DEPARTMENT OF HEALTH
BOARD OF RESPIRATORY CARE
GENERAL BUSINESS MEETING
GENERAL RULES REVIEW
OCTOBER 16, 2020
MEETING AGENDA

Telephone Conference/ Video Call at 8:30 a.m. EST
To join the meeting from your computer, tablet or smartphone
GoToMeeting Link

You can also dial in using your phone.
United States (Toll Free): 1(877)309-2073
Access Code: 779-560-757

Join from a video-conferencing room or system.
Dial in or type: 67.217.95.2 or inroomlink.goto.com
Meeting ID: 779 560 757
Or dial directly: 779560757@67.217.95.2 or 67.217.95.2##779560757

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Participants in this public meeting should be aware that these proceedings are recorded, and an audio file of the meeting will be posted to the Board's website.

8:30 a.m. ET
Call to Order – General Business Meeting

DISCIPLINARY PROCEEDINGS

SETTLEMENT AGREEMENTS

1. Amanda Silvas, RRT., 2018-23822 - (PCP, Hom and Sherrod)

2. Mary Abbott Kelley, CRT., 2018-25430 - (PCP, Garcia and Sherrod)

MOTION TO VACATE FINAL ORDERS

3. Juan Miguel Moreno, CRT., 2018-19311 – (PCP, Mitchell and Sherrod)

4. Shawna Cerda, CRT., 2017-16460 – (PCP, Broeker and Nunez)

PROSECUTOR'S REPORT

5. Ann Prescott, Prosecuting Attorney

    - PSU Inventory Report

ADMINISTRATIVE PROCEEDINGS

PERSONAL APPEARANCE PURSUANT TO §456.013(3)(c), F.S.

6. Melissa Ann Hanak, Registered Respiratory Therapist

7. Edward Scott Jr., Certified Respiratory Therapist

APPLICANT RATIFICATION LISTS

8. Certified Respiratory Therapists

9. Registered Respiratory Therapists

10. New Continuing Education Providers

11. Exemption from Employment Disqualification

RULE STATUS REPORT

12. Assistant Attorney General, John Fricke

    - 64B32-2.001, F.A.C., License by Endorsement

RULE DISCUSSION AND/OR DEVELOPMENT

13. JAPC Letter: Rules 64B32-5.002, F.A.C., 64B32-5.007, F.A.C., and 64B32-5.008, F.A.C

REPORTS, IF ANY

14. Board Member Reports, if any

    - Board Chair, Mr. Frey
    - Legislative Liaison, Ms. Hom
    - Budget Liaison, Mr. Frey
    - ULA Liaison, Mr. Mitchell
    - Enforcement Liaison, Dr. Friday-Stroud
    - Healthiest Weight Liaison, Ms. Hom
    - Continuing Education Liaison, Mr. Garcia

15. Executive Director, Allen Hall

    - Expenditures by Function Report
    - Cash Balance Report

16. Professional Association Update, if any

NEW BUSINESS

17. DOE v. Kentucky Bar Association

18. Discussion: 2021 Meetings, Combined Face-to-Face and GOTO Meetings

19. Financial Reports

OLD BUSINESS

20. Board of Respiratory Care Minutes

- July 10, 2020, General Business Meeting

OTHER BUSINESS AND INFORMATION

21. Antitrust Case

22. Staff Recognition

ADDENDUM ITEM

PERSONAL APPEARANCE PURSUANT TO §456.013(3)(c), F.S.

23. James C. Saunders, Registered Respiratory Therapist

September 11, 2020

Amanda Marie Silvas
583 Se 37th Terrace
Okeechobee, FL 34974

NOTICE OF HEARING FOR MOTION FOR BOARD'S FINAL ORDER BY SETTLEMENT AGREEMENT

DOH CASE # 2018-23822

Dear Silvas

The above referenced case has been placed on the agenda for final agency action for the Board of Respiratory Care. Disciplinary cases will be heard at approximately 8 30 a m via conference/video call, on the date listed below It is not possible to give you the exact time that you case will be reviewed by the Board

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a m. EST
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It is requested that you contact me in writing or via e-mail regardi g your intentio s to atte d the meeting You may write to the address listed below or fax your respo se to (850) 414-6860 If you have any othe pertinent additio al informati you may want reviewed prior to the meeting, please send it at least two weeks before the meeti g

Due to the onset of hurrica e seas n it may be necessary to ame d the time, locatio or eve cancel the meeti g above In order to notify you of any potential cha ge we request you keep this office informed of any changes to your work, home and cell phone numbers. If you have questions regarding changes due to a storm you may contact our office at the number below.

Thank you for your co ti ued cooperatio If you have any additio al questi ns, you may contact me at the address listed below, by telepho e at 850-901-6833 or e-mail barbara baker@flhealth gov

Sincerely,

Barbara Baker
Regulatory Specialist II

Type: 5701 / File:10635
Lic: RT10700

September 11, 2020

Amanda Marie Silvas
1937 NE 131 Lane
Okeechobee, FL 34972

NOTICE OF HEARING FOR MOTION FOR BOARD'S FINAL ORDER BY SETTLEMENT AGREEMENT

DOH CASE # 2018-23822

Dear Silvas

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Sincerely,

Barbara Baker
Regulatory Specialist II

Type 5701 / File:10635
Lic: RT10700

September 11, 2020

Highlands Regional Medical Center
Attn: Jamie Billingsley
3600 South Highlands Avenue
Sebring, FL 33970

Re Amanda Marie Silvas DOH Case No: 2018-23822

NOTICE OF HEARING FOR MOTION FOR BOARD'S FINAL ORDERBY SETTLEMENT AGREEMENT

This is to notify you that the Board of Respiratory Care will consider a Disciplinary Case in the case of Department of Health, Board of Respiratory Care vs Amanda Marie Silvas, RRT , at the meeting listed below You are being notified as the complainant in this case

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a.m. EST
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New to GoToMeeting? Get the app now and be ready whe your first meeting starts
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You are welcome to attend this public meeting but are not required This is not a request that you attend the meeting A Final Order detailing the outcome of the case will be available at this address https //appsmqa doh state fl us/finalordernet/ approximately one month following the hearing date

Due to the onset of hurrica e seas n it may be necessary to ame d the time, locatio or eve cancel the meeti g above In order to notify you of any pote tial cha ge we request you keep this office info med of any changes to your work, home and cell phone numbers If you have questio s regarding changes due to a storm you may contact ou offi e at the number bel w

Thank you for your continued cooperation. If you have any additional questions, you may contact me at the address listed below, by telephone at 850-901-6833 or e-mail barbara baker@flhealth gov

Sincerely,

Barbara Baker

Barbara Baker
Regulatory Specialist II

Type 5701 / File: 10635
Lic: RT10700

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

v. **CASE NO. 2018-23822**

AMANDA SILVAS, R.R.T.,

Respondent.
_____/

SETTLEMENT AGREEMENT

Amanda Silvas, R.R.T., referred to as "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Settlement Agreement and to the entry of a Final Order of the Board of Respiratory Care, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter. Petitioner is a state agency charged with regulating the practice of respiratory therapy pursuant to section 20.43, Florida Statutes, and chapters 456 and 468, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a registered respiratory therapist in the state of Florida, having been issued license number RT 10700.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of chapter 456, Florida Statutes, or chapter 468, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in

the Administrative Complaint and is entering into this Settlement Agreement for the purpose of settlement in these administrative proceedings only.

STIPULATED LAW

1. Respondent admits that she is subject to the provisions of chapters 456 and 468, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven true, would constitute violations of chapter 456, Florida Statutes, or chapter 468, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Appearance** - Respondent is required to appear before the Board at the meeting of the Board where this Settlement Agreement is considered.

2. **Reprimand** - The Board shall reprimand the license of Respondent.

3. **Fine and Costs** - The Board shall impose an administrative fine of **three-hundred dollars ($300.00)** and costs of investigation not to exceed **four thousand two hundred seventy-one dollars and ninety-five cents ($4,271.95)** to be paid by Respondent within four (4) years from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by check or money order. Put the case number on any check or money order so that the money may be credited to the proper case. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board. Send payment to the Department of Health, Compliance Management Unit, Bin C-76, Post Office Box 6320, Tallahassee, Florida 32314-6320,

Attention: Board of Respiratory Care Compliance Officer.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE AND COSTS IS HER LEGAL OBLIGATION AND RESPONSIBILITY, AND RESPONDENT AGREES TO CEASE PRACTICING RESPIRATORY CARE IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT.

4. **Continuing Education** – Respondent will enroll in and successfully complete four (4) hours of continuing education in laws and rules; four (4) hours in documentation and record-keeping; and two (2) hours in oxygen therapy. This shall be in addition to other normally required continuing education courses. Verification of course content and course completion must be submitted to the Board of Respiratory Care Compliance Officer within one (1) year from the date of filing of the Final Order accepting this Agreement. Correspondence will be made to: the Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Respiratory Care Compliance Officer.

5. **Probation** – Respondent's license shall be placed on probation for eighteen (18) months. The terms of Respondent's probation will be set by the Board at the meeting where this Settlement Agreement is considered and is, at minimum, subject to the following conditions:

> a. The Respondent must work in a setting under direct supervision and only as an employee of a health care facility or another respiratory care practitioner. Direct supervision requires a Respiratory Therapist to be working on the same unit or in the same facility as the Respondent and readily available to provide assistance and intervention.
>
> b. The Respondent shall submit written reports to the Compliance Officer at the Board of Respiratory Care office, which shall contain the Respondent's name, license number, and current address; the name, address, and phone number of each current employer, whether employed as a respiratory

therapist or not; and a statement by the Respondent describing her employment. This report shall be submitted to the Respiratory Care Compliance Officer every three (3) months in a manner as directed by the Respiratory Care Compliance Officer.

c. All current and future settings in which the Respondent practices respiratory care shall be promptly informed of the Respondent's probationary status. Within five (5) days of the receipt of the Final Order accepting this Settlement Agreement, the Respondent shall furnish a copy to her supervisor or supervisors, if there are multiple employers. The supervisor(s) must acknowledge this probation to the Respiratory Care Compliance Officer in writing on employer letterhead within ten (10) days. Should the Respondent change employers, she must supply a copy of the Final Order accepting this Settlement Agreement to her new respiratory care supervisor within five (5) days. The new employer shall acknowledge probation in writing on employer letterhead to the Respiratory Care Compliance Officer within ten (10) days. The Respondent shall be responsible for assuring that reports from respiratory care supervisors will be furnished to the Respiratory Care Compliance Officer every three (3) months. That report shall describe the Respondent's work assignment, workload, level of performance, and any problems that have occurred during that quarter. Any report indicating an unprofessional level of performance shall constitute a violation of probation.

d. The term of probation shall begin to run on the date that the Final Order is issued in this case. If the Respondent ceases to practice respiratory therapy, and/or ceases to practice in Florida, this probation shall be tolled until the Respondent returns to the active practice of respiratory care in Florida. Then the probationary period will resume. Unless the Final Order states otherwise, any fines imposed or continuing education required must be paid or completed within the time specified and are not tolled by this provision. Working in respiratory care without notification to the Board is a violation of the Final Order accepting this Settlement Agreement.

STANDARD PROVISIONS

1. **Appearance** - Respondent is required to appear before the Board at the meeting of the Board where this Settlement Agreement is considered, unless notified otherwise.

2. **No force or effect until final order** - It is expressly understood that this Settlement Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Settlement Agreement.

3. **Addresses** - Respondent must keep current residence on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said address.

4. **Future Conduct** - In the future, Respondent shall not violate chapter 456, 468, or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice of respiratory care. Prior to signing this Settlement Agreement, the Respondent shall read chapters 456, and 468, Florida Statutes, and the Rules of the Board at Chapter 64B32, Florida Administrative Code.

5. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Settlement Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to chapters 456 and 468, Florida Statutes.

6. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Settlement Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file

materials concerning Respondent prior to or in conjunction with consideration of the Settlement Agreement. Respondent agrees to support this Settlement Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Settlement Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

7. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Settlement Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

8. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Settlement Agreement, the parties hereby agree that, with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter under Florida Statutes, chapters 57, 120, 456, and 468, or on any other basis.

9. **Waiver of further procedural steps** - Upon the Board's adoption of this Settlement Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Agreement and the Final Order of the Board incorporating

said Settlement Agreement.

SIGNED this 30th day of July, 2020.

Amanda M. Silvas
AMANDA SILVAS, R.R.T.

STATE OF Florida
COUNTY OF Okeechobee
Before me personally appeared Amanda Marie Silvas whose identity is known to me by DL (type of identification), and who, under oath, acknowledges that their signature appears above. Sworn to or affirmed before me this 30th day of July, 2020.

Brenda Renee Box
Notary Public

Oct. 14, 2022
My Commission Expires

BRENDA RENEE BOX
Commission # GG 266656
Expires October 14, 2022
Bonded Thru Budget Notary Services

APPROVED this 4 day of August, 2020.

Scott A. Rivkees, M.D.
State Surgeon General

Ann L. Prescott
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No. 0092974
(850) 558-9886 Telephone
(850) 245-4662 Fax
Ann.Prescott@flhealth.gov

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

v. **CASE NO. 2018-23822**

AMANDA SILVAS, R.R.T.,

Respondent.

_____/

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Respiratory Care (hereinafter Board) against Amanda Silvas, R.R.T., and alleges:

1. Petitioner is the state department charged with regulating the practice of Respiratory Care pursuant to section 20.43, Florida Statutes; chapter 456, Florida Statutes; and chapter 468, Florida Statutes.

2. At all times material to this Complaint, Respondent was a registered respiratory therapist in the State of Florida, having been issued license number RT 10700.

Exhibit A

3. Respondent's address of record is 583 SE 37th Terrace, Okeechobee, Florida 34974.

4. Respondent may be located at 1937 NE 131st Lane, Okeechobee, Florida 34972.

5. At all times material to this Complaint, Respondent was employed as a respiratory therapist at Highlands Regional Medical Center (Highlands) located in Sebring, Florida.

6. On or about October 6-7, 2018, Respondent was assigned to care for patients in the intensive care unit (ICU) at Highlands during the overnight shift.

7. Patient M.L., a then-sixty-nine-year-old male, was a patient in the Highlands ICU during this shift.

8. The minimum standard of care for patient M.L. would include assessing the ventilated patient every four hours and documenting ventilator settings, patient vital signs and breath sounds, the need to suction and a description of sputum consistency; giving any ordered breathing treatments; and/or adjusting ventilator settings according to patient condition and physician orders.

9. On October 6, 2018, Respondent documented some of the ventilator settings for patient M.L. at approximately 23:29.

10. Respondent did not document all ventilator settings, patient vital signs, need for suctioning and/or sputum consistency, and/or any changes in patient condition or physician orders.

11. On October 7, 2018, Respondent documented some of the ventilator settings for patient M.L. at approximately 04:43.

12. Respondent did not document all ventilator settings, patient vital signs, need for suctioning and/or sputum consistency, and/or any changes in patient condition or physician orders.

13. Respondent was in the respiratory care unit, not the ICU, between about 21:50 and 05:13.

14. Respondent did not assess patient M.L. between about 21:50 and 05:13.

15. Respondent falsely documented assessing ventilator settings for patient M.L. at about 23:29 and/or 04:43.

16. Section 468.365(1)(f), Florida Statutes (2018), provides that unprofessional conduct, which includes, but is not limited to, any departure from, or failure to conform to, acceptable standards related to the delivery

of respiratory care services, as set forth by the board in rules adopted pursuant to this part, constitutes grounds for disciplinary action by the Board of Respiratory Care.

17. Rule 64B32-5.003(2), Florida Administrative Code defines acceptable standards as practicing respiratory care with the level of care, skill, and treatment which is recognized by a reasonably prudent respiratory therapist as being acceptable under similar conditions and circumstances.

18. Respondent engaged in unprofessional conduct in one or more of the following ways:

a. By failing to appropriately assess patient M.L.'s vital signs;

b. By failing to appropriately document patient M.L.'s vital signs;

c. By failing appropriately adjust patient M.L.'s ventilator settings, if needed;

d. By failing appropriately document patient M.L.'s ventilator settings;

e. By failing to assess the need for suctioning and/or sputum consistency;

f. By failing to document the need for suctioning and/or sputum consistency;

g. By failing to document any change in condition and/or physician orders;

h. By failing to asses patient M.L. between about 21:50 and 05:13; and/or

i. By falsely documenting assessing ventilator settings for patient M.L. at about 23:29 and/or 04:43.

19. Based on the foregoing, Respondent has violated section 468.365(1)(f).

WHEREFORE, the Petitioner respectfully requests that the Board of Respiratory Care enter an order imposing one or more of the following penalties: permanent revocation or suspension of license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, continuing education and/or any other relief that the Board deems appropriate.

[Signature page follows.]

SIGNED this _14th__ day of ___April___, 2020.

Scott A. Rivkees, M.D.
State Surgeon General

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Amanda Morales
DATE: 04/14/2020

/s/ Ann L. Prescott

Ann L Prescott
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Flo ida Bar #92974
Telephone: (850) 558-9886
Fax: (850) 245-4662
Ann.Prescott@flhealth.gov

PCP: 4/14/2020

PCP Members: Hom (chair) & Sherod

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

August 12, 2020

Amanda Silvas, R.R.T.
1937 NE 131st Lane
Okeechobee, FL 34972

Re: DOH vs. Amanda Silvas, R.R.T.
DOH Case Number: 2018-23822

Dear Ms. Silvas:

I am in receipt of the settlement agreement executed by you on July 30, 2020, concerning the above referenced case.

Our office is now making preparation for this settlement to be presented at the next meeting of the Florida Board of Respiratory Care, scheduled **October 16, 2020 at Hampton Inn Pensacola Airport – 2187 Airport Boulevard, Pensacola, Florida 32504**. You will receive official notification from the Florida Board of Respiratory Care of the date and time your case is set for hearing approximately two weeks prior to the meeting. Attendance is not required.

Thank for your attention and cooperation in this matter. Should you have any questions, please feel free to contact this office.

Sincerely,

Ann L. Prescott,
Assistant General Counsel

ALP/mmh

August 12, 2020

Amanda Silvas, R.R.T.
583 SE 37th Terrace
Okeechobee, FL 34974

Re: DOH vs. Amanda Silvas, R.R.T.
DOH Case Number: 2018-23822

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Thank for your attention and cooperation in this matter. Should you have any questions, please feel free to contact this office.

Sincerely,

Ann L. Prescott,
Assistant General Counsel

ALP/mmh

Search	Complaint/Case Numb[redacted]r: [redacted]	MAIN	HELP

[redacted]

[redacted]

[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]
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[redacted]		[redacted]

2nd Notification letter-December 7, 2018
1st Notification letter-October 22, 2018

CONFIDENTIAL TO:
AMANDA M. SILVAS, RRT
1937 NE 131st Lane
Okeechobee, Florida 34972

Case Number: 201823822

Dear AMANDA M. SILVAS:

We are currently investigating the enclosed document received by the Department of Health. This investigation was initiated after it was determined that you may have violated your practice act.

You are entitled to receive a copy of any patient record that resulted in the initiation of the investigation, pursuant to Section 456.073(1), Florida Statutes. If you would like a copy of the patient records, please complete the attached confidentiality agreement and return to the undersigned investigator.

Within **20 days** of receiving this letter, you may:
- submit a **written response** to the address below; **or**
- call our office at **239-344-0898** to schedule an **interview**.

Please provide a copy of your **curriculum vitae** and identify your **specialty** even if you choose not to submit a response. Include the above-referenced case number in any correspondence that you send.

Florida law requires that this case and all investigative information remain confidential until 10 days after the Probable Cause Panel has determined that a violation occurred or you give up the right to confidentiality. Therefore, the contents of the investigation cannot be disclosed to you or the general public. You may make a written request for a copy of the investigative file and it will be sent to you when the investigation is complete.

You are not required to answer any questions or give any statement, and you have the right to be represented by an attorney. It is not possible to estimate how long it will take to complete this investigation because the circumstances of each investigation differ.

The mission of the Department of Health is to protect, promote & improve the health of all people in Florida through intregrated state, county and community efforts. If you have any questions please call us at 239-344-0898

Sincerely,

Diane R. DiRocco

Diane R DiRocco
Medical Quality Assurance Investigator

//drd

Enclosure: Case Summary and Partial Initiating Documents with Confidentially Agreement.

October 22, 2018

CONFIDENTIAL TO:
AMANDA M. SILVAS, RRT
1937 NE 131st Lane
Okeechobee, Florida 34972

Case Number: 201823822

Dear AMANDA M. SILVAS:

We are currently investigating the enclosed document received by the Department of Health. This investigation was initiated after it was determined that you may have violated your practice act.

You are entitled to receive a copy of any patient record that resulted in the initiation of the investigation, pursuant to Section 456.073(1), Florida Statutes. If you would like a copy of the patient records, please complete the attached confidentiality agreement and return to the undersigned investigator.

Within **20 days** of receiving this letter, you may:
- submit a **written response** to the address below; **or**
- call our office at **239-344-0898** to schedule an **interview**.

Please provide a copy of your **curriculum vitae** and identify your **specialty** even if you choose not to submit a response. Include the above-referenced case number in any correspondence that you send.

Florida law requires that this case and all investigative information remain confidential until 10 days after the Probable Cause Panel has determined that a violation occurred or you give up the right to confidentiality. Therefore, the contents of the investigation cannot be disclosed to you or the general public. You may make a written request for a copy of the investigative file and it will be sent to you when the investigation is complete.

You are not required to answer any questions or give any statement, and you have the right to be represented by an attorney. It is not possible to estimate how long it will take to complete this investigation because the circumstances of each investigation differ.

The mission of the Department of Health is to protect, promote & improve the health of all people in Florida through intregrated state, county and community efforts. If you have any questions please call us at 239-344-0898

Sincerely,

Diane R. DiRocco

Diane R DiRocco
Medical Quality Assurance Investigator

//drd

Enclosure: Case Summary and Partial Initiating Documents with Confidentially Agreement.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Amanda Silvas
1937 NE 131st Lane
Okeechobee, Fl. 34972

9590 9402 1534 5362 5057 95

2. Article Number (Transfer from service label)

7014 2120 0001 7368 6086

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®

7014 2120 0001 7368 6086

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To
Amanda Silvas
Street & Apt. No., or PO Box No. 1937 NE 131st Lane
City, State, ZIP+4
Okeechobee Fl. 34972

PS Form 3800, July 2014 See Reverse for Instructions

October 23, 2018

CONFIDENTIAL
HIGHLANDS REGIONAL MEDICAL CENTER
3600 SOUTH HIGHLANDS AVENUE
SEBRING, FL 33870

Reference Number: 201823822
Subject: AMANDA MARIE SILVAS

Dear Sir or Madam:

Please be advised that the Investigative Services Unit is conducting an investigation on AMANDA MARIE SILVAS and I am the investigator assigned to your case.

Florida law requires that all information in a complaint remain confidential until 10 days after probable cause is found. Patient names and records are never released to the public.

The mission of the Department of Health is to protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts. If you have any questions, please call me at (239) 344-0898.

Sincerely,

Diane R. DiRocco

Diane Dirocco
Medical Quality Assurance Investigator

October 2, 2020

Melvi Lewis
1853 Jones Drive
Sebring, Fl rida 33870

Re Amanda Marie Silvas DOH Case No: 2018-23822

NOTICE OF HEARING FOR MOTION FOR BOARD'S FINAL ORDERBY SETTLEMENT AGREEMENT

This is to notify you that the Board of Respiratory Care will consider a Disciplinary Case in the case of Department of Health, Board of Respiratory Care vs Amanda Marie Silvas, RRT , at the meeting listed below *You are being notified as the patient in this case.*

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a.m. EST
To join the meeting from your computer, tablet or smartphone
GoToMeeting Link

You can also dial in using your phone
United States (Toll Free) 1(877)309-2073
Access Code: 779-560-757

Joi from a video- feren i g oom or system.
Dial in or type: 67 217 95.2 o inroomlink got m
Meeting ID 779 560 757
Or dial dire tly: 779560757@67 217 95 2 or 67 217 95.2##779560757

New to GoToMeeting? Get the app now and be ready when your first meeting starts:
https //global gotomeeting com/i stall/779560757

You are welcome to attend this public meeting, but you are not required. This is not a equest that you attend the meeting A Final Order detailing the outcome of the case will be available at this address: https //appsmqa doh state fl us/finalordernet/ approximately one month following the hearing date

Due to the onset of hurricane season it may be necessary to amend the time, location or even cancel the meeti g above In order to notify you of any potential cha ge we request you keep this office info med of any changes to your work, home and cell phone numbers. If you have questions regarding changes due to a storm you may contact our office at the number below.

Thank you for your continued cooperation If you have any additional questions, you may contact me at the address listed below, by telephone at 850-901-6833 o e-mail ba bara.baker@flhealth.gov.

Sincerely,

Barbara Baker

Barbara Baker
Regulatory Specialist II

Type 5701 / File: 10635
Lic: RT10700

September 11, 2020

Ms Mary Abbott Kelley
20480 Cr 137
Lake City, FL 32024

NOTICE OF HEARING FOR MOTION FOR BOARD'S FINAL ORDER BY SETTLEMENT AGREEMENT

DOH CASE # 2018-25430

Dear Ms Kelley

The above referenced case has been placed on the agenda for final agency action for the Board of Respiratory Ca e Disciplinary cases will be heard at approximately 8 30 a m via conference/video call, on the date listed below It is not possible to give you the exact time that you case will be reviewed by the Board

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a.m. EST
To j i the meeting from your computer, tablet o sma tphone
GoToMeeting Link

You can also dial in using your phone
United States (Toll Free): 1(877)309-2073
Access Code: 779-560-757

Join from a video- feren i g room or system.
Dial in or type 67.217 95.2 o inroomlink got m
Meeting ID 779 560 757
Or dial dire tly: 779560757@67 217 95 2 or 67 217.95.2##779560757

New to GoToMeeting? Get the app now and be ready whe your first meeti g sta ts
https://global gotomeeting m/i stall/779560757

It is requested that you contact me in writing or via e-mail regardi g your intentions to atte d the meeting You may write to the address listed below or fax your respo se to (850) 414-6860 If you have any othe pertinent additional informati you may want reviewed prior to the meeting, please send it at least two weeks before the meeti g

Due to the onset of hurricane season it may be necessary to amend the time, location or even cancel the meeti g above In order to notify you of any potential cha ge we request you keep this office informed of any changes to your work, home and cell phone numbers If you have questio s regarding changes due to a storm you may contact ou offi e at the number bel w

Thank you for your co ti ued cooperatio If you have any additio al questi ns, you may contact me at the address listed below, by telephone at 850-901-6833 or e-mail barbara baker@flhealth gov

Sincerely,

Barbara Baker
Regulatory Specialist II

Type: 5701 / File:10349
Lic: RT10440

September 14, 2020

Shands Lake Shore Reginal Medical Center
Attn: Keith McKernan
368 N.E Frankli Street
Lake City, FL 32055

Re Mary Abbott Kelley DOH Case No: 2018-25430

NOTICE OF HEARING FOR MOTION FOR BOARD'S FINAL ORDER BY SETTLEMENT AGREEMENT

This is to notify you that the Board of Respiratory Care will consider a Disciplinary Case in the case of Department of Health, Board of Respiratory Care vs Mary Abbott Kelley, CRT., at the meeting listed below You are being notified as the complainant in this case

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a.m. EST
To j i the meeting from your computer, tablet o smartpho e
GoToMeeting Link

You can also dial in using your phone.
United States (Toll Free): 1(877)309-2073
Access Code: 779-560-757

Joi from a video- feren i g oom or system
Dial in or type: 67.217.95 2 o inroomlink got m
Meeting ID 779 560 757
Or dial dire tly: 779560757@67 217 95 2 or 67 217.95 2##779560757

New to GoToMeeting? Get the app now and be ready whe your first meeting starts
https //global gotomeeting com/i stall/779560757

You are welcome to attend this public meeting but are not required This is not a request that you attend the meeting A Final Order detailing the outcome of the case will be available at this address https //appsmqa doh state fl us/finalordernet/ approximately one month following the hearing date

Due to the onset of hurrica e seas n it may be necessary to ame d the time, locatio or eve cancel the meeti g above In order to notify you of any pote tial cha ge we request you keep this office info med of any changes to your work, home and cell phone numbers If you have questio s regarding changes due to a storm you may contact ou offi e at the number bel w

Thank you for your continued cooperation. If you have any additional questions, you may contact me at the address listed below, by telephone at 850-901-6833 or e-mail barbara baker@flhealth gov

Sincerely,

Barbara Baker

Barbara Baker
Regulatory Specialist II

Type 5702 / File: 10349
Lic: TT10440

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO. 2018-25430**

MARY KELLEY, C.R.T.,

RESPONDENT.
_____/

SETTLEMENT AGREEMENT

Pursuant to section 120.57(4), Florida Statutes, the above-named parties hereby offer this Settlement Agreement (Agreement) to the Board of Respiratory Care (Board) as disposition of the Administrative Complaint, attached hereto as "Exhibit A," in lieu of any other administrative proceedings. The terms herein become effective only if and when a Final Order accepting this Agreement is issued by the Board and filed with the Department of Health Agency Clerk. In considering this Agreement, the Board may review all materials gathered during the investigation of this case. If this Agreement is rejected, it, and its presentation to the Board, shall not be used against either party.

STIPULATED FACTS

1. At all times material to this matter, Respondent was a **certified respiratory therapist (C.R.T.)** in the State of Florida holding license number **CRT 10440.**

2. The Department charged Respondent with an Administrative Complaint that was properly served upon Respondent with violations of chapters 456 and/or 468.

A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.

3. Respondent admits the factual allegations contained in the Administrative Complaint for the purposes of settlement in these proceedings only.

STIPULATED LAW

1. Respondent admits that she is subject to the provisions of chapters 456 and 468, and the jurisdiction of the Department and the Board.

2. Respondent admits that the stipulated facts, if proven true, constitute violations of chapter 456 and/or 468, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition Agreement is a fair, appropriate, and reasonable resolution of this pending matter, and is acceptable to Respondent.

STIPULATED DISPOSITION

1. **Appearance:** Respondent is required to appear before the Board at the meeting of the Board where the Settlement Agreement is considered.

2. **Reprimand:** The Board shall reprimand the license of the Respondent.

3. **Fine & Costs:** The Respondent shall pay an administrative fine in the amount of **one thousand dollars ($1,000.00)** and costs associated with the investigation and prosecution of this case within **(3 years)** from the date of entry of the Final Order. The current estimate of the Department's costs in this case is **two thousand two hundred forty-one dollars and eighty-three cents ($2,241.83)**.

Such costs exclude the cost of obtaining supervision or monitoring of the practice and the Board's administrative cost directly associated with Respondent's probation, if any. Payment shall be made to the Board of Respiratory Care and mailed to, DOH/HMQACS, Compliance Management Unit, Bin C76, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer. **Payment must be made by cashier's check or money order ONLY.** Personal checks will **NOT** be accepted.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE AND COSTS IS HER LEGAL OBLIGATION AND RESPONSIBILITY, AND RESPONDENT AGREES TO CEASE PRACTICING RESPIRATORY CARE IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT.

4. **Continuing Education:** The Respondent shall enroll in and successfully complete courses in Patient Assessment, three (3) hours; Mechanical Ventilation, four (4) hours; Pulmonary Function, two (2) hours; Respiratory Equipment, four (4) hours. This shall be in addition to other normally required continuing education courses. Verification of course content and course completion must be submitted to the Respiratory Care Compliance Officer within six (6) months from the date of the Final Order accepting this Settlement Agreement. The Board will retain jurisdiction for the purpose of enforcing continuing education requirements.

5. **Probation:** Respondent's license shall be placed on probation for eighteen (18) months. The terms of Respondent's probation will be set by the Board at the

meeting where this Settlement Agreement is considered and is, at minimum, subject to the following conditions:

a. The Respondent must work in a setting under direct supervision and only as an employee of a health care facility or another respiratory care practitioner. Direct supervision requires a Respiratory Therapist to be working on the same unit or in the same facility as the Respondent and readily available to provide assistance and intervention.

b. The Respondent shall submit written reports to the Compliance Officer at the Board of Respiratory Care office, which shall contain the Respondent's name, license number, and current address; the name, address, and phone number of each current employer, whether employed as a respiratory therapist or not; and a statement by the Respondent describing her employment. This report shall be submitted to the Respiratory Care Compliance Officer every three (3) months in a manner as directed by the Respiratory Care Compliance Officer.

c. All current and future settings in which the Respondent practices respiratory care shall be promptly informed of the Respondent's probationary status. Within five (5) days of the receipt of the Final Order accepting this Settlement Agreement, the Respondent shall furnish a copy to her supervisor or supervisors, if there are multiple employers. The supervisor(s) must acknowledge this probation to the Respiratory Care Compliance Officer in writing on employer letterhead within ten (10) days. Should the Respondent change employers, she must supply a copy of the Final Order accepting this Settlement Agreement to her new respiratory care supervisor within five (5) days. The new employer shall acknowledge probation in writing on employer letterhead to the Respiratory Care Compliance Officer within ten (10) days. The Respondent shall be responsible for assuring that reports from respiratory care supervisors will be furnished to the Respiratory Care Compliance Officer every three (3) months. That report shall describe the Respondent's work assignment, workload, level of performance, and any problems that have occurred during

that quarter. Any report indicating an unprofessional level of performance shall constitute a violation of probation.

d. The term of probation shall begin to run on the date that the Final Order is issued in this case. If the Respondent ceases to practice respiratory therapy, and/or ceases to practice in Florida, this probation shall be tolled until the Respondent returns to the active practice of respiratory care in Florida. Then the probationary period will resume. Unless the Final Order states otherwise, any fines imposed or continuing education required must be paid or completed within the time specified and are not tolled by this provision. Working in respiratory care without notification to the Board is a violation of the Final Order accepting this Settlement Agreement.

STANDARD PROVISIONS

6. Respondent is required to appear before the Board at the meeting of the Board where this Settlement Agreement is considered.

7. It is expressly understood that this Settlement Agreement is subject to the approval of the Department and the Board and has no force and effect until a Final Order is entered accepting this Settlement Agreement.

8. The Respondent shall not violate chapter 456 or 468, the rules promulgated pursuant thereto, any other state or federal law, rule, or regulation relating to the practice or the ability to practice respiratory care. Violation of an order from another state or jurisdiction shall constitute grounds for violation of the Final Order accepting this Settlement Agreement. Prior to signing this agreement, Respondent shall read chapter 456 and chapter 468 part V, Florida Statutes, and the Rules of the Board of Respiratory Care at Rule 64B32, Florida Administrative Code.

9. It is expressly understood that a violation of the terms of this Settlement Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to chapters 456 and 468, Florida Statutes.

10. This Settlement Agreement is executed by the Respondent for the purpose of avoiding further administrative action by the Board of Respiratory Care regarding the acts or omissions specifically set forth in the Administrative Complaint attached hereto. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to, or in conjunction with, consideration of the Agreement. Furthermore, should this Settlement Agreement not be accepted by the Board, it is agreed that presentation to, and consideration of, this Settlement Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings. Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

11. Respondent and the Department fully understand that this Settlement Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached hereto. This Agreement relates solely to the current disciplinary proceedings arising from the above-mentioned Administrative Complaint and does not preclude further action by

other divisions, departments, and/or sections of the Department, including but not limited to the Agency for Health Care Administration's Medicaid Program Integrity Office.

12. The Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

13. Respondent waives all rights to appeal and further review of this Agreement and these proceedings.

14. Respondent shall keep current her mailing and practice addresses with the Compliance Officer for the Board of Respiratory Care within ten (10) days of any change.

WHEREFORE, the parties hereto request the Board enter a Final Order accepting and implementing the terms of the Settlement Agreement contained herein.

(Signature page follows.)

SIGNED this 27 day of May, 2020.

Mary Abbott Kelley

MARY ABBOTT KELLEY, C.R.T.

STATE OF Florida
COUNTY OF Columbia
Before me personally appeared Mary Kelley whose identity is known to be by Valid FL License (type of identification), and who under oath, acknowledges that his/her signature appears above. Sworn to and subscribed by Respondent before me this 27 day of May, 2020.

Notary Public
My Commission Expires:
April 5th, 2024

MORGAN OSBORNE
Notary Public - State of Florida
Commission # GG 976171
My Comm. Expires Apr 5, 2024

APPROVED this 29th day of May, 2020.

Scott A. Rivkees, MD
State Surgeon General

M. Clifford For

Ann L. Prescott
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar Number ~~92974~~ 51912
Telephone: (850) 558-9886
Facsimile: (850) 245-4662
Ann.Prescott@flhealth.gov

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

v. **CASE NO. 2018-25430**

MARY KELLEY, C.R.T.,

Respondent.

_____/

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Respiratory Care (hereinafter Board) against Mary Kelley, CRT, and alleges:

1. Petitioner is the state department charged with regulating the practice of Respiratory Care pursuant to section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 468, Florida Statutes.

2. At all times material to this Complaint, Respondent was a certified respiratory therapist in the State of Florida, having been issued license number CRT 10440.

Exhibit A

3. Respondent's address of record is 20480 CR 37, Lake City, Florida 32024.

4. At all times material to this complaint, Respondent was employed at Shands Lake Shore Regional Medical Center (SLSRMC) in Lake City, Florida.

5. On or about August 16, 2018, patient S.S., a then-seventy-two-year-old female, was admitted to SLSRMC by the pulmonologist with complaints including acute respiratory failure, COPD exacerbation, and/or pulmonary infection.

6. On or about August 27, 2018, Respondent was assigned to care for patient S.S.

7. Patient S.S.'s physician Dr. C. entered a verbal order for patient S.S. to be intubated at about 0300 on August 27, 2018.

8. Respondent did not document ventilator settings or adjustments between 0300 and 0610.

9. Respondent was responsible for charting/documentation regarding placing the patient on a ventilator, ventilator settings, changes made to ventilator settings, and informing the physician of critical changes in the patient's condition.

10. Respondent failed to chart ventilator events including but not limited to: placing the patient on the ventilator; initial patient response to the ventilator; initial peak inspiratory pressure (PIP); breath sounds; O2 saturation; presence or absence of spontaneous respirations; events surrounding the second cardiac arrest; and/or any written record of the ventilator changes that were made.

11. Respondent indicated that she "tweaked" settings, but such attempts were not documented and were not followed by physician's orders in the record.

12. Respondent encountered difficulties in ventilating the patient at normal pressures.

13. Respondent increased the peak pressure setting to extremely high levels when the alarm sounded.

14. Respondent failed to document addressing the problem with ventilating the patient and/or the ventilator settings at high peak inspiratory pressures with the physician, such that she was sure the physician understood the urgency.

COUNT I

15. Petitioner realleges and incorporates paragraphs one through thirteen (13) as if set forth herein.

16. Section 468.365(1)(t), Florida Statutes (2018), provides that failing to keep written respiratory care records justifying the reason for the action taken by the licensee constitutes grounds for disciplinary action.

17. As set forth above, on or about August 27, 2018, Respondent failed to keep written records justifying respiratory care treatment of patient S.S.

18. Based on the foregoing, Respondent has violated Section 468.365(1)(t), Florida Statutes (2018).

COUNT II

19. Petitioner realleges and incorporates paragraphs one through thirteen (13) as if set forth herein.

20. Section 468.365(1)(f), Florida Statutes (2018), provides that unprofessional conduct, which includes, but is not limited to, any departure from, or failure to conform to, acceptable standards related to the delivery of respiratory care services, as set forth by the board in rules adopted pursuant to this part, constitutes grounds for disciplinary action.

21. Rule 64B32-5.003(2), Florida Administrative Code, defines acceptable standards as practicing respiratory care with the level of care, skill, and treatment which is recognized by a reasonably prudent respiratory therapist as being acceptable under similar conditions and circumstances.

22. As set forth above, on or about August 27, 2018, Respondent failed to meet acceptable standards in her care of patient S.S. in one or more of the following ways:

a. Respondent failed to document care provided to patient S.S.;

b. Respondent failed to communicate the urgency of patient S.S.'s change in condition to the physician; and/or

c. Respondent failed to properly address ventilator alarm settings.

23. Based on the foregoing, Respondent has violated section 468.365(1)(f), Florida Statutes (2018).

WHEREFORE, the Petitioner respectfully requests that the Board of Respiratory Care enter an order imposing one or more of the following penalties: permanent revocation or suspension of license, restriction of practice, imposition of an administrative fine, issuance of a reprimand,

placement of the Respondent on probation, corrective action, continuing education and/or any other relief that the Board deems appropriate.

SIGNED this 4th day of February, 2020.

Scott A. Rivkees, MD
State Surgeon General

/s/ Ann L. Prescott

Ann L. Prescott
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar #92974
Telephone: (850) 558-9886
Fax: (850) 245-4662
Email: Ann.Prescott@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE FEB 0 4 2020

PCP: 2/4/2020

PCP Members: Roberto Garcia (chair) & Bayyinah Sherod

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

Mission:
To protect, promote and improve the health of all people in Florida through integrated state, county and community efforts.

Ron DeSantis
Governor

Scott A. Rivkees, MD
State Surgeon General

Vision: To be the Healthiest State in the Nation

March 4, 2020

VIA CERTIFIED MAIL

Mary Kelley, CRT
20480 CR 37
Lake City, FL 32024

Re: Department of Health v. Mary Kelley, CRT
Complaint Number: 2018-25430

Dear Ms. Kelley:

My office is in receipt of your Election of Rights, which indicates that you dispute the allegations of fact contained within the Administrative Complaint filed against your license. However, you failed to sign the Election of Rights before a notary.

Your request for an administrative hearing is hereby denied. Should you still wish to request a formal hearing, you will need to specify the issues of material fact that you dispute, sign the form before a notary, and return it to my office within ten days of receipt of this letter.

Enclosed please find a Second Election of Rights form. Please indicate which paragraphs you specifically dispute and submit your updated response within ten days. If you wish to elect an informal hearing before the Board of Nursing or discuss a settlement agreement instead, please indicate that. If you do not timely submit a specific dispute of material facts, this matter will be forwarded to the Board of Nursing for a hearing not involving disputed issues of material fact. You will be allowed to testify and provide evidence in mitigation of a penalty, but not to dispute the facts. You will receive notice from the Board office of the specific date, time and location of the Board meeting where this matter will be considered.

Please contact me at (850) 558-9886 if you have any questions concerning this matter.

Sincerely,

Ann L. Prescott
Assistant General Counsel

/ALP

Florida Department of Health
Office of the General Counsel – Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-3265
EXPRESS MAIL: 2585 Merchants Row, Suite 105
PHONE: 850/245-4640 • FAX: 850/245-4662
FloridaHealth.gov

Accredited Health Department
Public Health Accreditation Board

June 3, 2020

Mary Abbott Kelley, C.R.T.
20480 CR 37
Lake City, FL 32024

Re DOH vs. Mary Abbott Kelley, C.R.T.
DOH Case Number: 2018-25430

Dear Ms. Kelley

I am in receipt of the settlement agreement executed by you o May 28, 2020, concerning the above referenced case.

Our office is now maki g preparation for this settlement to be presented at the next meeting of the Florida Board of Respiratory Care, scheduled **October 16, 2020 at Hampton Inn Pensacola Airport – 2187 Airport Boulevard, Pensacola, Florida 32504**. You will receive official notification from the Florida Board of Respiratory Care of the date and time your case is set for hearing approximately two weeks prior to the meeting. Attendance is required.

Thank for your attention and cooperation in this matter. Should you have any questions, please feel free to contact this offi e.

Sincerely,

/s/ Ann L. Prescott

Ann L. Prescott
Assistant General Counsel

ALP/mmh

Search | Complaint/Case Number: [redacted] | MAIN | HELP

[redacted]

[redacted]

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[redacted]		[redacted]
[redacted]		[redacted]

November 19, 2018

CONFIDENTIAL TO:
Mary Abbott Kelley, RT
20480 CR 137
Lake City, FL 32024

Case Number: CRT 2018-25430

Dear Ms. Kelley:

We are currently investigating the enclosed document received by the Department of Health. This investigation was initiated after it was determined that you may have violated your practice act.

Within **20 days** of receiving this letter, you may:

- submit a **written response** to the address below; **or**
- call our office to schedule an **interview**.

Please provide a copy of your **resume** and identify your **specialty** even if you choose not to submit a response. Include the above-referenced case number in any correspondence that you send.

Florida law requires that this case and all investigative information remain confidential until 10 days after the Probable Cause Panel has determined that a violation occurred, or you give up the right to confidentiality. Therefore, the contents of the investigation cannot be disclosed to you or the general public. You may make a written request for a copy of the investigative file and it will be sent to you when the investigation is complete.

You are not required to answer any questions or give any statement, and you have the right to be represented by an attorney. It is not possible to estimate how long it will take to complete this investigation because the circumstances of each investigation differ.

The mission of the Department of Health is to protect, promote & improve the health of all people in Florida through intregrated state, county and community efforts. If you have any questions, please call me at 850-475-5471.

Sincerely,

Maritza Abdel-Gadir
Investigator

MAG
Enclosures: Case Summary, Complaint Form

November 20, 2018

CONFIDENTIAL
Shands Lake Shore Regional Medical Center
Attn: Keith Mckernan, RN, Market Director of Risk Management
368 N.E Franklin Street
Lake City, FL 32055

Reference Number: 2018-25430
Subject: Mary Abbott Kelley, RT

Dear Mr. McKernan:

Please be advised that the Investigative Services Unit is conducting an investigation on Mary Abbott Kelley, RT and I am the investigator assigned to your case.

Florida law requires that all information in a complaint remain confidential until 10 days after probable cause is found. Patient names and records are never released to the public.

The mission of the Department of Health is to protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts. If you have any questions, please call me at (850) 475-5471.

Sincerely,

Maritza Abdel-Gadir

Abdel-Gadir, Maritza L

From: Abdel-Gadir, Maritza L
Sent: Wednesday, December 19, 2018 9:08 AM
To: keith mckernan@shandslakeshore com
Cc: Abdel-Gadir, Maritza L
Subject: Confidentiial Pursuant to 456 073(10) Subpoena for Employment Documents
Attachments: Kelley Subpoena pdf

Good Morning Mr McKernan,

Please find attached Subpoena for employment documents on Mary Abbott Kelley. A copy of the subpoena has been faxed to you as well

Happy Holidays!

Maritza Abdel-Gadir, Investigation Specialist II
Investigative Services Unit Pensacola
Division of Medical Quality Assurance
Florida Department of Health
5016 N. Davis Hwy
Pensacola, FL 32503
Telephone 850-475-5471, Fax 850-475-5475
Maritza abdel-gadir@flhealth gov

Mission_ To protect, promote and improve the health of all people in Flor da through integrated state, county and community efforts

EXHIBIT 6


Florida
HEALTH
Medical Quality
Assurance

September 14, 2020

Mr Juan Miguel Moreno
417 Crestrun Loop
Leesburg, FL 34748

MOTION TO VACATE FINAL ORDER

DOH CASE # 2018-19311

Dear Mr Moreno:

The above referenced case has been placed on the agenda for final agency action for the Board of Respiratory Ca e Disciplinary cases will be heard at approximately 8 30 a m via conference/video call, on the date listed below It is not possible to give you the exact time that you case will be reviewed by the Board

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a.m. EST
To j i the meeting from your computer, tablet o sma tphone
GoToMeeting Link

You can also dial in using your phone
United States (Toll Free) 1(877)309-2073
Access Code: 779-560-757

Joi from a video- feren i g oom or system.
Dial in or type: 67.217.95.2 o inroomlink got m
Meeting ID 779 560 757
Or dial directly: 779560757@67 217 95 2 or 67 217.95.2##779560757

New to GoToMeeting? Get the app now and be ready when your first meeti g sta ts
https://global gotomeeting m/i stall/779560757

You are welcome to attend this public meeting, however, you are not equired to appear. Please contact me in writing regarding any intents of attending the meeting You may write to the address listed below or fax your response to (850) 414-6860 If you have any pertinent additional information you may want reviewed prior to the meeting, please send to me at least two weeks before the meeting above

Due to the onset of hurrica e seas n it may be necessary to ame d the time, locati or eve cancel the meeti g above In order to notify you of any potential cha ge we request you keep this office informed of any changes to your work, home and cell phone numbers If you have questio s regarding changes due to a storm you may contact our office at the number below.

Thank you for your co ti ued cooperatio If you have any additio al questi ns, you may contact me at the address listed below, by telephone at 850-901-6833 or e-mail barbara baker@flhealth gov

Sincerely,

Barbara Baker
Regulatory Specialist II

Type: 5701/ File #: 12960
Lic: RT12595

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

v. **CASE NO. 2018-19311**

JUAN MIGUEL MORENO, CRT,
Respondent.
_____/

MOTION TO VACATE FINAL ORDER

Petitioner, Department of Health, by and through counsel, moves the Board of Respiratory Care to vacate the Final Order previously issued in this case. As grounds therefore, Petitioner states:

1. This matter came before the Florida Board of Respiratory Care (Board) for the purpose of a hearing not involving disputed issues of material fact pursuant to sections 120.569 and 120.57(2), Florida Statutes.

2. The Board filed a Final Order (Order) in this case on or about February 18, 2020, finding that Respondent violated section 456.072(1)(k), Florida Statutes, by being in default of a student loan obligation.

3. Petitioner requests that the Board vacate the order in this case filed on or about February 18, 2020 and dismiss the Complaint.

WHEREFORE, Petitioner respectfully requests that the Board vacate the Final Order previously issued in this case and dismiss the Complaint.

DATED this 23rd day of July, 2020.

Respectfully Submitted,

/s/ Matthew G. Witters

Matthew G. Witters
Florida Bar No. 91245
Chief Legal Counsel
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399
Tel.: (850) 558-9918
Fax: (850) 245-4662

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by U.S. mail this 23rd day of July, 2020, to Respondent at 417 Crestrun Loop, Leesburg, FL 34748.

/s/ Matthew G. Witters

Matthew G. Witters
Chief Legal Counsel

Final Order No. DOH-20-0252-FOL-MQA
FILED DATE - Feb 18, 2020
Department of Health
By: [signature]
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2018-19311
License No.: RT12595

JUAN MIGUEL MORENO,

Respondent.
_____/

FINAL ORDER

This matter appeared before the Board Respiratory Care at a duly-noticed public meeting on January 17, 2020, in Orlando, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner filed an Administrative Complaint seeking disciplinary action against the licensee. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Service of the Administrative Complaint was made upon Respondent by personal service. Respondent has not filed an Election of Rights. Petitioner filed a Motion for Determination of Waiver and Entry of Final Order. Petitioner was represented by Ann Prescott, Assistant General Counsel, Florida Department of Health. Respondent was present and addressed the Board.

FINDINGS OF FACTS

Since the licensee has not replied to the Administrative Complaint nor contested the factual allegations, the prosecuting attorney offered the investigative file as a basis to determine penalty. The investigate file was received into evidence. The Board adopts as its findings of facts the facts set forth in the Administrative Complaint.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Board concludes the licensee has violated Sections 468.365(1)(x) and 456.072(1)(k), Florida Statutes.

The Board is empowered by Sections 468.365(1)(x) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore, it is ORDERED that:

The licensee must pay an administrative fine of ten percent of the defaulted loan amount, for a fine of $1,798.00 and investigative costs of $457.94. Payment of the fine and costs is due three years from the date of the filing of this Order. Payment shall be made to the Board of Respiratory Care and mailed to DOH-Compliance Management Unit, 4052 Bald Cypress Way, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Respiratory Care Compliance Officer. Payment must be made by cashier's check or money order ONLY. Personal checks will not be accepted.

Suspension of Respondent's license is stayed. Respondent's license shall be placed on probation for the duration of the student loan or scholarship obligation period and he shall make biannual progress reports to the Department of Health Compliance Services Unit. Prior to termination of probation, Respondent shall submit documentation of satisfaction of student loan terms or scholarship obligations. The probation shall be subject to the following conditions:

a. The Respondent shall not violate Chapter 456 or 468, Florida Statutes, the rules promulgate pursuant thereto, any other state or federal law, rule, or regulation relating to the practice or the ability to practice respiratory care. Violation of an order from another state/jurisdiction shall constitute grounds for violation of this Final Order.

b. Whether employed as a respiratory therapist or not, the Respondent shall submit written reports to the Respiratory Care Compliance Officer, which shall contain the Respondent's name, license number, and current address; and a statement by the Respondent describing his student loan and/or scholarship obligation status. This report shall be submitted to the DOH Compliance Officer, 4052 Bald Cypress Way, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Respiratory Care Compliance Officer.

Respondent's failure to comply with the terms of the Final Order without the prior written consent of the Board shall be a violation of this probation. The probation shall not be terminated until the Respondent has complied with all terms of probation. The failure to comply with the terms of probation set forth above shall result in a subsequent Uniform Complaint Form being filed by the Board with the Department of Health against the Respondent's license, which may result in additional administrative fines, probationary periods, and/or suspensions being imposed against the Respondent's license.

The terms of the Final Order are effective as of the date the Final Order is filed with the clerk for the Department of Health. The Board office will send the Respondent information regarding probationary terms, however, failure of the Respondent to receive such information DOES NOT EXCUSE COMPLIANCE with the terms of the Final Order.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 17 day of February, 2020.

BOARD OF RESPIRATORY CARE

Allen Hall

Allen Hall,
Executive Director, *for*
Ronald Eric Mitchell, CRT,
Chair

NOTICE OF APPEAL RIGHTS

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 THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to: **JUAN MIGUEL MORENO**, 417 Crestrun Loop, Leesburg, FL 34748; and by e-mail to: **John B. Fricke, Jr.**, Assistant Attorney General, at John.Fricke@myfloridalegal.com; and to: **Ann Prescott**, Assistant Legal Counsel, at Ann.Prescott@flhealth.gov, on this 18th day of February, 2020.

Angel Sanders

Deputy Agency Clerk

JUAN MIGUEL MORENO
417 CRESTRUN LOOP
LEESBURG, FL 34748

Reg & certi mail

Certified Article Number

9414 7266 9904 2140 1109 65

SENDER'S RECORD

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO. 2018-19311**

JUAN MIGUEL MORENO, R.R.T.,

RESPONDENT.

_____/

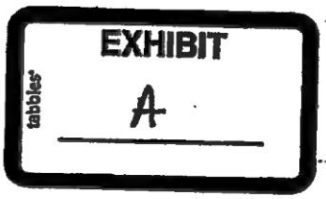
ADMINISTRATIVE COMPLAINT

Petitioner Department of Health (Department) files this Administrative Complaint before the Board of Respiratory Care (Board) against Respondent Juan Miguel Moreno, R.R.T., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of respiratory care pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 468, Florida Statutes.

2. At all times material to this Complaint, Respondent was licensed to practice as a certified respiratory therapist within the State of Florida, having been issued license number RT 12595.

3. At all times material to this Complaint, Respondent's address of record was 417 Crestrun Loop, Leesburg, Florida 34748.



4. On or about April 3, 2018, the Department received notice from the Florida Department of Education (FLDOE) that Respondent failed to repay one or more student loans guaranteed by the FLDOE in accordance with the terms of the loan(s).

5. FLDOE serves as guarantor of the Federal Family Education Loan Program, through which Respondent received one or more student loans.

6. Respondent defaulted on Respondent's loan(s) guaranteed by FLDOE on or about April 13, 2017.

7. Section 468.365(1)(x), Florida Statutes (2001-2018), authorizes discipline against a licensee for violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

8. Section 456.072(1)(k), Florida Statutes (2001-2018), authorizes discipline against a licensee for failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this Section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation.

9. Respondent violated Section 468.365(1)(x), Florida Statutes (2001-2018), through a violation of Section 456.072(1)(k), Florida Statutes (2001-2018), by failing to repay one or more student loans guaranteed by FLDOE in accordance with the terms of the loan(s).

WHEREFORE, Petitioner respectfully requests that the Board enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

[SIGNATURE BLOCK ON NEXT PAGE]

SIGNED this 20th day of August, 2019.

Scott A. Rivkees, M.D.
State Surgeon General

Mary A. Iglehart
Assistant General Counsel
FL DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar Number 93590
(P) (850) 558-9856
(F) (850) 245-4684
(E) Mary.Iglehart@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Angel Sanders
DATE: AUG 2 0 2019

PCP: 8.20.19
PCP Members: Mitchell & Sherrod

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

September 11, 2020

Shawna Lynn Cerda
456 Ponoka St
Sebastian, FL 32958

MOTION TO VACATE FINAL ORDER

DOH CASE # 2017-16460

Dear Ms Cerda

The above referenced case has been placed on the agenda for final agency action for the Board of Respiratory Ca e Disciplinary cases will be heard at approximately 8 30 a m via conference/video call, on the date listed below It is not possible to give you the exact time that your case will be reviewed by the Board

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a.m. EST
To j i the meeting from your computer, tablet o sma tphone
GoToMeeting Link

You can also dial in using your phone.
United States (Toll Free) 1(877)309-2073
Access Code: 779-560-757

Joi from a video- feren i g oom or system
Dial in or type: 67.217 95.2 o inroomlink got m
Meeting ID 779 560 757
Or dial directly: 779560757@67 217 95 2 or 67 217.95.2##779560757

New to GoToMeeting? Get the app now and be ready when your first meeti g sta ts
https://global gotomeeting m/i stall/779560757

You are welcome to attend this public meeting, however, you are not required to appear Please contact me in writing regarding any intents of attending the meeting You may write to the address listed below or fax your response to (850) 414-6860 If you have any pertinent additional information you may want reviewed prior to the meeting, please send to me at least two weeks before the meeting above

Due to the onset of hurrica e seas n it may be necessary to ame d the time, locatio or eve cancel the meeti g above In order to notify you of any potential cha ge we request you keep this office info med of any changes to your work, home and cell phone numbers If you have questio s regarding changes due to a storm you may contact ou offi e at the number bel w

Thank you for your co ti ued cooperatio If you have any additio al questi ns, you may contact me at the address listed below, by telephone at 850-901-6833 or e-mail barbara baker@flhealth gov

Sincerely,

Barbara Baker
Regulatory Specialist II

Type: 5702/ File 13387
Li TT12737

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

v. **CASE NO. 2017-16460**

SHAWNA CERDA, CRT,
Respondent.
_____/

MOTION TO VACATE FINAL ORDER

Petitioner, Department of Health, by and through counsel, moves the Board of Respiratory Care to vacate the Final Order previously issued in this case. As grounds therefore, Petitioner states:

1. This matter came before the Florida Board of Respiratory Care (Board) for the purpose of a hearing not involving disputed issues of material fact pursuant to sections 120.569 and 120.57(2), Florida Statutes.

2. The Board filed a Final Order (Order) in this case on or about July 31, 2019 finding that Respondent violated section 456.072(1)(k), Florida Statutes, by being in default of a student loan obligation.

3. Petitioner requests that the Board vacate the order in this case filed on or about July 31, 2019 and dismiss the Complaint.

WHEREFORE, Petitioner respectfully requests that the Board vacate the Final Order previously issued in this case and dismiss the Complaint.

DATED this 23rd day of July, 2020.

Respectfully Submitted,

/s/ Matthew G. Witters

Matthew G. Witters
Florida Bar No. 91245
Chief Legal Counsel
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399
Tel.: (850) 558-9918
Fax: (850) 245-4662

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by U.S. mail this 23rd day of July, 2020, to Respondent at 456 Ponoka Street, Sebastian, FL 32958, 14225 101st Street, Fellsmere, FL 32948, and 402 Babcock Street, Suite 204, Melbourne, FL 32901.

/s/ Matthew G. Witters

Matthew G. Witters
Chief Legal Counsel

Final Order No. DOH-19-1237-FOL-MQA
FILED DATE - JUL 31 2019
Department of Health
By: Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2017-16460
License No.: TT 12737

SHAWNA CERDA, C.R.T.,

Respondent.
_____/

FINAL ORDER

This matter appeared before the Board of Respiratory Care at a duly-noticed public meeting on July 19, 2019 in Fort Myers, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner filed an Administrative Complaint seeking disciplinary action against the licensee. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Service of the Administrative Complaint was made upon Respondent by certified mail. Respondent has not filed an Election of Rights. Petitioner filed a Motion for Determination of Waiver and Entry of Final Order. Petitioner was represented by Kelly Fox, Assistant General Counsel, Florida Department of Health. Respondent was not present.

FINDINGS OF FACTS

Since the licensee has not replied to the Administrative Complaint nor contested the factual allegations, the prosecuting attorney offered the investigative as a basis to determine penalty. The investigate file was received into evidence. The Board adopts as its findings of facts the facts set

forth in the Administrative Complaint.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Board concludes the licensee has violated Section 468.365(1)(x), and 456.072(1)(k), Florida Statutes.

The Board is empowered by Sections 468.365(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore, it is ORDERED that:

The licensee must pay an administrative fine of ten percent of the defaulted loan amount, for a fine of $1910.00 and investigative costs of $414.25. Payment of the fine and costs is due two years from the date of the filing of this Order.

Payment shall be made by cashier's check or money order payable to the Board of Respiratory Care and mailed to: DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Respiratory Care Compliance Officer.

Respondent's license is suspended and shall remain suspended until such time as Respondent provides documentation that new payment terms have been agreed upon, or that the scholarship obligation has been resumed. The Respondent shall immediately inform his/her employer in writing regarding the suspension of her license and provide a copy to DOH-Compliance Management Unit, 4052 Bald Cypress Way, Bin C-76, Tallahassee, Florida 32399-3276, Attention: Respiratory Care Compliance Officer.

Respondent's license shall be placed on probation for the duration of the student loan or scholarship obligation period. Prior to termination of probation, Respondent shall submit documentation of satisfaction of student loan terms, or scholarship obligations. The probation shall

be subject to the following conditions:

a. The Respondent shall not violate Chapter 456 or 464, Florida Statutes, the rules promulgate pursuant thereto, any other state or federal law, rule, or regulation relating to the practice or the ability to practice respiratory care. Violation of an order from another state/jurisdiction shall constitute grounds for violation of this Final Order.

b. Whether employed as a certified respiratory therapist or not, the Respondent shall submit written reports to the Respiratory Compliance Officer, which shall contain the Respondent's name, license number, and current address; and a statement by the Respondent describing her student loan and/or scholarship obligation status. This report shall be submitted to the Respiratory Care Compliance Officer, 4052 Bald Cypress Way, Bin C-76, Tallahassee, Florida 32399-3276, semi-annually in a manner as directed by the Respiratory Compliance Officer.

Respondent's failure to comply with the terms of the Final Order without the prior written consent of the Board shall be a violation of this probation. The probation shall not be terminated until the Respondent has complied with all terms of probation. The failure to comply with the terms of probation set forth above shall result in a subsequent Uniform Complaint Form being filed by the Board with the Department of Health against the Respondent's license, which may result in additional administrative fines, probationary periods, and/or suspensions being imposed against the Respondent's license.

The terms of the Final Order are effective as of the date the Final Order is filed with the

clerk for the Department of Health. The Board office will send the Respondent information regarding probationary terms, however, failure of the Respondent to receive such information DOES NOT EXCUSE COMPLIANCE with the terms of the Final Order.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 31 day of July, 2019.

BOARD OF RESPIRATORY CARE

Allen Hall

Allen Hall, Executive Director
on behalf of
Ronald Eric Mitchell, C.R.T., Chair

NOTICE OF APPEAL RIGHTS

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 THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to: **Shawna Cerda**, 456 Ponoka Street, Sebastian, FL 32958, 14225 101st Street, Fellsmere, FL 32948, and 402 Babcock Street, Suite 204, Melbourne, FL 32901; and by e-mail to: **John Fricke, Jr.**, Assistant Attorney General, at John.Fricke@myfloridalegal.com; and to: **Kelly Fox,** Assistant General Counsel, at Kelly.Fox@flhealth.gov, on this 31st day of July, 2019.

Angel Sanchez

Deputy Agency Clerk

Shawna Cerda
456 Ponoka St.
Sebastian, FL 32958

Certified Article Number
9414 7266 9904 2140 1199 82
SENDER'S RECORD

Shawna Cerda
402 Babcock St.
Suite 204
Melbourne, FL 32901

Certified Article Number
9414 7266 9904 2140 1203 91
SENDER'S RECORD

Shawna Cerda
14225 101st Street
Fellsmere, FL 32948

Certified Article Number
9414 7266 9904 2140 1204 07
SENDER'S RECORD

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO. 2017-16460**

SHAWNA CERDA, C.R.T.,

RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health (Department) files this Administrative Complaint before the Board of Respiratory Care (Board) against Respondent Shawna Cerda, C.R.T., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of respiratory care pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 468, Florida Statutes.

2. At all times material to this Complaint, Respondent was licensed to practice as a certified respiratory therapist within the State of Florida, having been issued license number TT 12737.

3. At all times material to this Complaint, Respondent's address of record was 402 North Babcock Street, Suite 204, Melbourne, Florida 32901.

4. Another address for Respondent may be 456 Ponoka Street, Sebastian, Florida 32958.

5. On or about August 1, 2018, the Department received notice from the Florida Department of Education (FLDOE) that Respondent failed to repay one or more student loans guaranteed by the FLDOE in accordance with the terms of the loan(s).

6. FLDOE serves as guarantor of the Federal Family Education Loan Program, through which Respondent received one or more student loans.

7. Respondent defaulted on Respondent's loan(s) guaranteed by FLDOE on or about August 2, 2001, October 11, 2007, May 7, 2009, and/or April 22, 2010.

8. Section 468.365(1)(x), Florida Statutes (2001-2018), authorizes discipline against a licensee for violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

9. Section 456.072(1)(k), Florida Statutes (2001-2018), authorizes discipline against a licensee for failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this Section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan or failing to comply

with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation.

10. Respondent violated Section 468.365(1)(x), Florida Statutes (2001-2018), through a violation of Section 456.072(1)(k), Florida Statutes (2001-2018), by failing to repay one or more student loans guaranteed by FLDOE in accordance with the terms of the loan(s).

WHEREFORE, Petitioner respectfully requests that the Board enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

[SIGNATURE BLOCK ON NEXT PAGE]

SIGNED this 11th day of December, 2018.

Celeste Philip, M.D., M.P.H.
Surgeon General and Secretary

Mary A. Iglehart
Assistant General Counsel
FL DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar Number 93590
(P) (850) 558-9856
(F) (850) 245-4684
(E) Mary.Iglehart@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Angel Sanders
DATE:E: DEC 1 1 2018

PCP: 12/11/18
PCP Members: Broeker & Nunez

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

BOARD OF RESPIRATORY CARE

PROSECUTION SERVICES REPORT

Meeting Date: October 16, 2020

TO:	**Allen Hall, Executive Director**
FROM:	**Ann Prescott, Assistant General Counsel**
DATE:	**September 14, 2020**
RE:	**Current Open / Pending Cases**

Inventory of Cases as of September 14, 2020

Cases under legal review (60 status):	3
Cases awaiting probable cause determination (70 status):	6
Cases where PC has been found (80 status):	4
Cases Submitted for Board Review (118 status):	2
Cases Currently Filed at DOAH (110 status):	0
Total cases open/active in PSU:	**15**
Total Number of Year and Older Cases:	3

**** THE DEPARTMENT REQUESTS LEAVE OF THE BOARD TO CONTINUE THE PROSECUTION OF THE YEAR AND OLDER CASES ****

FLORIDA | Board *of* Respiratory Care

APPLICATION SUMMARY

Names: Hanak, Melissa

5701 / 19417; Registered Respiratory Therapist Applicant

Application Completion Date: 04/21/2020

Other Related License(s): Michigan RT license 440100563.

DISCIPLINARY HISTORY Yes

- On July 30, 2015 the applicant's Michigan State Respiratory Care license was suspended due to an administrative complaint filed against her license in July 2015.

CRIMINAL HISTORY NO

Staff Notes:

Ms. Hanak did not report disciplinary actions taken against her license in Michigan on the Florida application.

Ms. Hanak was noticed to appear at the July 10, 2020 Board meeting on April 23, 2020. She was not present on the July 10, 2020 Conference/Video Call meeting and was issued an Order requiring her appearance at the Board's October 16, 2020 General Business Meeting.

Summary Prepared By: Shavondria Johnson

STATE OF FLORIDA
BOARD OF RESPIRATORY CARE

IN RE: APPLICATION FOR LICENSURE OF

MELISSA ANN HANAK
File Number: 5701/19417

_____/

ORDER REQUIRING APPEARANCE

This matter came before the **Florida Board of Respiratory Care** ("Board") at a duly-noticed public telephonic meeting on July 10, 2020.

In response to the disciplinary history against Applicant's Michigan respiratory therapist license number 44-01-005163, pursuant to correspondence dated June 24, 2020, the Applicant's appearance before the Board was required at the above-referenced meeting. The Applicant, MELISSA ANN HANAK, did not appear before the Board.

Section 456.013(3)(c), Florida Statutes, provides:

> In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.

Based on its findings, the Board voted to require you to appear before it to answer questions regarding your disciplinary history.

Therefore, it is **ORDERED AND ADJUDGED** that:

The Applicant is **required to appear** before the Florida Board of Respiratory Care at the next full board meeting, currently scheduled for October 16, 2020. **You will receive at a later date a Notice indicating the exact location and any changes, if applicable, to the meeting date.** If you fail to appear at this meeting, the application for licensure will be denied.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 22 day of July, 2020.

BOARD OF RESPIRATORY CARE

Allen Hall

Allen Hall, Executive Director
on behalf of
Joseph Frey, R.R.T., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to: **MELISSA ANN HANAK**, 507 S. Church Street, Brighton, MI 48116; and by electronic mail to: John B. Fricke, Jr., Assistant Attorney General, at John.Fricke@myfloridalegal.com, this 23rd day of July, 2020.

Annie Marks

Deputy Agency Clerk

September 11 2020

Ms Melissa A n Hanak
507 S Church Street
Brighton, MI 48116

Applicant ID 19417

Meeting changed to Conference Call:

Dear Ms. Hanak:

The Board of Respiratory Care will consider your appli ati at its October 16, 2020 meeti g The Board is requiri g your appea a e in the matte of your application via confere ce call, for registered respiratory therapist licensure by endorsement to discuss the discipline actio found during your appli ati process

In additi , the Board may inquire into any othe issues rega di g your eligibility and/or applicatio for licensure Your applicati n will be placed on the agenda for the Board's considerati as f llows

The meeting is scheduled for

Telephone Conference/ Video Call at 8:30 a m. EST
To j i the meeting from your computer, tablet o smartpho e
GoToMeeting Link

You can also dial in using your phone
United States (Toll Free) 1(877)309-2073
Access Code: 779-560-757

Joi from a video-co fere ci g room or system
Dial in or type: 67.217.95.2 o inroomlink got m
Meeting ID 779 560 757
Or dial directly: 779560757@67 217 95 2 or 67 217.95.2##779560757

New to GoToMeeting? Get the app now and be ready whe your first meeti g starts
https://global.gotomeeting.com/install/779560757

It is requested that you contact me in writing regarding your intentions to atte d the meeting You may write to the address listed below or fax your response to (850) 414-6860. If you have any pertine t additional informati you may want reviewed prior to the meeting, please send to me at least two weeks before the meeti g above

Section 456.013(3)(c), Florida Statutes, provides that in co sideri g applicati ns for licensure, the boa d, o the department whe there is o board, may require a pe so al appearance of the applica t If the applicant is equired to appear, the time pe iod in which a licensure applicati must be gra ted or denied shall be tolled until such time as the applicant appears However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings or fails to appear before the department withi 30 days if there is no board, the appli atio fo licensure shall be denied

Due to the onset of hurricane season it may be necessary to amend the time, location or even cancel the meeting above. In order to notify you of any potential change we request you keep this office informed of any changes to your work, home and cell phone numbers. If you have questions regarding changes due to a storm you may contact our office at the number below.

Thank you for your continued cooperation. If you have any questions, please contact me at the address below. You may also reach me at 850-901-6833 or e-mail barbara.baker@flhealth.gov.

Sincerely,

Barbara Baker

Barbara Baker
Regulatory Specialist II

Attention:
Barbara Baker

I will be attending the video conference call on October 16, 2020.

Thank you,

Melissa Hanak, RRT, CRT
Melissa Hanak
9-17-2020

fax

TO: 850-414-6860

Attention:
Florida Board of
Respiratory Care
Barbara Baker,
Regulatory Specialist II

from: Melissa Hanak
507 S Church St.
Brighton, MI 48116

Phone: 313-800-1728

Melissa Hanak

9-17-2020

From:	Melissa Hanak
To:	Baker, Barbara
Subject:	Re: FW: Meeting changed to Conference/Video Call: - file 19417
Date:	Thursday, September 17, 2020 1:27:28 PM

I will be attending the online conference call on October 16, 2020.
Melissa Hanak
09/17/2020

Get Outlook for iOS

From: Baker, Barbara <Barbara.Baker@flhealth.gov>
Sent: Thursday, September 17, 2020 1:20:42 PM
To: 'Melissa Hanak' <hanakmelissa99@gmail.com>
Subject: RE: FW: Meeting changed to Conference/Video Call: - file 19417

You can just write your statement/response in this e-mail and I will file it with your file.

Thanks!

From: Melissa Hanak <hanakmelissa99@gmail.com>
Sent: Thursday, September 17, 2020 12:56 PM
To: Baker, Barbara <Barbara.Baker@flhealth.gov>
Subject: Re: FW: Meeting changed to Conference/Video Call:

I will fax you the letter in writing today. Thank you, Melissa Hanak
313-800-1728
On Thu, Sep 17, 2020 at 12:53 PM Melissa Hanak <hanakmelissa99@gmail.com> wrote:

> Yes, I accept.
>
> On Thu, Sep 17, 2020 at 12:52 PM Baker, Barbara <Barbara.Baker@flhealth.gov> wrote:
>
>> Ms. Hanak,
>>
>> Please take note of the up coming RT meeting.
>> Can you please respond to this e-mail to let us know if you will be signing on the conference/video call for the consideration of licensure on Oct 16, 2020.
>>
>> Thank you in advance.
>>
>> Sincerely,
>>
>> Barbara Baker, Regulatory Specialist II
>>
>> Medical Quality Assurance
>> Health Care Practitioner Regulation
>> Florida Board of Respiratory Care

4052 Bald Cypress Way; Bin C05
Tallahassee, FL 32399-3255
Ph (850) 901-6833
Fax (850) 414-6860
www.flhealthsource.gov
www.floridasrespirato yca e.gov

EFFECTIVE IMMEDIATELY: Board staff will no longer accept any documents by email. Should you need to upload documents to your file, please log into your online account at www.flhealthsource.gov

How am I communicati g? Please contact my supervisor, Kayla.Karpp@flhealth gov

Miss on: To protect, promote and improve the health of all people in Florida through i tegrated state, county and community efforts

Note Florida has a very b oad public records law Most written communications to or from state officials regarding state business are public records available to the public and media upon request Your email communi ation may therefore be subject to public disclosure

---

From: Baker, Barbara

Sent: Friday, September 11, 2020 11:18 AM

To: 'Melissa Hanak' <hanakmelissa99@gmail.com>

Subject: Meeting changed to Conference/Video Call:

Ms Melissa Ann Hanak

507 S Church Street
Brighton, MI 48116

Applicant ID#: 19417

Meeting changed to Conference Call:

Dear Ms. Hanak:

Please see the attached letter regarding the Board of Respiratory Care meeting changes for

October 16, 2020 meeting.

It is requested that you contact me in writing regarding your intentions to participate in the meeting. You may write to the address listed below or fax your response to (850) 414-6860. If you

have any pertinent additional information you may want reviewed prior to the meeting, please send to me at least two weeks before the meeting above.

Thank you for your continued cooperation.

If you have any questions, please feel free to contact me

at (850) 901-6833 or e-mail

barbara.baker@flhealth.gov.

--
Melissa Hanak
313-800-1728

--
Melissa Hanak
313-800-1728

June 3, 2020

Ms Melissa Ann Hanak
507 S Church Street
Brighton, MI 48116

Applicant ID#: 19417

Meeting changed to Conference Call:

Dear Ms. Hanak:

The Board of Respi ato y Care will conside you application at its **July 10, 2020 meeting** The Boa d is **requiring** your **participation**/appearance in the matter of your application via conference call, for registered respi ato y therapist licensure by endorsement to discuss The discipline reported on you application

In addition, the Board may inquire into any other issues regarding you eligibility and/or application for licensure Your application will be placed on the agenda for the Board's consideration at the meeting listed below

Date:	**Friday, July 10, 2020**
Time	**8 30 a m EST** or soon thereafter
Conference Call#	1-888-585-9008
Part c pation Code	564-341 766 THEN #

It is requested that you contact me in writing regarding you intentions to attend the meeting You may write to the address listed below or fax you response to (850) 414-6860 If you have any pertinent additional information you may want reviewed prior to the meeting, please send to me at least two weeks befo e the meeting above.

Section 456.013(3)(c) Florida Statutes, p ovides that i conside ing applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant If the applicant is requi ed to appear, the time period in which a licensu e application must be granted o denied shall be tolled u til such time as the applicant appears However, if the applicant fails to appear before the board at either of the next two regula ly scheduled boa d meetings, or fails to appea before the depa tment within 30 days if the e is o board, the application for licensure shall be denied

Due to the onset of hur icane season it may be necessary to amend the time, location or even cancel the meeting above I order to notify you of any potential change we request you keep this office informed of any changes to your work, home and cell phone numbers If you have questions regarding changes due to a storm you may contact ou office at the number below

Thank you for your continued cooperation If you have any questions, please feel f ee to contact me at (850) 901-6833 o e-mail ba ba a.baker@flhealth g v

Sincerely,

Barbara Baker

Barbara Baker
Regulatory Specialist II

Johnson, Shavondria

From: Melissa Hanak <hanakmelissa99@gmail.com>
Sent: Tuesday, June 9, 2020 4:25 PM
To: Johnson, Shavondria
Subject: Re: FL RT app status File #19417

Yes, I will be attending the July 10 meeting

On Tue, Jun 9, 2020 at 2:58 PM Johnson, Shavondria <Shavondria.Johnson@flhealth.gov> wrote:

Good Afternoon,

Please responded back to this email letting the board know if you will be attend the upcoming meeting (conference call) on July 10th ,2020 .

EFFECTIVE IMMEDIATELY: Board staff will no longer accept any documents by email. Should you need to upload documents to your file, please log into your online account at www.flhealthsource.gov

Sincerely,

Renee Johnson

Regulatory Specialist II
Medical Quality Assurance

Health Care Practitioner Regulation

Florida Board of Respiratory Care

4052 Bald Cypress Way; Bin C05

Tallahassee, FL 32399-3255

Ph. (850) 617-1963

Fax (850) 414-6860
www.flhealthsource.gov
www.floridasrespiratorycare.gov

How am I communicating? Please contact my supervisor, Kayla.Karpp@flhealth.gov

Missi n T pr te t, p m te and improve the health f all pe ple in Fl rida thr ugh integrated state county and mmunity efforts

N te Florida has a ve y br ad publi e rds law M st written mmuni ations t r f m state ffi ials regarding state business a e publi re rds available t the publi and media up n request Y ur email communication may theref re be subj t t publi dis l sure

--
Melissa Hanak
313-800-1728

April 23, 2020

Ms Melissa Ann Hanak
507 S Church Street
Brighton, MI 48116

Applicant ID#: 19417

Dear Ms Hanak:

The Board of Respiratory Care will consider you application at its July 10, 2020 meeting The Board is requiring you appea ance in the matter of you application for certified respi ato y therapist licensu e by endo sement to discuss the following issue(s):

The Board wishes to discuss the Discipline eported on you application

In addition, the Board may inquire into any other issues regarding you eligibility and/or application for licensure You application will be placed on the agenda for the Board's conside ation at the meeting listed below:

Date:	**Friday,** July 10, 2020
Time	8:30 a m EST or soon thereafter
Location:	**Sherato Panama City Beach Golf & Spa Resort** 414 Jan Cooley Drive Panama City Beach Florida 32408
Phone	**(**850) 236-6000

It is requested that you contact me in writing regarding you intentions to attend the meeting You may write to the add ess listed below or fax you response to (850) 414-6860. If you have any pertinent additional information you may want reviewed prior to the meeting, please send to me at least two weeks before the meeting above

Section 456.013(3)(c), Florida Statutes, provides that i considering applications for licensure, the board, or the depa tment when there is o board may requi e a personal appea ance of the applicant If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled ntil such time as the applicant appears. However if the applicant fails to appea befo e the board at eithe of the next two regularly scheduled board meetings, or fa ls to appear before the department within 30 days if there is no board, the application fo licensu e shall be denied.

Due to the onset of hur icane season it may be necessa y to amend the time, location or even cancel the meeting above I order to notify you of any potential change we request you keep this office informed of any changes to you wo k home and cell phone numbers. If you have questions rega ding changes due to a storm you may contact our office at the number below

Thank you for you continued cooperation If you have any questions, please contact me at the address below You may also reach me at o e-mail shavondria johnson@flhealth gov

Sincere y,
Shavondria Johnson
Shavondria Johnson
Regulatory Specialist II

LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

Verify a License or Registration

Name and Address

Name: MELISSA ANN HANAK
Address: Allen Park, MI 48101

Profession and License/Registration Information

Profession: Respiratory Care
Type: Respiratory Therapist
Permanent ID #
4401005163
Status
Lapsed - Suspended
Issue Date
03/22/2010
Expiration Date
12/31/2016

Complaints and Disciplinary Action

Open Formal Complaints: None
Disciplinary Action
Summary Suspension Dissolved
Suspended
Summary Suspension
Date of Action
12/07/2015
12/07/2015
07/30/2015
Date of Compliance

Documents

FileName
Document Type
Melissa Ann Hanak (AC 2015).pdf
Administrative Complaint
View (/Files/ViewDocument/32148) | Download (/Files/DownloadDocument/32148)
Melissa Ann Hanak (FO 2015).pdf

Final Order
View (/Files/ViewDocument/32149) | Download (/Files/DownloadDocument/32149)
Melissa Ann Hanak (SS 2015).pdf
Order of Summary Suspension
View (/Files/ViewDocument/32150) | Download (/Files/DownloadDocument/32150)

Back to Search (/License/Search)

The Disciplinary Action section shows if a licensee/registrant currently has an open formal complaint and a listing of any final disciplinary action after January 1, 2005. The date of compliance may not be listed for disciplinary actions occurring prior to January 1, 2005.

Disciplinary documents are posted to the Documents section as required by Section 333.16216(6) of the Public Health Code. Final administrative disciplinary action is subject to judicial review.

NOTE: EMS PERSONNEL ARE NOT LICENSED BY LARA BUREAU OF PROFESSIONAL LICENSING. PLEASE VISIT THE DHHS PERSONNEL LICENSURE AND EDUCATION REQUIREMENTS PAGE (http://www.michigan.gov/mdhhs/0,5885,7-339-73970_5093_28508-47472--,00.html) TO VERIFY A LICENSE FOR EMS PERSONNEL.

MELISSA HANAK

Excellent Patient Care Brighton, MI
48116
melissahanak1986@gmail.com 3138001728

#readytowork
BLS Certified 2020
ACLS Certified 2020
CPR Health Care Professional Certified 2020
RRT-renewal sent in
CRT
10 years experience as a RRT!
Willing to relocate to: Fort Lauderdale, FL - West Palm Beach, FL - Miami Beach, FL

WORK EXPERIENCE

Veteran Caregiver

Private Duty Case in Home - Lincoln Park, MI
February 2018 to Present

Companionship, help with hygiene, medication management, transportation to Doctors appointments, grocery shopping assistance, cooking, scheduling, PTSD & depression monitoring. 64 year old nuclear clean up Veteran.

Office Manager

Car City Complete - Brownstown, MI
December 2016 to April 2018

Accounts Receivable, Accounts Payable, Quickbooks Data Entry, Payroll, Payroll Deductions, Federal and State Taxes utilizing Quickbooks and e-pay, Investor and Profit Sharing Preparation,
Filing, Marketing, Business Advertisement, Promotional Events, Exceptional Customer Service, Business Phone/Fax,
Mitchell International Auto Estimating Computer System, Auto Sales,
Federal and State Licensing Renewals, Payment and Invoices, Proficient and Fast Typing Rate.

Respiratory Therapist

Beaumont Hospital - Royal Oak, MI
December 2009 to April 2017

Patient Care, One Chart computer charting system, daily staffing assignment, Therapist:Patient monitoring, patient/family satisfaction and proper follow up care.
Tracheotomy care, breathing treatments, ABG draw, patient assessment, ABG interpretation, vent monitoring, vent adjustment, assist intubation, assist tracheostomy, O2 rounds, IPV, CPAP, Bi Pap, vent cleaning, charting, reporting, physician interaction and excellent patient care.
BLS Certified April 2020

ACLS Certified April 2020
CPR Health Professional Certified April 2020
RRT- renewal sent in
CRT
10+ years RRT experience!

EDUCATION

Associate in Registered, Certified Respiratory Therapist-renewal sent in.
Henry Ford Community College - Dearborn, MI January
2010 to Present

BLS, ACLS, CPR Healthcare Professional in Cardiac Life Support
Henry Ford Community College - Dearborn, MI April 2020
to April 2022

Associate in Respiratory Therapy
Henry Ford Community College - Dearborn, MI January 2007
to January 2010

Associate in Business Administration
Henry Ford Community College - Dearborn, MI January
2003 to May 2006

SKILLS

- **Office Management**
- **Accounts Receivable**
- **QuickBooks**
- **Bookkeeping**
- **Accounts Payable**
- **Accounting**
- **Accounts Payable**
- **Accounts Receivable**
- **Bookkeeping**
- **Office Management**
- **QuickBooks**
- **Human Resources**
- **Payroll**

- **Event Planning**
- **Microsoft Excel**
- **Microsoft Outlook**
- **Microsoft Powerpoint**
- **Budgeting**
- **Data Entry**
- **Tax Experience**
- **Medical Billing**
- **EMR Systems**
- **Hospital Experience**
- **Critical Care Experience**
- **ICU Experience**
- **Insurance Verification**
- **Microsoft Office (10+ years)**
- **One Chart (10+ years)**
- **PTSD Care**
- **Medical Records**
- **Case Management**
- **Vital Signs**
- **Medication Administration**
- **Laboratory Experience**

LINKS

https://share.indeedassessments.com/share_to_profile

CERTIFICATIONS AND LICENSES

BLS for Healthcare Providers

April 2020 to April 2022

ACLS

April 2020 to April 2022

CPR/AED for Professional Rescuers and Health Care Providers

April 2020 to April 2022

CPR/First Aid

GROUPS

NBRC

Present

Member# 118696

ADDITIONAL INFORMATION

SKILLS

Tracheotomy care, breathing treatments, ABG draw, patient assessment, ABG interpretation, vent monitoring, vent adjustment, assist intubation, assist tracheostomy, O2 rounds, IPV, CPAP, BiPAP, vent cleaning, charting, reporting, physician interaction and excellent patient care.
One Chart computer documenting system, daily staffing assignment, staff per patient count monitoring, patient/family satisfaction and proper follow up care.
BLS Certified April 2020
ACLS Certified April 2020
CPR Health Professional Certified April 2020

- Accounts Payable
- Billing
- Data Entry
- Payroll
- Quickbooks
- Receptionist
- Scheduling
- Typing
- Microsoft Office
- Outlook
- Office Management
- Human Resources
- Bookkeeping
- accounting
- Accounts Receivable
- Event Planning

April 13, 2020

Ms Melissa Ann Hanak
507 S Church Street
Brighton, MI 48116

File #: 19417

Dear Ms. Hanak:

Thank you for your application for licensure as a Florida registered respiratory therapist. Your application has been received and is pending the following documentation:

- **Verification of licensure submitted directly from the state board office.**
- **Your application is incomplete. The NBRC letter received does not have a valid /or current expiration date. Please provide a NBRC letter with the current or / valid expiration date.**
- **Because you have been out of the practice for 2 or more years, you must complete and submit proof of a Board approved comprehensive review course. Refer to Rule 64B32-2.001(3)(d) for additional requirements. Board approved comprehensive course means any course or courses which include, at a minimum, fourteen contact education hours in the topics and numbers of hours as follows:**
    - Patient assessment 3 hours
    - Hemodynamics 2 hours
    - Pulmonary Function 1 hour
    - Arterial blood gases 1 hour
    - Respiratory equipment 2 hours
    - Airway Care 1 hour
    - Mechanical ventilation 2 hours
    - Emergency care/special procedures 1 hour
    - General respiratory care (including medication) 1 hour

You are welcome to complete live, home-study or on-line course from the Florida Medical Educational Services (FMES) courses on-line at www.fmes.net or (386) 325-5790, Kettering National Seminars at www.ketteringseminars.com or 1-(800) 445-0860 or http://floridasrespiratorycare.gov/renewals/

You can now follow the progress of your application through our website at: https://mqaonline.doh.state.fl.us/. If you did not apply for licensure through this screen, please select "Click HERE for New User Registration" and create an account. You must have a valid email address to create your account.

Once you are logged in, you will be prompted to link your application to your account in four easy steps. Once you have successfully linked your application, you will be directed to the Quick Start Menu. Under the “Additional Activities” section, select “Application Status” to review any open deficiencies, upload documents or print out instructional documents.

As a reminder to all applicants, please understand that section 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

Thank you for your interest in practicing respiratory care in Florida. If you have any questions, please contact me at the address below. You may also reach me at 850-901-6833 or e-mail at shavondria.johnson@flhealth.gov .

Sincerely,

Shavondria Johnson
Regulatory Specialist II

FLORIDA | Board *of* Respiratory Care

APPLICATION SUMMARY

Names: Scott Jr., Edward

5702 / 17911; Certified Respiratory Therapist Applicant

Application Completion Date: 09/16/2020

Other Related License(s): None

DISCIPLINARY HISTORY No

CRIMINAL HISTORY Yes

Arrest / Offense Date: November 05,2006
Charge: Aggravated battery w/a deadly weapon
Level: Felony
Disposition: Disposed

Arrest / Offense Date: November 05,2006
Charge: VOP/ Aggravated battery w/a deadly weapon
Level: Felony
Disposition: Disposed

Arrest / Offense Date: November 05,2006
Charge: VOP/ Leaving scene of crash involving personal injury
Level: Unknown
Disposition: Disposed

Arrest / Offense Date: November 05,2006
Charge: Aggravated assault w deadly weapon without intent to kill
Level: Unknown
Disposition: Disposed

Arrest / Offense Date: November 05,2006
Charge: Hit and run fail to stop remain at crash involve injury
Level: Unknown
Disposition: Disposed

Staff Notes:

Mr. Scott was noticed to appear at the October 16, 2020 Board meeting on September 16, 2020.

Summary Prepared By: Shavondria Johnson

September 16 2020

Edward Be na d Scott Jr
1998 Nena Hills Dr
Tallahassee, FL 32304

Applicant ID#: 17911

Dear Mr Scott Jr :

The Board of Respirat ry Care will conside your applicati n at its October 16, 2020 meeti g The Board is requiri g your appeara ce in the matte of your applicatio via conference call, for certified respirato y therapist licensure by endo sement to discuss the criminal histo y you listed on your applicati n

In additi , the Board may inquire into any other issues regardi g your eligibility and/or applicati for licensure. Your application will be placed on the agenda for the Boa d's consideration as follows

The meeting is scheduled for:

Telephone Conference/ Video Call at 8:30 a.m. EST
To j i the meeti g from you computer, tablet or smartph e
GoToMeeting Link

You ca also dial i usi g your phone
United States (Toll Free): 1(877)309-2073
Access Code: 779-560-757

Joi from a video-co ferenci g room o system.
Dial in or type: 67.217 95.2 or inroomlink got c m
Meeting ID 779 560 757
Or dial directly: 779560757@67 217 95.2 o 67 217 95 2##779560757

New to GoToMeeting? Get the app now and be ready whe you first meeti g starts
https://global.gotomeeting.com/install/779560757

It is requested that you contact me in writi g regarding your intentions to attend the meeti g You may write to the address listed below or fax your response to (850) 414-6860 If you have any pertinent additi al informati you may want reviewed prior to the meeting, please send to me at least two weeks befo e the meeti g above

Section 456 013(3)(c), Flo ida Statutes, p ovides that in consideri g applications for licensure, the board, o the department whe there is no board, may require a personal appearance of the appli a t If the applicant is equired to appear, the time peri d in which a licensure applicatio must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next tw regularly scheduled board meetings or fails to appear before the department withi 30 days if there is no board, the applicati for licensure shall be denied

Due to the onset of hurrica e season it may be necessary to amend the time, l cation or even cancel the meeti g above In o de to notify you of any potential change we request you keep this office info med of

any changes to your work, home and cell phone numbers. If you have questions regarding changes due to a storm you may contact our office at the number below.

Thank you for your continued cooperation. If you have any questions, please contact me at the address below. You may also reach me at 850-901-6833 or e-mail shavondria.johnson@flhealth.gov .

Sincerely,
Shavondria Johnson
Shavondria Johnson
Regulatory Specialist II

Johnson, Shavondria

From: Edward Scott <edward.scott22@yahoo.com>
Sent: Wednesday, September 16, 2020 2:57 PM
To: Johnson, Shavondria
Subject: Re: Fl TT app status File # 17911

Afternoon Ms. Johnson,

I will be participating in the video conference and appreciate your time and consideration.

Edward Scott

On Sep 16, 2020, at 11:01 AM, Johnson, Shavondria <Shavondria.Johnson@flhealth.gov> wrote:

Good Morning,

Please see the attached document for details.

EFFECTIVE IMMEDIATELY: Board staff will no longer accept any documents by email. Should you need to upload documents to your file, please log into your online account at www.flhealthsource.gov

Sincerely,
<image001.png>
Renee Johnson
Regulatory Specialist II
Medical Quality Assurance
Health Care Practitioner Regulation
Florida Board of Respiratory Care
4052 Bald Cypress Way; Bin C05
Tallahassee, FL 32399-3255
Ph. (850) 617-1963
Fax (850) 414-6860
www.flhealthsource.gov
www.floridasrespiratorycare.gov

How am I communicating? Please contact my supervisor, Kayla.Karpp@flhealth.gov

<image002.jpg>
Mission: To protect, promote and improve the health of all people in Florida through integrated state, county and community efforts.

<Scott Jr. -CC notice.pdf>

June 1, 2020

Edward Bernard Scott Jr.
1998 Nena Hills Dr.
Tallahassee, FL 32304

File #: 17911

Dear Mr. Scott Jr.:

Thank you for your application for licensure as a Florida certified respiratory therapist. Your application has been received and is pending the following documentation:

- **Provide arrest reports for all disqualifying offenses. You may obtain these documents by contacting the arresting agency. If documents are not available due to record retention policies, have the arresting agency provide you with a letter, on their letterhead, stating there is no information available.**

- **Supporting documentation must be submitted to verify the events, including court documents for each offense, providing arrest records, restitution or current circumstances, final disposition, & completion of probation etc. If the records are no longer available, you must have certification of their unavailability from the court.**

You can now follow the progress of your application through our website at: https://mqaonline.doh.state.fl.us/. If you did not apply for licensure through this screen, please select "Click HERE for New User Registration" and create an account. You must have a valid email address to create your account.

Once you are logged in, you will be prompted to link your application to your account in four easy steps. Once you have successfully linked your application, you will be directed to the Quick Start Menu. Under the "Additional Activities" section, select "Application Status" to review any open deficiencies, upload documents or print out instructional documents.

As a reminder to all applicants, please understand that section 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

Thank you for your interest in practicing respiratory care in Florida. If you have any questions, please contact me at the address below. You may also reach me at 850-245-4373 or e-mail at shavondria.johnson@flhealth.gov.

Sincerely,

Shavondria Johnson
Regulatory Specialist II

August 12, 2020

Edward Bernard Scott Jr.
1998 Nena Hills Dr.
Tallahassee, FL 32304

File #: 17911

Dear Mr. Scott Jr.:

Thank you for your application for licensure as a Florida certified respiratory therapist. Your application has been received and is still pending the following documentation:

Supporting documentation must be submitted by you to verify the charge listed on your application, including court documents for each offense, providing arrest report record, restitution or current circumstances if any, final disposition, proof if completion of probation, paid fines and costs, etc. If the records are no longer available, you must have certification of their unavailability from the court.

You can now follow the progress of your application through our website at: https://mqaonline.doh.state.fl.us/. If you did not apply for licensure through this screen, please select "Click HERE for New User Registration" and create an account. You must have a valid email address to create your account.

Once you are logged in, you will be prompted to link your application to your account in four easy steps. Once you have successfully linked your application, you will be directed to the Quick Start Menu. Under the "Additional Activities" section, select "Application Status" to review any open deficiencies, upload documents or print out instructional documents.

As a reminder to all applicants, please understand that section 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

Thank you for your interest in practicing respiratory care in Florida. If you have any questions, please contact me at the address below. You may also reach me at 850-901-6833 or e-mail barbara.baker@flhealth.gov.

Sincerely,

Barbara Baker
Regulation Specialist II

July 22, 2020

Edward Bernard Scott Jr.
1998 Nena Hills Dr.
Tallahassee, FL 32304

File #: 17911

Dear Mr. Scott Jr.:

Thank you for your application for licensure as a Florida certified respiratory therapist. Your application has been received and is pending the following documentation:

- Provide arrest reports for all disqualifying offenses. You may obtain these documents by contacting the arresting agency. If documents are not available due to record retention policies, have the arresting agency provide you with a letter, on their letterhead, stating there is no information available.

- Supporting documentation must be submitted to verify the events, including court documents for each offense, providing arrest records, restitution or current circumstances, final disposition, completion of probation, etc. If the records are no longer available, you must have certification of their unavailability from the court.

You can now follow the progress of your application through our website at: https://mqaonline.doh.state.fl.us/. If you did not apply for licensure through this screen, please select "Click HERE for New User Registration" and create an account. You must have a valid email address to create your account.

Once you are logged in, you will be prompted to link your application to your account in four easy steps. Once you have successfully linked your application, you will be directed to the Quick Start Menu. Under the "Additional Activities" section, select "Application Status" to review any open deficiencies, upload documents or print out instructional documents.

As a reminder to all applicants, please understand that section 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

Thank you for your interest in practicing respiratory care in Florida. If you have any questions, please contact me at the address below You may also reach me at (850) 901-6833 or e-mail barbara.baker@flhealth.gov or Shavondria.Johnson@flhealth.gov.

Sincerely,

Barbara Baker

Barbara Baker
Regulatory Specialist II

CERTIFIED RESPIRATORY THERAPISTS
LIST FOR RATIFICATION

1.	Ulmer	Kaitlin	H	TT	16750
2.	Lawrence	Amber		TT	16751
3.	Armstrong	Latasha	Dawn	TT	16752
4.	Mayes	Jonmark		TT	16753
5.	Pina	Courtney		TT	16754
6.	Rivas	Jesus	H	TT	16755
7.	Baisden	Brianna	Arielle	TT	16756
8.	Baham	Shannon		TT	16757
9.	Niemeyer	Michael		TT	16758
10.	Terry	Amber	Elaine	TT	16759
11.	Wells	Tyler		TT	16760
12.	Coachman	Latoya	Quinett	TT	16761
13.	Brooks	Brittney	Marie	TT	16762
14.	Whidden	Megan		TT	16763
15.	Quesada	Marlon		TT	16764
16.	Vanorder	Steven		TT	16765
17.	Knight	Stephen	Layne	TT	16766
18.	Serrano	Blas	E	TT	16767
19.	Lester	Jessica	A	TT	16768
20.	Neal	Warren	Keith	TT	16769
21.	Mercier	Robert	Lee	TT	16770
22.	Crawford	Gabrielle	Nicole	TT	16771
23.	Leyva	Yadiana	Eva	TT	16772
24.	Jaramillo	Xochitl		TT	16774
25.	Pham	Tuan	V	TT	16775
26.	Barthelemy	Gladumide		TT	16776
27.	Hale	Brenda		TT	16777
28.	Martinez	Krista	Alina	TT	16778
29.	Chapman	Debra		TT	16779
30.	Moore	Cameron	Keith	TT	16780
31.	Barker	Jamie	Nicole	TT	16781
32.	Westfall	Joelle	Lynn	TT	16782
33.	Fleurime	Geraldine		TT	16783
34.	Moenius	John	Wayne	TT	16784
35.	Banville	Shaquilah		TT	16785
36.	Whitney	Kimberly	Ann	TT	16786
37.	Harrison	Monique	Renea	TT	16787
38.	White	Michele		TT	16788
39.	Hicks	Jerald	Jerome	TT	16789
40.	Page	Frederick	Mandel	TT	16790
41.	Heinecke	Christina	Carol	TT	16791
42.	Partee	Dennis		TT	16792
43.	Wilson	Tierra		TT	16793
44.	Dubois	Kenya	Shavon	TT	16794
45.	Speights	Kimberly	Ramsey	TT	16795
46.	Smith	Tia		TT	16796
47.	Hiles	Stephanie	Marie	TT	16797
48.	Wojtaszek	Catherine	Paulina	TT	16798
49.	Banks	Mckenzie		TT	16799
50.	Whitman	Robin	Lynne	TT	16800

51. Morales	Emily	Marie	TT	16801
52. Brown	Brandy	Raquel	TT	16802
53. Cadavid	Sofia		TT	16803
54. Shelton	Lisa	Anne	TT	16804
55. Kohlbeck	Wendy	Ann	TT	16805
56. Taylor	Katherine		TT	16806
57. Krzysik	Edward	Michael	TT	16807
58. Archer	Tracy		TT	16808
59. Tyson	Gabrielle		TT	16809
60. Steele	Faith		TT	16810
61. Gray	John	Alexander	TT	16811
62. Mathew	Shans		TT	16812
63. Trazil	Sonia		TT	16813
64. Louissaint	Joshua		TT	16814
65. Goode	Katiere	Franchae	TT	16815
66. Muhammad	Khalid		TT	16816
67. Montero	Dylan		TT	16817
68. Ingalls	Kelly		TT	16818
69. Gish	Jana	Lynn	TT	16819
70. Daniel	Seth	Allen	TT	16820
71. Coar	Geoffrey		TT	16821
72. Aguilera	Anna	Elizabeth	TT	16822
73. Tabango	Brandon		TT	16823
74. Macleod	Diane		TT	16824
75. Carbonel	Jose	Antonio	TT	16825
76. Johnson	Pauline	Tiki	TT	16826
77. Williams-Chakravartie	Loretta		TT	16827
78. Baker	Holly		TT	16828
79. Mulcahey	Marissa	Rose	TT	16829
80. Leedy	Crystal		TT	16830
81. Sainvil	Rodolph	M	TT	16831
82. Yope	Emily		TT	16832
83. Brown	Summer	Gail	TT	16833
84. Earl	Tireena		TT	16834
85. Parker	Randa		TT	16835
86. Ouimette	Trisha		TT	16836
87. Ellis	Maleeka	Monique	TT	16837
88. Adams	Samelia	I	TT	16838
89. Harris	Ernest	William	TT	16839
90. Stewart	Erica		TT	16840
91. Theodore	Emmanuel		TT	16841
92. Strain	Brittany		TT	16842
93. Morgan	Tashameek		TT	16843
94. Cotton	Asya		TT	16844
95. Leggett,	Kajumi Jajuan		TT	16845
96. Rogers-Clay	Connie	Rebecca	TT	16846
97. Lamb	Montanna	Nicole	TT	16847
98. Carter	Ann	Kristina	TT	16848

REGISTERED RESPIRATORY THERAPISTS
LIST FOR RATIFICATION

1. Bassett	Alicia	Leeann	RT	18604
2. White	Ruth-Anne		RT	18605
3. Waller	Alexander	Alfonso	RT	18606
4. Hegedus	Cassidy	Marie	RT	18607
5. Mayers	Tyler	Dominic	RT	18608
6. Hightshoe	Hillary		RT	18609
7. Helsley	Courtney	K	RT	18610
8. Vogel	Julia	M	RT	18611
9. Harvey	Khaleel	Samuel	RT	18612
10. Dobiash	Ashley	Lyn	RT	18613
11. Downs	Amanda		RT	18614
12. Restor	Edward		RT	18615
13. Brown	Taylor		RT	18616
14. Warren	Janna		RT	18617
15. Davis	Neiadra	Michelle	RT	18618
16. Hilton	Christina	Nicole	RT	18619
17. Dushensky	Leslie	Lyn	RT	18620
18. Gutierrez	Lindsy		RT	18621
19. Lantin	Natacha		RT	18622
20. Savilla Jr	Philip	Joseph	RT	18623
21. Holloway	Chrishanna		RT	18624
22. Thomas	Anu		RT	18625
23. Androwski	Adrienne	Denise	RT	18626
24. Lee	Jamie	L	RT	18627
25. Batuk	Matthew		RT	18628
26. Good	Karen	Latham	RT	18629
27. Wooten	Bailee	C.	RT	18630
28. Price	Denver	Charles	RT	18631
29. Sewell	Rennay		RT	18632
30. Scott	Monica	Denise	RT	18633
31. Fortson	Cierra	Lanequa	RT	18634
32. Alexander	Raoul	Payne	RT	18635
33. Martin	Ashley	Candice	RT	18636
34. Marcial	Maribel		RT	18637
35. Sittig	Jacob		RT	18638
36. Mcclelland	Shera	L	RT	18639
37. Klender	Tina	M	RT	18640
38. Guyett	Shane	David	RT	18641
39. Germany	Jessica	Erin	RT	18642
40. Gali	Armando		RT	18643
41. Shue	Emily		RT	18644
42. Kruger	Shawna	Leanne	RT	18645
43. Vasquez	Aleida		RT	18646
44. Eugene	Beatrice		RT	18647
45. Zambrano	Stephanie		RT	18648
46. Koester	Kimberly		RT	18649
47. Johnson	Jackie		RT	18650
48. Mayes	Amy	Nicole	RT	18651
49. Holmes	Samantha		RT	18652
50. Pfankuch	Taylor	Kristian	RT	18653
51. Pruden	Daniel		RT	18654

52. Ferguson	Jessica	Ann	RT	18655
53. Martin	Cortez		RT	18656
54. Mozdziak	Jamie	Marie	RT	18657
55. Powell	Jahlissa		RT	18659
56. Kennedy	Jon	Derek	RT	18660
57. Rojas	Bianca	Marie	RT	18661
58. Dugonjic	Sara		RT	18662
59. Lambrose	Steven	Michael	RT	18663
60. Hurtado	Yane		RT	18664
61. Young	Robin	Monique	RT	18665
62. Bennett	Monica	Lynn	RT	18666
63. Simken	Brandon		RT	18667
64. Carrera	Luz		RT	18668
65. Mccoy	Cassandra		RT	18669
66. Rivera	Natalia		RT	18670
67. Mcgowan	Christian	Xavier	RT	18671
68. Tucker	Kastyn		RT	18672
69. Dohrman	Audrey	Battaglia	RT	18673
70. Clarke	Ashley	M	RT	18674
71. Bailey	Vennie	Karen	RT	18675
72. Chacon Swenson	Lucinda	Ann	RT	18676
73. Pritchett	Caylah		RT	18677
74. Bang	Thomas		RT	18678
75. Snyder	Peter		RT	18679
76. Beaty	Robert	E	RT	18680
77. Matthews	Brian	Andrew	RT	18681
78. Mcclaugherty	Kim		RT	18682
79. Patel	Kekina		RT	18683
80. Hardee	Karen	Denise	RT	18684
81. Jones	Brittany	Kiara	RT	18685
82. Jaycox	Marie	Elaine	RT	18686
83. Molo	Cindy		RT	18687
84. Vance	Chase	Dwayne	RT	18688
85. Camacho	Mae		RT	18689
86. Hall	Sally	Ann	RT	18690
87. Robinson	Armesha	Lesha	RT	18691
88. Naughton	Patrick	John	RT	18692
89. Ricks	Azariel		RT	18693
90. Fabjon	Cindy	W	RT	18694
91. Davis	Deadria		RT	18695
92. Pike	Lynda		RT	18696
93. Cerqueira	Luciana		RT	18697
94. Miller	Brittany	Michelle	RT	18698
95. Odell	Jennifer	Louise	RT	18699
96. Cienega	Melissa	Marie	RT	18700
97. Pollock	Amy		RT	18701
98. Acosta	Thais		RT	18702
99. Wallace	Tabitha	Renee	RT	18703
100. Boncler	Kimberly	Dawn	RT	18704
101. Haaland	Jensen	Paige	RT	18705
102. Sambucaro	Frank		RT	18706
103. Krause	Tanya	Lynn	RT	18707
104. Beaumont	Ryan	Neal	RT	18708
105. Cook	Fareeda	Damali	RT	18709
106. Nelson	Raelene		RT	18710
107. Faison	Lakesha	Monay	RT	18711

108.	Tureaud	Jalyn	Victoria	RT	18712
109.	Clemons	Amy	N	RT	18713
110.	Berson	Rebecca	Rose	RT	18714
111.	Bidare	Abdulkadir	Yusuf	RT	18715
112.	Dareus	Myrnoye		RT	18716
113.	Rosas	Carol		RT	18717
114.	Gomez	Alejandra	M	RT	18718
115.	Marker	Renee		RT	18719
116.	Kashuba	Raymond		RT	18720
117.	Martinez	Andrea	Carolina	RT	18721
118.	Delassaint	Wesline		RT	18722
119.	Turner	Ashley	Elizabeth	RT	18723
120.	Mulcahy	Fredrick		RT	18724
121.	Crook	Michelle		RT	18725
122.	Montero-Gonzalez	Haylen		RT	18726
123.	Shelton	Korea		RT	18727
124.	Reyes	Eric	Nelson	RT	18731
125.	Harris	Kelley		RT	18732
126.	Holness	Ariana		RT	18733
127.	Garrett	Destinee		RT	18734
128.	Bombino	Michael		RT	18735
129.	Clerveau	Marjorie	Medjine	RT	18736
130.	Penalver Dita	Yahima		RT	18737
131.	Parales	Juliann		RT	18738
132.	Dehaven	Maryann	Mcbride	RT	18739
133.	Hignight	Jessica		RT	18740
134.	Padron	Ernesto		RT	18741
135.	Schrader	Kristina	Michelle	RT	18742
136.	Gonzalez	Indira	Paola	RT	18743
137.	Price	Natara		RT	18744
138.	Petro	Nicholas	W	RT	18745
139.	Thompson	Kathedene	Yolande	RT	18746
140.	Divoll	Melissa		RT	18747
141.	Rozier	Deanna	Michelle	RT	18748
142.	Grzesiak	Joselyn		RT	18749
143.	Hampton	Azsha	Mone	RT	18750
144.	Ray	Alona	Olivia	RT	18751
145.	Harris	Martina		RT	18752
146.	Edouard	Jonathan		RT	18753
147.	Surratt	Jessica		RT	18754
148.	Rogers	Jason		RT	18755
149.	Sjoblom	Marisa		RT	18756
150.	Mesfun	Mahta		RT	18757
151.	Cuevas	Marissa		RT	18758
152.	Lowe	Sarah	Ann	RT	18759
153.	Williams	Crystal	Marie	RT	18760
154.	Laubach	Clara	Lynn	RT	18761
155.	Ross	Arlene	L	RT	18762
156.	Rodriguez	Gabriel	Anthony	RT	18763
157.	Wilsher	Brenee	Louise	RT	18764
158.	Kimmel	Jason		RT	18765
159.	Chandler	Kelly	Lynn	RT	18766
160.	Trimarco	Lara		RT	18767
161.	Ross	Jennifer		RT	18768
162.	Atabong	Atemnkeng		RT	18769
163.	Elrhalami	Mohammed	Nasreddine	RT	18770

164.	Redmond	Katie		RT	18771
165.	Nguyen	John	Tuong Phong	RT	18772
166.	Riker	Amy		RT	18773
167.	Thurman	Erin		RT	18774
168.	Barry	Remona		RT	18775
169.	Garris	Richard	Odell	RT	18776
170.	Oberle	Katie	L	RT	18777
171.	Noel	Gina	Pierre	RT	18778
172.	Terrebonne	Amie	Renae	RT	18779
173.	Weatherspoon	Sasha		RT	18780
174.	Rogel	Jonathan	Alexander	RT	18781
175.	Fuqua	Ashley		RT	18782
176.	Campbell	Tessica	C	RT	18783
177.	Fahra	Africa	Ibrahim	RT	18784
178.	Bennetsen	Grace	Ellen	RT	18785
179.	Davis	Fred	L	RT	18786
180.	Garcia	Miguel	Angel	RT	18787
181.	Ho	Stephen		RT	18788
182.	Turner	Jane	Rae	RT	18789
183.	Smith	Alpha		RT	18790
184.	Landrum	Glenda	Marie	RT	18791
185.	Aaron	Taji	Latoi	RT	18792
186.	Harris	Robert		RT	18793
187.	John	Laly		RT	18794
188.	Mozdziak	Thomas	Joseph	RT	18795
189.	Nelson	Patsy	Leann	RT	18796
190.	Leyva	Yadiana	Eva	RT	18797
191.	Hanson	Jaime	Nels	RT	18798
192.	Usita	Danica		RT	18799
193.	Platzer	Jason	Jeremiah	RT	18800
194.	Murray	Brad		RT	18801
195.	Matson	Alison		RT	18802
196.	Petroni	Tina	Marie	RT	18803
197.	Klima	Francis	Richard	RT	18804
198.	Hoskins	Willie		RT	18805
199.	Coleman	Andrea	Lorraine	RT	18806
200.	Donovan	Anita		RT	18807
201.	Jones	Tamar		RT	18808
202.	Davis	Julie	Perry	RT	18809
203.	Stalls	Lori	A	RT	18810
204.	Wood	Teresa	M	RT	18811
205.	Hamilton	Montana	Marie	RT	18812
206.	Murphy	Niesha	C	RT	18813
207.	Mitchell	Tameka		RT	18814
208.	Babalola	Omolade	Angela	RT	18815
209.	Jimenez	Julie		RT	18816
210.	Jorgensen	Paige		RT	18817
211.	Succeur	Frankie		RT	18818
212.	Duncombe	War		RT	18819
213.	Ahmad	Sireen		RT	18820
214.	Oliver	Heidi		RT	18821
215.	Varughese	Sheela		RT	18822
216.	Constable	Abby		RT	18823
217.	Leigh	Jessica	Erin	RT	18824
218.	Brown	Tamika	Latoya	RT	18825
219.	D'Aprile	Melissa		RT	18826

220.	Shines	Sellie		RT	18827
221.	Babjak	Kim	Marie	RT	18828
222.	Wheeler	Lisa		RT	18829
223.	Shrestha	Karishma		RT	18830
224.	Swift	Jaime		RT	18831
225.	Sailsman	Tre		RT	18832
226.	Ashe	Kevin	Brian	RT	18833
227.	Baldwin	Arlisha		RT	18834
228.	Hartfelder	Morgan		RT	18835
229.	Downing	John		RT	18836
230.	Temples	Tara	Gene	RT	18837
231.	Mclean	Nathaniel	Ryan	RT	18838
232.	Wilfong	Joshua	Lee	RT	18839
233.	Olridge	Quinton		RT	18840
234.	Danley	Nancy		RT	18841
235.	King	Meghan	Renee	RT	18842
236.	Amayem	Mohamed	Elsayed	RT	18843
237.	Nelson	Mary	Brandyne	RT	18844
238.	Dunlap	Nathaniel		RT	18845
239.	Vargas	Kamyl	T	RT	18846
240.	Graham	Tonya	Lynn	RT	18847
241.	Kazmer	Nicholas		RT	18848
242.	Stone	Traveta		RT	18849
243.	Packard	Cassandra	Louise	RT	18850
244.	Johnson	Shauna		RT	18851
245.	Pierre	Marilyn		RT	18852
246.	Stewart	Jo		RT	18853
247.	Penix	Erica		RT	18854
248.	Brown-Price	Tiffany		RT	18855
249.	Gorday	Amelia	Lauren	RT	18856
250.	Chavis	Patrick	Wayne	RT	18857
251.	Alexyn	Jessica	Rose	RT	18858
252.	Bala	Ardit		RT	18859
253.	Coser	David	Edward	RT	18860
254.	Wambari	Eunice	W	RT	18861
255.	Saint-Hilaire	Jean Wisly		RT	18862
256.	Tymon	Daniel	Jack	RT	18863
257.	Gentry	Jeremy	Lynn	RT	18864
258.	Shaffer	Marissa	Margarita	RT	18865
259.	Lopez	Jessica		RT	18866
260.	Atkins	Jessica	Pruett	RT	18867
261.	Gray	Alexis	Alana	RT	18868
262.	Harris	Aundrea		RT	18869
263.	Euell	Melanie		RT	18870
264.	D'Ottavio	Elizabeth	Margaret	RT	18871
265.	Colton	Paul	Michael	RT	18872
266.	Scott	Jeanette	Marie	RT	18873
267.	Crawford	Annette		RT	18874
268.	Aranguren	Helen		RT	18875
269.	Stephens	Arienne		RT	18876
270.	Donovan	Cody	J	RT	18877
271.	Gino	Maria	Frances	RT	18878
272.	Delgado	Pamela		RT	18879
273.	Collins	Christopher		RT	18880
274.	Yarbour	Lori		RT	18881
275.	Tanaka	Christine	Yvonne	RT	18882

276.	Pannell	Tonya	H	RT	18883
277.	Cisar	Haley		RT	18884
278.	Cuthbertson	Andrew	Brickell	RT	18885
279.	Salami	Cynthia	Arlene	RT	18886
280.	Ramirez Cedano	Kenny	Alberto	RT	18887
281.	Sheltra	Shannon	Joan	RT	18888
282.	Franklin	Rebecca		RT	18889
283.	Kee-Smith	Michelle	M	RT	18890
284.	Wilson	Dawn	Louise	RT	18891
285.	Johnson	Bianca		RT	18892
286.	Farrell	Dorothy	Shaw	RT	18893
287.	Roberson	Jerry	Lynn	RT	18894
288.	Wood	Heather		RT	18895
289.	Clark	Ronda		RT	18896
290.	Henderson	Felicia	Serena	RT	18897
291.	Quesada	Marlon		RT	18898
292.	Soca Toledo	Dasneily		RT	18899
293.	Sisk	Suzanne	Michelle	RT	18900
294.	Voll	William		RT	18901
295.	Arner	Sandra	Tara	RT	18902
296.	Mcfadden	Valerie	Lorraine	RT	18903
297.	Roeder	Marcia		RT	18904
298.	Kennedy	Cory	Matthew	RT	18905
299.	Tyrrell	Makayla	Nicole	RT	18906
300.	Luma	Cherly		RT	18907
301.	Thao	Pa	Chai	RT	18908
302.	Eckroth	Rachel	Marie	RT	18909
303.	Ruiz	Victor	Manuel	RT	18910
304.	Cuida	Ana		RT	18911
305.	Meade	Jason		RT	18912
306.	Vedder	April	Lee	RT	18913
307.	Martin	Lisa	M	RT	18914
308.	Arledge	Betty	Jean	RT	18915
309.	Whitaker	Lakeesha	Bolus	RT	18916
310.	Segar	Joel	Edward	RT	18917
311.	Rose	Amanda		RT	18918
312.	Russell	Gregory	Paul	RT	18919
313.	Silchenko	Alexey		RT	18920
314.	Rojas	Julie		RT	18921
315.	Bowers	Bridget		RT	18922
316.	Dyson	Latesha	S	RT	18923
317.	Edwards	Vera		RT	18924
318.	Nathan	Yolanda	D	RT	18925
319.	Murphy	Keith	Terrance	RT	18926
320.	Albino-Figueroa	Ninascka		RT	18927
321.	Andresen	Matthew	Bradley	RT	18928
322.	Holloway	Brianne	Lynn	RT	18929
323.	Coquat	Joshua		RT	18930
324.	Lockhart-Boyette	Daveena		RT	18931
325.	Mejia	Amanda		RT	18932
326.	Guerra	Shay	Christi	RT	18933
327.	Feliciano	Aza	Ann	RT	18934
328.	Renton	Rebecca	Elise	RT	18935
329.	Gonzalez	Lauren	Margret	RT	18936
330.	Gregoire	Roselaure		RT	18937
331.	Smith	Gabrielle	Nicole	RT	18938

332.	Fleury	Taylor	Shea	RT	18939
333.	Fitzsimons	Sean	Brendan	RT	18940
334.	Coxe	Taylor	Shae	RT	18941
335.	Tran	Judith		RT	18942
336.	Mergener	Lori	Marie	RT	18943
337.	Warmack	Jonathan	Michael	RT	18944
338.	Cercet	Nicole		RT	18945
339.	Daout	Darlens		RT	18946
340.	Dye	Johannah	Grace	RT	18947
341.	Karr	Stacy		RT	18948
342.	Walburger	Tara		RT	18949
343.	Patel	Preethi		RT	18950
344.	Hill	Jennifer		RT	18951
345.	Fields	Shayla		RT	18952
346.	Cathey	Tanisha		RT	18953
347.	Prario	Kayla	Marie	RT	18954
348.	Crosby	Tamara	Norris	RT	18955
349.	Cruz	Erika		RT	18956
350.	Roper	Wendy	Cook	RT	18957
351.	Smith	Autum	R	RT	18958
352.	Mayo	Katherine	Andrea	RT	18959
353.	Ewing	Shetisha	D	RT	18960
354.	Gover	Erica		RT	18961
355.	Mazak	Shauna	Kathleen	RT	18962
356.	Stringer	Laura	Ann	RT	18963
357.	Nell	Charles	Edward	RT	18964
358.	Hoffman	Danielle	Michael Marie	RT	18965
359.	Hall	Wayne	Franklin	RT	18966
360.	Fritsch	Jamon		RT	18967
361.	Bigelow	Julie		RT	18968
362.	Shin	Junsun		RT	18969
363.	Montoya	Maria		RT	18970
364.	Tran	Loc	Kimthien	RT	18971
365.	Evans	Jaime		RT	18972
366.	Gomes	Cassidy		RT	18973
367.	Clark	Lottie	Sue	RT	18974
368.	Shiver	Amanda	Cribb	RT	18975
369.	Cole	Nashunta	Letice	RT	18976
370.	Harrison	Monique	Renea	RT	18977
371.	Jules	Leila		RT	18978
372.	Fabian	Alexander	John	RT	18979
373.	Dupuis	Sidney	Danielle	RT	18980
374.	Ristevski	Ivana		RT	18981
375.	Price	Raven	Michelle	RT	18982
376.	Cremeans	Jeanne	Elizabeth	RT	18983
377.	Simpson	Nancy	Ann	RT	18984
378.	Hale	Katherine	Leeann	RT	18985
379.	Villa	Alyse		RT	18986
380.	Cooper	Jordan	James	RT	18987
381.	Booth	Robyn		RT	18988
382.	Kammeraad	Kathy	Lynn	RT	18989
383.	Wichert	Diane	L	RT	18990
384.	Boyd	Catherine	Shandor	RT	18991
385.	Smith	Jan	Joseph	RT	18992
386.	Ewing	Lindsay		RT	18993

387.	Bosler	Ann		RT	18994
388.	Benton	Edward	Lynn	RT	18995
389.	Bachand	Mark		RT	18996
390.	Houlihan	Patrick	Ryan	RT	18997
391.	Tutko	Elizabeth		RT	18998
392.	Macleod	Kenneth	John	RT	18999
393.	Cantrall	Trevor	Michael	RT	19000
394.	Marotti	Isabella	M	RT	19001
395.	Grundy	Jeremiah		RT	19002
396.	Ford	Diane	Sophia	RT	19003
397.	Neal	Roy	Evan	RT	19004
398.	Swayze	Brittany	Jennifer	RT	19005
399.	Wells	Kelley	Noel	RT	19006
400.	Hayward	Eric	D' Wayne	RT	19007
401.	Cruz	Donna	L	RT	19008
402.	Dale	Patricia	Lynn	RT	19009
403.	Llewellyn	Leah	Marie	RT	19010
404.	Pendergrass	Valarie	D	RT	19011
405.	Lang	Lanean	M.	RT	19012
406.	Foster	Christopher		RT	19013
407.	Albanna	Shireen		RT	19014
408.	Douglas	Holly		RT	19015
409.	Ramirez	Liz	Ivette	RT	19016
410.	Pinkney	Jacqueline		RT	19017
411.	Howard	Rajuan	Russhta	RT	19018
412.	Johnston	Emily	Ann	RT	19019
413.	Allen	Marie	Bernice	RT	19020
414.	Vanorder	Steven		RT	19021
415.	Riley	Melisa		RT	19022
416.	Mcdonough	Patrick		RT	19023
417.	Salesman	Angela	Faye	RT	19024
418.	Fullerton	Jacob	D	RT	19025
419.	Rosado	Yajaira		RT	19026
420.	Rivas	Jesus	H	RT	19027
421.	Howard	Sharon		RT	19028
422.	Capron	Barbara	Anne	RT	19029
423.	Hendrix	Don		RT	19030
424.	Bolen	Jacqueline		RT	19031
425.	Montijo	Allen	Raymond	RT	19032
426.	Wolfgang	Michael		RT	19033
427.	Forthner	Vanessa	Hill	RT	19034
428.	Penrod	Janeece		RT	19035
429.	Ramos	Xavier	Wilbert	RT	19036
430.	Pina	Courtney		RT	19037
431.	Gutierrez	Anthony		RT	19038
432.	Massey	Tigerlily		RT	19039
433.	Logan	Portia	Jae	RT	19040
434.	Russo	Vitoria	L	RT	19041
435.	Young	Ronald	Alan	RT	19042
436.	Allen	Travis	Joel	RT	19043
437.	Eblen	Cynthia	Ann	RT	19044
438.	Chester	Nalani		RT	19045
439.	Robinson	Amber		RT	19046
440.	Gerard	Lakieva	Lashawn	RT	19047
441.	Gifford	Jessica		RT	19048
442.	Acord	Andrew		RT	19049

443.	Whittington	Anngela	Kay	RT	19050
444.	Prosser	David	Andrew	RT	19051
445.	Dryden	Mary		RT	19052
446.	Blevins	Carrie		RT	19053
447.	Medeiros	Glenn	Edward	RT	19054
448.	Dawson	Tiffany	Ann	RT	19055
449.	Hale	Mylin	W	RT	19056
450.	Berkhoff	Joseph	William	RT	19057
451.	Morris	Heather	Alice	RT	19058
452.	Asher	Jacqueline	Nicole	RT	19059
453.	Hale	Summer	Marie	RT	19060
454.	Otte	Cortney	Lynn	RT	19061
455.	Garcia	Emmanuel	Hunt	RT	19062
456.	Moraza-Giner	Irvin	Adrian	RT	19063
457.	Nettles	Orlando	Travon	RT	19064
458.	Gregory-Preston	Charlin		RT	19065
459.	Roberts	Olivia	D	RT	19066
460.	Day	Tamika	Lamay	RT	19067
461.	Demske	Adam	Joseph	RT	19068
462.	Sullivan	Julie		RT	19069
463.	Galvan	Socorro		RT	19070
464.	Murphy	Megan		RT	19071
465.	Carney	Megan	Patricia	RT	19072
466.	Asmar	Sallem		RT	19073
467.	Mcnair	Jennifer		RT	19074
468.	Osborne	Kayla	Bates	RT	19075
469.	Caraballo Stallcup	Laura		RT	19076
470.	Bean	Robert	Macfarlane	RT	19077
471.	Mccleary	Miquel	Shavonne	RT	19078
472.	Simmons	Alexis		RT	19079
473.	Barrios	Gregory	Brandt	RT	19080
474.	Bishop	Ryan	Louis	RT	19081
475.	Alhamed	Amani	Ibrahim	RT	19082
476.	Valentin	Rose	Athensa	RT	19083
477.	Roberge	Jazzmin		RT	19084
478.	Laughlin	Tyler		RT	19085
479.	Giddings	Lindsay	Laura	RT	19086
480.	Lashchuk	Yuriy		RT	19087
481.	Lanzas	Jennifer		RT	19088
482.	Pham	Ai	Thuy	RT	19089
483.	Bolden	Brandi	S	RT	19090
484.	Tobias	Cassandra		RT	19091
485.	Carlos	Lorenzo		RT	19092
486.	Luna	Karina		RT	19093
487.	Miklos	Stephen	Jay	RT	19094
488.	Hamilton	Nicholas	Alexander	RT	19095
489.	Bond	Michelle	Lynn	RT	19096
490.	Lorenzana	Patrick		RT	19097
491.	Nguyen	Tan		RT	19098
492.	Keller	Amber		RT	19099
493.	Abdullah	Umid	Nuri	RT	19100
494.	Hallmark	Jacob		RT	19101
495.	Rosario	Edward	James	RT	19102
496.	Young	William	Wesley	RT	19103
497.	Jones	Tiree		RT	19104
498.	Palaamo	Christina	Dawn	RT	19105

499.	Osborne	Jesse		RT	19106
500.	Dale	Carol	E	RT	19107
501.	Azumah	Doe		RT	19108
502.	Nicolas	Rachel	Veronica	RT	19109
503.	Barakat	Faiza		RT	19110
504.	Doxtader	Timothy		RT	19111
505.	Glenn	Kathy	Victoria	RT	19112
506.	Gannon	Melissa		RT	19113
507.	Casillas	Caleb		RT	19114
508.	Pulles	Jonathan	A.	RT	19115
509.	Assidy	Sarah		RT	19116
510.	Larrabee	Chelsea		RT	19117
511.	Pearson	Bryan	John	RT	19118
512.	Lane	Tracey		RT	19119
513.	Guevara	Nicole	Monique	RT	19120
514.	Heinemann	Brooke		RT	19121
515.	Kuriakose	Elann		RT	19122
516.	Park	Antoinette		RT	19123
517.	Garr	John	Nelson	RT	19124
518.	Barton	David	Darren	RT	19125
519.	Clay	Ashley		RT	19126
520.	Gillette	Michelle		RT	19127
521.	Mayo	Lourdes		RT	19128
522.	Magee	Michele		RT	19129
523.	Ricker	Brittany		RT	19130
524.	Capiral	Coleene	Christine	RT	19131
525.	Patric	Wendy	Ann	RT	19132
526.	Williams	Vahness		RT	19133
527.	Harmon	Kady	Elysabeth	RT	19134
528.	Crawford	Chiquania	L	RT	19135
529.	Bishop	Jason	Michael	RT	19136
530.	Torres	Marilyn	Eve	RT	19137
531.	Grubbs	Yvonne		RT	19138
532.	Sester	Benjamin	William	RT	19139
533.	Tran	Trang		RT	19140
534.	Jones	Sommer		RT	19141
535.	Moretine	Tara	Mattice	RT	19142
536.	Pierce	William	C	RT	19143
537.	Anderson	Sherry	Ann	RT	19144
538.	Martinez	Tessie		RT	19145
539.	Brand	Charles	S	RT	19146
540.	Smairy	Meryem		RT	19147
541.	Alaoui Balghiti	Fatima Zahra		RT	19148
542.	Garrison	Letitia		RT	19149
543.	Roy	Alana		RT	19150
544.	Hall	Regina		RT	19151
545.	Flores	Bryant	Agustin	RT	19152
546.	Ramos	Mario		RT	19153
547.	Williams	Matthew		RT	19154
548.	Auffenberg	Melissa	Ann	RT	19155
549.	Garrett	Lynette	Denise	RT	19156
550.	Wright	Jamie	Lynn	RT	19157
551.	Ibrahim	Wasiu	Abolaji	RT	19158
552.	Etheridge	Kendra	D	RT	19159
553.	Derobles	Joseph	Ed-Chirion	RT	19160
554.	Graham	Ron	F	RT	19161

555.	Torres	Teresa	De Jesus	RT	19162
556.	Morales	Emily	Marie	RT	19163
557.	Jackson	Corey	Steven	RT	19164
558.	Dandridge	Tammy	Lynn	RT	19165
559.	Perkins	Tessa	Miranda	RT	19166
560.	Decastro	Milton		RT	19167
561.	Thomas	Allen	Ray	RT	19168
562.	Smith	Haley	Suzanne	RT	19169
563.	Placide	Ashley	Dionee	RT	19170
564.	Bynum	Mario		RT	19171
565.	Wilkins	Jennifer	Lynn	RT	19172
566.	Gerber	Kenda	L	RT	19173
567.	Taylor	Rori	A	RT	19174
568.	Tatti	Nicole		RT	19175
569.	Miranda	Gabriella	M	RT	19176
570.	Wilson	Lorie		RT	19177
571.	Codispoti	Gina	Renee	RT	19178
572.	Meloy	Karen		RT	19179
573.	Peters	Shannon	N	RT	19180
574.	Leonard	Crystal		RT	19181
575.	Carraway	Porsha		RT	19182
576.	Miller	Jennifer	Elaine	RT	19183
577.	Thornton	Rebecka	Ann	RT	19184
578.	Thompson	Kamm		RT	19185
579.	Lagarda	Carlos	Antonio	RT	19186
580.	Mitchell	Daphne	Joy	RT	19187
581.	Smith	Catherine	Courtney	RT	19188
582.	Altidort	Marie	Jenny	RT	19189
583.	Birge	Leala	Donnell	RT	19190
584.	Heckmann	Megan		RT	19191
585.	Applegate	Kamila	Danielle	RT	19192
586.	Dibbern	Vickie	Sue	RT	19193
587.	Wilson	Kandi	Denise	RT	19194
588.	Tong	Vinh		RT	19195
589.	Taylor	Kyle		RT	19196
590.	Navarijo	Erwin	A	RT	19197
591.	Bastardo Medina	Ana	Leslie	RT	19198
592.	Dart	Netanya	Sue	RT	19199
593.	Ring	Angela	Marie	RT	19200
594.	Marston	Kemar	M	RT	19201
595.	Poulin	Jeanne		RT	19202
596.	Brown	Kiauna	Arielle	RT	19203
597.	San Millan	Jacques		RT	19204
598.	Duque	Luisa	Fernanda	RT	19205
599.	Mcnutt	Cristy	Lee	RT	19206
600.	Whitfield	Jessica		RT	19207
601.	Baies	Alfred	Steven	RT	19208
602.	Hoit	Kimberly	A	RT	19209
603.	Mcdaniel	Nikkole		RT	19210
604.	Justice	Kyle		RT	19211
605.	Gutierriez	Richard	Joseph	RT	19212
606.	Speights	Kimberly	Ramsey	RT	19213
607.	Salters	Ashley		RT	19214
608.	Krupp	Cathy		RT	19215
609.	Sherrod	James	Craig	RT	19216
610.	Valenzuela	Yesica		RT	19217

611.	Evans	Sherie	J.	RT	19218
612.	Campbell	Noah		RT	19219
613.	Olivarria Quijada	Franciso	Javier	RT	19220
614.	McCoy	Lindsey	Renee	RT	19221
615.	Hahesy	Parke	Marie	RT	19222
616.	Wieck	William	R	RT	19223
617.	O'Neil	Gwendolyn	Ruth	RT	19224
618.	Collet	Jason	Oliver	RT	19225
619.	Miller	Anthony	Taylor	RT	19226
620.	Counts	Elizabeth		RT	19227
621.	Fiorenzi	Ana	T	RT	19228
622.	Tubbs	Tracie		RT	19229
623.	Gibbs	Derrick	Anthony	RT	19230
624.	Delgado Orozco	Saskia	Naomi	RT	19231
625.	Buck	Crystal		RT	19232
626.	Langston	Theresa		RT	19233
627.	Boyd Jr	Daniel		RT	19234
628.	Spurlock	Lesslee	Logan	RT	19235

NEW BOARD APPROVED CONTINUING EDUCATION PROVIDERS FOR RATIFICATION

1.	CEU's for ALL	50-7451
2.	Adventhealth Waterman	50-25967
3.	CMES Training	50-30336
4.	Enjoyable Education LLC	50-29984
5.	SmartCE	50-20680

EXEMPTIONS FOR DISQUALIFICATION FROM EMPLOYMENT FOR RATIFICATION

The board has delegated authority to staff to administratively review and approve exemption applications that meet certain criteria. The list of administratively approved exemptions is included for ratification.

1. Tennille Spikes RT17137
2. Cary Steven Giles RT14095
3. Robert Edward Hornick RT10816

BOARD OF RESPIRATORY CARE RULES REPORT
OCTOBER 2020

Executive Director – Allen Hall

	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B31-2.001	License by Endorsement	05/28/2020	07/31/2020	08/12/2020	09/02/2020		

BILL GALVANO
President

JOSE R. OLIVA
Speake

THE FLORIDA LEGISLATURE

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

KENNETH J. PLANTE
COORDINATOR
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Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc state.fl us
japc@leg.state.fl us

June 23, 2020

Mr John Fricke, Jr.
Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050

RE: Department of Health, Board of Respiratory Care
Existing Rules 64B32-5.002, .007, and .008

Dear Mr. Fricke:

In accordance with the Committee's responsibilities pursuant to section 120.545(1) and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules. I have the following comments.

64B32-5.002: Please correct the citation to section 468.365(2)(c) as a law implemented. There is no (2)(c) in that statute.

64B32-5.007(1): Please provide a copy of the form referenced in the last sentence of this rule subsection. Also, it may be helpful to refer to the form and the rule in which the form is incorporated by reference in this rule text

64B32-5.008(2): Please correct the reference to section 486.365(1)(x) in this subsection There is no such statute.

If the board intended to cite section 468.365(1)(x) instead, please explain which rule or statute is the underlying offense.

Please let me know if you have any questions. Otherwise, I look forward to your response

Sincerely,

Marjorie C. Holladay
Chief Attorney

cc: Mr Edward A. Tellechea, Chief Assistant Attorney General

MCH:df #182133, 182136, 182137

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ATTORNEY GENERAL
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July 2, 2020

Ms Marjorie Holladay
Chief Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 West Madison St eet
Tallahassee, Florida 23299 1400

Re Department of Health, Board of Respiratory Care Existing Rules 64B32-5 002, 007, and 008

Dear Ms Holladay:

I am writing in response to your corresp ndence of June 23, 2020, regarding the above-referenced rules I will have your letter added to the agenda for discussion and consideration of changes to the existing rules at the Board's upcoming meeting scheduled for October 16, 2020 Following the meeting, I will advise you of the Board's decisions on your comments.

Very truly yours,

John B Fricke, Jr
Assistant Attorney General

cc: Allen Hall, Executive Director
Edward Tellechea, Chief Assistant attorney General
Tracy Smith, Paralegal Specialist

64B32-5.002 Payment of Fine.

All fines imposed by the Board shall be paid within thirty (30) days from the date of the final order entered by the Board unless the final order extends the deadline in any given case.

Rulemaking Authority 456.072(4), 468.365(4) FS. Law Implemented 456.072(4), 468.365(2)(c) FS. History–New 6-9-99, Formerly 64B8-74.005.

64B32-5.007 Citations.

(1) Pursuant to Section 456.077, F.S., the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the penalty to be imposed. All citations will include a requirement that the subject correct the violation, if remediable, within a specified period of time not to exceed 90 days, and impose whatever obligations will remedy the offense, except documentation of completion of continuing education requirements shall be as specified in paragraph (2)(a). If the violation is not corrected, or is disputed, the Department shall follow the procedure set forth in Section 456.073, F.S. In addition to any administrative fine imposed, the Respondent shall be required by the Department to pay the costs of investigation. The form to be used is specified in the rules of the Department of Health.

(2) The following violations may be disposed of by citation with the specified penalty:

(a) Violations of continuing education requirements required by Section 468.361, F.S.: are to be completed within 90 days of the date of the filing of the final order. Licensee must submit certified documentation of completion of all the CE requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, licensee must document compliance with the CE requirements for the relevant period.

1. Failure to document HIV/AIDS continuing education requirement the fine shall be $100.00.

2. Documentation of some but not all of the 24 hours of continuing education for license renewal the fine shall be $50.00 for each hour not documented.

(b) Violation of any portion of Rule 64B32-5.003, F.A.C., for unprofessional conduct the fine shall be $300.00.

(c) Failure to notify the Board of current address as required by Rule 64B32-1.006, F.A.C., the fine shall be $50.00.

(d) Failure to keep written respiratory care records justifying the reason for the action taken on only one patient under Section 468.365(1)(t), F.S., the fine shall be $100.00.

(e) Circulating misleading advertising in violation of Section 468.365(1)(e), F.S., the fine shall be $500.00.

(f) Exercising influence on a patient to exploit the patient for financial gain by promoting or selling services, goods, appliances or drugs under Section 468.365(1)(u), F.S., the fine shall be $1,000.00.

(g) Failure to submit compliance documentation after receipt of the continuing education audit notification under Section 468.365(1)(x), F.S., the fine shall be $150.00.

(h) Failure to provide satisfaction including the costs incurred following receipt of the Department's notification of a check dishonored for insufficient funds under Section 468.365(1)(l), F.S., the fine shall be $150.00.

(i) Failure to pay required fees and/or fines in a timely manner under Section 468.365(1)(i), F.S., the fine shall be $150.00.

(3) When an initial violation for which a citation could be issued occurs in conjunction with a violation or other violations for which a citation could not be issued, the procedures of Section 456.073, F.S., shall apply.

(4) The licensee has 90 days from the date the citation becomes a final order to pay any fine imposed and costs. All fines and costs are to be made payable to the Department of Health, and sent to the Department in Tallahassee. A copy of the citation shall accompany the payment of the fine and costs.

(5) The Department of Health shall periodically, submit a report to the Board regarding the number and nature of the citations issued, the penalties imposed, and the level of compliance.

Rulemaking Authority, 456.072(3), 456.077 FS. Law Implemented 456.072(3), 456.077 FS. History–New 5-19-96, Formerly 59R-74.006, 64B8-74.006, Amended 1-6-02, 5-31-04, 2-23-06, 3-28-10, 9-15-10.

64B32-5.008 Notice of Noncompliance.

In accordance with Sections 120.695 and 456.073, F.S., the Board shall issue a notice of noncompliance as a first response to a minor violation of a rule. Failure of a licensee to take action to correct the violation within 15 days shall result in either the issuance of a citation when appropriate or the initiation of regular disciplinary proceedings. The minor violations which shall result in a notice of noncompliance are:

(1) Failure to notify of a change of address within 60 days as required by Rule 64B32-1.006, F.A.C.

(2) Non-intentional issuance of a bad check to the Department under Section 486.365(1)(x), F.S.

Rulemaking Authority 120.695, 456.073(3), 468.365(1)(x) FS. Law Implemented 120.695, 456.073(3) FS. History–New 5-31-04.

At this time Board members will have the opportunity to discuss any information to be provided from the designated liaisons.

- Board Chair, Mr. Frey
- Legislative Liaison, Ms. Hom
- Budget Liaison, Mr. Frey
- ULA Liaison, Mr. Mitchell
- Enforcement Liaison, Dr. Friday-Stroud
- Healthiest Weight Liaison, Ms. Hom
- Continuing Education Liaison, Mr. Garcia

DEPARTMENT OF HEALTH
BOARD OF RESPIRATORY THERAPY
EXPENDITURES BY FUNCTION
For Period Ending June 30, 2020

Function	Direct Charges	Allocated Charges	Total	Percent*
Director, MQA		$ 9,385	$ 9,385	1.27%
Bureau of Opns Admin		$ 3,278	$ 3,278	0.44%
Testing Services			$ -	0.00%
Licensure Support Svcs	$ 4,544	$ 6,415	$ 10,959	1.48%
Artifical Intelligence		$ 1,849	$ 1,849	0.25%
Practitioner Reporting		$ 71	$ 71	0.01%
Systems Spt Unit		$ 35,228	$ 35,228	4.77%
Central Records		$ 3,287	$ 3,287	0.44%
Renewal Support			$ -	0.00%
Call Center		$ 20,117	$ 20,117	2.72%
Operational Services		$ 13,452	$ 13,452	1.82%
Imaging Services		$ 7,253	$ 7,253	0.98%
Web Design Development	$ 400	$ 5,731	$ 6,131	0.83%
Strategic Management Unit		$ 6,210	$ 6,210	0.84%
Background Screening	$ 58	$ 216	$ 274	0.04%
Bureau of HCPR Admin		$ 6,247	$ 6,247	0.85%
Board Office	$ 106,875	$ 67,608	$ 174,483	23.61%
Prosecution Svcs Unit - Enforce	$ 7,606	$ 34,313	$ 41,919	5.67%
Bureau of Enforce Admin		$ 2,112	$ 2,112	0.29%
Consumer/Compliance Unit - Enforce		$ 6,851	$ 6,851	0.93%
Investigations Svcs Unit-Enforce		$ 18,282	$ 18,282	2.47%
Div of IT & Admin; Ofc of Sec		$ 43,600	$ 43,600	5.90%
DOAH			$ -	0.00%
Profiling Services			$ -	0.00%
Practitioner Compliance			$ -	0.00%
Impaired Practitioner		$ 60,376	$ 60,376	8.17%
Attorney General	$ 16,110		$ 16,110	2.18%
Risk Management Insurance		$ 5,296	$ 5,296	0.72%
Human Resource Services		$ 1,231	$ 1,231	0.17%
Refund of State Revenues	$ 1,345	$ 0	$ 1,345	0.18%
Service Charge to Gen Revenue	$ 49,007	$ 0	$ 49,007	6.63%
FDLE Transfer			$ -	0.00%
Ch 215.32 Transfer of Funds	$ 129,143		$ 129,143	17.48%
			$ -	
Unlicensed Activity		$ 1,046	$ 1,046	0.14%
ULA Ch 215.32 Transfer of Funds	$ 64,410		$ 64,410	8.72%
			$ -	
Total	$ 379,497.65	$ 359,453.67	$ 738,951.32	100.00%

Cash Balance @ June 30 - Licensed Account	$ 206,439
Cash Balance @ June 30 - Unlicensed Account	$ 318,237

* Percent of the function's expenditure to the Board's total expenditures.

64-75-11-01-057	RESPIRATORY THERAPY	licensed	unlicensed	total
Beginning Cash Balances		**$672,957**	**$377,198**	**$1,050,155**
Revenues				
61800	Refunds	$80	$0	$80
65900	Transfer In from Other Agencies	$38	$0	$38
66700	Fees and Licenses	$204,966	$6,495	$211,461
67200	Sales of Goods and Services - non-State	$2	$0	$2
67300	Fines, Forfeitures, Judgements & Settlements	$1,892	$0	$1,892
Total Revenues		**$206,977**	**$6,495**	**$213,472**
Expenditures				
110000	Salary and Bonuses	$173,916	$345	$174,261
121000	Other Personnel Services - Wages	$7,176	$131	$7,307
131300	Consulting Services	$2,934.23	$0.08	$2,934.31
131400	Court Reporting, Transcript & Translation Services	$2,532	$0	$2,532
131600	Legal Fees and Attorney Services	$16,148	$0	$16,148
131800	Expert Witness Fee	$5,290	$0	$5,290
132200	Temporary Employment Services	$395	$0	$395
132400	Examination and Inspection Services	$80	$0	$80
132600	Research Services	$37	$0	$37
132700	Information Technology Services	$36,749	$0	$36,749
132800	Training Services	$1,626	$0	$1,626
133100	Advertising	$895	$206	$1,101
134100	Security Services	$472	$0	$472
134200	Mailing and Delivery Services	$477.62	$0.31	$477.93
134500	Banking Services	$4,792	$7	$4,799
134900	Fingerprint & Background Check Services	$63	$2	$65
151000	Employment Taxes & Contributions	$87,826	$204	$88,030
165000	Unemployment Compensation Contributions	$95	$2	$97
221000	Communications	$1,543	$40	$1,582
225000	Postage	$2,637	$3	$2,640
230000	Printing & Reproduction	$467.89	$0.92	$468.81
241000	Repairs & Maintenance	$4,114.74	$0.24	$4,114.98
261000	In-State Travel	$7,010	$22	$7,033
262000	Out-of-State Travel	$10	$0	$10
341000	Educational & Training Supplies	$3,099	$19	$3,118
371000	Gasoline, Lubricants & Auto Parts	$106	$0	$106
393000	Application Software (Licenses)	$1,788	$0	$1,788
419000	Insurance & Surety	$5,304	$0	$5,304
433000	Facility & Storage Space Rental	$18,373	$62	$18,435
446000	Vehicle Rentals	$0.04	$0.00	$0.04
449000	Equipment Rentals	$901.38	$0.98	$902.36
461000	Fees - General - Commodities	$35.44	$0.65	$36.09
461800	Registration Fee with no Travel Expenses	$4.89	$0.85	$5.74
492000	Subscriptions & Dues	$55	$0	$55
498000	State Awards	$62	$0	$62
511000	Books & Other Library Resources > $250	$13	$0	$13
512000	Furniture & Equipment > $1000	$2,180	$0	$2,180
516000	Information Technology Equipment	$223	$0	$223
517000	Motor Vehicles	$523	$0	$523

Expenditures

750000	Impaired Practitioner Program	$60,376	$0	$60,376
810000	Non-Operating Distribution and Transfers	$172,812	$64,410	$237,222
860000	Non Operating - Refunds	$1,345	$0	$1,345
880800	Service Charge to General Revenue 8%	$49,007	$0	$49,007
Total Expenditures		**$673,495**	**$65,456**	**$738,951**
Ending Cash Balances		**$206,439**	**$318,237**	**$524,676**

This is an opportunity for Professional Associations to discuss or provide updates to any topics of interest.

This United States District Court case related to obtaining a license to practice law in Kentucky is provided as an informational item.

Your attorney will be available should you have any questions.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

JANE DOE PLAINTIFF

v. CIVIL ACTION NO. 3:19-CV-236-JRW

SUPREME COURT OF KENTUCKY, et al. DEFENDANTS

ORDER

1. The Court **GRANTS** Jane Doe's motion for leave to amend (DN 14).

2. The Court **DIRECTS** the Clerk to file Doe's Amended Complaint (DN 14-1).

3. The Court **GRANTS** the motions to dismiss (DNs 16, 18, & 19).

4. The Court **DENIES AS MOOT**:

   a. The first motions to dismiss (DNs 7, 8, 10);

   b. Doe's motion for an extension of time (DN 13);

   c. Doe's motion to proceed under a pseudonym (DN 33); and

   d. The Board Defendants' motion for leave to file an Amended Response in Opposition to Doe's motion for leave to proceed under a pseudonym (DN 37).

5. The Court **DISMISSES** Counts I, II, & III of the Amended Complaint, with prejudice.

6. The Court **DISMISSES** Counts IV & V of the Amended Complaint, without prejudice.

MEMORANDUM OPINION

Courts, journalists, and scholars have extensively documented the mental health issues that afflict lawyers.[1] The problems begin in law school, where "law students have disproportionate levels of stress, anxiety, and mental health concerns compared with other populations."[2] After graduation, lawyers suffer from depression at higher rates than non-lawyers.[3] Not long ago, the Kentucky Bar Association President described a spike in Kentucky lawyers dying by suicide as "disproportionate" and "disconcerting."[4]

Jane Doe was a lawyer in Florida. She moved to Kentucky. She wanted to practice law here. Bureaucrats didn't want her to. They thought her mental disability made her unfit. For over two years, they stopped her. But she didn't give up. And they eventually relented.

Then Doe sued them, alleging they had illegally asked about her mental health history and treatment, illegally forced her to turn over her medical records and her therapists' notes from their counseling sessions, and illegally treated her like a criminal because of her disability.

This case is not only about Jane Doe. It's also about the lawyers who decide who else can be a lawyer.

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[1] *See, e.g.*, *ACLU of Indiana v. Individual Members of the Indiana State Board of Law Examiners*, No. 1:09-cv-842-TWP-MJD, 2011 WL 4387470, at *1 (S.D. In. 2011); ROSA FLORES & ROSE MARIE ARCE, *Why Are Lawyers Killing Themselves?*, CNN.COM, Jan. 24, 2014, https://www.cnn.com/2014/01/19/us/lawyer-suicides/index.html;
PATRICK R. KRILL, RYAN JOHNSON, AND LINDA ALBERT, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 JOURNAL OF ADDICTION MEDICINE 46, 52 (Jan. 2016).

[2] JEROME M. ORGAN, DAVID B. JAFFE, & KATHERINE M. BENDER, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 JOURNAL OF LEGAL EDUCATION 116, 121 (Autumn 2016).

[3] FLORES & ARCE, *Why Are Lawyers Killing Themselves?*.

[4] *Lawyer Suicides Concern Colleagues*, THE COURIER-JOURNAL, Jun. 3, 2013, https://www.usatoday.com/story/news/nation/2013/06/03/lawyer-suicides-concern-colleagues/2383627/.

Under the Kentucky Constitution, that power belongs to the Supreme Court of Kentucky.[5] The court, in turn, delegates that job to its Bar Bureaucracy:

- The Character and Fitness Committee and Board of Bar Examiners comprise the Office of Bar Admissions.[6]
- The Character and Fitness Committee prohibits people from practicing law if the committee thinks they are immoral[7] or unfit.[8]
- The Board of Bar Examiners prohibits people from practicing law if they can't pass a timed exam that tests their ability to memorize whole areas of the law they will never again need to know anything about.[9]
- The Kentucky Bar Association decides who gets to stay a lawyer.[10]
- The Kentucky Lawyer Assistance Program keeps tabs on lawyers and aspiring lawyers who have mental health issues by monitoring their medications, counseling, where they live, and where they travel.[11]

Anyone with any power in this Bar Bureaucracy is a lawyer. So, just like an oil or drug cartel, those who are already selling something get to decide who else may sell that same thing. Of course, unlike most cartels, this one is legal. In fact, the Kentucky Constitution requires it.[12]

If Doe had sued the Bar Bureaucracy back when it stopped her from entering the market, she would have had standing to ask the Court to block it from treating her like it did. But you can't blame Doe for waiting to sue. If your goal is to persuade the Bar Bureaucracy's lawyers to let you

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[5] Ky. Const. § 116 ("The Supreme Court shall, by rule, govern admission to the bar and discipline members of the bar.").
[6] SCR 2.000. Some of the Supreme Court Rules cited here have been recently amended due to the ongoing pandemic, but none of the recent amendments are material to this analysis.
[7] SCR 2.011(1); SCR 2.040(3).
[8] SCR 2.011(2); SCR 2.040(3).
[9] SCR 2.020(3); SCR 2.080.
[10] SCR 3.025; SCR 3.050; SCR 3.060; SCR 3.640(8)(d); SCR 3.645(4); *see, e.g.*, *Grinnell v. Kentucky Bar Association*, 602 S.W.3d 784 (Ky. 2020); *see also* SCR 3.035(1)(c) ("Failure to maintain a current address which allows for physical service of process with the Director [of the Kentucky Bar Association] may be prosecuted in the same manner as a violation of the Rules of Professional Conduct.").
[11] SCR 3.900; SCR 3.910(2); DN 14-1 ¶¶ 40, 72.
[12] Ky. Const. § 116.

join their club, it isn't a good strategy to poke them in the eye with a lawsuit that accuses them of violating the Americans with Disabilities Act and the United States Constitution.

Because the Bar Bureaucracy (finally) allowed Doe to practice law, she lacks standing for prospective relief. And because legislative and judicial immunity protect Bar Bureaucracies from money damages arising from the promulgation of bar rules and the adjudication of bar applications, the Court will dismiss Doe's federal claims. In addition, the Court declines to exercise supplemental jurisdiction over Doe's state-law claims.

The Bar Bureaucracy won this round against an applicant it deemed suspect and undesirable. But there will be more applicants — and more lawsuits. Some of those plaintiffs will have standing to seek prospective relief. And when they do, the Bar Bureaucracy will have to answer for a medieval approach to mental health that is as cruel as it is counterproductive.

I.

A.

Several federal and state courts have held that the Americans with Disabilities Act prohibits Bar Bureaucracies from unnecessarily interrogating applicants about their mental health.[13] So too did the Department of Justice. In 2014, it concluded that questions about applicants' mental health

[13] *In re Application of Underwood & Plano*, BAR-93-21, 1993 WL 649283, at *1 (Me. Dec. 7, 1993); *Ellen S. v. Florida Bd. Of Bar Examiners*, 859 F. Supp. 1489 (S.D. Fla. 1994); *Clark v. Virginia Bd. Of Bar Examiners*, 880 F. Supp. 430 (E.D. Va. 1995); *ACLU of Indiana v. Individual Members of the Indiana State Bd. of Law Examiners*, No. 1:09-cv-842-TWP-MJD, 2011 WL 4387470, at *6 (S.D. Ind. Sept. 20, 2011); *see also Medical Society of New Jersey v. Jacobs*, No. 93-3670 (WGB), 1993 WL 413016, at *8 (D. N.J. Oct. 5, 1993); *In Re Petition of Frickey*, 515 N.W.2d 741 (Minn. 1994); *Doe v. Judicial Nominating Commission*, 906 F. Supp. 1534, 1542-43 (S.D. Fla. 1995); *In re Petition & Questionnaire for Admission to Rhode Island Bar*, 683 A.2d 1333, 1337 (R.I. 1996); *Brewer v. Wisconsin Bd. of Bar Examiners*, No. 04-C-0694, 2006 WL 3469598, at *8 (E.D. Wis. Nov. 28, 2006), *aff'd*, 270 F. App'x 418 (7th Cir. 2008); *but see Applicants v. Texas State Bd. of Law Examiners*, No. A 93 CA 740 SS, 1994 WL 923404, at *9 (W.D. Tex. Oct. 11, 1994); *McCready v. Illinois Bd. of Admissions to Bar*, No. 94 C 3582, 1995 WL 29609, at *1 (N.D. Ill. Jan. 24, 1995); *In re Henry*, 841 N.W.2d 471, 476 n.5 (S.D. 2013); *see generally* LANNY KING, Note, *The Kentucky Board of Bar Examiners' Character and Fitness Certification Questionnaire: Are Mental Health Inquiries a Violation of the Americans with Disabilities Act?*, 84 KY. L.J. 685 (1996).

do "*not* provide an accurate basis for predicting future misconduct."[14] Instead, they likely "deter applicants from seeking counseling and treatment for mental health concerns, which fails to serve the Court's interest in ensuring the fitness of licensed attorneys."[15] In other words, according to the Department of Justice, a Bar Bureaucracy's decision to ask applicants about their mental health status makes aspiring lawyers *less* fit to practice law.[16]

B.

Jane Doe was born and raised in Kentucky.[17] She earned her Florida law license in 2006 and worked there in government and private practice. After a 2014 diagnosis for Bipolar I Disorder, Doe entered a monitoring program run by the Florida Lawyers' Assistance Program. She was, and remains, in good standing with the Florida bar.[18]

In December 2015, Doe applied for a Kentucky law license. The application required her to disclose her history of depression and Bipolar I Disorder and that she had undergone treatment. And so began her 994-day tale of bureaucratic woe.

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[14] Letter from U.S. Department of Justice, Civil Rights Division, to Karen L. Richards, Executive Director, Vermont Human Rights Commission (Jan. 21, 2014) at 5 (emphasis added).

[15] Letter from U.S. Department of Justice, Civil Rights Division, to the Honorable Bernette J. Johnson, Chief Justice, Louisiana Supreme Court, Elizabeth S. Schell, Executive Director, Louisiana Supreme Court Committee on Bar Admissions, Charles B. Plattsmier, Chief Disciplinary Counsel, Louisiana Attorney Disciplinary Board (Feb. 5, 2014) at 23.

[16] To be clear, neither Doe nor the Department of Justice has argued that Bar Bureaucracies cannot ask about an applicant's relevant past *conduct*, regardless of whether mental disability had a role in that conduct. Rather, they argue that Bar Bureaucracies cannot ask about an applicant's status as a person with a mental disability, and they cannot treat an applicant differently based on that status. So, for example, it's fair game to ask, "Have you ever been fired?" Or, "Have you ever robbed a bank?" Applicants' mental health provides no escape from the questions, even if they had a mental disability when they were fired (or robbed the bank).

[17] The Court takes the facts from the Amended Complaint and draws all reasonable inferences in Doe's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court also relies on the Supreme Court Rules, which are public record. *Bassett v. National Collegiate Athletic Association*, 528 F.3d 426, 430 (6th Cir. 2008).

[18] DN 14-1 ¶ 18.

Doe disclosed everything Kentucky's Bar Bureaucracy required her to disclose. That included two required releases giving the Bar Bureaucracy "complete access to her personal and private medical records, including treatment notes"[19] and a third for her monitoring records from Florida. In January 2016, Doe's doctor told the Bar Bureaucracy that Doe had "compli[ed] with medical advice, prescription instructions," and what the Florida bar required of her.[20] Doe's doctors have always said she should "continue practicing law without concerns for her or the public's safety."[21]

The Bar Bureaucracy pressed on. So Doe sent in yet another form. This fourth medical records release granted "access to inpatient records, outpatient records, and treatment notes."[22]

The next month, shortly before Doe took the February 2016 bar exam, the Character and Fitness Committee refused to approve her application. Instead, in March, the Bar Bureaucracy proposed, and Doe signed, a "consent agreement" for conditional admission.[23] It required 1) a Kentucky Contract (more on that later); 2) compliance with Florida's rules and Kentucky's rules and reporting requirements; and 3) "residency in Kentucky . . . unless" Doe was relocating for work and the Bar Bureaucracy approved.[24]

The consent agreement did not provide details about the Kentucky Contract. Yvette Hourigan, Director of the Kentucky Lawyer Assistance Program, said the contract would mirror the monitoring arrangement Doe had with the Florida Lawyers' Assistance Program, which was tailored to Doe's diagnosis.

Doe passed the bar exam. She paid the dues and swearing-in fee.

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[19] *Id.* ¶ 27.
[20] *Id.* ¶ 34.
[21] *Id.* ¶ 21.
[22] *Id.* ¶ 36.
[23] *Id.* ¶¶ 40, 41.
[24] *Id.* ¶ 40.

C.

Although Hourigan had promised to send a proposed contract, she didn't. Instead, she arranged to meet with Doe the morning of the new lawyers' swearing-in ceremony at the State Capitol. That day, Hourigan "texted that she was running late and they would meet on the steps of the Capitol" minutes before the swearing-in.[25]

At this point, you might be thinking that a public place with many of Doe's peers isn't an ideal place to discuss private medical issues. (It isn't.)

You might also wonder if other bar applicants could overhear their discussion.[26] (They could.)

Instead of the personalized contract Hourigan had promised, she presented a boilerplate contract. It included a host of medically unnecessary requirements, including random drug and alcohol testing. When Doe told Hourigan she had never had drug or alcohol problems, Hourigan told her the provisions were standard. Hourigan, who is not a doctor[27] but plays one on the Capitol steps, also said Doe's medications required abstinence from alcohol. (They don't.)

Doe refused to sign the contract. She told Hourigan it violated the Americans with Disabilities Act, and "the ADA does not permit the disabled to be treated like criminals."[28] (It doesn't.)

D.

Later in 2016, after Doe provided yet another medical-records release, Doe's doctor advised Hourigan that Doe could drink alcohol on her medication.

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[25] *Id.* ¶ 49.
[26] *Id.* ¶¶ 50, 54.
[27] SCR 3.910(2).
[28] DN 14-1 ¶ 52.

Hourigan partially relented. She removed the alcohol provisions from the Kentucky Contract. But other intrusive and unnecessary requirements remained. For example, Doe had to tell Hourigan if she was leaving town for longer than a week.

Unable to practice law, Doe taught civics, safety, and sewing to refugees. Meanwhile, the Bar Bureaucracy ordered her to appear for a formal hearing, at Doe's expense, to show cause for allegedly violating the consent agreement. The Bar Bureaucracy's lawyer, Elizabeth Feamster, demanded even more documents, as well as the contact information for Doe's employer.

Doe asked Feamster if they could "discuss the ADA issues and how the parties could resolve concerns on both sides," rather than having a hearing.[29] But Feamster demanded that Doe prove she wasn't practicing law. In December 2016, Doe received in-patient treatment for her disability.

Doe's formal hearing was on April 27, 2017. She again expressed her concerns about violations of the Americans with Disabilities Act. Feamster relied solely on Doe's disability in denying Doe a full law license. Soon after, the Character and Fitness Committee recommended that the Supreme Court of Kentucky permanently revoke Doe's conditional license. Recall that on the record before us, Doe had been licensed by Florida for the past eleven years — and had practiced there for the first nine of those years — and remained in good standing that whole time.[30]

E.

A year later, in 2018, Doe successfully completed Florida's monitoring program. Her doctor wrote yet another letter to the Bar Bureaucracy saying he still "had no concerns regarding her mental health and encouraged her to continue practicing law."[31]

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[29] *Id.* ¶ 76.
[30] *Id.* ¶ 18.
[31] *Id.* ¶ 92.

In July 2018, the Bar Bureaucracy held another hearing. Again, they interrogated Doe about her disability. After the hearing, Feamster demanded still more information about Doe's medical treatment. And yet again, Doe told the Bar Bureaucracy that they were violating the Americans with Disabilities Act.

Finally, in August 2018, Doe was unconditionally admitted to practice law in Kentucky.

Her bar file still contains protected health information and show cause orders suggesting that "her disability and treatment [are] character and professional flaws."[32]

In 2019, Doe filed this suit against the Bar Bureaucracy for violating the Americans with Disabilities Act, the Rehabilitation Act, and the Equal Protection Clause.[33] She also sued under Kentucky law for defamation and intentional infliction of emotional distress.[34]

F.

The Bar Bureaucracy moves to dismiss for lack of subject-matter jurisdiction and for failure to state a claim.[35] In addition, some defendants object to Doe's use of a pseudonym.[36]

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[32] *Id.* ¶ 98.

[33] Doe brings her ADA and Rehabilitation Act claims against the institutional defendants (Supreme Court of Kentucky; Office of Bar Admissions; Character and Fitness Committee; Board of Bar Examiners; Kentucky Bar Association; and Kentucky Lawyer Assistance Program entities). *See id.* ¶¶ 108-13. She brings her constitutional claim against "All Defendants." *See id.* ¶¶ 114-24. This constitutional claim concerns the defendants' "system." *See id.* ¶ 118 ("licensing and bar admission system"), ¶ 119 ("licensing and bar admission system"), ¶ 120 ("licensing and bar admission system"), ¶ 121 ("licensing and bar admission system"), ¶ 122 ("licensing and bar admission system"), ¶ 124 ("licensing and bar admission system"). Therefore, this count is best construed to raise claims against the institutional defendants, as well as Hourigan in her official capacity. As for Feamster, earlier in the Amended Complaint, Doe is explicit that Feamster is sued only in her individual capacity. *Compare id.* ¶ 10, *with id.* ¶ 13. It's true this claim also says, "Defendants' discriminatory actions against Plaintiff based on her status as an individual with a mental disability were intentional or committed with reckless or callous disregard for her rights." *Id.* ¶ 123. But that paragraph can best be construed to concern the defendants' conduct in their official capacities. That's because the "actions against Plaintiff based on her status" were, by the very terms of Doe's Amended Complaint, in accord with the "discriminatory licensing and bar admission system." *Id.* ¶ 124. With regard to Doe's federal claims, Feamster did not, in her individual capacity, do anything to injure Doe.

[34] Doe's state-law claims concern the conduct of Feamster and Hourigan in their individual capacities.

[35] DNs 16, 18, & 19; *see also* DNs 7, 8, & 10.

[36] DN 8 at #179; DN 10-1 at #250; DN 18 at #366; DN 19 at #383. Doe later moved for leave to proceed under a pseudonym. DN 33. Some of the defendants opposed Doe's motion. DNs 34 & 35.

As for the pseudonym, Kentucky law explicitly protects the confidentiality of those who receive help (or hindrance) from the Kentucky Lawyer Assistance Program.[37] Kentucky law also protects Doe's character and fitness results from public disclosure.[38] And Doe's prior conditional admission status is confidential.[39]

The Bar Bureaucracy knows who Doe is. Opposing her pseudonym does little for its credibility. But ultimately that motion is moot because Doe's suit will be dismissed.[40]

II.

A.

Article III of the Constitution limits the Court's jurisdiction to only "Cases" and "Controversies."[41] Doe asks for injunctive relief, damages, and attorneys' fees.[42] She must have standing for each claim "and for each form of relief that is sought."[43]

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[37] SCR 3.990; *see also* KENTUCKY LAWYER ASSISTANCE PROGRAM, *KYLAP Staff,* https://www.kylap.org/about-kylap/kylap-staff/ ("All contact with KYLAP is confidential.").
[38] *See* SCR 2.008.
[39] SCR 2.042(4).
[40] Doe asks to amend her Complaint. DN 14. She voluntarily dismissed her claims against some defendants, none of whom have answered or moved for summary judgment. DN 14-1 at #267; Fed. R. Civ. P. 41(a)(1)(A)(i). Dismissing them without prejudice is appropriate. Fed. R. Civ. P. 41(a)(1)(B). The remaining defendants oppose the amendment on futility grounds and alternatively move to dismiss for lack of subject-matter jurisdiction and for failure to state a claim. DNs 16, 18, & 19.
[41] U.S. CONST. Art. III, § 2; *see Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014).
[42] DN 14-1 at #290.
[43] *Town of Chester, New York v. Laroe Estates, Inc.*, 137 S.Ct. 1645, 1650 (2017) (quoting *Davis v. Federal Election Commission*, 554 U.S. 724, 734 (2008)) (cleaned up).

1.

For injunctive relief, Doe wants the Bar Bureaucracy "to remove show cause orders and medical information and records from [her] file."[44] But Doe has not alleged any harm that may result from the allegedly tainted file, much less that an injury is "certainly impending."[45]

Although it took years to get there, Doe is now a full-fledged Kentucky lawyer.[46] And if she avoids any disciplinary issues here in Kentucky — just as she remained in good standing in Florida — the file may never come into play.[47] It's conceivable that her file could be used at some point for some other purpose. But any future injury is "speculative or tenuous," so Doe has "no standing to seek injunctive relief."[48]

2.

Doe also lacks standing for the federal claims she brings against the Office of Bar Admissions, the Kentucky Board of Bar Examiners, the Kentucky Bar Association, the Kentucky Lawyer Assistance Program entities, and Yvette Hourigan in her official capacity. There is no "causal connection" between Doe's injuries and these defendants.[49] They didn't block her from practicing law, if only because they didn't have that power.

Dissecting this byzantine Bar Bureaucracy takes a little digging. It turns out that none of those entities have any authority in the character and fitness process. Instead, the Character and Fitness Committee makes its own rules, which the Supreme Court of Kentucky approves.[50]

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[44] DN 14-1 at #290. Specifically, as of December 2018, Doe's "official bar files contained confidential and protected health information and multiple orders to show cause which reference her disability and treatment as character and professional flaws." DN 14-1 ¶ 98.
[45] *Clapper v. Amnesty International USA*, 568 U.S. 398, 401 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).
[46] DN 14-1 ¶ 97.
[47] *Id.* ¶ 18.
[48] *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 833 (6th Cir. 2001).
[49] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).
[50] SCR 2.000.

Likewise, the Character and Fitness Committee decides who has the "character and fitness" to practice law, and only the Supreme Court of Kentucky can review that decision.[51] The same is true for deciding who is conditionally admitted: Only the Character and Fitness Committee makes that call,[52] and only the Supreme Court can overrule it.[53] Thus, although the Character and Fitness Committee is a division of the Office of Bar Admissions, the Office of Bar Admissions doesn't actually make any final decisions — at least not for our purposes.

3.

Doe does, however, have standing for her federal-law damages claims against the Supreme Court of Kentucky and the Character and Fitness Committee. They had the power to (and did) decide to ask her about her mental health.[54] They had the power to (and did) put her through the ringer based on her honest answers.[55] They had the power to (and did) deny her an unconditional license for over two years.[56] They had the power to (and did) impose administrative and financial burdens on her that they didn't impose on other applicants.[57]

All these injuries are "fairly traceable" to the Kentucky Supreme Court and the Character and Fitness Committee.[58] And a damages decision in Doe's favor would redress these injuries.[59]

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[51] SCR 2.011; SCR 2.060.
[52] SCR 2.042.
[53] SCR 2.060.
[54] *See* DN 14-1 ¶ 26. While Doe refers here to the "KBA," the Kentucky Bar Association does not determine an applicant's character and fitness to practice. *Compare* SCR 3.025 *with* SCR 2.060.
[55] *See, e.g.*, DN 14-1 ¶ 36 (requiring "inpatient records, outpatient records, and treatment notes").
[56] *See id.* ¶ 97.
[57] *Cf. id.* ¶ 78.
[58] *Lujan*, 504 U.S. at 560 (cleaned up).
[59] *Id.* at 561.

Doe also has standing to sue both Hourigan and Feamster personally for defamation and intentional infliction of emotional distress. The remaining claims and defendants are:

- The Supreme Court of Kentucky (federal-law claims);
- The Character and Fitness Committee (federal-law claims); and
- Hourigan and Feamster (state-law claims).

B.

The second jurisdictional question concerns the *Rooker-Feldman* doctrine. Some of the defendants rely on it in asking for dismissal.[60] But *Feldman* explicitly says the Court has "subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state court judgment in a particular case."[61] Here, Doe challenges Kentucky's bar rules, including its "licensing and bar admission system."[62] The *Rooker-Feldman* argument fails.[63]

C.

The third jurisdictional question is straight out of a Fed Courts exam. Is state sovereign immunity the type of jurisdictional issue the Court must decide before it considers non-jurisdictional issues (like judicial and legislative immunity)?

Let's start with the argument for "yes." The Sixth Circuit has said, repeatedly and as recently as last week, that state sovereign immunity is "jurisdictional."[64] Also, the Eleventh

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[60] DN 18 at #352-55; DN 19 at #383.
[61] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983).
[62] DN 14-1 ¶¶ 118-22, & 124.
[63] *See VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 409 (6th Cir. 2020) (Sutton, J., concurring) ("Absent a claim seeking review of a final state court judgment, a federal court tempted to dismiss a case under *Rooker-Feldman* should do one thing: Stop.").
[64] *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015); *Doe v. DeWine*, 910 F.3d 842, 848 (6th Cir. 2018); *Ladd v. Marchbanks*, --- F.3d ---, 2020 WL 4882885, at *1 n.2 (6th Cir. Aug. 20, 2020).

Amendment talks about the "Judicial power of the United States" and where it "shall not be construed to extend," which sure sounds jurisdictional.[65]

But here's why, in this case, the answer is "no." Unlike subject-matter jurisdiction, which can never be waived, a state can waive its sovereign immunity.[66] In the same vein, while the party invoking jurisdiction has the burden of establishing jurisdiction, a defendant invoking sovereign immunity has the burden to show it applies.[67] That's because the Eleventh Amendment "enacts a sovereign immunity from suit, rather than a nonwaivable limit on the Federal Judiciary's subject-matter jurisdiction."[68] It "does not automatically destroy original jurisdiction."[69]

Under *Nair v. Oakland County Community Mental Health Authority*, "a State that has authority to waive the broader question (of whether it is amenable to suit at all) has authority to waive the narrower question (of whether a court must address a sovereign-immunity defense before the merits)."[70] And that's what happened here: Although the defendants raised sovereign immunity in their motions to dismiss, at oral argument, they expressly declined to raise it as a threshold defense, and they specifically cited *Nair* in doing so.[71] Thus, under *Nair*, the Court may address judicial and legislative immunity before state sovereign immunity.[72]

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[65] U.S. CONST. Amend. XI.
[66] *Wisconsin Department of Corrections v. Schacht*, 524 U.S. 381, 389 (1998).
[67] *Nair v. Oakland County Community Mental Health Authority*, 443 F.3d 469, 474 (6th Cir. 2006).
[68] *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 267 (1997); *see also Nair*, 443 F.3d at 474 (The Eleventh Amendment "defense is not coextensive with the limitations on judicial power in Article III.") (quoting *Calderon v. Ashmus*, 523 U.S. 740, 745 n.2 (1998)) (cleaned up).
[69] *Schacht*, 524 U.S. at 389.
[70] 443 F.3d at 476 (citing *Alden v. Maine*, 527 U.S. 706, 737 (1999)).
[71] Oral Argument, Aug. 26, 2020 (Q: "[You are] declining to raise sovereign immunity as a threshold defense?" KBA: "Correct. We are not waiving sovereign immunity, but we are declining to raise it as a set — threshold defense as set forth in *Nair*."; Board Defendants: "Yes, sir. Same."; Supreme Court: "Correct . . . to reserve it in the event that the sovereign would otherwise lose on the merits.").
[72] *See, e.g.*, *Nair*, 443 F.3d at 477; *West v. Berkman*, No. 19-2384, 2020 U.S. App. LEXIS 25450, at *6-8 (6th Cir. Aug. 11, 2020); *Kitchen v. Noe*, Nos. 18-2254/19-1125, 2019 U.S. App. LEXIS 24499 at *4 (6th Cir. Aug. 15, 2019); *cf. Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 779 (2000) ("We . . . have routinely addressed *before* the question whether the Eleventh Amendment

This conclusion doesn't contravene the precedents of this circuit that at most imply otherwise. Even *Russell v. Lundergan-Grimes*, which held that Eleventh Amendment immunity is "jurisdictional," said that courts are "not required" to raise Eleventh Amendment immunity if the defendant doesn't.[73] In contrast, the Court must always consider issues of subject-matter jurisdiction, even if the parties don't raise them.[74]

In this case, the sovereign immunity question is complex. Congress has abrogated sovereign immunity when a state violates the Americans with Disabilities Act and also the Fourteenth Amendment.[75] Courts have split on whether systems similar to Kentucky's violate the Americans with Disabilities Act. The issue "has been the subject of intense controversy."[76] And if the Bar Bureaucracy violated only the Americans with Disabilities Act and not the Fourteenth Amendment, then the Court would decide "whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid."[77]

Those issues can and should be avoided by first answering the question of judicial and legislative immunity — a question on which there is binding precedent directly on point.

D.

In *Sparks v. Character & Fitness Committee of Kentucky*, the Bar Bureaucracy refused to admit Gerald Sparks to the bar.[78] He sued for damages.[79] The Sixth Circuit held that "the nature

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forbids a particular statutory cause of action to be asserted against States, the question whether the statute itself *permits* the cause of action it creates to be asserted against States.").

[73] *Russell*, 784 F.3d at 1046.

[74] *Fort Bend County, Texas v. Davis*, 139 S.Ct. 1843, 1849 (2019).

[75] *United States v. Georgia*, 546 U.S. 151, 159 (2006) ("Thus, insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity.").

[76] *Brewer v. Wisconsin Board of Bar Examiners*, No. 04-C-0694, 2006 WL 3469598, at *8 (E.D. Wi. 2006), *aff'd*, 270 F.App'x 418 (7th Cir. 2008).

[77] *Georgia*, 546 U.S. at 159.

[78] 859 F.2d 428 (6th Cir. 1988).

[79] *See id.* at 429.

of the function involved in determining qualifications for admission to the bar" is "a judicial act."[80] Therefore, "absolute immunity" shielded both the Supreme Court of Kentucky and the Character and Fitness Committee.[81]

The Sixth Circuit reached the same result in *Mayfield v. Francks*.[82] And again in *Thomas v. Michigan State Board of Law Examiners*.[83] And once again in *Lawrence v. Welch*.[84] In each instance, judicial immunity protected a Bar Bureaucracy when plaintiffs sought damages for how it adjudicated their bar applications.[85]

Another immunity, legislative immunity, protects the Supreme Court of Kentucky from a challenge to its promulgation of bar admission rules, including the rules requiring the Character and Fitness Committee to interrogate applicants about their mental health. In *Supreme Court of Virginia v. Consumers Union of the United States*, the U.S. Supreme Court held that the Bar Bureaucracy's "members are the State's legislators for the purpose of issuing the Bar Code," so they "are immune from suit when acting in their legislative capacity."[86] Likewise, the Sixth Circuit has applied legislative immunity to block suits challenging how a state supreme court and its delegates promulgated rules about who gets to become a lawyer.[87]

By this point, you might be wondering how a plaintiff could ever challenge the way a Bar Bureaucracy asks applicants about their mental health and puts them through the ringer if they

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[80] *Id.* at 433.
[81] *Id.* at 434.
[82] 959 F.2d 235 (6th Cir. 1992) (unpublished table decision).
[83] 41 F.3d 1508 (6th Cir. 1994) (unpublished table decision).
[84] 531 F.3d 364 (6th Cir. 2008).
[85] *See Lawrence*, 531 F.3d at 372-73 (affirming district court's dismissal of claim seeking damages for failure to state a claim); *Thomas*, 1994 WL 659148, at *2 ("The individual state defendants are absolutely immune from a civil rights action for damages."); *Mayfield*, 1992 WL 73151, at *1 ("The dismissal of Mayfield's monetary claims was also appropriate. Monetary relief is unavailable to Mayfield because the defendants were protected by absolute immunity for the actions that they performed at the behest of the Michigan Supreme Court.").
[86] 446 U.S. 719, 734 (1980).
[87] *See, e.g.*, *Abick v. Michigan*, 803 F.2d 874, 878 (6th Cir. 1986).

truthfully disclose a mental disability. The answer is that a plaintiff could sue for prospective relief — a declaration that the questions violate federal law and an injunction prohibiting the Bar Bureaucracy from asking them. To have standing, the plaintiff would need to be a bar applicant, not an unconditionally licensed lawyer like Doe was when she filed this suit.

E.

Let's recap. For her federal-law claims, Doe lacks standing for prospective relief. She also lacks standing to sue the institutional defendants other than the Supreme Court of Kentucky and the Character and Fitness Committee because the others didn't cause her injuries. Judicial immunity and legislative immunity shield the Supreme Court of Kentucky and Character and Fitness Committee from damages.

Doe's federal claims must therefore be dismissed.[88] And the Court declines to exercise jurisdiction over her state-law claims.[89]

* * *

Law school is hard. The stress, rigor, and competition can lead to depression, anxiety, and substance abuse. Many students who start school healthy are far from it by the time they graduate. Some kill themselves.[90]

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[88] Without injunctive relief or damages for Doe's federal-law claims, all that's left of her prayer for relief against the Supreme Court of Kentucky and the Character and Fitness Committee are her attorneys' fees and costs. *See* DN 14-1 at #290. "The litigation must give the plaintiff some other benefit besides reimbursement of costs that are a byproduct of the litigation itself. An interest in attorney's fees is insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 107 (1998) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 480 (1990)) (cleaned up).

[89] 28 U.S.C. § 1367(c)(3).

[90] *See The Suicide of a Law Student Hits Home*, LAWYERS WITH DEPRESSION http://www.lawyerswithdepression.com/articles/the-suicide-of-a-law-student-hits-home/.

Aspiring lawyers should seek the health care they need. But if Kentucky continues to punish people who get help, many won't.[91] And one day, a law student will die after choosing self-help over medical care because he worried a Character and Fitness Committee would use that medical treatment against him — as Kentucky's did against Jane D e.

It is not a matter of if, but when.

8/28/2020

[91] *See, e.g.*, MADELINE HOLCOMBE, *Law Students Say They Don't Get Mental Health Treatment for Fear It Will Keep Them from Becoming Lawyers*, CNN.COM (Feb 29, 2020) https://www.cnn.com/2020/02/23/health/law-school-bar-exam-mental-health-questions/index.html.

The Chair requested a discussion to consider, once we return to face-to-face meetings, conducting meetings simultaneously face-to-face and with the Go To Meeting platform.

Positive Aspects:

- Board more accessible.
- Opportunity to increase meeting attendance and CE availability.
- No travel expenses for those that attend by video.

Potential Legal Issues:

- Conducting specific types of disciplinary cases by phone or video was possible because of Emergency and Executive Orders. Once these Orders expire we would need to conduct these types of cases in person. The Prosecuting Attorney can address the specifics of how a hybrid meeting would impact the disciplinary process.
- The meeting(s) will have to be noticed for both in person and video. Except for specific types of discipline cases, applicants and licensees will likely have the ability to decide how they wish to attend. It is unclear if the Board could mandate physical attendance should it wish to do so.
- Those appearing by video cannot be required to provide statements under oath as they can't be sworn.
- What are the legal implications if the video portion of the meeting cannot be conducted due to technical or other issues?

Potential Technical Issues:

- The possibility exists that technical issues that develop the day of the meeting could prevent the Board from conducting business and meeting statutory obligations.
- How to obtain a combined audio recording of both the in person and video attendees?
- How to address audio feedback caused by multiple individuals in the same room on the video platform? Feedback caused by the amplification of the in person attendees may also be an issue.
- It is unclear if the audio vendor will be able to amplify those attending by video so those attending in person will be able to hear them.
- Those attending in person, other than Board members, will not have laptops so would not be visible to those attending by video. Those attending by video would not be visible to the audience.
- It is unclear if the DOH Wi-Fi routers have sufficient bandwidth and speed to support access to the meeting materials and video.
- The video portion of the meeting could be vulnerable to hacking.

The Senior Health Budget Analyst has provided the following financial reports.

- Historical and Projected Cash Balances: FY 12/13 to FY 25/26
- Revenue and Expenditure Projections: FY 20/21 to FY 25/26
- Unlicensed Activity Balance Cash Sweep Impact: FY 20/21
- Revenue/Expenditures/Cash Balances: July 1, 2019 to June 30, 2020
- Projected Cash Balances: FY 20/21 to FY 25/26
- Review of the Adequacy of Renewal Fees

Cash Sweep Information:

- FY 17/18 cash sweep was $13,000,000
- FY 18/19 cash sweep was $11,040,779
- FY 19/20 cash sweep is $12,000,000
- FY 20/21 cash sweep is $ 5,000,000

*These reports are provided for informational purposes: no specific action is requested.

HISTORICAL AND PROJECTED CASH BALANCES

	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Projected	Projected	Projected	Projected	Projected	Projected
	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance
MQA TRUST FUND	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**	**2023-24**	**2024-25**	**2025-26**
BOARD/COUNCIL														
Acupuncture	357,215	721,929	458,944	946,223	874,616	1,180,021	858,950	1,174,350	959,458	1,387,767	1,261,570	1,701,493	1,576,519	2,011,390
Anesthesiologist Asst	13,078	19,647	110,627	145,938	286,677	229,196	255,582	203,055	259,530	253,538	325,119	319,931	391,776	386,238
Athletic Trainers	149,529	73,754	255,966	261,634	487,461	397,289	531,326	394,037	573,408	535,224	742,817	708,824	917,177	881,361
Chiropractic Medicine	1,618,406	1,886,435	1,314,105	2,721,645	2,103,152	3,169,426	1,884,737	2,467,776	1,408,110	2,621,566	1,726,206	2,988,597	2,100,826	3,341,931
Clinical Lab Personnel	282,604	44,025	121,353	13,990	148,261	70,152	440,084	445,644	655,680	543,040	760,460	677,252	901,110	805,099
Cert. Nursing Assistant	(2,079,003)	(814,471)	(768,711)	23,680	(225,869)	(396,559)	(157,301)	(912,303)	(1,251,726)	(2,306,840)	(2,781,785)	(3,641,635)	(4,085,766)	(5,030,555)
Cert. Social Worker	(129,529)	(129,473)	(132,626)	0	0	0	0	0	0	0	0	0	0	0
CSW, MFT & MHC	2,479,855	920,593	2,172,521	507,457	1,811,259	371,705	1,546,548	64,819	1,356,550	(191,636)	1,022,588	(437,808)	795,219	(703,365)
Dentistry	(716,665)	254,414	(2,144,333)	(1,163,216)	(3,776,737)	(2,334,422)	(4,449,098)	(2,547,240)	(5,329,646)	(4,057,978)	(6,933,503)	(5,525,870)	(8,380,223)	(7,031,733)
Dental Hygienist	521,464	1,063,509	601,514	1,244,591	998,998	1,478,533	1,008,879	1,534,566	1,113,912	1,728,326	1,418,995	2,056,136	1,749,443	2,376,698
Dental Labs	268,771	316,483	246,872	364,350	355,646	397,525	311,121	357,216	307,020	402,048	379,414	476,840	454,446	550,829
Dietetics and Nutrition	259,256	124,716	441,971	417,059	776,486	496,755	748,192	493,887	735,825	554,921	830,231	659,663	936,380	761,316
Electrolysis	(555,377)	(527,535)	(638,545)	(585,551)	(706,406)	(741,635)	(1,033,082)	(1,132,509)	(1,374,424)	(1,458,353)	(1,709,736)	(1,780,153)	(2,029,383)	(2,105,678)
EMS (EMT & PMT)	(3,435,852)	(4,442,867)	(3,845,162)	(4,767,548)	(3,976,433)	(4,820,380)	(4,266,474)	(5,268,243)	(4,524,465)	(5,718,682)	(5,024,819)	(6,168,525)	(5,463,313)	(6,628,991)
Hearing Aid Specialists	188,369	(81,637)	264,778	187,404	558,765	429,216	599,373	398,838	607,783	502,758	737,740	638,428	874,754	772,957
Massage Therapy	(968,026)	(595,212)	(3,511,398)	(5,259,602)	(8,812,903)	(9,618,370)	(12,309,226)	(12,832,570)	(16,882,516)	(18,488,266)	(22,706,128)	(24,083,650)	(28,263,332)	(29,740,131)
Medical Physicists	99,317	95,828	131,562	140,983	216,026	185,498	247,203	212,028	288,904	298,142	390,700	401,199	494,054	504,004
Medicine	11,000,662	9,111,009	6,636,402	5,189,878	8,916,058	11,505,899	13,641,686	15,468,222	17,016,741	19,174,200	21,481,633	24,264,900	26,681,513	29,192,560
Midwifery	(834,964)	(860,708)	(900,115)	(852,199)	(862,573)	(790,064)	(821,707)	(821,861)	(856,718)	(837,549)	(873,966)	(851,372)	(887,434)	(866,330)
Naturopathic	(304,378)	(305,321)	(306,584)	0	0	0	0	0	0	0	0	0	0	0
Nursing	6,657,842	5,264,746	7,511,111	7,094,178	11,938,958	11,923,553	13,050,343	10,733,529	11,581,902	12,922,744	14,110,552	16,118,654	17,424,783	19,142,632
Nursing Home Admin.	123,358	(59,636)	286,153	269,212	641,845	491,448	820,245	615,874	1,006,723	947,069	1,379,898	1,329,072	1,763,574	1,708,908
Occupational Therapy	583,500	223,670	500,451	138,764	508,489	207,451	599,337	316,729	715,866	457,231	860,738	624,072	1,032,354	786,131
Opticianry	674,264	380,172	450,711	125,008	242,332	(90,449)	(16,036)	(441,343)	(411,179)	(845,684)	(830,172)	(1,246,378)	(1,227,535)	(1,651,701)
Optometry	988,472	522,207	1,102,454	957,901	1,706,530	1,211,358	1,748,837	1,347,082	1,895,507	1,724,642	2,367,278	2,206,041	2,851,792	2,686,367
Orthotists & Prosthetists	38,223	223,071	51,462	341,047	324,782	494,883	434,854	593,764	537,637	739,728	728,795	935,693	925,299	1,130,106
Osteopathic Medicine	930,503	1,924,956	727,326	2,474,708	1,993,662	3,812,660	2,588,270	4,298,096	3,197,681	5,056,606	4,261,003	6,196,689	5,410,066	7,312,362
Pharmacy	(322,427)	145,497	22,237	91,415	494,795	820,010	29,315	299,380	(790,209)	(880,807)	(2,165,710)	(1,959,819)	(3,194,860)	(3,117,939)
Physical Therapy	314,230	901,373	106,832	795,325	181,246	1,152,494	237,026	1,372,749	410,683	1,419,623	529,302	1,596,104	714,474	1,756,107
Physician Assistant	417,310	1,402,833	562,278	2,456,158	1,797,927	3,873,964	2,711,737	5,009,090	3,876,157	6,831,590	6,070,666	9,077,847	8,323,574	11,308,245
Podiatric Medicine	44,122	431,365	164,222	490,163	182,734	524,627	306,373	649,475	333,048	596,691	322,613	601,998	330,121	602,659
Psychology	673,321	1,665,879	1,044,529	2,152,299	1,851,456	2,822,168	2,105,790	2,538,336	1,959,407	2,777,147	2,385,646	3,221,797	2,833,913	3,662,055
Radiological Technican	(2,033,081)	(2,162,881)	(2,284,873)	(456,544)	(789,285)	(237,894)	(406,764)	(254,455)	(173,859)	(214,238)	(176,114)	(182,143)	(138,455)	(159,425)
Respiratory Therapy	937,369	359,427	1,055,358	475,171	1,303,664	636,327	672,958	206,440	237,013	(258,475)	548,694	77,558	889,696	407,967
School Psychology	69,510	116,196	46,885	148,513	135,845	248,660	96,871	124,041	39,899	121,518	44,532	130,036	53,683	137,496
Speech-Language, P & A	935,853	1,261,312	843,156	1,478,170	1,447,850	1,797,132	1,229,664	1,687,610	1,339,080	1,893,057	1,661,658	2,246,223	2,018,930	2,590,189
Telehealth Providers	0	0	0	0	0	0	0	(164,847)	(329,847)	(494,839)	(659,839)	(824,831)	(989,831)	(1,154,822)
TOTAL	19,247,101	19,475,305	12,699,433	18,568,204	23,135,314	30,898,177	25,245,613	28,631,262	20,488,935	27,735,826	22,487,079	32,552,863	27,785,343	36,624,936
	10	10	9	6	7	8	8	8	9	11	9	10	9	10

CYCLICAL DEFICIT

CHRONIC DEFICIT (Two or more consecutive years)

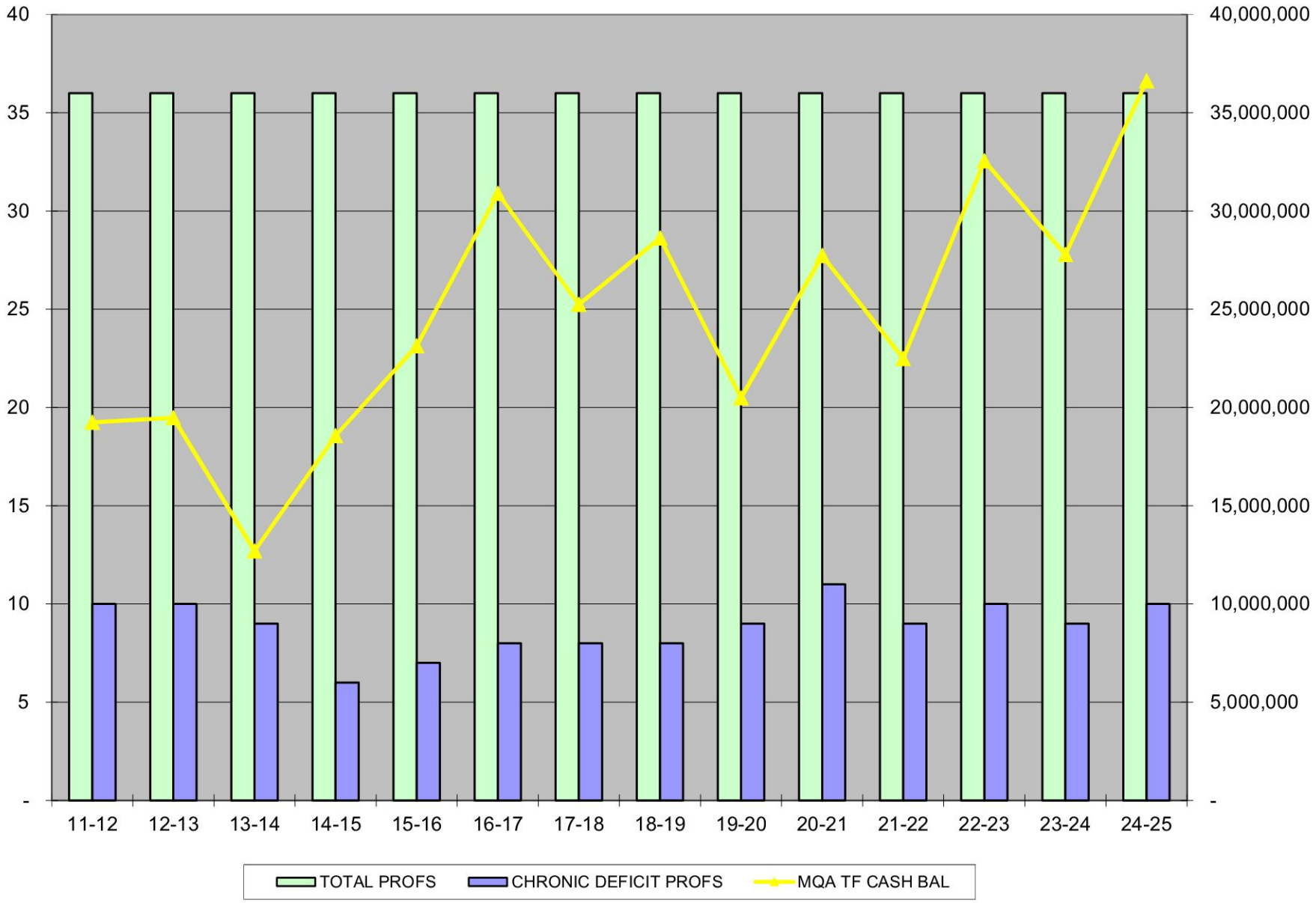
NICA is a pass through and is excluded from the projections. Unlicensed Activity is excluded.

Master Certified Social Worker cash account merged with CSW/MF/MHC cash account effective 7/1/2015

Naturopath cash account merged with Medicine cash account effective 7/1/2015

	Actual	Actual	Actual	Actual	Actual	Actual	Actual
	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance
MQA TRUST FUND	**11-12**	**12-13**	**13-14**	**14-15**	**15-16**	**16-17**	**17-18**
TOTAL PROFS	36	36	36	36	36	36	36
CHRONIC DEFICIT PROFS	10	10	9	6	7	8	8
MQA TF CASH BAL	19,247,101	19,475,305	12,699,433	18,568,204	23,135,314	30,898,177	25,245,613
%OFDEFICIT PROFESSIONS	27.8%	27.8%	25.0%	16.7%	19.4%	22.2%	22.2%

Actual	Projected	Projected	Projected	Projected	Projected	Projected
Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance	Cash Balance
18-19	19-20	20-21	21-22	22-23	23-24	24-25
36	36	36	36	36	36	36
8	9	11	9	10	9	10
28,631,262	20,488,935	27,735,826	22,487,079	32,552,863	27,785,343	36,624,936
22.2%	25.0%	30.6%	25.0%	27.8%	25.0%	27.8%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TOTAL PROFS
CHRONIC DEFICIT PROFS
MQA TF CASH BAL

Table 15
Revenue/Expenditures/Cash Balances
July 1, 2019 - June 30, 2020

MQA TF PROFESSIONS	BEGINNING CASH BALANCE	REVENUES	EXPENDITURES	ENDING CASH BALANCE	UNLICENSED ACT CASH BAL
Acupuncture	$ 858,950	$ 768,860	$ 453,460	$ 1,174,350	$ (847)
Anesthesiologist Assistants	$ 255,582	$ 17,201	$ 69,728	$ 203,055	$ 2,960
Athletic Trainers	$ 531,326	$ 82,729	$ 220,018	$ 394,037	$ 38,079
Chiropractic	$ 1,884,737	$ 2,106,255	$ 1,523,216	$ 2,467,776	$ 76,241
Clinical Laboratory	$ 440,084	$ 736,516	$ 730,956	$ 445,644	$ 264,823
Certified Nursing Assistants	$ (157,301)	$ 4,210,582	$ 4,965,584	$ (912,303)	$ 1,985,470
CSW,MFT,MHC	$ 1,546,548	$ 984,315	$ 2,466,044	$ 64,819	$ 254,823
Dentistry	$ (4,449,098)	$ 5,081,740	$ 3,179,882	$ (2,547,240)	$ (1,134,745)
Dental Hygienist	$ 1,008,879	$ 1,262,336	$ 736,649	$ 1,534,566	$ 256,081
Dental Labs	$ 311,121	$ 161,943	$ 115,848	$ 357,216	$ (243,551)
Dietetics & Nutrition	$ 748,192	$ 119,051	$ 373,356	$ 493,887	$ (275,569)
Electrolysis	$ (1,033,082)	$ 263,050	$ 362,477	$ (1,132,509)	$ (358,879)
EMS (EMT & PMT)	$ (4,266,474)	$ 272,222	$ 1,273,991	$ (5,268,243)	$ (18,414)
Hearing Aid Specialist	$ 599,373	$ 59,893	$ 260,428	$ 398,838	$ (98,282)
Massage Therapy	$ (12,309,226)	$ 4,811,973	$ 5,335,317	$ (12,832,570)	$ (3,757,762)
Medical Physicists	$ 247,203	$ 45,626	$ 80,801	$ 212,028	$ 13,232
Medicine	$ 13,641,686	$ 19,398,807	$ 17,572,271	$ 15,468,222	$ (2,362,620)
Midwifery	$ (821,707)	$ 119,424	$ 119,578	$ (821,861)	$ (104,411)
Nursing	$ 13,050,343	$ 16,880,185	$ 19,196,999	$ 10,733,529	$ 9,241,248
Nursing Home Administrator	$ 820,245	$ 196,672	$ 401,043	$ 615,874	$ 28,213
Occupational Therapy	$ 599,337	$ 382,169	$ 664,777	$ 316,729	$ 299,424
Opticianry	$ (16,036)	$ 93,373	$ 518,680	$ (441,343)	$ (894,495)
Optometry	$ 1,748,837	$ 116,469	$ 518,224	$ 1,347,082	$ 34,773
Orthotist & Prosthetist	$ 434,854	$ 353,614	$ 194,704	$ 593,764	$ (144,780)
Osteopathic Medicine	$ 2,588,270	$ 4,211,523	$ 2,501,697	$ 4,298,096	$ 115,783
Pharmacy	$ 29,315	$ 7,773,631	$ 7,503,566	$ 299,380	$ 691,368
Physical Therapy	$ 237,026	$ 2,562,924	$ 1,427,201	$ 1,372,749	$ 498,027
Physician Assistant	$ 2,711,737	$ 4,161,550	$ 1,864,197	$ 5,009,090	$ 162,819
Podiatry	$ 306,373	$ 783,812	$ 440,710	$ 649,475	$ 30,774
Psychology	$ 2,105,790	$ 1,282,394	$ 849,848	$ 2,538,336	$ (139,492)
Radiological Technicans	$ (406,764)	$ 1,084,694	$ 932,385	$ (254,455)	$ (671)
Respiratory Therapy	$ 672,958	$ 206,977	$ 673,495	$ 206,440	$ 318,237
School Psychology	$ 96,871	$ 192,405	$ 165,235	$ 124,041	$ 14,221
Speech-Language & Audiology	$ 1,229,664	$ 1,454,213	$ 996,267	$ 1,687,610	$ 290,870
Telehealth Providers	$ -	$ 1	$ 164,848	$ (164,847)	$ -
Total	$ 25,245,613	$ 82,239,129	$ 78,853,480	$ 28,631,262	$ 5,082,948

NOTE: NICA is a pass through and is excluded.
PRN Student Pilot Project not included

Cash Sweep	$ 5,000,000		
Cash Balance 7/1/2017			Cash Sweep
Licensed	$ 28,631,262	84.92%	$ 4,246,171
Unlicensed	$ 5,082,948	15.08%	$ 753,829
Total MQA TF	$ 33,714,210	100.00%	$ 5,000,000

	ENDING ULA CASH BAL 6/30/2020	ALLOCATION OF CASH WITHDRAWAL	ULA IMPACT CASH BAL 6/30/2018
MQA TRUST FUND			
Acupuncture	**$ (847)**	**$ -**	**$ (847)**
Anesthesiologist Asst	**$ 2,960**	**$ 153**	**$ 2,807**
Athletic Trainers	**$ 38,079**	**$ 1,964**	**$ 36,115**
Chiropractic	**$ 76,241**	**$ 3,932**	**$ 72,309**
Clinical Lab	**$ 264,823**	**$ 13,657**	**$ 251,166**
Cert Nurs Asst	**$ 1,985,470**	**$ 102,392**	**$ 1,883,078**
Cert Social Worker		**$ -**	**$ -**
CSW,MF&MHC	**$ 254,823**	**$ 13,141**	**$ 241,682**
Dentistry	**$ (1,134,745)**	**$ -**	**$ (1,134,745)**
Dental Hygienist	**$ 256,081**	**$ 13,206**	**$ 242,875**
Dental Labs	**$ (243,551)**	**$ -**	**$ (243,551)**
Dietetics & Nutrition	**$ (275,569)**	**$ -**	**$ (275,569)**
Electrolysis	**$ (358,879)**	**$ -**	**$ (358,879)**
EMS (EMT & PMT)	**$ (18,414)**	**$ -**	**$ (18,414)**
Hearing Aid Specialist	**$ (98,282)**	**$ -**	**$ (98,282)**
Massage Therapy	**$ (3,757,762)**	**$ -**	**$ (3,757,762)**
Medical Physicists	**$ 13,232**	**$ 682**	**$ 12,550**
Medicine	**$ (2,362,620)**	**$ -**	**$ (2,362,620)**
Midwifery	**$ (104,411)**	**$ -**	**$ (104,411)**
Naturopathic		**$ -**	**$ -**
Nursing	**$ 9,241,248**	**$ 476,575**	**$ 8,764,673**
Nursing Home Admin	**$ 28,213**	**$ 1,455**	**$ 26,758**
Occupational Therapy	**$ 299,424**	**$ 15,441**	**$ 283,983**
Opticianry	**$ (894,495)**	**$ -**	**$ (894,495)**
Optometry	**$ 34,773**	**$ 1,793**	**$ 32,980**
Ortho & Proth	**$ (144,780)**	**$ -**	**$ (144,780)**
Osteopathic	**$ 115,783**	**$ 5,971**	**$ 109,812**
Pharmacy	**$ 691,368**	**$ 35,654**	**$ 655,714**
Physical Therapy	**$ 498,027**	**$ 25,683**	**$ 472,344**
Physician Assistant	**$ 162,819**	**$ 8,397**	**$ 154,422**
Podiatry	**$ 30,774**	**$ 1,587**	**$ 29,187**
Psychology	**$ (139,492)**	**$ -**	**$ (139,492)**
Radiological Tech	**$ (671)**	**$ -**	**$ (671)**
Respiratory Therapy	**$ 318,237**	**$ 16,412**	**$ 301,825**
School Psychology	**$ 14,221**	**$ 733**	**$ 13,488**
Speech-Language	**$ 290,870**	**$ 15,000**	**$ 275,870**
Telehealth Providers	**$ -**		
Total	**$ 5,082,948**	**$ 753,829**	**$ 4,329,119**

NICA is not included in the above cash balance.

Table 16
Projected Cash Balances
Medical Quality Assurance Trust Fund

MQA TF PROFESSIONS	Projected Ending Cash Balance 2020-2021	Projected Ending Cash Balance 2021-2022	Projected Ending Cash Balance 2022-2023	Projected Ending Cash Balance 2023-2024	Projected Ending Cash Balance 2024-2025	Projected Ending Cash Balance 2025-2026
Acupuncture	$ 959,458	$ 1,387,767	$ 1,261,570	$ 1,701,493	$ 1,576,519	$ 2,011,390
Anestiologist Asst	$ 259,530	$ 253,538	$ 325,119	$ 319,931	$ 391,776	$ 386,238
Athletic Trainers	$ 573,408	$ 535,224	$ 742,817	$ 708,824	$ 917,177	$ 881,361
Chiropractic	$ 1,408,110	$ 2,621,566	$ 1,726,206	$ 2,988,597	$ 2,100,826	$ 3,341,931
Clinical Laboratory	$ 655,680	$ 543,040	$ 760,460	$ 677,252	$ 901,110	$ 805,099
Cert Nurs Asst	$ (1,251,726)	$ (2,306,840)	$ (2,781,785)	$ (3,641,635)	$ (4,085,766)	$ (5,030,555)
Cert Social Worker	$ -	$ -	$ -	$ -	$ -	$ -
CSW,MFT,MHC	$ 1,356,550	$ (191,636)	$ 1,022,588	$ (437,808)	$ 795,219	$ (703,365)
Dentistry	$ (5,329,646)	$ (4,057,978)	$ (6,933,503)	$ (5,525,870)	$ (8,380,223)	$ (7,031,733)
Dental Hygienist	$ 1,113,912	$ 1,728,326	$ 1,418,995	$ 2,056,136	$ 1,749,443	$ 2,376,698
Dental Labs	$ 307,020	$ 402,048	$ 379,414	$ 476,840	$ 454,446	$ 550,829
Dietetics & Nutrition	$ 735,825	$ 554,921	$ 830,231	$ 659,663	$ 936,380	$ 761,316
Electrolysis	$ (1,374,424)	$ (1,458,353)	$ (1,709,736)	$ (1,780,153)	$ (2,029,383)	$ (2,105,678)
EMS (EMT & PMD)	$ (4,524,465)	$ (5,718,682)	$ (5,024,819)	$ (6,168,525)	$ (5,463,313)	$ (6,628,991)
Hearing Aid Spec	$ 607,783	$ 502,758	$ 737,740	$ 638,428	$ 874,754	$ 772,957
Massage Therapy	$ (16,882,516)	$ (18,488,266)	$ (22,706,128)	$ (24,083,650)	$ (28,263,332)	$ (29,740,131)
Medical Physicists	$ 288,904	$ 298,142	$ 390,700	$ 401,199	$ 494,054	$ 504,004
Medicine	$ 17,016,741	$ 19,174,200	$ 21,481,633	$ 24,264,900	$ 26,681,513	$ 29,192,560
Midwifery	$ (856,718)	$ (837,549)	$ (873,966)	$ (851,372)	$ (887,434)	$ (866,330)
Naturopathy	$ -	$ -	$ -	$ -	$ -	$ -
Nursing	$ 11,581,902	$ 12,922,744	$ 14,110,552	$ 16,118,654	$ 17,424,783	$ 19,142,632
Nursing Home Admin	$ 1,006,723	$ 947,069	$ 1,379,898	$ 1,329,072	$ 1,763,574	$ 1,708,908
Occupational Therapy	$ 715,866	$ 457,231	$ 860,738	$ 624,072	$ 1,032,354	$ 786,131
Opticianry	$ (411,179)	$ (845,684)	$ (830,172)	$ (1,246,378)	$ (1,227,535)	$ (1,651,701)
Optometry	$ 1,895,507	$ 1,724,642	$ 2,367,278	$ 2,206,041	$ 2,851,792	$ 2,686,367
Ortho & Prosth	$ 537,637	$ 739,728	$ 728,795	$ 935,693	$ 925,299	$ 1,130,106
Osteopathic	$ 3,197,681	$ 5,056,606	$ 4,261,003	$ 6,196,689	$ 5,410,066	$ 7,312,362
Pharmacy	$ (790,209)	$ (880,807)	$ (2,165,710)	$ (1,959,819)	$ (3,194,860)	$ (3,117,939)
Physical Therapy	$ 410,683	$ 1,419,623	$ 529,302	$ 1,596,104	$ 714,474	$ 1,756,107
Physician Assistant	$ 3,876,157	$ 6,831,590	$ 6,070,666	$ 9,077,847	$ 8,323,574	$ 11,308,245
Podiatry	$ 333,048	$ 596,691	$ 322,613	$ 601,998	$ 330,121	$ 602,659
Psychology	$ 1,959,407	$ 2,777,147	$ 2,385,646	$ 3,221,797	$ 2,833,913	$ 3,662,055
Radiological Tech	$ (173,859)	$ (214,238)	$ (176,114)	$ (182,143)	$ (138,455)	$ (159,425)
Respiratory Therapy	$ 237,013	$ (258,475)	$ 548,694	$ 77,558	$ 889,696	$ 407,967
School Psychology	$ 39,899	$ 121,518	$ 44,532	$ 130,036	$ 53,683	$ 137,496
Speech-Language	$ 1,339,080	$ 1,893,057	$ 1,661,658	$ 2,246,223	$ 2,018,930	$ 2,590,189
Telehealth Providers	$ (329,847)	$ (494,839)	$ (659,839)	$ (824,831)	$ (989,831)	$ (1,154,822)
Total	$ 20,488,935	$ 27,735,826	$ 22,487,079	$ 32,552,863	$ 27,785,343	$ 36,624,936

NICA and Unlicensed Activity are excluded from the amounts shown above.

A Review of the Adequacy of Renewal Fees

MQA Trust Fund (Chapter 456)							
	Profession	FY 20-21 & 21-22 Estimated Expend	Number of Licensees (1)	Cost to Regulate (1)	Renewal Fee Cap	Current Renewal Fee (3)	Sufficient (4) Current Renewal Fee
1.	Acupuncture	$ 530,123	2,551	$208	$ 500	$275/$150	Yes
2.	Anesthesiologist Asst	$ 65,251	494	$132	$ 1,000	$ 200	Yes
3.	Athletic Trainers	$ 242,197	2,897	$84	$200/$100	$100/$50	Yes
4.	Chiropractic	$ 2,622,704		$275			Yes
A.	Chiropractic		6,464		$ 500	$ 250	
B.	Chiropractic PA		233		$ 250	$55/$28	
C.	Chiropractic Asst		2,851		$ 25	$ 25	
5.	Clinical Laboratory	$ 1,876,369		$109			Yes
A.	Director		231		$ 150	$ 130	
B.	Supervisor		5,251		$ 150	$ 110	
C.	Technologist		9,771		$ 150	$ 90	
D.	Technician		1,560		$ 150	$ 50	
E.	Training Program		47		$ 300	$ 300	
F.	Inactive		386		$ 50	$ 50	
6.	Certified Nursing Asst	$ 10,549,905	160,932	$66	$ 50	$ 50	
7.	CSW,MFT,MHC	$ 5,533,070		$195			
A.	Clincial Social Work		12,366		$250/$50	$115/$50	
B.	Marriage and Fam Ther		2,416		$250/$50	$115/$50	
C.	Mental Health Couns		13,551		$250/$50	$115/$50	
D.	Interns		0		$ 100	$ 75	
E.	Mstr Cert Social Worker		7		$ 250	$150/$50	
8.	Dentistry	$ 7,300,792	14,641	$499	$ 300	$ 300	
9.	Dental Hygienist	$ 1,076,663	14,482	$74	$ 300	$ 80	Yes
10.	Dental Labs	$ 107,389	778	$138	$ 300	$ 175	Yes
11.	Dietetics & Nutrition	$ 522,786	5,300	$99	$ 500	$ 75	Yes
12.	Electrolysis	$ 733,270	2,182	$336	$ 100	$ 100	
13.	Hearing Aid Spec	$ 379,366	1,071	$354	$ 600	$375/$375	Yes
14.	Massage Therapy	$ 12,676,230		$277			
A.	Massage Therapist		37,566		$200/$250	$ 100	
B.	Massage Establishment		8,198		$ 150	$ 100	
15.	Medical Physicists	$ 83,644		$118			Yes
A.	Medical Physicists		653		$ 500	$ 150	
B.	Medical Phys In Trng		58		No Cap	$ 100	
16.	Medicine	$ 35,475,495	77,168	$460	$ 500	$360/$120	Yes
17.	Midwifery	$ 155,472	196	$793	$ 500	$500/$500	
18.	Nursing	$ 37,799,884		$89			Yes
A.	Registered Nurse (RN)		323,932		No Cap	$65/$55	
B.	Licensed Practical Nurse		64,259		No Cap	$65/$55	
C.	Advanced Practice Registered Nurse (APRN)		37,254		No Cap	$ 50	
19.	Nursing Home Admin	$ 521,561	1,757	$297	No Cap	$ 325	Yes
20.	Occupational Therapy	$ 1,395,739	16,599	$84	No Cap	$ 55	Yes
21.	Opticianry	$ 1,059,495	4,033	$263	$350/$50	$125/$50	
22.	Optometry	$ 774,821		$212			Yes
A.	Optometrist		3,629		$ 300	$ 300	
B.	Optometry Faculty		25		No Cap	$ 100	
23.	Orthotists & Prosthetics	$ 224,713	672	$334	$ 500	$ 400	Yes
24.	Osteopathic	$ 3,647,289	10,539	$346	$ 500	$400/$200	Yes
25.	Pharmacy	$ 16,509,595		$177			
A.	Pharmacists		33,414		$ 250	$ 200	
B.	Consultant Pharmacist		3,182		$ 250	$ 100	
C.	Nuclear Pharmacist		192		$ 250	$ 100	
D.	Pharmacies Permit		10,727		$ 250	$ 250	
E.	Pharmacy Technicians		46,016		$ 50	$ 50	
26.	Physical Therapy	$ 3,055,890		$105			Yes
A.	Physical Therapist		17,751		$ 200	$75/$50	
B.	Physical Therapist Asst		11,256		$ 150	$75/$50	
27.	Physician Assistant	$ 2,554,136	10,111	$253	$ 500	$275/$150	Yes
28.	Podiatry	$ 805,260		$351			Yes
A.	Podiatric Medicine		1,792		$ 350	$ 350	
B.	Cert Podiatric X-Ray Asst		500		No Cap	$ 75	
29.	Psychology	$ 1,108,315		$186			Yes
A.	Psychologist		5,952		$ 500	$ 295	
B.	Limited License		11		$ 500	$ 25	
30.	Respiratory Therapy	$ 1,495,254	13,299	$112	$200/$50	$120/$50	Yes
31.	School Psychology	$ 212,959	882	$241	$ 500	$190/$150	Yes
32.	Speech-Lang, P & A	$ 1,537,544		$112			Yes
A.	Pathologist & Audiologist		12,219		$500/$100	$ 75	
B.	P & A Assist		1,465		No Cap	$ 50	
	Total Fund (4)	$ 152,633,181	1,015,769	$150			

Notes:
1. Cost to regulate is computed by adding FY 20-21 and FY 21-22 projected expenditures and dividing by the total number of non-delinquent active and inactive licensees eligible to renew as of June 30, 2020.
2. Two amounts in the column for fee caps and/or current fees represent two different amounts for active and inactive licensees.
3. If there is a projected positive cash balance at June 30, 2026, then the current renewal fee is deemed to be sufficient.

PROFESSION-BY-PROFESSION REVENUE AND EXPENDITURE PROJECTIONS
(NOT INCLUDING UNLICENSED ACTIVITY)

MQA TRUST FUND	ENDING CASH BAL 6/30/2020	LICENSED ALLOCATION OF CASH WITHDRAWAL	ESTIMATED REVENUES FY 20-21	ESTIMATED EXPEND FY 20-21	ENDING CASH BAL 06/30/21	ESTIMATED REVENUES FY 21-22	ESTIMATED EXPEND FY 21-22	ENDING CASH BAL 06/30/22	ESTIMATED REVENUES FY 22-23	ESTIMATED EXPEND FY 22-23	ENDING CASH BAL 06/30/23	ESTIMATED REVENUES FY 23-24	ESTIMATED EXPEND FY 23-24	ENDING CASH BAL 06/30/24	ESTIMATED REVENUES FY 24-25	ESTIMATED EXPEND FY 24-25	ENDING CASH BAL 06/30/25	ESTIMATED REVENUES FY 25-26	ESTIMATED EXPEND FY 25-26	ENDING CASH BAL 06/30/26
Acupuncture	$ 1,174,350	$ 94,073	$ 74,281	$ 195,101	$ 959,458	$ 763,331	$ 335,023	$ 1,387,767	$ 74,281	$ 200,478	$ 1,261,570	$ 763,331	$ 323,409	$ 1,701,493	$ 74,281	$ 199,255	$ 1,576,519	$ 763,331	$ 328,461	$ 2,011,390
Anesthesiologist Asst	$ 203,055	$ 16,266	$ 114,800	$ 42,059	$ 259,530	$ 17,200	$ 23,193	$ 253,538	$ 114,800	$ 43,218	$ 325,119	$ 17,200	$ 22,389	$ 319,931	$ 114,800	$ 42,954	$ 391,776	$ 17,200	$ 22,738	$ 386,238
Athletic Trainers	$ 394,037	$ 31,565	$ 332,219	$ 121,283	$ 573,408	$ 82,729	$ 120,914	$ 535,224	$ 332,219	$ 124,626	$ 742,817	$ 82,729	$ 116,722	$ 708,824	$ 332,219	$ 123,866	$ 917,177	$ 82,729	$ 118,546	$ 881,361
Chiropractic	$ 2,467,776	$ 197,685	$ 349,089	$ 1,211,071	$ 1,408,110	$ 2,625,090	$ 1,411,633	$ 2,621,566	$ 349,089	$ 1,244,449	$ 1,726,206	$ 2,625,090	$ 1,362,699	$ 2,988,597	$ 349,089	$ 1,236,860	$ 2,100,826	$ 2,625,090	$ 1,383,985	$ 3,341,931
Clinical Lab	$ 445,644	$ 35,699	$ 1,273,092	$ 1,027,357	$ 655,680	$ 736,372	$ 849,012	$ 543,040	$ 1,273,092	$ 1,055,672	$ 760,460	$ 736,372	$ 819,580	$ 677,252	$ 1,273,092	$ 1,049,234	$ 901,110	$ 736,372	$ 832,383	$ 805,099
Cert Nurs Asst	$ (912,303)	$ -	$ 4,577,684	$ 4,917,107	$ (1,251,726)	$ 4,577,684	$ 5,632,798	$ (2,306,840)	$ 4,577,684	$ 5,052,628	$ (2,781,785)	$ 4,577,684	$ 5,437,535	$ (3,641,635)	$ 4,577,684	$ 5,021,815	$ (4,085,766)	$ 4,577,684	$ 5,522,472	$ (5,030,555)
CSW,MF&MHC	$ 64,819	$ 5,192	$ 4,297,491	$ 3,000,567	$ 1,356,550	$ 984,316	$ 2,532,503	$ (191,636)	$ 4,297,491	$ 3,083,267	$ 1,022,588	$ 984,316	$ 2,444,712	$ (437,808)	$ 4,297,491	$ 3,064,463	$ 795,219	$ 984,316	$ 2,482,900	$ (703,365)
Dentistry	$ (2,547,240)	$ -	$ 596,212	$ 3,378,618	$ (5,329,646)	$ 5,193,842	$ 3,922,173	$ (4,057,978)	$ 596,212	$ 3,471,737	$ (6,933,503)	$ 5,193,842	$ 3,786,210	$ (5,525,870)	$ 596,212	$ 3,450,565	$ (8,380,223)	$ 5,193,842	$ 3,845,352	$ (7,031,733)
Dental Hygienist	$ 1,534,566	$ 122,929	$ 123,361	$ 421,087	$ 1,113,912	$ 1,269,991	$ 655,576	$ 1,728,326	$ 123,361	$ 432,692	$ 1,418,995	$ 1,269,991	$ 632,850	$ 2,056,136	$ 123,361	$ 430,054	$ 1,749,443	$ 1,269,991	$ 642,736	$ 2,376,698
Dental Labs	$ 357,216	$ 28,615	$ 16,618	$ 38,199	$ 307,020	$ 164,218	$ 69,190	$ 402,048	$ 16,618	$ 39,252	$ 379,414	$ 164,218	$ 66,792	$ 476,840	$ 16,618	$ 39,012	$ 454,446	$ 164,218	$ 67,835	$ 550,829
Dietetics & Nutrition	$ 493,887	$ 39,564	$ 506,142	$ 224,640	$ 735,825	$ 117,242	$ 298,145	$ 554,921	$ 506,142	$ 230,832	$ 830,231	$ 117,242	$ 287,810	$ 659,663	$ 506,142	$ 229,424	$ 936,380	$ 117,242	$ 292,306	$ 761,316
Electrolysis	$ (1,132,509)	$ -	$ 101,588	$ 343,503	$ (1,374,424)	$ 305,838	$ 389,767	$ (1,458,353)	$ 101,588	$ 352,970	$ (1,709,736)	$ 305,838	$ 376,255	$ (1,780,153)	$ 101,588	$ 350,818	$ (2,029,383)	$ 305,838	$ 382,133	$ (2,105,678)
EMS (EMT & PMT)	$ (5,268,243)	$ -	$ 2,554,842	$ 1,811,064	$ (4,524,465)	$ 262,867	$ 1,457,083	$ (5,718,682)	$ 2,554,842	$ 1,860,979	$ (5,024,819)	$ 262,867	$ 1,406,573	$ (6,168,525)	$ 2,554,842	$ 1,849,630	$ (5,463,313)	$ 262,867	$ 1,428,545	$ (6,628,991)
Hearing Aid Specialist	$ 398,838	$ 31,949	$ 455,430	$ 214,536	$ 607,783	$ 59,805	$ 164,830	$ 502,758	$ 455,430	$ 220,449	$ 737,740	$ 59,805	$ 159,117	$ 638,428	$ 455,430	$ 219,104	$ 874,754	$ 59,805	$ 161,602	$ 772,957
Massage Therapy	$ (12,832,570)	$ -	$ 2,042,517	$ 6,092,463	$ (16,882,516)	$ 4,978,017	$ 6,583,768	$ (18,488,266)	$ 2,042,517	$ 6,260,378	$ (22,706,128)	$ 4,978,017	$ 6,355,539	$ (24,083,650)	$ 2,042,517	$ 6,222,199	$ (28,263,332)	$ 4,978,017	$ 6,454,816	$ (29,740,131)
Medical Physicists	$ 212,028	$ 16,985	$ 141,116	$ 47,255	$ 288,904	$ 45,626	$ 36,389	$ 298,142	$ 141,116	$ 48,557	$ 390,700	$ 45,626	$ 35,128	$ 401,199	$ 141,116	$ 48,261	$ 494,054	$ 45,626	$ 35,676	$ 504,004
Medicine	$ 15,468,222	$ 1,239,104	$ 20,210,288	$ 17,422,666	$ 17,016,741	$ 20,210,288	$ 18,052,829	$ 19,174,200	$ 20,210,288	$ 17,902,855	$ 21,481,633	$ 20,210,288	$ 17,427,021	$ 24,264,900	$ 20,210,288	$ 17,793,674	$ 26,681,513	$ 20,210,288	$ 17,699,241	$ 29,192,560
Midwifery	$ (821,861)	$ -	$ 21,767	$ 56,624	$ (856,718)	$ 118,017	$ 98,849	$ (837,549)	$ 21,767	$ 58,184	$ (873,966)	$ 118,017	$ 95,422	$ (851,372)	$ 21,767	$ 57,829	$ (887,434)	$ 118,017	$ 96,913	$ (866,330)
Nursing	$ 10,733,529	$ 859,825	$ 20,424,462	$ 18,716,263	$ 11,581,902	$ 20,424,462	$ 19,083,620	$ 12,922,744	$ 20,424,462	$ 19,236,653	$ 14,110,552	$ 20,424,462	$ 18,416,360	$ 16,118,654	$ 20,424,462	$ 19,118,333	$ 17,424,783	$ 20,424,462	$ 18,706,612	$ 19,142,632
Nursing Home Admin	$ 615,874	$ 49,335	$ 707,058	$ 266,873	$ 1,006,723	$ 195,033	$ 254,687	$ 947,069	$ 707,058	$ 274,229	$ 1,379,898	$ 195,033	$ 245,859	$ 1,329,072	$ 707,058	$ 272,556	$ 1,763,574	$ 195,033	$ 249,699	$ 1,708,908
Occupational Therapy	$ 316,729	$ 25,372	$ 1,186,529	$ 762,020	$ 715,866	$ 375,084	$ 633,719	$ 457,231	$ 1,186,529	$ 783,022	$ 860,738	$ 375,084	$ 611,751	$ 624,072	$ 1,186,529	$ 778,247	$ 1,032,354	$ 375,084	$ 621,307	$ 786,131
Opticianry	$ (441,343)	$ -	$ 561,782	$ 531,618	$ (411,179)	$ 93,372	$ 527,878	$ (845,684)	$ 561,782	$ 546,270	$ (830,172)	$ 93,372	$ 509,578	$ (1,246,378)	$ 561,782	$ 542,938	$ (1,227,535)	$ 93,372	$ 517,538	$ (1,651,701)
Optometry	$ 1,347,082	$ 107,910	$ 1,153,383	$ 497,048	$ 1,895,507	$ 106,908	$ 277,773	$ 1,724,642	$ 1,153,383	$ 510,747	$ 2,367,278	$ 106,908	$ 268,144	$ 2,206,041	$ 1,153,383	$ 507,632	$ 2,851,792	$ 106,908	$ 272,333	$ 2,686,367
Ortho & Proth	$ 593,764	$ 47,564	$ 77,476	$ 86,038	$ 537,637	$ 340,766	$ 138,675	$ 739,728	$ 77,476	$ 88,410	$ 728,795	$ 340,766	$ 133,868	$ 935,693	$ 77,476	$ 87,870	$ 925,299	$ 340,766	$ 135,959	$ 1,130,106
Osteopathic	$ 4,298,096	$ 344,305	$ 676,817	$ 1,432,927	$ 3,197,681	$ 4,073,287	$ 2,214,362	$ 5,056,606	$ 676,817	$ 1,472,420	$ 4,261,003	$ 4,073,287	$ 2,137,601	$ 6,196,689	$ 676,817	$ 1,463,440	$ 5,410,066	$ 4,073,287	$ 2,170,991	$ 7,312,362
Pharmacy	$ 299,380	$ 23,982	$ 6,891,090	$ 7,956,696	$ (790,209)	$ 8,462,300	$ 8,552,899	$ (880,807)	$ 6,891,090	$ 8,175,992	$ (2,165,710)	$ 8,462,300	$ 8,256,409	$ (1,959,819)	$ 6,891,090	$ 8,126,131	$ (3,194,860)	$ 8,462,300	$ 8,385,379	$ (3,117,939)
Physical Therapy	$ 1,372,749	$ 109,966	$ 534,655	$ 1,386,755	$ 410,683	$ 2,678,075	$ 1,669,134	$ 1,419,623	$ 534,655	$ 1,424,976	$ 529,302	$ 2,678,075	$ 1,611,273	$ 1,596,104	$ 534,655	$ 1,416,286	$ 714,474	$ 2,678,075	$ 1,636,442	$ 1,756,107
Physician Assistant	$ 5,009,090	$ 401,260	$ 329,661	$ 1,061,333	$ 3,876,157	$ 4,448,236	$ 1,492,803	$ 6,831,590	$ 329,661	$ 1,090,585	$ 6,070,666	$ 4,448,236	$ 1,441,054	$ 9,077,847	$ 329,661	$ 1,083,934	$ 8,323,574	$ 4,448,236	$ 1,463,564	$ 11,308,245
Podiatry	$ 649,475	$ 52,027	$ 86,734	$ 351,134	$ 333,048	$ 717,769	$ 454,126	$ 596,691	$ 86,734	$ 360,812	$ 322,613	$ 717,769	$ 438,383	$ 601,998	$ 86,734	$ 358,612	$ 330,121	$ 717,769	$ 445,231	$ 602,659
Psychology	$ 2,538,336	$ 203,337	$ 201,619	$ 577,211	$ 1,959,407	$ 1,348,844	$ 531,105	$ 2,777,147	$ 201,619	$ 593,119	$ 2,385,646	$ 1,348,844	$ 512,694	$ 3,221,797	$ 201,619	$ 589,502	$ 2,833,913	$ 1,348,844	$ 520,702	$ 3,662,055
Radiological Tech	$ (254,455)	$ -	$ 968,512	$ 887,916	$ (173,859)	$ 950,512	$ 990,891	$ (214,238)	$ 950,512	$ 912,388	$ (176,114)	$ 950,512	$ 956,541	$ (182,143)	$ 950,512	$ 906,824	$ (138,455)	$ 950,512	$ 971,483	$ (159,425)
Respiratory Therapy	$ 206,440	$ 16,537	$ 839,898	$ 792,788	$ 237,013	$ 206,978	$ 702,466	$ (258,475)	$ 1,621,808	$ 814,638	$ 548,694	$ 206,978	$ 678,114	$ 77,558	$ 1,621,808	$ 809,670	$ 889,696	$ 206,978	$ 688,707	$ 407,967
School Psychology	$ 124,041	$ 9,936	$ 26,666	$ 100,871	$ 39,899	$ 193,706	$ 112,088	$ 121,518	$ 26,666	$ 103,651	$ 44,532	$ 193,706	$ 108,202	$ 130,036	$ 26,666	$ 103,019	$ 53,683	$ 193,706	$ 109,893	$ 137,496
Speech-Language	$ 1,687,610	$ 135,188	$ 441,822	$ 655,164	$ 1,339,080	$ 1,436,357	$ 882,380	$ 1,893,057	$ 441,822	$ 673,221	$ 1,661,658	$ 1,436,357	$ 851,792	$ 2,246,223	$ 441,822	$ 669,115	$ 2,018,930	$ 1,436,357	$ 865,098	$ 2,590,189
Telehealth Providers	$ (164,847)	$ -	$ -	$ 165,000	$ (329,847)	$ -	$ 164,992	$ (494,839)	$ -	$ 165,000	$ (659,839)	$ -	$ 164,992	$ (824,831)	$ -	$ 165,000	$ (989,831)	$ -	$ 164,991	$ (1,154,822)
Total	$ 28,631,262	$ 4,246,171	$ 72,896,701	$ 76,792,856	$ 20,488,935	$ 88,564,162	$ 81,317,272	$ 27,735,826	$ 73,660,611	$ 78,909,358	$ 22,487,079	$ 88,564,162	$ 78,498,378	$ 32,552,863	$ 73,660,611	$ 78,428,130	$ 27,785,343	$ 88,564,162	$ 79,724,569	$ 36,624,936
		84.92%		$ 73,928,876			$ 78,704,306													
							$ 158,110,128													
Unlicensed Activity, NICA, and PRN Project are not included in the above projections.							$ 152,633,181													

Total Cash Sweep is $5,000,000

The Florida

Board of Respiratory Care

MINUTES
Draft

July 10, 2020

DEPARTMENT OF HEALTH
BOARD OF RESPIRATORY CARE
GENERAL BUSINESS MEETING
GENERAL RULES REVIEW
JULY 10, 2020
MEETING AGENDA

Conference/ Video Call at 8:30 a.m. EST
To join the meeting from your computer, tablet or smartphone
https://www.gotomeet.me/MedicalTherapies/rt-gbm

Or dial United States (Toll Free): 1 866 899 4679
Access Code: 595-106-269

Joseph Frey, RRT
Chair

Ronald Mitchell, CRT
Vice Chair

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Participants in this public meeting should be aware that these proceedings are recorded and an audio file of the meeting will be posted to the board's website.

8:30 a.m. EST
Call to Order – General Business Meeting

Mr. Joseph Frey, Chair, called the general business meeting to order at 8:34 a.m. Those present for the meeting, included the following:

Members Present
Joseph Frey, RRT., Chair
Ronald Eric Mitchell, CRT Vice Chair
Roberto Garcia, RRT
Shawnta Friday-Stroud, Ph., D.
Janelle Hom

Court Reporter
For the Record
850-222-5491

Staff Present
Allen Hall, Executive Director
Kayla Karpp, Program Operations Administrator
Barbra Baker, RSII

Board Counsel
John Fricke, Board Counsel
Office of the Attorney General

Prosecuting Attorney
Ann Prescott
DOH Assistant General Counsel

To accommodate individuals wishing to address the Board, the Board Chair may adjust the sequence of the agenda items. **The minutes reflect the actual sequence of events rather than the original agenda order.**

ADMINISTRATIVE PROCEEDINGS

PERSONAL APPEARANCE PURSUANT TO §456.013(3)(c), F.S.

6. Ibraltino Andrade, Registered Respiratory Therapist

Mr. Andrade was present on the call.

Mr. Andrade was required to appear before the board due to the “yes” answer in the disciplinary history section of his application.

MOTION: After discussion, Mr. Frey made a motion to grant licensure with no conditions. The motion was seconded by Mr. Mitchell and carried 5/0.

7. Khajuanna Ke’Shea Carithers, Certified Respiratory Therapist

Ms. Carithers was present on the call.

Ms. Carithers was required to appear before the board due to the “yes” answer in the disciplinary history section of her application.

MOTION: After discussion, Mr. Frey made a motion to grant licensure contingent upon the following conditions:

- Comply with the terms of previous Final Order issued in DOH Case# 2007-17541, by the Florida Board of Respiratory Care, totaling $1,796.10.

The motion was seconded by Ms. Hom and carried 5/0.

8. Melissa Ann Hanak, Registered Respiratory Therapist

Ms. Hanak was not present on the call and was not represented by Legal Counsel.

Ms. Hanak was required to appear before the board due to the “yes” answer in the criminal history section of her application.

MOTION: After discussion, Mr. Frey made a motion to table Ms. Hanak’s application until the October 16, 2020 Respiratory Care Board Meeting. The motion was seconded by Mr. Garcia and carried 5/0.

9. Josue Hernandez, Certified Respiratory Therapist

Mr. Hernandez was present on the call.

Mr. Hernandez was required to appear before the board due to the “yes” answer in the criminal history section of his application.

Ms. Friday-Stroud directed staff to make sure the disposition was included in materials prior to licensure.

MOTION: After discussion, Mr. Frey made a motion to grant licensure with no conditions. The motion was seconded by Dr. Friday-Stroud and carried 5/0.

10. Kayla Putt, Registered Respiratory Therapist

Ms. Putt was present on the call.

Ms. Putt was required to appear before the board due to the “yes” answer in the criminal history section of her application.

MOTION: After discussion, Mr. Frey made a motion to grant licensure with no conditions. The motion was seconded by Mr. Mitchell and carried 5/0.

11. Ameshia Walker-Smith, Registered Respiratory Therapist

Ms. Walker-Smith was present on the call.

Ms. Walker-Smith was required to appear before the board due to the “yes” answer in the disciplinary history section of her application.

MOTION: After discussion, Dr. Friday-Stroud made a motion to grant licensure with the following conditions:

- Applicant must have quarterly reports sent to the Florida Board of Respiratory Care by her direct supervisor for one (1) year after the filing of the Order by the Board.

The motion was seconded by Ms. Hom and carried 4/1. Mr. Mitchell opposed.

12. Jeoleah Carmen Wynn, Registered Respiratory Therapist

Ms. Wynn was present on the call.

Ms. Wynn was required to appear before the board due to the “yes” answer in the disciplinary history section of her application.

MOTION: After discussion, Mr. Mitchell made a motion to grant licensure with no conditions. The motion was seconded by Mr. Frey and carried 5/0.

DISCIPLINARY PROCEEDINGS

MOTION FOR DETERMINATION OF WAIVER AND FINAL ORDER BY HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

1. Andres D. Gued, CRT., Case No: 2018-19718 (PCP, Mitchell and Barrett)

Respondent was not present nor represented by Counsel.

Mr. Mitchell was recused from the case due to participation in probable case panel.

Ms. Prescott summarized the case for the Board. Respondent was charged with the following violation: Section 456.072(1) (aa), Florida Statutes (2016), by testing positive for any drug, as defined in s.112.0455, on any confirmed preemployment or employer ordered drug screening when the practitioner does not have a lawful prescription.

The case was presented as a Hearing Not Involving Disputed Issues of Material Facts and determination of Respondent's waiver of right to request an informal hearing by default.

MOTION: Mr. Frey made a motion to accept the investigative report and exhibits into evidence for the purposes of imposing penalty, making a finding that the Respondent was properly served and has waived his right to a formal hearing, adopted the findings of fact that is set forth in the Administrative Complaint. The motion was seconded by Dr. Friday- Stroud and carried 4/0.

MOTION: Ms. Hom made a motion to adopt the conclusions of Law as set forth in the Administrative Complaint and that this constitutes a violation of the Practice Act. The motion was seconded by Dr. Friday-Stroud and carried 4/0.

MOTION: After discussion Mr. Hom made a motion to impose the following penalties:

- The Respondent's license to practice respiratory care in the State of Florida shall be SUSPENDED until he has been determined to be safe to practice by the board. Such demonstration of skill and safety shall include an evaluation by the Professionals Resource Network (PRN).
- The Respondent's shall appear before the Board when said PRN Evaluation is completed. If PRN's recommendations are suitable, the Board shall make the determination of whether Respondent is safe to practice respiratory care with reasonable skill and safety. If needed, the license shall remain suspended until he compliances with terms and conditions of PRN contract.

The motion was seconded by Dr. Friday-Stroud and carried 4/0.

MOTION: Dr. Friday-Stroud made a motion to access the costs of $1453.74 to be paid within two years of the filing of the Final Order. The motion was seconded by Ms. Hom and carried 4/0.

2. Richard A. Pla, RRT., Case No. 2019-38360 (PCP, Mitchell and Barrett)

Respondent was not present nor represented by Counsel.

Mr. Mitchell was recused from the case due to participation in probable case panel.

Ms. Prescott summarized the case for the Board. Respondent was charged with the following violation: Section 456.072(1) (c), Florida Statutes (2018), for being convicted or found guilty of , or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice, or the ability to practice, a licensee's profession constitutes grounds for disciplinary action.

The case was presented as a Hearing Not Involving Disputed Issues of Material Facts and determination of Respondent's waiver of right to request an informal hearing by default.

MOTION: Mr. Frey made a motion to accept the investigative report and exhibits into evidence for the purposes of imposing penalty, making a finding that the Respondent was properly served and has waived his right to a formal hearing, adopted the findings of fact that is set forth in the Administrative Complaint and that this constitutes a violation of the Practice Act. The motion was seconded by Ms. Hom and carried 4/0.

MOTION: After discussion Ms. Hom made a motion to impose the following penalties:

- Revocation of Respondent's license.
- Costs waived

The motion was seconded by Mr. Frey and carried 4/0.

3. Vorarut Vorasiangsuk, RRT., Case No. 2019-01697 PCP, Mitchell and Barrett)

Respondent was not present nor represented by Counsel.

Mr. Mitchell was recused from the case due to participation in probable case panel.

Ms. Prescott summarized the case for the Board. Respondent was charged with the following violation: Section 456.072(1) (c), Florida Statutes (2018), for being convicted or found guilty of , or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession constitutes grounds for disciplinary action.

The case was presented as a Hearing Not Involving Disputed Issues of Material Facts and determination of Respondent's waiver of right to request an informal hearing by default.

MOTION: Ms. Hom made a motion to accept the investigative report and exhibits into evidence for the purposes of imposing penalty, making a finding that the Respondent was properly served and has waived his right to a formal hearing, adopted the findings of fact that is set forth in the Administrative Complaint and that this constitutes a violation of the Practice Act. The motion was seconded by Mr. Frey and carried 4/0.

MOTION: After discussion Ms. Hom made a motion to impose the following penalties:

- Revocation of Respondent's license
- Costs waived

The motion was seconded by Mr. Frey and carried 4/0.

MOTION FOR BOARD'S FINAL ORDER BY SETTLEMENT AGREEMENT

4. Natalie Yager, RRT., Case No: 2018-27460 (PCP, Broeker and Nunez)

Respondent was present on the call.

Mr. Frey recused himself from the case due knowledge of the license holder.

Ms. Prescott summarized the case for the Board. Respondent was charged with the following violation: Section 468.365 (1)(w), Florida Statutes (2018), by being unable to deliver respiratory care services with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs narcotics, chemicals, or any other type of material as a result of any mental or physical condition.

The case was presented as a Settlement Agreement that would impose the following penalties:

- Reprimand
- The Respondent's license to practice respiratory care in the State of Florida is hereby SUSPENDED until such time as he demonstrates the ability to practice respiratory care with reasonable skill and safety. Such demonstration of skill and safety shall include an evaluation by the Professionals Resource Network (PRN). The Board retains jurisdiction in this matter to impose terms and conditions upon reinstatement of Respondent's license.

- Costs of $5,597.98 to be paid within six (6) years of the filing of the Final Order

MOTION: Ms. Hom made a motion to accept the settlement agreement. The Respondent's accepted an Oral amendment to Paragraph 3 of disposition to petition the Board- not state surgeon general for reinstatement to practice with proof of safety and the Board shall make the determination of whether Respondent is safe to practice respiratory care with reasonable skill and safety. The motion was seconded by Dr. Friday- Stroud and carried 4/0.

PROSECUTOR'S REPORT

5. Ann Prescott, Prosecuting Attorney

- PSU Inventory Report

Inventory of Cases as of June 12, 2020

Cases under legal review (60 status	4
Cases awaiting probable cause determination (70 status)	7
Cases where PC has been found (80 status):	3
Cases Submitted for Board Review (118 status):	4
Cases Currently Filed at DOAH (110 status):	0
Total cases open/active in PSU:	**18**
Total Number of Year and Older Cases:	7

MOTION: Dr. Hom made a motion to allow prosecution service to continue prosecuting year-old cases. The motion was seconded by Mr. Frey and carried 5/0.

<u>ADMINISTRATIVE PROCEEDINGS</u>

APPLICANT RATIFICATION LISTS

13. Certified Respiratory Therapists

MOTION: Mr. Frey made a motion to ratify the list of 75 names (Exhibit A), beginning with Luisito Mallavo and ending with Christine Higgins for CRT licensure by endorsement. The motion was seconded by Ms. Hom and carried 5/0.

14. Registered Respiratory Therapists

MOTION: Mr. Frey made a motion to ratify the list of 302 names (Exhibit B), beginning with Helen Watson and ending with Breanna Ellison for RRT licensure by endorsement. The motion was seconded by Ms. Hom and carried 5/0.

15. New Continuing Education Providers

MOTION: Mr. Frey made a motion to ratify the two names (Exhibit C), CE Solutions, Division of VGM Education and Priority Medical Education, as new continuing education providers. The motion was seconded by Dr. Friday- Stroud and carried 5/0.

16. Exemption from Employment Disqualification

MOTION: Mr. Mitchell made a motion to ratify the three names (Exhibit D), Jose Dolores Suarez, Jr., Mark S. Notley and Patrick M. Fortin, for exemption for disqualification from employment by delegation of authority from the Board for staff to administratively review and approve exemption applications that meet certain criteria. The motion was seconded by Mr. Frey and carried 5/0.

RULE DISCUSSION AND/OR DEVELOPMENT

17. Rule 64B32-2.001, F.A.C., Application for Registered and Certified Respiratory Therapist Licensure

MOTION: Mr. Mitchell made a motion to accept the changes to the Respiratory Therapist application form as purposed. The motion was seconded by Mr. Frey and carried 5/0.

MOTION: Mr. Frey made a motion to accept the language changes and updated the date to Rule 64B32-2.001, Florida Administrative Code. The motion was seconded by Mr. Frey and carried 5/0.

MOTION: Mr. Mitchell made a motion to find the proposed revisions do not have an adverse impact on small businesses and will not be likely to directly or indirectly increase regulatory costs to any entity (including government) in excess of $200,000 in the aggregate in Florida within 1 year after the implementation of the rule. The motion was seconded by Mr. Frey and carried 5/0.

MOTION: Mr. Mitchell made a motion to find that a violation of this rule or any part of this rule will not designate as a minor violation. The motion was seconded by Mr. Frey and carried 5/0.

MOTION: Mr. Mitchell made a motion that the sunset provision is not required in this case. The motion was seconded by Mr. Frey and carried 5/0.

RULE STATUS REPORT

18. Assistant Attorney General, John Fricke

- Rule 64B32-2.001, F.A.C., Licensure by Endorsement

BOARD OF RESPIRATORY CARE RULES REPORT - JUNE 2020

Executive Director – Allen Hall

	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B31-2.001	License by Endorsement	05/28/2020					

No Action.

REPORTS, IF ANY

19. Board Member Reports, if any

- Board Chair, Mr. Frey
- Legislative Liaison, Ms. Hom
- Budget Liaison, Mr. Frey
- ULA Liaison, Mr. Mitchell
- Enforcement Liaison, Dr. Friday-Stroud
- Healthiest Weight Liaison, Ms. Hom
- Continuing Education Liaison, Mr. Garcia

Ms. Homs commended on the legislative report regarding receiving new Bills being presented. Mr. Hall also reminded the Board members that Respiratory Care was included in the Telehealth Bill in 2019.

Mr. Frey and Ms. Hom elaborated on healthiest weight, encouraging everyone to keep moving, exercise and stay healthy.

20. Executive Director, Allen Hall

- Expenditures by Function Report
- Cash Balance Report

This was provided for informational purposes only.

21. Professional Association Update, if any

Mr. Tomas Berlin, President of the Florida Society of Respiratory Care was present and spoke on behalf of the FSSRC. He updated the Board on upcoming events regarding cancelations or rescheduling FSRC and AARC events, due to the COVID-19 Pandemic.

OLD BUSINESS

22. Board of Respiratory Care Minutes

- April 3, 2020, General Business Meeting

Motion: After Discussion, Mr. Frey made a motion to approve the April 3, 2020, General Business minutes as presented. The motion was seconded by Mr. Garcia and carried 5/0.

- May 28, 2020, General Business Meeting

Motion: After Discussion, Mr. Frey made a motion to approve the May 28, 2020 General Business minutes as presented. The motion was seconded by Mr. Hom and carried 5/0.

OTHER BUSINESS AND INFORMATION

23. Staff Recognition

Informational only.

With no further discussion, the meeting was adjourned at 10:18 a.m.

Exhibit A

CERTIFIED RESPIRATORY THERAPISTS
LIST FOR RATIFICATION

1.	Mallavo	Luisito			TT	16674
2.	Hersey	Dena	Marie		TT	16675
3.	Carter	Amy	Cassevah		TT	16676
4.	Pangonis	Thomas			TT	16677
5.	Mish	Eric	Barnett		TT	16678
6.	Blake	Mendey			TT	16679
7.	Espinoza	Jane			TT	16680
8.	Jenkins	Kierstin	Cheyenne		TT	16681
9.	Cane	Kalaya	Sylvia		TT	16682
10.	St John	Domineaux			TT	16683
11.	Mantilla	Yosmel			TT	16684
12.	Bowman	Stephanie	Lynn		TT	16686
13.	Harris	Steve	Dallas		TT	16687
14.	Marasa	Lillianna			TT	16688
15.	Centofanti	Enzo			TT	16689
16.	Trego	Katherine	Mary		TT	16690
17.	Bragg	Kailan	Uthiter		TT	16691
18.	Mccabe	Leonard	F.		TT	16692
19.	Spangler	Alex			TT	16693
20.	Bowman	Andrew	Thomas		TT	16694
21.	Grayson	Margaret	Louise		TT	16695
22.	Montiague	Nancy			TT	16696
23.	Coale	Patti	Ann		TT	16697
24.	Delgado	Pamela			TT	16698
25.	Robinson	Clarence		III	TT	16699
26.	Joseph	Roselene			TT	16700
27.	Merritt	Shannon	Jane		TT	16701
28.	Anderson	Devon	Nicole		TT	16702
29.	Mier	Anthony	F		TT	16703
30.	Elrhalami	Farida	S		TT	16704
31.	Rodriguez	Angela			TT	16705
32.	Florentino	Winelly			TT	16706
33.	Ziccardi Jr	John			TT	16707
34.	Crayton	Torris			TT	16708
35.	Allison	Ivy			TT	16709
36.	Jean-Paul	Irlene			TT	16710
37.	Pope	Trenton			TT	16711
38.	Volmy	Charlene			TT	16712
39.	Joseph	Peterson			TT	16713
40.	Wilborn	Gerkiria			TT	16714
41.	Turner	David	Glenn		TT	16715
42.	Butler	George			TT	16716
43.	Garris	Brian	Craig		TT	16717
44.	Rozzell-Jennings	Kimberly	Dawn		TT	16718
45.	Kirkwood	Amy			TT	16719

46.	Morrison	Rukiya	Wendie	TT	16720
47.	Walker	Shanon		TT	16721
48.	Nichols	Dixie		TT	16722
49.	Hickman	Dolores	Melody	TT	16723
50.	Bowman	Steven	Wayne	TT	16724
51.	Atallah	Abdulrahman		TT	16725
52.	Kiah	Donyll	O	TT	16726
53.	Farra	Kiana	S	TT	16727
54.	Crockett	Kizzy	E	TT	16728
55.	Santana	Heriberto		TT	16729
56.	Janice	Kayla	Cherise	TT	16730
57.	Ralston	James	H	TT	16731
58.	Delouis	Claire	Viola	TT	16732
59.	Williams	Patricia		TT	16733
60.	Jenkins	Frances	L	TT	16734
61.	King	Amy	W	TT	16735
62.	Korakakos	Madelene		TT	16736
63.	Blaise	Venine	Gracia	TT	16737
64.	Parker	Jennifer	Rene	TT	16738
65.	Van Wye	Teresa	Lynn	TT	16739
66.	Torres	Marilyn	Eve	TT	16740
67.	Richardson	Cassandra	Dionne	TT	16741
68.	Burleson	Jessica	Morgan	TT	16742
69.	Cleary	Michael		TT	16743
70.	Rozier	Deanna	Michelle	TT	16744
71.	Newman	Kristie		TT	16745
72.	Parham	Tara	Kamilah	TT	16746
73.	Pacheco	Gisell		TT	16747
74.	Dugonjic	Sara		TT	16748
75.	Higgins	Christine		TT	16749

Exhibit B

REGISTERED RESPIRATORY THERAPISTS
LIST FOR RATIFICATION

1.	Watson	Helen		RT	18301
2.	Hughes	Cary	Andrew	RT	18302
3.	Heck	Joann		RT	18303
4.	Branam	Amy		RT	18304
5.	Altman	Tina		RT	18305
6.	Perez	Justine	Emily	RT	18306
7.	Hardik	Austin		RT	18307
8.	Nikulina	Olga		RT	18308
9.	Walker	Shankeya		RT	18309
10.	Powell	Matthew		RT	18310
11.	Hoyt	Ladona		RT	18311
12.	Phillips	Venus	Melissa	RT	18312
13.	Avery	Layton	Laloni	RT	18313
14.	Rivera	Christina	Tiffany	RT	18314
15.	Martinez Jr	Wilfredo		RT	18315
16.	Peppas	Sharon	Yvonne	RT	18316
17.	Morales	Megan		RT	18317
18.	Bennici	Joshua	Joseph	RT	18318
19.	Malinis	Edgardo	Gabriel	RT	18319
20.	Cash	Donald	Larry	RT	18320
21.	Estrada	Diana		RT	18321
22.	Pratt	Audrianna	L	RT	18322
23.	Webber	Latony		RT	18323
24.	Bradley	Lisa	Marie	RT	18324
25.	Gray	Johnny	Leah	RT	18325
26.	Gaul	Karly	Danielle	RT	18326
27.	Friedel	David		RT	18327
28.	Knight	Sharon	Michelle	RT	18328
29.	Winkle	Rochelle	Eileen	RT	18329
30.	Curtis	Cassandra		RT	18330
31.	Trentacosti	Charles	Dominick	RT	18331
32.	Friend	Ebony	Anjeanette	RT	18332
33.	Moye	Nancy	E	RT	18333
34.	Ruckman	Joni		RT	18334
35.	Johnson	Chelsea	Danielle	RT	18335
36.	Casnave	Jada	Kiarra	RT	18336
37.	Flanigan	Amanda	Danielle	RT	18337
38.	Ratton	Zachary	Michael	RT	18338
39.	Cardey	Eric	Lamare	RT	18339
40.	Lindner	William	Joseph	RT	18340
41.	Williams	Kelli	L	RT	18341
42.	Ortiz	Cesar	A	RT	18342
43.	Dzaferagic	Aida		RT	18343
44.	Riggs	Natasha	Marie	RT	18344
45.	Laquatra	Lisa	Marie	RT	18345

46. Thomas	Kiarke	Jamal	RT	18346
47. Kuser	Joseph	Christopher J	RT	18347
48. Wolfe	Natalie	Rebecca	RT	18348
49. Craig	Robert	A	RT	18349
50. Odum	Andria	Michelle G	RT	18350
51. Lipman	Kelly		RT	18351
52. Brock	Stefani		RT	18352
53. Mckelvy	Heather		RT	18353
54. Canez	Samantha	Jane	RT	18354
55. Obas	Darlie		RT	18355
56. Dizon	Joshua		RT	18356
57. Metellus	Harold		RT	18357
58. Delaroderie	Thomas	Andrew	RT	18358
59. Brunson	Arthur	Louis	RT	18359
60. King	Kelly	Whelchel	RT	18360
61. Keyes	Catherine	Hilda	RT	18361
62. Raby	Shawn		RT	18362
63. Writz	Anne		RT	18363
64. Lake-Wickham	Madison	Eloise	RT	18364
65. Dawkins	Orrett	Stuart	RT	18365
66. Kinchen-Miller	Joryell	Terri	RT	18366
67. Stephens	Carmen		RT	18367
68. Tripi	Marie	A	RT	18368
69. Ewing	Karen		RT	18369
70. Fischer	Dyana		RT	18370
71. Wormly	Imani		RT	18371
72. Pharr	Sheldon	James	RT	18372
73. Urbach	John		RT	18373
74. Garcia	Amalfi		RT	18374
75. Wargo	Brenda	G	RT	18375
76. Adams	Martina	C	RT	18376
77. West	Lisa	Martin	RT	18377
78. Ruiz	Alexis	Samone	RT	18378
79. Padgett	Jerry	E	RT	18379
80. Bonney	Lynne		RT	18380
81. Williamson	Diana		RT	18381
82. Wilson	Lesimone Christopher		RT	18382
83. Cox			RT	18383
84. Van Vlymen	Vanessa	Rae	RT	18384
85. Woodruff	Daniel		RT	18385
86. Williams	Ryan	Edward	RT	18386
87. Vega	Christine		RT	18387
88. Glover	Laurel		RT	18388
89. Dallas	Tiffany	R	RT	18389
90. Casolari	Solomon	Antony	RT	18390
91. Cervantes	Latesea		RT	18391
92. Nina	Priscilla	Maria	RT	18392
93. Thomas	Rebecca		RT	18393
94. Vitchock	Elizabeth	Yunger	RT	18394
95. Rollyson	Rebecca	Jo	RT	18395

96.	Horton	Teryka		RT	18396
97.	Estrella	Girlie		RT	18397
98.	Bergman	Emily	Mae-Kennedy	RT	18398
99.	Doyle	Wendy	Raquel	RT	18399
100.	Theophilopoulos	Peter		RT	18400
101.	Latham	Jason	Lee	RT	18401
102.	Alexander	Tommy	Ray	RT	18402
103.	Westervelt	Thomas	Richard	RT	18403
104.	Drown	Kegan	Jarrot	RT	18404
105.	Dyer	Lisa	B	RT	18405
106.	Evans	Christiaan	David	RT	18406
107.	Pendley	Curtis	Murrell	RT	18407
108.	Rollins	Amy	Denea	RT	18408
109.	Hall	Candace	J	RT	18409
110.	Atkinson	Samuel	Alexander	RT	18410
111.	Ellis	Jeremiah		RT	18411
112.	Chapman	Rebekah		RT	18412
113.	Ferguson	Colleen	Kelly	RT	18413
114.	Payne	David	Kee	RT	18414
115.	Christianer	Cathyren	Anne	RT	18415
116.	Walker	Angela	E	RT	18416
117.	Jenkins	Kierstin	Cheyenne	RT	18417
118.	Goldsby	Tiffany	M	RT	18418
119.	Gonzalez	Sergio		RT	18419
120.	Morgan	Melissa	M	RT	18420
121.	Brannon	Crystal	Dawn	RT	18421
122.	Perez	Jimmy		RT	18422
123.	Priselac	Michelle	Therese	RT	18423
124.	Stosich	John	D.	RT	18424
125.	Moreno	Noel		RT	18425
126.	Yanchar	Kimberley	Ann	RT	18426
127.	Neal	Mathew	Dwane	RT	18427
128.	Hammons	Mary	Ann	RT	18428
129.	Aronson	Payden		RT	18429
130.	Mullins	Kenneth	D	RT	18430
131.	Glass	Vickie	Townsend	RT	18431
132.	Mann	Diane		RT	18432
133.	De Lima	Larisa		RT	18433
134.	Callahan	Standish	Brock	RT	18434
135.	Barrett	Renetta	Monique	RT	18435
136.	Trujillo	Paulo		RT	18436
137.	Turner	Brittany		RT	18437
138.	Enders	Leeann	Kay	RT	18438
139.	Shaw	Jesse		RT	18439
140.	Gardner	Laura	Jean	RT	18440
141.	Colston	Jamie	Graham	RT	18441
142.	Stoops	Robert	Ben	RT	18442
143.	Anderson	Tracie	Jo	RT	18443
144.	Highfill	Selena		RT	18444
145.	Reed Jr.	Ritchie	Roy	RT	18445

146.	Dominguez F	Joelys	Loren	RT	18446
147.	Ray	Stacey	Anne	RT	18447
148.	Chapman	Jennifer		RT	18448
149.	Blanchard	Louis	Gene	RT	18449
150.	Finn	Kelly	Noel	RT	18450
151.	Johnson	Kayler	Renee	RT	18451
152.	Mcpherson	Beverly	Jean	RT	18452
153.	Wrigley	Thomas	J	RT	18453
154.	Demuth	Justin	Dennis	RT	18454
155.	Dejesus	Jessica	Yvonne	RT	18455
156.	Sarollo	Manuela	Anna	RT	18456
157.	Martinez	Juan	Carlos	RT	18457
158.	Steele	Jennie		RT	18458
159.	Staie	Melissa		RT	18459
160.	Rosenhoover	Lauren		RT	18460
161.	Clay	Megan	Diane	RT	18461
162.	Franklin	Lynne		RT	18462
163.	Bates	Kevin	M	RT	18463
164.	Irrgang	Denise	Anne	RT	18464
165.	Hodde	Rock	William	RT	18465
166.	Hamrick Harriman	Hope	Leanne	RT	18466
167.	King	Ryan	Todd	RT	18467
168.	Yarbrough	Vicki	L	RT	18468
169.	Fullam	Lauren		RT	18469
170.	Harrison	Caletheia	Patrice	RT	18470
171.	Gruber	Valerie	Lynn	RT	18471
172.	Vega	Dwight		RT	18472
173.	Swanger	Misty	Gail	RT	18473
174.	Sumowski	Debra	J	RT	18474
175.	Jama	Ayanle	Ahmed	RT	18475
176.	Sheppard	Rakeshia	S	RT	18476
177.	Schrader	Luke		RT	18477
178.	Baldwin	Mia	S	RT	18478
179.	Garrett	Shiana		RT	18479
180.	Smith	Rebecca	C	RT	18480
181.	Padgett	Jerry	Shaun	RT	18481
182.	Butler	Nicholas	Wayne	RT	18482
183.	Roderick	Gabriel		RT	18483
184.	Bonsu	Kwaku	A	RT	18484
185.	Kirk	Douglas		RT	18485
186.	Bloom	Jawan		RT	18486
187.	Hunter	Breon	Lee	RT	18487
188.	Stylianou	Annette		RT	18488
189.	Bennett	Tuesday		RT	18489
190.	Nunn	Melinda		RT	18490
191.	Watkins	Eric	Henry	RT	18491
192.	Antolini	Zoey	Nicole	RT	18492
193.	Nolan	Hayley	Kathleen	RT	18493
194.	Solis Silvas	Emily	Elizabeth	RT	18494
195.	Chambers	Madison		RT	18495

196.	Mullennix	Kylie	Megan	RT	18496
197.	Sheatz	Alisha	Lynn	RT	18497
198.	Yelton	Jesslyn	Rena	RT	18498
199.	Saka	Gregory	Lance	RT	18499
200.	Gillman	Evie	Kay	RT	18500
201.	Romero	Alex		RT	18501
202.	Brooks	Ranette		RT	18502
203.	Hill	Zachery	Tyler	RT	18503
204.	Lee	Olivia	Renee	RT	18504
205.	Briggs	Lacy		RT	18505
206.	Lemons	Laura	Lee	RT	18506
207.	Keesee	A'Lexus		RT	18507
208.	Gamino	Richard	Frank	RT	18508
209.	Wilson	Lisa	Marie	RT	18509
210.	Veloz	Bianca		RT	18510
211.	Patterson	Raymond	Anthony	RT	18511
212.	Johns	Maranda		RT	18512
213.	Hernandez	Lorenzo	Raul	RT	18513
214.	Herms	John		RT	18514
215.	Sabine	Skylar	Christine	RT	18515
216.	Todd	Savannah	Leigh	RT	18516
217.	Chau	Ngoc Tuong Van		RT	18517
218.	Bush	Molly	Lynn	RT	18518
219.	Johnston	Theresa	Marie	RT	18519
220.	Otten	Katelyn		RT	18520
221.	Scuncio	Shelby	Nicole	RT	18521
222.	Jackson	Sean	Edward	RT	18522
223.	Wright	Kemoy	K	RT	18523
224.	Volcy	Berline		RT	18524
225.	Vidal	Tache		RT	18525
226.	Matlovsky	Jordan		RT	18526
227.	Lopez Ii	William	Salinas	RT	18527
228.	Swanson	Cody		RT	18528
229.	Nunez	Diapme		RT	18529
230.	Lingerfelt	Robert	Howard	RT	18530
231.	Arena	Judy		RT	18531
232.	Cushing	Kendall		RT	18532
233.	Kozlowski	Cassandra	Lynn	RT	18533
234.	Knapp	Daniel		RT	18534
235.	Blueitt	Kendra		RT	18535
236.	Comer	Marquell		RT	18536
237.	Patel	Shivani	Kishor	RT	18537
238.	Quintana	Juan		RT	18538
239.	Kiel	Amber		RT	18539
240.	Cassanova	Lauren		RT	18540
241.	Smith	Alfonzo		RT	18541
242.	Ali-Winn	Arabihah	Nicole	RT	18542
243.	Johnson	Carrie	Renee	RT	18543
244.	Renwick	Aubrey		RT	18544
245.	Clemons	Kaitlyn	Elizabeth	RT	18545

246.	Jacobson	Amber		RT	18546
247.	Lambrose	Lindsay		RT	18547
248.	Barwig	Mikayla		RT	18548
249.	Reed	Jamie	Diane	RT	18549
250.	Bernhard	Zehava	Golda	RT	18550
251.	Pristow	Lucie	J	RT	18551
252.	Holcombe	Timothy	Richard	RT	18552
253.	Hinojosa	Adriana		RT	18553
254.	Brown	Linda	M	RT	18554
255.	Atallah	Abdulrahman		RT	18555
256.	Luu	Lonnie		RT	18556
257.	Johnson	Zanicea	Chontez	RT	18557
258.	Thomas	Annette	Marie	RT	18558
259.	Gleason	Patrick	Joseph	RT	18559
260.	Waters	Tyler		RT	18560
261.	Pope	Lisa		RT	18562
262.	Mostolinia	Sara		RT	18563
263.	Plaza	Juan	Sebastian	RT	18564
264.	Hernandez	Lorenzo		RT	18565
265.	David	Maria	M	RT	18566
266.	Hazel	Courtney	W	RT	18567
267.	Owen	Tyler	William	RT	18568
268.	Billi	Jennifer	Lynn	RT	18569
269.	Chaudhry	Kanwal		RT	18570
270.	Draper	Brianna	Elizabeth	RT	18571
271.	King	Olivia		RT	18572
272.	Guidos	Jose		RT	18573
273.	Davenport	Jennifer	April	RT	18574
274.	Falla	Francisco		RT	18575
275.	Depriest	Jenna	Renee	RT	18576
276.	Davis	Laura	A	RT	18577
277.	Jean-Baptiste	Albert	Richard	RT	18578
278.	Wanlass	Savannah	Nicole	RT	18579
279.	Gonzalez	Marrissa		RT	18580
280.	Gonzalez	Yasiel		RT	18581
281.	Rayson Higgins	Melecia	Nicole	RT	18582
282.	Petty	Katie	Lynn	RT	18583
283.	Fajardo	Perlita	R	RT	18584
284.	Jilek	Jeff	J	RT	18585
285.	Price	Kenyia	Brianna	RT	18586
286.	Chvokina	Irina		RT	18587
287.	Young	Randi	Raechelle	RT	18588
288.	Estafanos	Makrina		RT	18589
289.	Simpson	Suree		RT	18590
290.	South	Martha	R	RT	18591
291.	Wern Jr.	Scott	Oscar	RT	18592
292.	Alghulam	Ali Radi J		RT	18593
293.	Tomazin	David		RT	18594
294.	Hawkins	Labradford	Quintez	RT	18595
295.	Ellerth	Morgan	Victoria	RT	18596

296.	Hettinger	Anne	Marie	RT	18597
297.	Occhiuto	Paul		RT	18598
298.	Steiner	Samantha		RT	18599
299.	Urani	Kelly	Elizabeth	RT	18600
300.	Frederick	Marbria	Iris	RT	18601
301.	Castro Rhoads	Sulibeth		RT	18602
302.	Ellison	Breanna		RT	18603

Exhibit C

NEW BOARD APPROVED CONTINUING EDUCATION PROVIDERS FOR RATIFICATION

1. CE Solutions, A Division of VGM Education 50-4572
2. Priority Medical Education 50-30108

Exhibit D

EXEMPTIONS FOR DISQUALIFICATION FROM EMPLOYMENT FOR RATIFICATION

The board has delegated authority to staff to administratively review and approve exemption applications that meet certain criteria. The list of administratively approved exemptions is included for ratification.

1. Jose Dolores Suarez, Jr. RT14180
2. Mark S. Notley RT5105
3. Patrick M. Fortin TT16591

The attached 11th Circuit decision allowing an antitrust claim against the Georgia Board of Dentistry is provided as an informational item.

In short, the court determined that SmileDirect should be allowed to proceed with an antitrust claim against the Georgia Board of Dentistry based on the Board's rule amendment requiring direct supervision for expanded duties of dental assistants.

SmileDirect Decision Reveals Antitrust Risk For State Boards

By Steven Fellman and Richard Bar
Law360 (September 11, 2020, 3:52 PM EDT) --

The new normal developed in response to the coronavirus pandemic has radically changed the way that professional services are provided to consumers.

For many professions, working remotely rather than in an office setting has become pervasive. Virtual physical exams have become commonplace in health care. Virtual education is the norm for students from preschool through graduate school.

In-person testing for professional licensure has largely been replaced by online testing programs. The court systems have moved to utilize Zoom-type depositions and hearings and, in some situations, actual Zoom trials.

How are professional service providers held accountable to meeting the requirements of professional practice amid these drastic changes? In our system of government, state boards often have the responsibility of developing regulations that establish what constitutes minimum requirements for professional practice.

Historically, a majority of the members of such state boards are active, practicing members of the profession that they are regulating. In a wide range of antitrust cases involving highly regulated professions such as — but certainly not limited to — lawyers, doctors and dentists, courts have found that members of state boards are subject to the antitrust laws. In the seminal 2014 decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission, the U.S. Supreme Court held:

When a State empowers a group of active market participants to decide who can participate in its market and on what terms, the need for supervision is manifest. The Court holds today that a state board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy Midcal's [California Retail Liquor Dealer's Association v. Midcal Aluminum, Inc.] active supervision requirement in order to invoke state-action antitrust immunity.

Every state and city has advisory boards and commissions. For example, the city of New York lists more than 300 advisory boards and commissions. Since the time of the North Carolina Dental Examiners decision, the makeup of these boards has been evolving and inclusion considerations have expanded the areas of expertise and interests on state boards.

Many state boards include several consumer representatives to provide user input. State government experts also may be included. And some are dominated by active practitioners, though they may not be aware of the fact that they possibly face personal antitrust liability.

The U.S. Court of Appeals for the Eleventh Circuit's recent decision in SmileDirectClub LLC v. Tanja Battle demonstrates this exposure and the growing, imperative need for attorneys who represent state boards or state board members to review and monitor their clients' activities.

This case gives us a fascinating preview or, in the words of dissenting U.S. Circuit Judge Gerald Tjoflat, an advisory opinion of how state board members may be subject to antitrust liability unless state governments carefully supervise their activities.

Summary

SmileDirectClub offers orthodontic treatments at a steep discount compared to typical orthodontists, because unlike the typical orthodontist, it does not provide in-person treatment. SmileDirectClub SmileShops are staffed by dental technicians, not a dentist or orthodontist.

Patient scans are sent to state-licensed dentists who review and identify any periodontal disease, cavities or other oral conditions that would require further investigation or prevent the patient from being a candidate for SmileDirectClub's treatment. If no such problems are present, the dentist writes a patient-specific plan and ultimately a prescription for SmileDirectClub's clear aligners, which are sent to the patient by mail.

The Georgia Board of Dentistry was organized pursuant to Georgia Title 43, Chapter 11 of the Code of Georgia. At the time of this litigation, the board had 11 members, nine of whom were practicing dentists licensed in Georgia. One board member was a dental hygienist and one was a nondental professional. The board had the power to regulate the acts and practices performed by dental hygienists, dental assistants or other persons at the direction of and under the supervision of a licensed dentist.

On Jan. 24, the board voted to amend Rule 150-9-.02, which related to expanded duties of dental assistants. The proposed amendment added conducting digital scans for fabrication of orthodontic appliances and models to the duties of dental assistants that required direct supervision of a dentist.

"Direct supervision" was defined to require a Georgia-licensed dentist to be in the dental office or treatment facility, personally diagnose the condition to be treated, personally authorize the procedures to be done by the dental assistant, remain in the facility while the procedures are being performed, and before dismissal of the patient, evaluate the performance of the dental assistant.

The board sent the proposed amendment to the Georgia governor, who by statute was required to approve, modify or veto the proposed rule amendment.[1] On April 30, 2018, the governor issued a certificate of active supervision to the board approving the proposed amendment "for the purposes of active certification review required by Sec 43-1C-3."

Consequently, SmileDirectClub sued the board and the board members in their individual capacity, alleging antitrust, equal protection and due process violations. The board members filed a Rule 12(b)(6) motion to dismiss the antitrust violations.

The district court denied the motion to dismiss finding that, based on the complaint, there was insufficient evidence to conclude that the Midcal active supervision test had been met. The members of the board appealed to the Eleventh Circuit arguing that, on its face, the certificate of active supervision met the test.

The three judge panel of the Eleventh Circuit issued a 2-1 decision to send the case back to the district court.

Takeaways

The majority opinion by U.S. Circuit Judge R. Lanier Anderson III is of great value to professional associations, state boards and legal practitioners. It begins by discussing the antitrust state-action immunity doctrine of Parker v. Brown, explaining that the Sherman Act applies to individuals but not to action by state governments.

However, the state action immunity doctrine does not allow states to "give immunity to those who violate the Sherman Act by authorizing them to violate it or by declaring that their action is lawful."[2]

Therefore, under the rationale of North Carolina State Board of Dental Examiners. v. FTC, ibid, where a state board is composed of active market participants, the State Board members do not automatically get antitrust immunity. Actions of state boards must meet the Midcal active supervision test.

The Eleventh Circuit court found that, although the governor clearly had the authority to exercise active supervision, there is no evidence that he actually did so. Judge Anderson stated:

There is no indication that the Governor engaged in a substantive review of the amended rule to ensure that it accords with state policy. His comments regarding the proposed amendment in the Certificate of Active Supervision suggest that he only examined the procedural question of whether the amended rule was within the Board of Dentistry's statutory power to propose a rule change. The Governor did not comment—even in passing—on the merits or the contents of the rule change. Quite the contrary. The reasonable inferences from his Certification is that he ascertained that the amendment was within the authority delegated to the Board by the Georgia statute … This is exactly the sort of potential for active supervision—without active supervision—that the Supreme Court has repeatedly held is insufficient to satisfy the active supervision requirement.

This decision should serve as a reminder that, when a new seller enters the marketplace offering a new and cheaper alternative for services or products, the seller may be faced with a situation where a state board or government regulator, based on input from current sellers, decides to curtail the new seller's market access.

In such situations the actions of the members of the state board or advisors to the government regulator may violate the antitrust laws. Many industry and professional groups have tried to hide behind the skirts of government and conspire to keep innovative, lower-priced products and services from the market.

In defending their turf, they may be violating the antitrust laws. Per se antitrust violations such as price-fixing, bid-rigging, customer allocations and some concerted refusal to deal are felonies. Individuals convicted of such felonies are subject to a minimum jail sentence of one year.

If you have a client serving on a state board or if you advise a state board, you should take necessary steps to ensure that actions of the state board and its members are subject to the type of active supervision described in the SmileDirectClub decision.

This case also highlights the need for state boards to recognize that, where a state board composed of active practitioners is engaging in activities that have a possible anticompetitive

affect, even if the state board is created by the legislature and its members are appointed by the governor, antitrust counsel must review the proposed course of conduct to insure that it meets antitrust requirements.

The antitrust review must be by someone who has the specific authority to approve, modify or veto the proposed rule. If this is not done, the individual state board members who established the rule face personal liability, even if their actions have been submitted for approval to another state agency that has supervisory authority.

The SmileDirectClub decision emphasizes that the test is not what the supervisor is authorized to do or even what the supervisor says was done. The test is whether the supervisor made an independent antitrust analysis of the underlying facts and concluded that the proposed action does not violate the antitrust laws.

All states have a person or group in the attorney general's office with specific antitrust responsibilities. It would be prudent to have such a person be given the responsibility of reviewing actions of state boards comprised of active market participants and the authority to approve, modify or veto such actions.

Steven Fellman is of counsel and Richard Bar is a principal at GKG Law PC.

[1] O.C.G.A. Sec 43-1C-3.

[2] 317 U.S. 351.

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12227

D.C. Docket No. 1:18-cv-02328-WMR

SMILEDIRECTCLUB, LLC,

Plaintiff–Appellee,

versus

TANJA D. BATTLE,
in her official capacity as Executive Director of
the Georgia Board of Dentistry,
et al.,

Defendants–Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(August 11, 2020)

Before JORDAN, TJOFLAT, and ANDERSON, Circuit Judges.

ANDERSON, Circuit Judge:

SmileDirectClub, LLC, brought the instant suit against the Georgia Board of Dentistry, including the Board's members in their individual capacities, alleging *inter alia*, antitrust, Equal Protection, and Due Process violations. Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Board members moved to dismiss SmileDirect's complaint, which the district court granted in part and denied in part. They now appeal the denial of their motion to dismiss the complaint with respect to the alleged antitrust violations. After carefully reviewing the record, and with the benefit of oral argument, we affirm. We conclude that, based on the facts alleged in SmileDirect's complaint, the Board members are not entitled to state-action immunity under *Parker v. Brown*, 317 U.S. 341 (1943), at this point in the litigation, and the district court properly denied their motion to dismiss.[1]

I. BACKGROUND

For the purposes of our review at this stage, we accept all of the factual allegations in SmileDirect's complaint as true.

A. SmileDirect and the Georgia Board of Dentistry

SmileDirect is a company that offers orthodontic treatments, like teeth alignment, to its customers at a steep discount. It is able to afford that discount because, unlike most other orthodontists, it does not do in-person treatment.

[1] The Court notes the contributions of the United States Federal Trade Commission, which participated in this case as *amicus curiae*.

Instead, its patients go to one of its locations—called "SmileShops"—located around the country, which are staffed by SmileDirect technicians. At the "SmileShop," the technicians take digital scans of the patient's teeth, which are sent to SmileDirect's lab to create a model for treatment.

If the SmileDirect patient is in Georgia, the lab sends the model to a Georgia-licensed dentist or orthodontist for review. The doctor "then identifies any periodontal disease, cavities, or any other oral conditions that require[] further investigation or which would prevent the patient from being a candidate for" SmileDirect's treatment. Dist. Ct. Op. at 2. If there are no such problems, the doctor creates a patient-specific plan, which culminates in a prescription for SmileDirect's "clear aligners." The patient receives the aligners through the mail.

Enter the Georgia Board of Dentistry. The Board is organized under Title 43, Chapter 11, of the Code of Georgia. The Board is primarily made up of licensed, practicing dentists—along with one dental hygienist and one non-dental professional—who are appointed by the Governor. O.C.G.A. § 43-11-2. Thus, nine of the eleven current members of the Board are practicing dentists. It has broad power to regulate "those acts, services, procedures, and practices which may be performed by dental hygienists, dental assistants, or other persons at the direction of and under the supervision of a licensed dentist." *Id.* § 43-11-9.

On January 24, 2018, the Board voted to amend Rule 150-9-.02, which related to the "Expanded Duties of Dental Assistants." The proposed amendment added conducting "[d]igital scans for fabrication [of] orthodontic appliances and models" to the list of expanded duties of dental assistants, Ga. Bd. of Dentistry R. 150-9-.02(aa), which requires "direct supervision" by a dentist, *see id.* at 150-9-.01, .02. "Direct supervision and control as it pertains to a dental assistant shall mean that a dentist licensed in Georgia is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental assistant and, before dismissal of the patient, evaluates the performance of the dental assistant." *Id.* 150-9-.01(2). The practical effect of the proposed amendment would be to require that digital scans, like the ones conducted by SmileDirect at their "SmileShops," only take place when a licensed dentist is physically in the building where the scans are taking place, and to prohibit them otherwise.

The Board then sent the proposed amendment to Governor Nathan Deal, who was tasked with approving, modifying, or vetoing it. *See* O.C.G.A. § 43-1C-3. On April 30, 2018, he issued a "Certification of Active Supervision" to the Board, which "approve[d] the amendment to [the rule] for the purposes of active

supervision review required by § 43-1C-3." Mot. to Dismiss, Ex. 2. The second paragraph of the Certification states:

> Georgia law grants the Board authority to promulgate rules and regulations related to dental assistant services. As such, the amendment adopted by the Board is within its authority as granted by clearly articulated state policy. Therefore, I hereby approve the amendment to [the dental regulations] for the purposes of active supervision review required by [state law].

Id.

B. The Instant Lawsuit

In response to the amendment to Rule 150-9-.02, SmileDirect filed the instant lawsuit against the Georgia Board of Dentistry and its members, challenging the amended rule. It alleged, *inter alia*, that the Board's actions in amending the rule violated antitrust law, the Equal Protection Clause, and the Due Process Clause; it also sought a declaratory judgment that taking digital scans did not constitute the practice of dentistry such that the Board could lawfully regulate it. In response, the Board moved to dismiss the complaint, pursuant to Rule 12(b)(6). The district court granted the motion and dismissed SmileDirect's claims against the Board in its official capacity because of sovereign immunity, as well as the claims against the Board members for compensatory damages. The district court also dismissed SmileDirect's claim for declaratory judgment, holding that the amended rule fell squarely within the practice of dentistry subject to the regulation of the Board. However, the district court denied the motion with respect to the

antitrust, Equal Protection, and Due Process claims against the Board members in their individual capacities. The Board appeals only from the district court's denial of its motion to dismiss the antitrust claim.[2] Thus, SmileDirect's Equal Protection and Due Process claims against the Board members remain pending in the district court, and the only issue before this Court on appeal involves SmileDirect's antitrust claim and the district court's denial of the Board members' motion to dismiss it on the basis of state-action immunity under *Parker v. Brown*. The district court held "that SmileDirect's Sherman Act antitrust claim, as pleaded, is sufficient to survive a Rule 12(b)(6) motion to dismiss on *Parker* immunity grounds." Dist. Ct. Op. at 13.

II. DISCUSSION

A. Jurisdiction

Before proceeding to the merits of this case, we have an "obligation to satisfy ourselves that we have jurisdiction" over this appeal. *See Boyd v. Homes of Legend, Inc.*, 188 F.3d 1294, 1297 (11th Cir. 1999). SmileDirect argues that we do not have jurisdiction to hear the Board's appeal of the (partial) denial of its motion to dismiss because it does not fit within the collateral-order doctrine.

[2] The Board does not appeal from the district court's denial of its motion to dismiss with respect to the Equal Protection and Due Process claims.

It is, of course, generally the case that parties can only appeal final decisions of district courts. *See* 28 U.S.C. § 1291. However, as the Supreme Court recognized in *Cohen v. Beneficial Industrial Loan Corporation*,[3] "an otherwise nonappealable interlocutory order is appealable if it (1) 'conclusively determine[s] [a] disputed question,' (2) 'resolve[s] an important issue completely separate from the merits of the action,' and (3) '[is] effectively unreviewable on appeal from a final judgment.'" *Freyre v. Chronister*, 910 F.3d 1371, 1378 (11th Cir. 2018) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)).

Pursuant to binding precedent in this Circuit, a district court's denial of a Rule 12(b)(6) motion to dismiss based on state-action immunity is immediately appealable under the collateral order doctrine. *Diverse Power, Inc. v. City of LaGrange*, 934 F.3d 1270, 1272 & n.1 (11th Cir. 2019); *Commuter Transp. v. Hillsborough Cty.*, 801 F.2d 1286, 1289–90 (11th Cir. 1986). *Diverse Power* held: "[S]tate-action immunity is a form of immunity from suit, not merely from liability. And denials of immunity from suit—like denials of sovereign and qualified immunities—are immediately appealable under the collateral order doctrine." 934 F.3d at 1272 n.1 (citations omitted).[4] Put another way, state-action

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[3] 337 U.S. 541 (1949).

[4] We cannot agree with our dissenting brother's position that the first prong of *Cohen* is absent. Respectfully, we believe that the district court has conclusively determined a disputed question. The district court expressly held "that SmileDirect's Sherman Act antitrust claim, as pleaded, is sufficient to survive a Rule 12(b)(6) motion to dismiss on *Parker* immunity grounds[.]"

Dist. Ct. Op. at 13. And the district court's dispositive order expressly denied the Board members' motion to dismiss that claim. *Id.* at 16 ("Defendants' Motion to Dismiss . . . is **DENIED** with respect to the claims in Counts II–IV [Count II being the antitrust claim] against the Board member defendants."). Thus, the district court rejected the Board members' legal arguments that they were entitled to state-action immunity as a matter of law. That the district court acknowledged the fact that the ultimate determination of the Board members' entitlement to immunity would have to await "further factual developments" later in the litigation does not nullify the district court's holding that SmileDirect's claim, as pleaded, survives the immunity defense. *See Commuter Transp.*, 801 F.2d at 1289 (holding that a summary judgment decision rejecting a claim of state-action immunity "is 'conclusive' even if it is based on the existence of potential fact issues").

As noted in the text, binding precedent in *Diverse Power* and *Commuter Transportation* holds that state-action immunity is immunity from suit—not merely immunity from liability. There is established law detailing the significance of immunity from suit, as distinguished from immunity from liability. As the Supreme Court said in *Behrens v. Pelletier*:

> *Harlow* and *Mitchell* make clear that the defense is meant to give government officials a right, not merely to avoid "standing trial," but also to avoid the burdens of "such *pretrial* matters as discovery . . . , as 'inquiries of this kind can be peculiarly disruptive of effective government.'" *Mitchell*, *supra*, at 526 (emphasis added) (quoting from *Harlow*, *supra*, at 817). Whether or not a later summary judgment motion is granted, denial of a motion to dismiss is conclusive as to this right. . . . [T]his right is important enough to support an immediate appeal.

516 U.S. 299, 308 (1996); *see also Brown v. Crawford Cty., Ga.*, 960 F.2d 1002, 1011 (11th Cir. 1992) (noting the significance of immunity from suit, we held: "[t]o preserve its purpose, 'entitlement to absolute immunity must be determined as early as possible' and appropriately on a motion to dismiss or judgment on the pleadings") (quoting from *Marx v. Gumbinner*, 855 F.2d 783, 788 (11th Cir. 1988)).

Thus, if the Board members' legal arguments at this early stage had been sound, they would have been entitled to dismissal now, without having to engage in discovery and further litigation. After a litigant's immunity defense is denied at an early stage, the caselaw recognizes that the facts may change after further factual development, and at a later stage in the litigation, the party may assert again its immunity defense. *See Behrens*, 516 U.S. at 309, 116 S. Ct. at 840 ("[R]esolution of the immunity question may require more than one judiciously timed appeal, because the legally relevant factors bearing upon the *Harlow* question will be different on summary judgment than on an earlier motion to dismiss.") (internal quotation omitted).

We also disagree with the dissent's suggestion that our decision is merely a hypothetical, advisory opinion. Although it is true that our decision does not resolve the issue of the Board members' ultimate entitlement to state-action immunity, our decision does definitively resolve the legal issues the Board members have presented at this stage. Our decision does definitively reject two legal arguments asserted by the Board members: First, their argument that they are entitled to *ipso facto* immunity merely because the Governor approved the Board's rule under Georgia's

immunity is "comparable to" qualified immunity for the purposes of applying the *Cohen* doctrine. *Commuter Transp.,* 801 F.2d at 1289. Accordingly, we conclude that we have jurisdiction of the Board members' appeal of the denial of its motion to dismiss because it implicates immunity from suit under the state-action doctrine.

SmileDirect's argument that private parties—and it asserts that the individual members of the Board members are private parties—are not entitled to immediately appeal under the collateral-order doctrine is at odds with our precedent. *See Praxair, Inc. v. Fla. Power & Light*, 64 F.3d 609, 611 (11th Cir. 1995). In *Praxair*, we held that there was "collateral order appellate jurisdiction of the appeals of Florida Power and Florida Power & Light" because the denial of state-action immunity is immediately appealable. *See id.* Although *Praxair* also involved an automatic appeal under 28 U.S.C. § 1292(b), we nonetheless conclude that it held, as a binding alternative holding, that private parties are entitled to appeal the denial of state-action immunity under the collateral-order doctrine.

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statutory framework that vests in the Governor the power, authority, and duty to substantively review, approve, modify, or veto the rule, notwithstanding whether the Governor has actually exercised his powers and discharged his duties; and second, their argument that the "active supervision" prong (of the applicable analysis where the board is dominated by market participants) is satisfied because of the Governor's approval of the rule in light of that statutory framework, again notwithstanding whether the Governor has actually exercised his statutory powers and discharged his duties.

For the foregoing reasons, we conclude that we do have appellate jurisdiction under the collateral order doctrine. Accordingly, we proceed to the merits of this case.

B. State-Action Immunity

We review the district court's ruling on a motion to dismiss *de novo*. *Paez v. Mulvey*, 915 F.3d 1276, 1292 (11th Cir. 2019). A motion to dismiss is properly denied if, taking the allegations in the plaintiff's complaint as true, the plaintiff makes out a claim "that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The Sherman Antitrust Act of 1890 makes unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or [interstate] commerce." 15 U.S.C. § 1. However, in *Parker v. Brown*, the Supreme Court explained that the Sherman Act does not apply to state action—"it must be taken to be a prohibition of individual and not state action." 317 U.S. at 352. This exemption from antitrust liability does not extend to allowing states to "give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful[.]" *Id.* at 351.

Determining the existence of "state action"—that is, actors claiming that they are acting as the state and thus are immune from suit—requires a context-specific analysis. That a defendant in an antitrust case is technically a state board,

agency, or commission is not dispositive of the ultimate question. "The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. *Parker* immunity does not derive from nomenclature alone." *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 511 (2014) (hereinafter *Dental Examiners*). Addressing a case involving the North Carolina State Board of Dental Examiners—a state board charged with regulating the practice of dentistry and composed of a majority of board members who are engaged in the active practice of the profession it regulates, precisely like the Georgia Board of Dentistry in this case—the Supreme Court in *Dental Examiners* held:

> When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity.[5]

Id. at 511–12.

[5] The parties in *Dental Examiners* and the Court assumed that the clear articulation requirement of *Midcal* was satisfied. 574 U.S. at 504.

Accordingly, we turn to what is commonly known as the *Midcal* test—a two-prong analysis synthesized by the Supreme Court in *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980). In *Midcal*, the Supreme Court explained that, under *Parker v. Brown*, there are "two standards for antitrust immunity." *Id.* "First, the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy'; second, the policy must be 'actively supervised' by the State itself." *Id.* (quoting *City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 410 (1978)). As noted above, the Supreme Court in *Dental Examiners* recently explained that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity." *Dental Examiners*, 574 U.S. at 511–12.

However, the *Midcal* test is not applied in all instances in which state-action immunity is invoked. The actions of a "state sovereign" are, *ipso facto*, "exempt from the operation of the antitrust laws." *Hoover v. Ronwin*, 466 U.S. 558, 568 (1984). In such a case, the *Midcal* test is not conducted and state-action immunity applies automatically. *See id.* The Supreme Court has applied *ipso facto* state-action immunity in only limited cases—to the actions of a "state legislature adopt[ing] legislation" or "a decision of a state supreme court, acting legislatively

rather than judicially[,]" *id.*, and only where the conduct challenged "was in reality that of" the sovereign itself, *see id.* at 573.

We first address whether, on the basis of the facts we assume in this Rule 12(b)(6) posture, the Board members have satisfied the *Midcal* test. Because we conclude below that the Board members have failed to satisfy the "active supervision" prong, and because satisfaction of both prongs is necessary, we conclude that the Board members have failed to satisfy the *Midcal* test, and we need not address the clear articulation prong. We then proceed to consider, and ultimately reject, the Board's argument that it is entitled to *ipso facto* immunity.

1. The *Midcal* Test

As explained previously, the *Midcal* test synthesized the Supreme Court's past state-action immunity caselaw into two discrete requirements. For state-action immunity to apply (aside from *ipso facto* immunity where the sovereign itself has acted), the challenged market restraint must be (1) "clearly articulated and affirmatively expressed as state policy," and (2) "actively supervised by the State itself." 445 U.S. at 105 (citations and quotations omitted).

a. Clear Articulation

Most litigation with respect to the satisfaction of the *Midcal* test concerns the second prong—the presence of "active supervision." The absence of "active supervision" is dispositive, and courts need not consider the "clear articulation"

prong where "active supervision" is absent. *Patrick v. Burget*, 486 U.S. 94, 100 (1988). Because we conclude below that the Board members have failed to satisfy the "active supervision" prong, we decline to address the clear articulation prong.

b. Active Supervision

We turn to the second prong of the *Midcal* analysis, which asks whether the amendment to Rule 150-9-.02 was "actively supervised by the State." *Midcal*, 445 U.S. at 105. The "active supervision" prong

> mandates that the State exercise ultimate control over the challenged anticompetitive conduct. The mere presence of some state involvement or monitoring does not suffice. The active supervision prong of the *Midcal* test requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy. Absent such a program of supervision, there is no realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests.

Patrick, 486 U.S. at 101 (citations omitted). "[T]he purpose of the active supervision is not to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices. Its purpose is to determine whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties. . . . [T]he analysis asks whether the State has played a substantial role in determining the specifics of the economic policy. The question is not how well the regulation works, but

whether the anticompetitive scheme is the State's own." *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 634–35 (1992).

This is not an inquiry conducted in the abstract. The "Court has identified only a few constant requirements of active supervision":

> The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, *see Patrick*, 486 U.S., at 102–03; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, *see ibid.*; and the "mere potential for state supervision is not an adequate substitute for a decision by the State," *Ticor*, [504 U.S.] at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

Dental Examiners, 574 U.S. at 515.

The Supreme Court's opinion in *Ticor* helps illustrate the application of these principles. *Ticor* concerned the permissibility, under antitrust law, of the defendant insurance companies' setting of rates for title search and examination services, which applied in multiple states. The Third Circuit concluded that the State of Wisconsin's Insurance Department had actively supervised the insurance companies' setting of these rates. *Ticor Title Ins. Co. v. FTC*, 922 F.2d 1122, 1139–40 (3d Cir. 1991). Specifically, the court determined that "Wisconsin had the power to regulate Ticor's collective filing of rates for title search and examination services" and that it had exercised that power. *Id.* It based its conclusion that Wisconsin had exercised its power on the fact that "Wisconsin's

program of supervision was in place during the relevant time and that it was staffed and funded," and that the Department "demonstrated some basic level of activity directed towards seeing that Ticor carried out the state's policy and not simply its own policy." *Id.* at 1140.

But the Supreme Court concluded that this was insufficient and reversed the Third Circuit's decision. "Where prices or rates are set as an initial matter by private parties, subject only to a veto *if the State chooses to exercise it*, the party claiming the immunity must show that state officials have undertaken the necessary steps to determine the specifics of the price-fixing or ratesetting scheme. *The mere potential for state supervision is not an adequate substitute for a decision by the State*." *Ticor*, 504 U.S. at 638 (emphasis added). The administrative law judge in the case found that, in Wisconsin, "at most the rate filings were checked for mathematical accuracy," and some "were unchecked altogether." *Id.* Despite the state law requirement that the State Insurance Commissioner "examine the rating bureau at regular intervals" and its "authoriz[ation] to reject rates through a process of hearings," it did neither. *Id.* at 630. And, the Court's later decision in *Dental Examiners* held that *Ticor*'s holding that the "mere potential for state supervision is not an adequate substitute" also applied in the context of regulation by a dentistry board the composition of which was substantially identical to the Georgia Board of Dentistry in this case.

We believe that similar dynamics are at play here. Though the Governor of Georgia had the "authority and duty to actively supervise" and was clearly empowered to "approve, remand, modify or reverse" proposed rules (or amendments), O.C.G.A. § 43-1C-3, he did not exercise that power here. There is no indication that the Governor engaged in a substantive review of the amended rule to ensure that it accords with state policy. His comments regarding the proposed amendment in the Certification of Active Supervision suggest that he examined only the procedural question of whether the amended rule was within the Board of Dentistry's statutory power to propose the rule change. The Governor did not comment—even in passing—on the merits or substance of the rule change. Quite the contrary. The reasonable inferences from his Certification indicate that he ascertained that the amendment was within the authority delegated to the Board by the Georgia statute, and the Governor then concluded: "Therefore, I hereby approve the amendment." This is the exact sort of *potential* for active supervision—without *actual* supervision—that the Supreme Court has repeatedly held is insufficient to satisfy the active supervision requirement. *See Dental Examiners*, 574 U.S. at 515 ("mere potential for state supervision is not an adequate substitute" (quoting *Ticor*, 504 U.S. at 638)); *Patrick*, 486 U.S. at 101, 105 ("The active supervision prong of the *Midcal* test requires that state officials have and exercise power to review particular anticompetitive acts of private parties

and disapprove those that fail to accord with state policy," and the mere assurance that reasonable procedures were used without a "review [of] the merits of a [challenged] decision to determine whether it accorded with state regulatory policy . . . does not convert the action of a private party . . . into the action of the state for purposes of the state-action doctrine.").

Accordingly, accepting the reasonable inferences from the allegations of SmileDirect's complaint, and the Governor's certification to which it refers, we conclude that the Board has not satisfied the active supervision requirement for entitlement to state-action immunity.[6]

2. *Ipso Facto* Immunity

In addition to its argument that it complied with the *Midcal* test, the Board members argue that they are exempt from that test altogether. They argue that they are entitled to *ipso facto* immunity because the Board of Dentistry's amendment to Rule 150-9-.02 can be attributed to the Governor of Georgia. Specifically, they argue that Georgia's statutory framework for rulemaking grants the Governor both the authority and power to substantively review any rule promulgated by a

[6] Of course, upon the initiation of discovery, the Board members may be able to produce evidence of Governor Deal's substantive consideration of the proposed amendment. Our comments on the Board's compliance with the *Midcal* test only applies to the facts which we assume in this Rule 12(b)(6) posture.

professional board, like the Board of Dentistry, and indeed imposes upon him the *duty* to do so.

The Board members argue that, in this case, then-Governor Nathan Deal, who issued a Certification of Active Supervision approving the amendment to Rule 150-9-.02, reviewed the amendment and approved it. They argue that the challenged conduct—the amended rule—is attributed to him, and not the Board itself. We read the Board members' argument as one essentially arguing that, without regard to whether the Governor *actually* exercised his power to substantively review a rule, the mere power, authority, and duty to do so is sufficient to invoke state-action immunity *ipso facto*. Stated more concisely, the Board's position is that the mere potential for such action by the Governor is sufficient without regard to whether the Governor actually reviews the rule substantively and makes it his own action. We reject that argument; we believe it is inconsistent with Supreme Court case law.

We will assume, *arguendo*, but expressly do not decide, that the executive action of a governor could qualify for *ipso facto* state-action immunity.[7] We also assume, *arguendo*, that the Georgia General Assembly actually granted the

[7] Neither the Supreme Court, *Ronwin*, 466 U.S. at 568 n.17, nor the Eleventh Circuit has decided whether the executive action of a governor could qualify for state action immunity under appropriate factual circumstances. We need not address that issue today.

Governor the kind of power, authority, and duty to substantively review proposed rules such that they are attributable to him.[8] Nonetheless, even making these assumptions, the Board members' argument is ultimately without merit.

In evaluating *ipso facto* immunity, we review the Supreme Court's limited jurisprudence on the subject. The cases in which the Supreme Court has employed *ipso facto* state-action immunity involve situations as in *Hoover v. Ronwin*, *supra*. There, Ronwin was an unsuccessful candidate for admission to the Bar of Arizona. The Arizona Constitution vested authority in the Arizona Supreme Court to determine admissions to the Bar. Arizona Supreme Court rules delegated to a committee the tasks of designing a grading or scoring system, submitting same to the Court before the examination, grading the exams and submitting to the Court its recommendations with respect to admission to the Bar. Only the Court had authority to admit or deny, and any applicant was entitled to individualized review by filing a petition directly with the Court. Ronwin did petition the Court challenging, *inter alia*, the grading or scoring formula. The Court denied his petition. Ronwin later sued the members of the Committee in federal district court, challenging that same grading or scoring formula, which he claimed is an

[8] SmileDirect makes a forceful argument that the Georgia legislation delegates the rule-making authority to the Board, and intended only to give the Governor sufficient authority to satisfy *Midcal*'s active supervision prong. In light of our decision today, we need not decide the scope of the authority actually delegated to the Governor.

anticompetitive action to reduce the number of competing attorneys. The Ninth Circuit construed the district court as having dismissed Ronwin's complaint pursuant to Rule 12(b)(6) on the basis of state-action immunity. The Ninth Circuit reversed, holding that the mere fact the members of the Committee were appointed by the Arizona Supreme Court was insufficient to confer state-action immunity.

The Supreme Court granted certiorari. In its opinion, the Court noted that "[c]loser analysis is required when the activity at issue is not directly that of the legislature or supreme court, but is carried out by others pursuant to state authorization." *Ronwin*, 466 U.S. at 568. The Court also noted the *Midcal* line of cases, and noted that its two-step analysis—clear articulation of state policy and active supervision—is applicable when the challenged anticompetitive conduct is that of a non-sovereign state actor. *Id.* at 568–69. However, the Court held that where the challenged anticompetitive conduct is that of the sovereign itself, it is not necessary to address the issues of "clear articulation" and "active supervision." *Id.* at 569. Thus, the issue was whether the challenged conduct was in reality that of the Arizona Supreme Court. *Id.* The Court emphasized the fact that Ronwin had taken full advantage of the rules and petitioned for individualized review in the Arizona Supreme Court, challenging the grading formula, *id.* at 564 & n.11, 573 & n.23; and the fact that the state supreme court heard and denied his petition, including his claim that the grading formula violated the Sherman Act, *id.* at 564 &

n.11, 573 & n.23. The Court held that the Arizona Supreme Court had the "sole authority to determine who should be admitted," and had "itself approved the particular grading formula," *id.* at 573, which was the conduct challenged by Ronwin. Thus, the Court concluded that "the conduct that Ronwin challenges was in reality that of the Arizona Supreme Court." *Id.*

The Court's decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), also applied *ipso facto* state-action immunity on facts virtually indistinguishable from those in *Ronwin*. There, Bates challenged as anticompetitive his suspension from the practice of law imposed because of his violation of a disciplinary rule of the Supreme Court of Arizona restricting advertising by lawyers. Although the disciplinary complaint was initially heard by the Bar committee, Bates sought review in the Arizona Supreme Court, challenging the rule as a violation of the Sherman Act. The Arizona Supreme Court heard his challenge and rejected it. *Id.* at 356. Bates appealed to the United States Supreme Court. Again emphasizing that the Arizona Supreme Court adopted the challenged rule and was the "ultimate trier of fact and law in the enforcement process," *id.* at 361, the Court held that state-action immunity was available.

The *Ronwin* Court's holding—"the conduct that Ronwin challenges was in reality that of the Arizona Supreme Court"—was expressly based on the *Bates* decision. *Ronwin*, 466 U.S. at 573. The *Bates* opinion illustrates that *ipso facto*

state-action immunity is available only if the anticompetitive conduct challenged is "in reality" the action of the sovereign itself. In distinguishing its previous decision in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), the Court in *Bates* held:

> This Court concluded that the action was not protected, emphasizing that "we need not inquire further into the state-action question because it cannot fairly be said that the State of Virginia through its Supreme Court Rules required the anticompetitive activities of either respondent." In the instant case, by contrast, the challenged restraint is the *affirmative command of the Arizona Supreme Court*.

Bates, 433 U.S. at 359–60 (emphasis added).

The argument of the Board members—that the power, authority and duty vested in the Governor to adopt and make his own the challenged anticompetitive action of the Board is sufficient for *ipso facto* state-action immunity, without regard to whether or not the Governor actually exercises that authority—is inconsistent with *Ronwin*, *Bates* and *Goldfarb*. Even assuming *arguendo* such power and duty vested in the Governor, we cannot conclude that one could fairly say that the anticompetitive conduct challenged here (*i.e.*, the amended rule) was "in reality" the act of Governor Nathan Deal.

Whatever the Governor's power and duty with respect to the amended rule, if he does not exercise same and does not actually make the amended rule his own "affirmative command," his actions fall short of the actions of the Arizona Supreme Court in *Ronwin* and *Bates* where the challenged anticompetitive conduct

was actually the conduct of the sovereign actor—i.e., approving and enforcing the challenged grading formula (in *Ronwin*), or promulgating the challenged rule and enforcing the violation thereof (in *Bates*), in both cases after an individualized hearing on the challenge by the Arizona Supreme Court. *See Dental Examiners*, 574 U.S. at 504 (suggesting that *ipso facto* state-action immunity is available only when the challenged conduct is "an undoubted exercise of state sovereign authority").

The argument of the Board members is also inconsistent with the Court's decisions in *Dental Examiners* and *Ticor*. Even in the context of describing the kind of sovereign action necessary to satisfy the "active supervision" prong of *Midcal*, both *Dental Examiners* and *Ticor* held that the "mere potential for state supervision is not an adequate substitute for a decision by the State." *Dental Examiners*, 574 U.S. at 515 (quoting *Ticor*, 504 U.S. at 638); *see also Patrick*, 486 U.S. at 101 ("The active supervision prong of the *Midcal* test requires that state officials have *and exercise* power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.") (emphasis added). It would make no sense to suppose, as the Board members do, that the mere power and duty on the part of the Governor would suffice for *ipso facto* immunity, when clearly established Supreme Court case law makes it clear that mere potential supervision is not even sufficient to satisfy the "active

supervision" prong of *Midcal*. In other words, given that *ipso facto* immunity serves to entirely immunize an actor from antitrust litigation without the rigorous, fact-sensitive scrutiny articulated in the *Midcal* test, it would make no sense to apply a *lower* standard with respect to *ipso facto* immunity than is required to satisfy the *Midcal* test.

For the foregoing reasons, we reject the Board members' argument that *ipso facto* state-action immunity is available merely because of the Governor's power and duty, and without regard to his actual exercise thereof. We held above—in our discussion of the "active supervision" prong—that, on the basis of the facts we must assume in this Rule 12(b)(6) posture, the Board members have established no more than the mere potential for active supervision on the part of the Governor. Accordingly, it follows that the Board members have fallen far short of establishing that the amended rule was "in reality" the action of the Governor. We hold that the Board members are not entitled to *ipso facto* state-action immunity at this stage of the litigation.

III. CONCLUSION

For the foregoing reasons, we conclude that the district court properly denied the Board members' motion to dismiss with respect to SmileDirect's antitrust claims.[9]

AFFIRMED.

[9] We decline to address other arguments of the parties not addressed in this opinion, the resolution of which is not necessary for us to conclude at this stage of the litigation that the district court correctly denied the Board members' motion to dismiss.

JORDAN, Circuit Judge, concurring:

Our cases hold that the denial of state-action antitrust immunity is immediately appealable under the collateral order doctrine, not only by the state but by private parties as well. *See, e.g., Commuter Transportation Systems, Inc. v. Hillsborough County Aviation Authority*, 801 F.2d 1286 (11th Cir. 1986); *Praxair, Inc. v. Florida Power & Light Co.*, 64 F.3d 609, 611 (11th Cir. 1995). In my view, our precedent on this issue is mistaken and should be re-examined in an appropriate case by the full court.

The Supreme Court first recognized what is frequently referred to as state-action immunity in *Parker v. Brown*, 317 U.S. 341, 350–52 (1943), holding that the Sherman Act does not reach anticompetitive conduct by the state or its officers or agents. Over time, the Supreme Court extended *Parker* protection, in appropriate circumstances, to municipalities and private parties. *See Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38–39 (1985) (municipalities); *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 104–06 (1980) (private parties).

Parker held only that the Sherman Act does not reach state action, not that it cannot do so. *See Parker*, 317 U.S. at 350–51 ("We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save

only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress."). State-action antitrust "immunity" therefore arose from an interpretation of the Sherman Act's scope, not from a constitutional (or common-law) right to avoid trial, and not out of concern about special harms that might result from litigation. *See S.C. St. Bd. of Dentistry v. FTC*, 455 F.3d 436, 444–45 (4th Cir. 2006). As a number of our sister circuits have explained, *Parker* "immunity" is more like a defense to a cause of action than an entitlement to avoid suit completely. *See id.*; *Acoustic Sys., Inc. v. Wenger Corp.*, 207 F.3d 287, 292 n.3, 294 (5th Cir. 2000). The denial of state-action immunity, therefore, is not "effectively unreviewable" on appeal, and a party made to postpone its arguments until final judgment may still invoke the protections of *Parker*. *See, e.g., SolarCity Corp. v. Salt River Project Agricultural & Power District*, 859 F.3d 720, 726–27 (9th Cir. 2017); *S.C. St. Bd. of Dentistry*, 455 F.3d at 444–45; *Huron Valley Hosp. v. City of Pontiac*, 792 F.2d 563, 567 (6th Cir. 1986). *Contra Martin v. Memorial Hospital at Gulfport*, 86 F.3d 1391, 1394 (5th Cir. 1996); 1A Phillip Areeda & Herbert Hovenkamp, Antitrust Law ¶ 222b (4th ed. 2013).

Even if we assume that a state is able to immediately appeal the denial of *Parker* immunity, an interlocutory appeal should not be available to private parties like the members of the Georgia Board of Dentistry, whose status does not implicate

sovereignty concerns. *See Auraria Student Hous. v. Campus Village*, 703 F.3d 1147, 1151 (10th Cir. 2013); *Acoustic Sys.*, 207 F.3d at 293–94; Jason Kornmehl, *State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation*, 39 Seattle U. L. Rev. 1, 32 (2015). As the Fifth Circuit concluded in *Acoustic Systems*, the concerns that might animate the need for an immediate appeal by a state—for example, sparing the state the burdens and uncertainties of litigation—are "not raised by a suit against a private party." 207 F.3d at 294. Indeed, insofar as private parties are concerned, *Parker* "provides only a defense to liability." *Id.*

Our decision in *Praxair, Inc.*, 64 F.3d at 611, which allowed a private party to take an immediate appeal from the denial of *Parker* immunity, contains no analysis whatsoever. It is therefore not surprising that we stand alone among the circuits in holding that a private party may take an interlocutory appeal of the denial of *Parker* immunity. *See Auraria Student Hous.*, 703 F.3d at 1151 (describing the lopsided circuit split).

There is, moreover, another reason why private parties should not be able to immediately appeal the denial of *Parker* imunity. The collateral order doctrine "is a practical construction" of the general rule that parties may only appeal final decisions of a district court. *See Dig. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546

(1940)). To come within the "small class" of interlocutory orders that are immediately appealable under *Cohen*, an order must (1) conclusively determine the disputed question, (2) be effectively unreviewable on appeal after trial, and (3) resolve an important issue completely separate from the merits of the action. *See Cohen*, 337 U.S. at 545–46. The Supreme Court has repeatedly stressed that very few interlocutory orders will meet these three stringent conditions. *See Will v. Hallock*, 546 U.S. 345, 958 (2006) ("[W]e have not mentioned applying the collateral order doctrine recently without emphasizing its modest scope.").

Where, as here, private parties are concerned, the matter of *Parker* immunity is not completely separate from the merits. That is because the Supreme Court requires private parties to satisfy the "clear articulation" and "active supervision" requirements, as set out in *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980), and its progeny. *See* Christopher J. Reid, *Appealability of State Action Immunity: Navigating Federal Courts Past the Crossroads Where Parker Immunity Meets the Collateral Order Doctrine*, 52 Suffolk L. Rev. 157, 180–82, 184–85 (2019). Given these requirements, it is difficult, if not impossible, to separate the *Parker* immunity of a private party from the merits.

With these thoughts, I join the majority opinion in full.

TJOFLAT, Circuit Judge, dissenting:

The majority concludes that we have jurisdiction to hear this interlocutory appeal of the District Court's order, which denied the Georgia Board of Dentistry members' Rule 12(b)(6) motion to dismiss, because it implicates the Board members' entitlement to immunity from suit under the state-action doctrine established by the Supreme Court in *Parker v. Brown*, 317 U.S. 341, 63 S. Ct. 307 (1943). *See ante* at 7–9. That would be right *if* the District Court held that the Board members weren't entitled to immunity and denied their motion to dismiss on that ground. But the District Court rendered no decision on the Board members' entitlement to state-action immunity. Instead, it reserved that question for consideration at the summary-judgment stage, after much-needed development of the factual record through discovery. As such, any decision by this Court on the Board members' entitlement to state-action immunity at this stage of the litigation would be merely provisional—or, in the words of the District Court, "premature." Because we lack both statutory and constitutional jurisdiction to issue hypothetical decisions on appeal, I respectfully dissent.

I.

The Courts of Appeals generally have jurisdiction to hear appeals only of a district court's final decision. 28 U.S.C. § 1291.[1] But in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 1225–26 (1949), the Supreme Court carved out as a narrow exception to this general rule a small class of orders "which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." Accordingly, under *Cohen*, we have jurisdiction to review an otherwise nonappealable interlocutory order only if it "(1) conclusively determines a disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment." *Freyre v. Chronister*, 910 F.3d 1371, 1378 (11th Cir. 2018) (alterations adopted) (quotations omitted). The Supreme Court has repeatedly stressed that each prong of the *Cohen* test is stringent, and that the collateral-order doctrine must "never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered." *Mohawk*

[1] We also have jurisdiction over certain interlocutory orders that the district court has specifically certified for appeal, where "such order involves a controlling question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Tellingly, the District Court here denied the Board members' request to certify its order for interlocutory appeal under § 1292(b).

Indus., Inc. v. Carpenter, 558 U.S. 100, 106, 130 S. Ct. 599, 605 (2009) (quoting *Dig. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868, 114 S. Ct. 1992, 1996 (1994)); *Will v. Hallock*, 546 U.S. 345, 349–50, 126 S. Ct. 952, 957–58 (2006).

This appeal fails the first prong of *Cohen*'s collateral-order doctrine because the District Court never conclusively determined that the Board members could not avail themselves of *Parker* state-action immunity. To understand why, it is necessary to lay out the District Court's entire analysis of the *Parker* immunity issue. The District Court first held that SmileDirect's complaint sufficiently alleged that the Board members engaged in concerted action to unreasonably restrain trade, and thus that the complaint adequately stated a federal antitrust claim under the Sherman Act so as to survive a motion to dismiss under Rule 12(b)(6). Dist. Ct. Op. at 10–11. Then, turning to the defense of state-action immunity, the District Court held:

> [T]he Complaint reveals a well-pleaded factual dispute that is not resolved by the Certification of Active Supervision. *Only discovery will determine* whether the Board provided all relevant information to the Governor, whether the proposed amendment was subjected to any meaningful review by the Governor, or whether the Certification of Active Supervision was merely "rubberstamped" as a matter of course. *See* Patrick v. Burget, 486 U.S. 94, 101 (1988) ("[t]he mere presence of some state involvement or monitoring does not suffice" to meet the active supervision requirement).
>
> Accordingly, *the Court finds that a definitive ruling on Parker immunity would be premature at this stage*, that SmileDirect's Sherman Act antitrust claim, as pleaded, is sufficient to survive a Rule 12(b)(6) motion to dismiss on Parker immunity grounds, and that *further factual development is required to determine whether the Board members are*

> *entitled to Parker immunity. The Board members may therefore raise the Parker immunity defense at a later stage in this litigation, such as in a motion for summary judgment*, if appropriate.

Id. at 13 (footnote omitted) (emphases added).

The majority's cursory reference to the District Court's opinion treats the District Court as having denied the Board members' Rule 12(b)(6) motion to dismiss based on a determination that the Board members are not entitled to state-action immunity. *See ante* at 6. But as the full text of the District Court's opinion reveals, the Court explicitly reserved ruling on the Board members' motion to dismiss based on the state-action-immunity defense.[2] It found merely that the Board members' entitlement to state-action immunity was not apparent on the face of the complaint, which included only a single paragraph (out of 113) that could support immunity at this stage: that the Georgia Governor had signed a Certification of Active Supervision.[3] Finding simply that SmileDirect had not pled

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[2] The majority points to the last page of the District Court's opinion, which states "Defendants' Motion to Dismiss . . . is **DENIED**" with respect to the antitrust claim in Count II. *See id.* at 7–8 n.4 (quoting Dist. Ct. Op. at 16). But, based on the District Court's *analysis*, it is clear that that order refers to the District Court's conclusion that, as an initial matter, SmileDirect adequately stated an antitrust claim—i.e., that the complaint sufficiently alleged concerted action to unreasonably restrain trade. *See* Dist. Ct. Op. at 10–11. Its denial of the Board members' motion to dismiss has nothing to do with the Board members' affirmative defense, which is a separate question. That the District Court's denial of the Board members' motion to dismiss relates only to whether SmileDirect stated an antitrust *claim*—as opposed to the sufficiency of the Board members' affirmative defense—makes sense, since the sole purpose of Rule 12(b)(6) is to assess whether the complaint has sufficiently stated a claim for relief.

[3] I can't understand why SmileDirect chose to include this allegation in its complaint. It certainly wasn't necessary to state an antitrust claim under the Sherman Act, 15 U.S.C. § 1. *See, e.g.*, *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1260 (11th Cir. 2019) (en banc) ("[Section] 1 prohibits (1) conspiracies that (2) unreasonably (3) restrain interstate or foreign trade."). As the District Court observed, SmileDirect's complaint

itself out of court, the District Court decided that it would take up the *Parker* issue at a later stage of the litigation, after the Board members answered the complaint and the parties had the opportunity to conduct discovery on SmileDirect's claims and, importantly, the Board members' defenses. Thus, there simply is no "fully consummated decision" regarding the Board members' entitlement to state-action immunity—no "complete, formal, and . . . final rejection" of the immunity defense—which we can review at this stage of the litigation. *See Abney v. United States*, 431 U.S. 651, 659, 97 S. Ct. 2034, 2040 (1977).

This is not to say that this Court could *never* have collateral-order jurisdiction to review a district court's denial of state-action immunity at the motion-to-dismiss stage *when the district court in fact makes such a conclusive determination*. Indeed, we held in *Diverse Power, Inc. v. City of LaGrange* that this Court does have jurisdiction under the collateral-order doctrine to review a

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sufficiently alleged that the Board members engaged in concerted action to unreasonably restrain trade as required to state an antitrust claim, without regard to the Certification of Active Supervision. *See* Dist. Ct. Op. at 10–11. The only apparent purpose of this paragraph is to preemptively negate the Board members' anticipated defense of *Parker* immunity. But it is of course black-letter law that a plaintiff need not negate defenses in its complaint in order to survive a Rule 12(b)(6) motion to dismiss. *See, e.g.*, *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1304 (11th Cir. 2020) ("A complaint need not anticipate and negate affirmative defenses and should not ordinarily be dismissed based on an affirmative defense unless the defense is apparent on the face of the complaint." (citing *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011))). In fact, by including a reference to the Certification in its complaint, SmileDirect handed the Board members the very allegation to support their argument that the defense of state-action immunity was apparent on the face of the complaint.

district court's denial of a Rule 12(b)(6) motion to dismiss based on state-action immunity. 934 F.3d 1270, 1272 & n.1 (11th Cir. 2019).

In *Diverse Power*, the plaintiff corporation brought federal antitrust claims against the City of LaGrange, Georgia, alleging that a City ordinance created an unlawful tying arrangement by conditioning the sale of the City's water utility services on the installation of natural gas appliances in all new construction (the plaintiff corporation was in the business of providing electrical services that competed with the City's natural gas utility service). *See id.* at 1271–72. The City moved to dismiss the federal antitrust claims against it on state-action immunity grounds, arguing that certain Georgia statutes evinced a "clearly articulated and affirmatively expressed" state policy to displace competition. *Id.* at 1272–73. Specifically, section 36-65-2 of the Georgia Code "provide[d] that 'in the exercise of such powers [*i.e.*, the "powers specifically granted to them by law," O.C.G.A. § 36-65-1], . . . local governing authorities shall be immune from antitrust liability to the same degree and extent as enjoyed by the State of Georgia.'" *Diverse Power*, 934 F.3d at 1277 (second alteration in original) (quoting O.C.G.A. § 36-65-2). The City claimed that because O.C.G.A. § 36-34-5(a)(3) granted the City the authority and power to operate water or sewage systems, it also (by virtue of § 36-65-2) authorized the City to engage in the anticompetitive actions alleged in the

complaint, since those actions were related to the exercise of the City's granted authority to provide water utility services. *Id.*

The District Court thus identified the question at the motion-to-dismiss stage as "whether, as a matter of law, the conditioning of water utility service on natural gas installation is a foreseeable result of the anticompetitive conduct authorized by the State of Georgia." *Diverse Power, Inc. v. City of LaGrange, Georgia*, No. 3:17-CV-3-TCB, 2018 WL 9651475, at *4 (N.D. Ga. Feb. 21, 2018), *aff'd,* 934 F.3d 1270 (11th Cir. 2019). If so, then the City acted pursuant to a "clearly articulated and affirmatively expressed" state policy to displace competition and was entitled to *Parker* state-action immunity. The only question before the District Court, then, was whether the Georgia statute contemplated the type of anticompetitive conduct raised in the complaint—a purely legal question of statutory interpretation. The District Court needed no additional facts to interpret the statute at the motion-to-dismiss stage, and so the Court proceeded to decide the issue. It found that the City's alleged coercion in the natural gas market, a completely different market, "is not, as a matter of law, the sort of activity contemplated by the legislature in authorizing the operation of water and sewage systems" in § 36-34-5, and therefore denied the City's motion to dismiss on state-action-immunity grounds. *Id.* at *5.

On the City's interlocutory appeal, we determined that we had collateral-order jurisdiction under *Cohen* to review that conclusive determination by the District Court. 934 F.3d at 1272 & n.1. Specifically, we said that "state-action immunity is a form of immunity from suit, not merely from liability. And denials of immunity from suit—like denials of sovereign and qualified immunities—are immediately appealable under the collateral order doctrine."[4] *Id.* at 1272 n.1. But importantly, we only had collateral-order jurisdiction because the District Court made a definitive ruling on the scope of the Georgia statute, and thus conclusively determined that the City was not entitled to state-action immunity.

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[4] In support of our finding that we had collateral-order jurisdiction, we cited *Commuter Transportation Systems, Inc. v. Hillsborough County Aviation Authority*, 801 F.2d 1286 (11th Cir. 1986). In *Commuter Transportation Systems*, we determined that we had collateral-order jurisdiction to review the District Court's denial of *summary judgment* based on state-action immunity, because such immunity is an immunity from suit rather than a mere defense to liability. *Id.* at 1289–90. In so doing, we concluded that the District Court's denial of summary judgment "finally and conclusively determined" the disputed question—"the defendant's claim of right not to stand trial on the plaintiff's allegations"—because "[t]here are simply no further steps that can be taken in the district court to avoid the trial the defendant maintains is barred." *Id.* at 1289 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 527, 105 S. Ct. 2806, 2816 (1985)). We also noted that the District Court's denial came "[a]fter four years and nine months of discovery, including extensive interrogatories, production of thousands of pages of [the defendant's] records, and seventeen depositions." *Id.* at 1288. Of course, that is not the case here. As explained in Part II, there is nothing preventing the District Court from deciding on summary judgment, after the close of discovery on the relevant *Parker*-immunity facts, that the Board members are entitled to state-action immunity. At *that* stage, the District Court could render a conclusive determination on state-action immunity by construing the relevant facts in the light most favorable to SmileDirect—thereby eliminating any fact issue—and deciding whether, as a matter of *law*, the Board members are entitled to the immunity defense. Unlike in *Commuter Transportation Systems*, then, the Board members here have one more opportunity to convince the District Court at this next step of the litigation that they are entitled to immunity from suit and should not have to stand trial on SmileDirect's Sherman Act claims. Thus, their entitlement to state-action immunity—and their right not to stand trial—have not yet been conclusively determined.

The same cannot be said of this appeal. Unlike *Diverse Power*, this is not a case in which the entitlement to immunity rests on a purely legal question, or some other question that is resolvable solely on the allegations in the complaint. Rather, it depends here on additional facts that are not in the complaint (and are not required to be included in the complaint). The District Court, recognizing this, deferred a definitive ruling on the state-action-immunity issue until those relevant additional facts could be discovered. At least at this juncture, it left the immunity question open, and we lack jurisdiction to review an issue that the District Court did not actually resolve below. *See Royalty Network, Inc. v. Harris*, 756 F.3d 1351, 1355 (11th Cir. 2014) (finding that the district court's order satisfied the first *Cohen* prong where "[t]he court's order finally settled the question and did not leave anything open, unfinished, or inconclusive").

II.

What's more, by entertaining and deciding this appeal despite the lack of a final decision below, the majority renders an advisory opinion that defies one of our most fundamental constitutional principles. "[T]he oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions." *Flast v. Cohen*, 392 U.S. 83, 96, 88 S. Ct. 1942, 1950 (1968) (quotation marks and citation omitted). This ironclad rule derives from Article III's case or controversy requirement: "no justiciable controversy is

presented . . . when the parties are asking for an advisory opinion." *Miller v. F.C.C.*, 66 F.3d 1140, 1146 (11th Cir. 1995) (quoting *Flast*, 392 U.S. at 95, 88 S. Ct. at 1950). We therefore have insisted that "[w]e are not in the business of issuing advisory opinions that do not 'affect the rights of litigants in the case before' us or that merely opine on 'what the law would be upon a hypothetical state of facts.'" *Gagliardi v. TJCV Land Tr.*, 889 F.3d 728, 733 (11th Cir. 2018) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172, 133 S. Ct. 1017, 1023 (2013)). Today, the majority decides a case that presents no justiciable controversy on appeal—because the relevant issue was never actually resolved by the District Court below, we have nothing to review. And it issues an opinion that cannot have any effect on the pending litigation—at least with respect to the *Parker* immunity issue—except to affirm that the suit may continue on its natural course. Article III prohibits just these types of hypothetical rulings.

To illustrate why the majority's decision on appeal is merely hypothetical, consider what follows today's decision. After this Court affirms the District Court's "denial" (scare quotes intended) of the Board members' motion to dismiss on state-action immunity grounds, the case then returns to the District Court and the Board members must file their answer. In that answer, the Board members will assert a variety of defenses, including that they are entitled to state-action immunity. And they will include in their pleading the additional facts—not

included in the complaint—supporting their entitlement to immunity that were not before the District Court (or this Court) at the motion-to-dismiss stage.[5]

Discovery ensues on the claims and defenses. At the close of discovery, the Board members move for summary judgment on the same theory presented here, but this time armed with the additional favorable facts not previously available for consideration by the District Court. The District Court, presented with virtually the same arguments it was presented with at the motion-to-dismiss stage, must decide whether the Board members are *now* entitled to state-action immunity under *Parker*. It must decide whether, in light of these new facts, the Board members have *now* met their burden to show that the defense applies.[6] As the majority

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[5] It's worth noting that, had SmileDirect not included the allegation regarding the Certification of Active Supervision in its complaint, this is precisely what would have happened. The Board members, lacking any argument that the allegations *in the complaint* show that they are entitled to state-action immunity, would have been forced to file an answer including that argument—and the facts supporting that argument—as a defense.

[6] If the District Court denied immunity at *this* stage of the litigation, we could have collateral-order jurisdiction. That's because, after discovery has closed and all of the relevant *Parker*-immunity facts have been made available to the District Court, the District Court, in ruling on summary judgment, will construe all of the relevant facts in the light most favorable to SmileDirect, the non-movant. By thus eliminating any fact issue, the District Court will render a final legal determination on whether the Board members are entitled, as a matter of law, to state-action immunity. We would have collateral-order jurisdiction to review that final legal determination on appeal.

Theoretically, the District Court could have gone through this exercise at the motion-to-dismiss stage. It could have construed all of the facts alleged at this stage in the light most favorable to the plaintiff, SmileDirect, and decided whether, accepting the facts as alleged by SmileDirect, the Board members are nonetheless entitled to state-action immunity. Only then, after having eliminated any fact issue, could the District Court have rendered a final legal determination on state-action immunity that would be reviewable on appeal under *Cohen*. Of course, the District Court here did not do this. Rather, it noted that the fact issues were not resolvable at the motion-to-dismiss stage, and so it deferred any final determination of the

admits, nothing it says here would prevent the District Court from reaching the opposite conclusion—that the Board members are entitled to state-action immunity and thus entitled to avoid trial on SmileDirect's federal antitrust claims—if the facts revealed in discovery turned out to support that conclusion. *See ante* at 18 n.6.

Finally, when the losing party inevitably appeals the District Court's decision on summary judgment to this Court, we would again have to consider on appeal (1) whether, if the District Court denied the motion for summary judgment based on state-action immunity, we have collateral-order jurisdiction to review the denial of immunity; and (2) whether, if the District Court granted the motion or if we determine that we do have collateral-order jurisdiction to review the denial of

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immunity issue for resolution at the summary-judgment stage. (Truthfully, the Board members should be thankful that the District Court did not definitively rule on the state-action-immunity defense based only on the facts in the complaint. If it did, and conclusively determined that the Board members were not entitled to state-action immunity, that would be the end of the matter. The Board members could not re-raise the issue at the summary judgment stage.)

Of course, even at the summary-judgment stage, we will not *necessarily* have collateral-order jurisdiction to review the District Court's decision. For example, if the District Court does not eliminate the fact issues by leaning the facts one way or the other, and instead finds that genuine *factual* issues preclude granting summary judgment to the Board members, we would not have collateral-order jurisdiction on appeal. *Cf. Johnson v. Jones*, 515 U.S. 304, 313, 115 S. Ct. 2151, 2156 (1995) (holding that the District Court's determination that the summary judgment record raised a genuine issue of fact—i.e., of "evidence sufficiency"—concerning the defendants' entitlement to qualified immunity was not a "final decision" that was immediately appealable); *cf. also Plumhoff v. Rickard*, 572 U.S. 765, 773, 134 S. Ct. 2012, 2019 (2014) (distinguishing *Johnson* on the ground that the defendant-petitioners in *Plumhoff* "raise[d] legal issues; these issues are quite different from any purely factual issues that the trial court might confront if the case were tried").

immunity, the Board members are entitled to state-action immunity. In other words, we would have to reconsider the same questions that the majority proceeds to decide today, this time based on the new facts found in discovery. Again, nothing the majority says here would prevent a future panel from reaching a different conclusion on state-action immunity at this later stage of the litigation.

So, what exactly does today's decision do? It informs the parties and the District Court of the legal standards that will govern the Board members' defense of state-action immunity. It tells the Board members that the Certification of Active Supervision will not be enough, alone, to satisfy that standard. And it advises the Board members of the types of facts they must allege in their answer and offer as evidence at the summary-judgment stage to establish their entitlement to state-action immunity. Article III does not permit us to engage in this hypothetical exercise or to issue such guidance.

* * *

Cohen is clear: we may review an otherwise nonappealable interlocutory order only if the district court has, among other things, conclusively determined the disputed question. *Freyre*, 910 F.3d at 1371. "So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal." *Cohen*, 337 U.S. at 546, 69 S. Ct. at 1225. Here, the District Court explicitly did not decide whether the Board members were entitled to state-action immunity, instead finding that a

definitive ruling on that issue would be "premature" and leaving the question open for resolution at the summary-judgment stage of the litigation. Because there has been no conclusive determination regarding the Board members' entitlement to state-action immunity, we lack jurisdiction to consider the issue on appeal.

Moreover, that lack of finality means that today's decision amounts to nothing more than an advisory opinion explaining to the Board members the relevant facts they must unearth in discovery in order to be entitled to summary judgment based on state-action immunity. Nothing about this decision "affects the rights of the litigants before us"—they will get another chance in the District Court to litigate whether the Board members are entitled to immunity. To make matters worse, the majority's opinion—despite having no tangible effect on the instant litigation—creates binding precedent for future litigants seeking the benefit of state-action immunity. Article III prohibits us from rendering such a decision.

Because this appeal amounts to nothing more than a dry run of the Board members' argument that they are entitled to state-action immunity under *Parker*, I would dismiss the appeal for lack of jurisdiction, and wait to reach the merits of the immunity issue when this case inevitably comes before us again after discovery of the relevant *Parker*-immunity facts.[7] I therefore respectfully dissent.

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[7] In its decision on the merits, the majority, like the District Court, cites *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), for the standard governing our analysis of the Board members' motion to

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dismiss. *See ante* at 10. But it then jumps straight into an analysis of state-action immunity. *Id.* In doing so, the majority's opinion would seem to require that a plaintiff, in order to adequately plead an antitrust violation under the Sherman Act, allege facts showing the *absence* of state action. *See id.* at 10–11. But a plaintiff need not plead the absence of state action as part of the cause of action to state a federal antitrust claim; state-action immunity is a defense that must be pleaded and proved by the defendant seeking its protection. So, the real question in this case is whether the *defendant* Board members have met *their* burden to show that they are entitled to this defense at the motion-to-dismiss stage. *Cf. id.* at 13 (finding that "the Board members have failed to satisfy the *Midcal* test" for state-action immunity); *id.* at 18 ("[T]he Board has not satisfied the active supervision requirement for entitlement to state-action immunity."); *id.* at 25 ("[T]he Board members have fallen far short of establishing that the amended rule was 'in reality' the action of the Governor"). It's an odd question to answer, because the only pleading we have so far is the plaintiff's complaint. That's why when we are faced with a motion to dismiss a complaint based on a defense, we ask whether the defense appears on the face of the plaintiff's complaint. *E.g.*, *Bingham*, 654 F.3d at 1175 (citing *Jones v. Bock*, 549 U.S. 199, 215, 127 S. Ct. 910, 921 (2007)). In other words, we must ask whether the *plaintiff's* allegations adequately support the *defendant's* claims.

In my view, the best way to conceptualize this awkward exercise is to treat the defendant's motion as if it were an answer under Rule 8, which asserts the affirmative defense of state-action immunity and includes the relevant facts from the plaintiff's complaint (and no more). The motion to dismiss would then be treated as a motion for judgment on the pleadings under Rule 12(c). Based on the defendant's "answer," we would ask whether, viewing all the alleged facts in the light most favorable to the non-movant (the plaintiff), the defendant has sufficiently shown its entitlement to an affirmative defense, and thus dismissal of the complaint. So, in this case, we would imagine that the Board members had filed an answer asserting the affirmative defense of state-action immunity, which included only a single factual allegation along the lines of paragraph 45 of SmileDirect's complaint—i.e., the Certification of Active Supervision. The issue to be resolved, then, is whether the Board members have shown—based only on the facts alleged in their hypothetical answer—that they are entitled to the affirmative defense. Working through the analysis in this way ensures that we do not place the burden on the wrong party.

Karpp, Kayla

From: Mike Mulcahy <fmmulcahy@msn.com>
Sent: Friday, July 10, 2020 10:18 AM
To: Karpp, Kayla
Subject: Shavondria Johnson

Ms Karpp,

I write to you today to sing the high praises of Shavondria Johnson. She is a quintessential professional and I can't thank her enough for her timeliness, communication and dedication to outstanding customer service.

I hope you are aware of what a gem she truly is.

Kindest regards,

Michael Mulcahy, RRT

Karpp, Kayla

From: Preethi Patel <prettypreethi@icloud.com>
Sent: Tuesday, August 11, 2020 4:42 PM
To: Karpp, Kayla
Subject: Review

Hello Ms Kayla,
I wanted to take a few minutes to make sure that I leave a positive review regarding Ms Barbara Baker, Regulatory Specialist and share my awesome experience communicating with her.
She has been so helpful to me as I apply for my Registered Respiratory therapist FL licence. She has gone above and beyond to find the necessary documents I need to submit and went as far as getting me the phone number from the CT licence verification office.
Ms. Barbara is a assets to your department.
Thank you and have a wonderful day,
Preethi Patel

Preethi Patel

Karpp, Kayla

From: xavier Ramos <xramos76@yahoo.com>
Sent: Wednesday, August 26, 2020 1:16 PM
To: Karpp, Kayla
Subject: Customer Review

Good Afternoon,

My name is Xavier Ramos, and I would like to leave a very positive review for Shavondria Johnson. Ever since I had started my licensing process a month ago she has been on top of keeping me informed of everything I need for my application. Her responses to email are alway almost immediate and she has made this process amazingly simple for me. She is amazing at her job and should know that. Please pass this message along to her and let her know that her hard work is very, very appreciated. Thank you so much for everything.

FLORIDA | Board *of* Respiratory Care

APPLICATION SUMMARY

Names: Saunders, James Chalker

5701/ 20459; Registered Respiratory Therapist Applicant

Application Completion Date: 10/13/2020

Other Related License(s): Florida CRT License – TT12837 -Voluntary Relinquished
Florida RRT license- RT9232-Revoked
Florida LPN License- PN1346791 – Null and Void
Florida CRT license-TT16847-Clear/Active

DISCIPLINARY HISTORY Yes

Mr. Saunders previously appeared before the Board on January 17, 2020. At that meeting, Mr. Saunders was required to comply with a previous disciplinary order before the issuance of his license. Mr. Saunders complied with all terms of the Final Order and was licensed with his CRT license (TT16847) on September 23, 2020.

Board staff became aware that Mr. Saunders had two other cases in which he was out of compliance and directed him to contact the Consumer Services Unit to address the issue.

Subsequently, Mr. Saunders applied for his RRT license on October 9, 2020. The Consumer Services Unit notes he is out of compliance in the two cases noted below.

Case Number	Penalties
2012-02062	$1,189.33
2011-20992	• $272.00 • Continuing Education- 3 hours of General (May be direct or non-direct hours)

State: Florida Board of Respiratory Care

Discipline Date: November 6, 2012

Administrative Violation: Violated Statutes and Rule of this Board by being unable to practice respiratory care with reasonable skill and safety to patients by reason of alcohol, drugs, or any other type chemicals.

Penalties Imposed: Revocation

Compliance Status: Not compliant with case # 2012-02062.

Summary Prepared By: Kayla Karpp

State: Florida Board of Respiratory Care

Discipline Date: May 31, 2012

Administrative Violation: Received internally generated complaint stating subject failed to document full compliance with the continuing education requirements for license renewal for the biennium ending 05/31/11, provided that all continuing education courses had been timely completed. Subject is to submit certification for 3 hours of General CE credits

Penalties Imposed: Non-Disciplinary Citation

Compliance Status: Not compliant with case # 2011-20992.

CRIMINAL HISTORY Yes

Arrest / Offense Date: June 18, 2010

Charge: Driving Under the Influence with Property Damage

Level: Misdemeanor

Disposition: Unknown

Arrest / Offense Date: April 29, 2001

Charge: Possession of Cannabis Paraphernalia

Level: Misdemeanor

Disposition: Guilty, sentence to probation with conditions and pay fines and costs.

Mr. Saunders has met all terms of probation and the case was closed on August 9, 2002

Arrest / Offense Date: July 24, 2000

Charge: Driving Under the Influence

Level: Misdemeanor

Disposition: Plea Nolo Contendere, Adjudication of Guilt/Withheld, sentenced to pay fines and costs. Completed May 31, 2002.

Arrest / Offense Date: May 25, 2000

Charge: Driving Under the Influence

Level: Misdemeanor

Disposition: Guilty, sentenced to pay fines and costs and probation for 9 months with conditions. January 17, 2001 this case for discharged and probation terminated.

Staff Notes:

Mr. Saunders was noticed to appear at the October 16, 2020 Board meeting on October 13, 2020.

O t be 13, 2020

James C Saunders
5943 Shady Creek Ln
Po t Orange, FL 32128

Applicant ID# 20459

Dea Mr Saunders:

The Boa d of Respiratory Care will consider your application at its October 16, 2020 meeting. The B ard is requiring your appea an e in the matte of your application via nference all, for e tified respirat ry therapist licensu e by end sement t discuss the riminal hist ry you listed on your applicati n.

In addition, the B ard may inquire int any othe issues rega ding your eligibility and/or application for licensure. Your application will be placed on the agenda for the Boa d's nside ation as follows

The meeting is s hed led f r

Telephone C nferen e/ Video Call at 8 30 a m EST
To join the meeting from your computer, tablet or sma tph ne
GoToMeeting Link

You can also dial in using your phone
United States (Toll Free): 1(877)309-2073 Access Code: 779-560-757

Join from a video-conferencing room or system. Dial in or type: 67.217.95.2 or inroomlink.goto.com Meeting ID: 779 560 757 Or dial directly 779560757@67.217 95.2 o 67.217.95.2##779560757

New to GoToMeeting? Get the app now and be ready when your first meeting starts: https://global.gotomeeting.com/install/779560757

It is requested that you nta t me in writing rega ding your intentions t attend the meeting. Y u may write to the address listed below r fax your resp nse t (850) 414 6860 If you have any pertinent additi nal informati n you may want eviewed prior t the meeting, please send t me at least two weeks bef re the meeting ab ve.

Secti n 456 013(3)(c), Fl rida Statutes, provides that in conside ing appli ati ns for licensure, the boa d, o the depa tment when the e is no board, may require a pe s nal appea an e of the applicant If the applicant is required t appear, the time period in which a licensure application must be granted denied shall be t lled until su h time as the applicant appears However, if the applicant fails t appea bef re the b ard at eithe of the next two regula ly scheduled b a d meetings o fails t appea before the depa tment within 30 days if there is no board, the application for licensure shall be denied

Due t the onset of hurricane season it may be ne essa y to amend the time, l cati n even an el the meeting ab ve In rder t notify you of any p tential hange we equest you keep this office inf rmed of
Thank you for your ntinued o pe ation If you have any questions, please nta t me at the address bel w You may als ea h me at 850-245-4373 r e-mail shavondria.johnson@flhealth.gov.

Sincerely,
Shavond ia J hns n
Regulato y Spe ialist II

Department of Health

License Verification

Printer Friendly Version

JAMES CHALKER SAUNDERS

License Number: TT16847

Data As Of 1/1/0001

License Information | Secondary Locations | Discipline/Admin Action

Back

Profession

Certified Respi atory Therapist

License

TT16847

License Status

CLEAR/ACTIVE

License Expiration Date

5/31/2021

License Original Issue Date

09/23/2020

Add ess of Reco d

651 Ca 651 Ca ya Court

Deland

DELAND, FL 32724

Discipline on File

No

Public Complaint

No

For instructions on how to request a license certification of you Florida license to be sent to another state f om the Florida Department of Health, please visit the License Certifications web page

Primary Source Verified

Department of Health

JAMES C SAUNDERS

License Number: TT12837

Data As Of 10/12/2020

Profession	Certified Respi ato y Therapist
License	TT12837
icense Status	VOL-RELINQ/
icense Exp ration Date	5/31/2009
icense Original ssue Date	11/15/2005
Address of Record	If further information is needed, p ease contact the Department of Health at (850) 488-0595
Discipline on Fi e	No
Publ c Complaint	No

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Department of Health

JAMES CHALKER SAUNDERS

License Number: RT9232

Data As Of 10/12/2020

Profession	Regi te ed Respi ato y Therapist
icense	RT9232
icense Status	REVOKED/
License Exp ation Date	5/31/2013
License Original Issue Date	02/11/2008
Address of Record	If further informat on is needed, please contact the Depa tment of Health at (850) 488-0595
Discipline on Fi e	Yes
Public Comp aint	Yes
A erts	Enforcement Alert 3/16/2012 8:31 19 AM Emergency Suspension O de filed 3/16/12.

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Department of Health

JAMES CHALKER SAUNDERS

License Number: PN1346791

Data As Of 10/12/2020

Profession	Licensed Practical Nurse
License	PN1346791
icense Status	NULL AND VOID/
icense	
Exp ation Date	7/31/2005
icense	
Original ssue Date	05/26/1999
Address of Record	If further informat on is needed, please contact the Department of Health at (850) 488-0595
Discipline on Fi e	Yes
Public Complaint	No
A erts	Enforcement Alert 11/20/2002 3:45:30 PM ESO filed 11/20/02.

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October 12, 2020

James C Saunders
5943 Shady Creek Ln
Port Orange, FL 32128

File # 20459

Dear Mr. Saunders:

Thank you for your application for licensure as a Florida registered respiratory therapist Your application has bee received and is pending the following documentation:

- **Your application is incomplete. Please provide your emp oyment history including dates, location, name of employer, position or either a resume.**

You can now follow the progress of your application through our website at https //mqaonline doh state fl us/ If you did not apply for licensure through this screen, please select "Click HERE for New User Registration" and create an account You must have a valid email address to create your account

Once you are logged in, you will be prompted to link your application to you account in four easy steps Once you have successfully linked your application, you will be directed to the Quick Start Menu Unde the "Additional Activities" section, select "Application Status" to review any open deficiencies, upload documents or p int out instructional documents

As a reminder to all applicants, please understand that section 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department

Thank you for your interest in practicing respiratory care in Florida If you have any questions, please contact me at the address below You may also reach me at 850-245-4373 or e-mail at shavondria johnson@flhealth gov

Sincerely,

Shavondria Johnson
Regulatory Specialist II