

ADMINISTRATIVE DIRECTIVE #MS-17

SUBJECT: ADMINISTRATIVE HEARING PROCEDURES FOR DENIAL OF LICENSURE/RENEWAL LICENSURE FOR PAIN MANAGEMENT CLINICS

EFFECTIVE DATE: December 6, 2010

REVIEW DATE: December 6, 2015

SUPERSEDES: NEW

Authority:

As authorized by Section 9 of Hillsborough County Ordinance 10-8E, as amended, the Hillsborough County Board of County Commissioners delegates to the County Administrator the establishment of hearing procedures for review of denial of any new or renewal Pain Management Clinic license and requires the County Administrator to adopt a policy establishing such procedures. The Ordinance requires these review hearings be conducted in accordance with the policy adopted by the County Administrator.

Purpose:

The purpose of this Administrative Directive is to provide hearing procedures for the review of denial of any new or renewal Pain Management Clinic license. The purpose of these hearing procedures is to ensure fundamental procedural due process protections as provided for by law.

Directive:

The following procedures shall apply for reviews of denial of any new or renewal Pain Management Clinic license.

A. Notice of Denial of a New or Renewal Pain Management Clinic License:

Pursuant to Section 9 of Hillsborough County Ordinance 10-8E (hereinafter "Ordinance"), as amended, in the event an application for a new or renewal Pain Management License is denied by the County, County Staff (hereinafter "Staff") shall provide written notice as specified in Section 12 of the Ordinance to the Applicant specifying the grounds for the denial.

B. Service of Any Notice Required by this Ordinance:

In addition to the Notice described in Paragraph A above, any notice required by these procedures shall be in writing and served as specified in Section 12 of the Ordinance.

C. Time Frames:

All time frames set forth by these procedures are computed by business days. Business days are defined as Monday through Friday, excluding Saturdays, Sundays and holidays as designated by the Hillsborough County Board of County Commissioners (BOCC). The day of the act, event, or default from which the designated period of time begins to run shall not be included.

D. Request for Review:

1. Any Applicant, upon receipt of notice of the County's denial of a new or renewal license for any reason other than filing of an incomplete application, may request a formal review of the denial before a Hearing Officer appointed by the BOCC.
2. The Applicant's request for review must be in writing and must specify the specific alleged error or errors made by the County along with any and all facts that support the Applicant's position the license was erroneously denied.
3. The written request for review must be received by Hillsborough County's Consumer Protection Agency within ten (10) business days of the date the denial notice was received by the Applicant.

E. Failure to Request Review within the time periods prescribed above:

If the Applicant makes no written request for review within ten (10) business days of the date the written denial notice was received by the Applicant, the Applicant's right to a review is thereby deemed to be waived and the license shall be deemed denied without further action by the County. The Applicant shall immediately cease and desist operating as a Pain Management Clinic.

F. Initial Review:

1. Upon receipt of the written request for review described in Paragraph D(2) above, the Hearing Officer shall review the Applicant's written request and all supporting documents to determine if sufficient cause exists to grant a hearing on the request. "Sufficient cause" is defined as "reasonable grounds" demonstrating a prima facie case that the denial of a new or renewal license was erroneous. The Hearing Officer has ten (10) business days from receipt of the request for review to make a determination on whether sufficient cause exists to grant a hearing on the request and shall notify both Staff and the Applicant of his or her decision in writing.
2. In the event Applicant's request and supporting documents fail to allege the existence of sufficient cause for a hearing, the Hearing Officer shall issue an order summarily dismissing the Applicant's request without further right of review by the County. Upon receipt of the Hearing Officer's Order dismissing the request for review, the Applicant shall immediately cease and desist operating as a Pain Management Clinic.
3. Should the Hearing Officer make a determination that the Applicant's request for review and supporting documentation establishes sufficient cause to grant a hearing on the request, a hearing shall be scheduled within thirty (30) business days of the

date of the Hearing Officer's written determination. The Applicant and Staff shall be given no less than ten (10) business days prior written notice of the time, place and nature of the hearing. The County Attorney's Office shall facilitate the scheduling of the hearings.

G. Hearing Procedures:

1. The Hearing Officer is authorized to issue subpoenas for the production of documents or the attendance of witnesses at a hearing upon the written request of Staff or the Applicant.
 - a. A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of such service shall be made by affidavit of person making service.
 - b. A party may seek enforcement of a subpoena issued under the authority of this section by filing a petition for enforcement in the County Court in conformity with the requirements of the Florida Rules of Civil Procedure. The County Court shall have jurisdiction and shall be authorized to make any and all decisions within the Court's authority to enforce the subpoena.
2. No pre-hearing discovery shall be allowed by the Hearing Officer except (1) for the sole purpose of scheduling a deposition perpetuating testimony of a witness who is unavailable to attend the hearing and (2) as provided for in Paragraph G (13) below.
3. Within ten (10) business days of the hearing's conclusion, the Hearing Officer shall prepare and serve upon the parties a written order. The Order shall state (1) whether or not the new or renewal license is denied or granted, (2) the factual findings in support of the Hearing Officer's decision and (3) conclusions of law.
4. Each party shall be afforded the following rights relevant thereto:
 - a. Be accompanied, represented and advised by counsel, provided by the party at its sole cost and expense;
 - b. To call and examine witnesses;
 - c. To introduce exhibits;
 - d. To cross-examine opposing witnesses;
 - e. To impeach any witness; and
 - f. To rebut evidence.
5. The Order of presentation and time allotments shall be as follows:
 - a. Opening statement by Staff, unless waived by Staff: five (5) minutes.

- b. Opening statement by Applicant, unless waived by Applicant: five (5) minutes.
- c. Staff's presentation of its investigation, evidence, findings, witnesses and exhibits: sixty (60) minutes. This time allotment excludes cross-examination and questions presented by the Hearing Officer.
- d. Applicant's presentation of evidence and witnesses: sixty (60) minutes. This time allotment excludes cross-examination and questions presented by the Hearing Officer.
- e. Rebuttal by Staff: five (5) minutes.
- f. Rebuttal by Applicant: five (5) minutes.
- a. Amended recommendations of Staff and summation, if any: five (5) minutes.
- g. Summation by Applicant, if any: five (5) minutes.

The time allotments delineated above exclude cross-examination and any questions presented by the Hearing Officer. Cross-examination shall be limited by either side to five (5) minutes per witness.

For good cause shown, the Hearing Officer may grant additional time on any of the time allotments identified above.

- 6. The Hearing Officer may, in his or her discretion, and upon good cause shown, allow witnesses to appear telephonically.
- 7. In the event a witness is unavailable for a hearing, depositions to perpetuate testimony are permitted in lieu of actual live testimony.
- 8. The Hearing Officer may call and question witnesses as he or she deems necessary and appropriate.
- 9. Any relevant evidence shall be admitted if the Hearing Officer finds it competent and reliable. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient, alone, to support an Order unless such evidence would be admissible in a civil action. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Any part of the evidence may be received in written form and all testimony shall be under oath.
- 10. The Hearing Officer may, in his or her discretion, continue a hearing at any time and may request further information from any party. Except in the case of an emergency, requests for continuance must be made at least five (5) business days prior to the date noticed for the hearing and must be based upon good cause shown.
- 11. Although the presentation of the evidence is as delineated above, the burden of persuasion remains upon the Applicant to prove by a preponderance of the evidence its entitlement to the license.

