Marini proclaims that Dr. Kuhl's "knowledge and use of dental materials was opinion bias and against the acceptable standards presented by the American Dental Association and the manufacturers of dental materials."

⁵ Ms. Derico-Harris added that this amount does not include interest from February 10, 2020, to present, for which Dr. Marini is also obligated to pay.

26. Consequently, Dr. Marini argues that Dr. Kuhl's testimony could not support the finding that Respondent was overpaid by Medicaid, and the ALJ should not have accepted Dr. Kuhl as an expert to testify regarding the validity of Medicaid claims for dental services. Therefore, Dr. Marini emphatically declares that the Final Order issued in 2017 was improperly decided and invalid.

27. In requesting an administrative hearing in the present matter, Dr. Marini hopes to have a "properly vetted and qualified dental expert" review his Medicaid claims. Dr. Marini maintains that Respondent owes nothing more to AHCA than \$24.49, which is based on two errors he found in Respondent's Medicaid claims during the audit period. Dr. Marini voluntarily paid the \$24.49 to AHCA on March 5, 2020, which he considers the full amount of the overpayment.

28. Dr. Marini admits that Respondent has not reimbursed AHCA for any amount over the \$24.49. Neither has Respondent entered into a repayment agreement with AHCA.

29. At the final hearing, Dr. Marini testified that Dr. Kuhl has never been challenged or properly vetted as an expert. However, contrary to Dr. Marini's assertions, the record in the MPI Hearing reveals that Respondent had a full and fair opportunity to attack Dr. Kuhl's competency to testify with respect to Medicaid overpayment claims. Indeed, Dr. Marini (through his legal counsel) frequently and purposefully questioned Dr. Kuhl's expertise, knowledge, and training.⁶ More to the point, as further discussed below, Respondent cannot

⁶ For example, before the final hearing, Respondent and AHCA participated in two depositions of Dr. Kuhl. Prior to Dr. Kuhl's last deposition, Respondent filed an Objection to Notice of Taking Deposition in Lieu of Live Testimony and Motion in Limine to Exclude Testimony of Mark Kuhl, D.M.D. Following the deposition, Respondent filed another Motion in Limine to Strike Testimony of [AHCA's] Expert Witness, Mark Kuhl, D.M.D., and Supporting Memorandum of Law. Finally, nine days after the final hearing, Respondent filed a Motion in Opposition to [AHCA's] Tendering of Mark A. Kuhl, D.M.D., as an Expert in Rendering Dental Care and Dental Medical Necessity With Respect to Medicaid Overpayment Cases. In its motions, Respondent repeatedly urged the ALJ to exclude Dr. Kuhl's testimony. Respondent argued that Dr. Kuhl did not specialize in pediatric dentistry, therefore Dr. Kuhl did not possess the knowledge, training, or expertise to testify

relitigate these issues. AHCA's Final Order is final and is now beyond appeal. Respondent's recourse to raise issues regarding AHCA's overpayment determination was by appeal, which he pursued and ultimately lost.

30. Based on the competent substantial evidence presented at the final hearing, the clear and convincing evidence in the record establishes that Respondent failed to reimburse AHCA for a Medicaid overpayment or pay a fine AHCA imposed by final order. The evidence further establishes that Respondent has not entered into an agreement with AHCA to repay the overpayment or the fine. Accordingly, AHCA met its burden of proving that section 409.913(30) authorizes the termination of Respondent's participation in the Medicaid program.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 409.913(31).

32. AHCA brings this action to terminate Respondent's participation in the Medicaid program alleging that Respondent failed to reimburse an

regarding the provision of dental services to Medicaid patients. Respondent further asserted that Dr. Kuhl did not qualify as a "peer" under section 409.9131(2)(c), Florida Statutes (2013). Therefore, AHCA's "use of Dr. Kuhl as an expert witness to testify in support of his peer review," violated Florida law.

Judge Bogan denied every Respondent motion regarding Dr. Kuhl and allowed AHCA to present Dr. Kuhl's deposition testimony at the final hearing. In addition, approximately two weeks following the final hearing, Judge Bogan issued a written ruling entitled Order Recognizing Mark A. Kuhl as an Expert and Peer Reviewer, which specifically decreed:

1. Dr. Kuhl is accepted as an expert in rendering dental care and dental medical necessity with respect to Medicaid overpayment cases. Accordingly, as to this issue, Respondent's objection to Petitioner's tender is **OVERRULED**.
2. Dr. Kuhl, as previously determined by the undersigned, is Respondent's peer within the meaning of section 409.9131. Accordingly, as to this issue, Respondent's objection is **OVERRULED**.

overpayment of \$424,031.64 for medical services not covered by Medicaid or pay an agency-imposed fine of \$84,806.33.

33. The Medicaid program is the federal-state medical assistance program authorized by Title XIX of the Federal Social Security Act, pursuant to which the State of Florida provides medical goods and services to eligible recipients. § 409.901(16), Fla. Stat.

34. Pursuant to section 409.902(1), AHCA shall make Medicaid payments only for services included in the Medicaid program. Payments shall only be made on behalf of eligible individuals and shall be made only to qualified providers in accordance with federal requirements for Title XIX of the Social Security Act and provisions of state law.

35. AHCA oversees the activities of Medicaid providers to ensure that fraudulent and abusive behavior occurs to the minimum extent possible. § 409.913, Fla. Stat. Towards this end, AHCA is authorized to recover overpayments that may have occurred for goods or services paid under the Medicaid program. §§ 409.913(11), (12)(a), (16)(j), and (31), Fla. Stat.

36. If an overpayment has been determined, section 409.913(30) states that AHCA:

[S]hall terminate a provider's participation in the Medicaid program if the provider fails to reimburse an overpayment or pay an agency-imposed fine that has been determined by final order, not subject to further appeal, within 30 days after the date of the final order, unless the provider and the agency have entered into a repayment agreement.

Rule 59G-9.070(7) similarly provides:

Sanctions. In addition to the recoupment of the overpayment, if any, the Agency will impose sanctions as outlined in this subsection. Except when the Secretary of the Agency determines not to impose a sanction, pursuant to section 409.913(16)(j), F.S., sanctions shall be imposed as follows:

* * *

(s) For non-payment or partial payment where monies are owed to the Agency, and failure to enter into a repayment agreement, in accordance with sections 409.913(25)(c) and 409.913(30), F.S., the Agency shall impose the sanction of termination.

37. This action to terminate Respondent's participation in the Medicaid program is penal in nature. Accordingly, AHCA bears the burden of proof to demonstrate the grounds for doing so by clear and convincing evidence. *Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996); *see also Fla. Dep't of Child. & Fams. v. Davis Fam. Day Care Home*, 160 So. 3d 854, 856 (Fla. 2015) ("an agency must prove its reasons for revoking a professional license by clear and convincing evidence because such a proceeding is penal in nature and implicates significant property rights.").

38. Clear and convincing evidence is a heightened standard that "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" Clear and convincing evidence is defined as an intermediate burden of proof that:

[R]equires 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 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.

S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872-73 (Fla. 2014)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

39. As stated above, the clear and convincing evidence in the record establishes that Respondent failed to reimburse AHCA for a Medicaid overpayment in the amount of \$424,031.64 or pay a fine of \$84,806.33. The

evidence further shows that Respondent has not entered into an agreement with AHCA to repay the overpayment or the fine. Accordingly, section 409.913(30) authorizes AHCA to terminate Respondent's participation in the Medicaid program.

40. Respondent's defense in this matter rests on his assertion that the overpayment resulting from the 2017 MPI Hearing was derived from flawed and unsupported evidence. However, a well-established premise of judicial and quasi-judicial (administrative) proceedings is that decisions become final and conclusive at the end of litigation. *See Felder v. State of Fla., Dep't of Mgmt. Servs., Div. of Ret.*, 993 So. 2d 1031, 1034-35 (Fla. 1st DCA 2008). The issue of Respondent's obligation to pay an overpayment, as well as the amount of the overpayment, the imposition of the administrative fine, and the credibility and persuasiveness given to the evidence supporting the overpayment (Dr. Kuhl's expert testimony) were all litigated and decided in *Marini*, DOAH Case No. 16-5641MPI. Respondent's recourse to assert errors in that decision was by appeal. At this time, Respondent has exhausted all available appeals. Accordingly, it is not proper for the undersigned to reconsider whether Respondent is obligated to reimburse AHCA for the overpayment. Neither is it appropriate to entertain Dr. Marini's continued complaint about the weight Judge Bogan gave to Dr. Kuhl's testimony.

41. Based on the principles of administrative finality, res judicata, and collateral estoppel, Respondent may not relitigate in this proceeding the issues that were previously fully addressed and determined in the MPI Hearing. "Administrative finality" is the policy that there must be a "terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein." *Fla. Power Corp. v. Garcia*, 780 So. 2d 34, 44 (Fla. 2001). The doctrine of administrative finality is based on the litigants' need "to have confidence in the authority of an administrative order." *Felder*, 993 So. 2d at 1035.

42. In the field of administrative law, administrative finality is the counterpart to res judicata. *Delray Med. Ctr. v. State Ag. for Health Care Admin.*, 5 So. 3d 26, 29 (Fla. 4th DCA 2009); *see also Pumphrey v. Dep't of Child. & Fams.*, 292 So. 3d 1264, 1266 (Fla. 1st DCA 2020) (“The doctrine of administrative finality is based on principles similar to those supporting res judicata and collateral estoppel.”). Under the doctrine of res judicata, a final judgment or order bars a subsequent suit between the same parties based on the same issues and cause of action. *Felder*, 993 So. 2d at 1034. Res judicata applies both to issues actually raised and determined in the first proceeding, as well as issues that could have been raised and determined in that proceeding. *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So. 2d 1216, 1235 (Fla. 2006).

43. Similarly, the doctrine of collateral estoppel bars a party from litigating in a second action issues that were adjudicated in prior litigation between the same parties or their privies. The doctrine of collateral estoppel is applicable to administrative orders and decisions. *Cook v. State*, 921 So. 2d 631, 634 (Fla. 2d DCA 2005) (The doctrine of collateral estoppel “bars relitigation of the same issues between the same parties in connection with a different case of action... . The doctrine ... is ‘applicable to administrative proceedings.’” Citing *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1141 n. 4 (Fla. 2d DCA 2001). Collateral estoppel bars subsequent causes of action when five factors are met: (1) an identical issue must have been presented in the prior proceeding; (2) the issue must have been a critical and necessary part of the prior determination; (3) there must have been a full and fair opportunity to litigate that issue; (4) the parties in the two proceedings must be identical; and (5) the issue [] must have been actually litigated.” *Pumphrey*, 292 So. 3d at 1266, citing *Felder*, 993 So. 2d at 1034–35.

44. The essential elements of administrative finality, res judicata, and collateral estoppel are all found in this proceeding. AHCA and Respondent are the exact same parties in the 2017 MPI Hearing and the present matter.

During the first administrative hearing, the parties presented identical facts and issues regarding whether Respondent was overpaid for Medicaid claims for the period from March 1, 2010, through August 31, 2012. Dr. Marini had a fair and full opportunity to litigate AHCA's allegations. Finally, the credibility and persuasiveness of Dr. Kuhl's (expert) testimony was integral and necessary to the ALJ's finding that Respondent received an overpayment from the Medicaid program.

45. Consequently, administrative finality precludes Respondent from relitigating in this present matter issues that were fully adjudicated in the MPI Hearing. The findings of fact and conclusions of law set forth in Judge Bogan's Recommended Order, and adopted in AHCA's Final Order, are conclusive and dispositive as to every challenge Dr. Marini raises regarding the alleged overpayments, including AHCA and Judge Bogan's reliance on Dr. Kuhl's expert testimony. *See Delray Med. Ctr.*, 5 So. 3d at 29.⁷ The undersigned will not reexamine claims that Respondent presented (or could have presented) during the MPI Hearing, including AHCA's specific determination in its Final Order that Respondent is obligated to reimburse AHCA for an overpayment of \$424,031.64 and must pay a fine of \$84,806.33.

46. Accordingly, the sole issue for consideration in this proceeding is whether AHCA is authorized to terminate Respondent from the Medicaid program. Towards this end, section 409.913(30) directs that AHCA "shall" terminate Respondent's participation in the Medicaid program if it has failed to reimburse an overpayment or pay an agency-imposed fine that has been determined by final order (not subject to further appeal), unless he has entered into a repayment agreement with AHCA.

⁷ Florida courts "do not apply the doctrine of administrative finality when there has been a significant change in circumstances or there is a demonstrated public interest." *Pumphrey*, 292 So. 3d at 1267. In this matter, however, Respondent did not introduce facts showing a significant change of circumstances regarding his overpayment during the audit period or demonstrate a public need to have the matter reheard.

47. The clear and convincing evidence adduced at the final hearing establishes the following:

a. By Final Order in *Marini*, Case No. 16-5641MPI (AHCA Oct. 27, 2017), Respondent owes AHCA \$424,031.64 for overpayments from Medicaid for the period of March 1, 2010, through August 31, 2012.

b. Respondent has failed to reimburse AHCA for the overpayment (other than \$24.49).

c. Also by Final Order, AHCA imposed a fine on Respondent in the amount of \$84,806.33.

d. Respondent has not paid AHCA this fine.

e. The Final Order in *Marini* is not subject to further appeal.

f. Respondent and AHCA have not entered into an agreement to repay the overpayment.

48. Based on the record in this matter, the fact that Respondent owes an overpayment and fine to AHCA, as well as the credibility and reliability of the underlying evidence supporting it, was conclusively and, with “finality,” established in *Marini*, Case No. 16-5641MPI. Therefore, Respondent may not continue to contest the money Respondent owes to AHCA in a subsequent administrative or judicial forum. Accordingly, section 409.913(30) mandates that AHCA terminate Respondent’s participation in the Medicaid program.

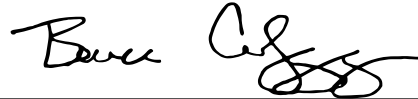
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that AHCA issue a final order terminating Respondent’s participation in the Medicaid program.

In its Proposed Recommended Order, AHCA requests that, as the prevailing party, it is entitled to recover all costs incurred in this matter pursuant to section 409.913(23)(a). To the extent that section 409.913(23)(a) applies, jurisdiction is retained to determine the amount of an award of costs, if any. Within 30 days after entry of a final order, either party may file a

request for a hearing to determine the amount of appropriate costs. Failure to request a hearing within 30 days after entry of the final order shall be deemed to indicate that the issue of costs has been resolved.

DONE AND ENTERED this 16th day of July, 2020, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 16th day of July, 2020.

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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.