Rick Scott
Governor

FLORIDA DEPARTMENT OF HEALTH

Ana M. Viamonte Ros, M.D., MPH
Secretary of Health/State Surgeon General

February 15, 2011

CORLISS A. RUPP, M.D.
c/o Brandon Perkins, Esq.
The Powell Law Firm, P.A.
18001 Old Cutler Road, Suite 525
Palmetto Bay, FL 33157

Re: Corliss A. Rupp, M.D.
ME 86724

Dear Dr. Rupp:

With regard to the action by Florida Department of Health, it has been determined that Dr. Rupp was without fault. The Department of Health required Dr. Rupp to take an administrative action of which she was unaware and which was therefore impossible for her to take. Nothing having to do with this matter concerned or reflected in any adverse manner Dr. Rupp's care of her patients. Dr. Rupp is a physician with an unblemished disciplinary record. The Florida Department of Health/Board of Medicine has withdrawn its "Letter of Concern" in all respects and asks that it be treated as though it were never issued.

Sincerely,

Larry G. McPherson, Jr.
Executive Director

cc: Brett C. Powell, Esq.
Michael R. Barnes, Esq.

FLORIDA DEPARTMENT OF HEALTH

Charlie Crist
Governor

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

October 28, 2008

Corliss A. Rupp, M.D.
3134 Turf Terrace
Snellville, GA 30078

Via Overnight Delivery

RE: Corliss A. Rupp v. Department of Health
DOH Case Numbers.: 04-35830 and 05-3242

Dear Dr. Rupp:

Please be advised that the Third District Court of Appeal issued a decision in the above-referenced case on July 18, 2007 in which it was determined that:

With regard to the action by the Department of Health against Dr. Corliss Rupp, Dr. Rupp was without fault.

The Florida Department of Health required Dr. Rupp to take administrative actions of which she was unaware, and which were therefore impossible for her to take.

In response to the appellate opinion, the Florida Department of Health has withdrawn its "Letter of Concern" in all respects and it is being treated as though it were never issued. Further, the Florida Department of Health acknowledges that Dr. Rupp is a physician with an unblemished disciplinary record. Nothing having to do with this matter concerned Dr. Rupp's care and treatment of her patients.

As of the date of this letter, the department's files, including the public Practitioner Profile, have been updated and reflect no disciplinary actions against Dr. Rupp. Information regarding this disciplinary action will be retracted from any National Inquiry Database to which the Florida Department of Health/Florida Board of Medicine may have reported.

Very truly yours,

Kathryn E. Price

Kathryn E. Price
Deputy General Counsel
Florida Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Rachel Bh
DATE 7-2-09

CORLISS A. RUPP, M.D.,

Petitioner,

vs.

DOH CASE NO.:2004-35830
DOAH CASE NO.:08-1933FC
LICENSE NO.: ME0086724

DEPARTMENT OF HEALTH, M.D.,

Respondent.
_____/

ORDER CORRECTING SCRIVENER'S ERROR

THIS CAUSE originally came before the Board of Medicine (Board) on August 15, 2008, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. The Final Order filed in this matter on September 3, 2008, contained a Scrivener's Error in the License Number for the Petitioner in this matter. The License Number set forth in the Final Order was ME0066823. The correct License Number for the Petitioner is ME0086724. No additional changes are made to the Final Order filed in this matter on September 3, 2008.

This Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED *nunc pro tunc* to September 3, 2008.

BOARD OF MEDICINE

Larry McPherson, Jr., Executive Director
For Fred Bearison, M.D., CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to Corliss Ann Rupp, M.D., 137 Maracaibo Lane, Cudjoe Key, Florida 33042; to Michael R. Barnes, Esquie 801 Whitehead Street, Key West, Florida 33040; to Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalchee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 2 day of July, 2009.

Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

CORLISS A. RUPP, M.D.,

Petitioner,

vs.

DOH CASE NO.:2004-35830
DOAH CASE NO.:08-1933FC
LICENSE NO.: ME0066923

DEPARTMENT OF HEALTH, M.D.,

Respondent.
_____/

FINAL ORDER ACCEPTING SETTLEMENT AGREEMENT

THIS CAUSE came before the Board of Medicine (Board) on August 15, 2008, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 29th day of August, 2008.

BOARD OF MEDICINE

Larry McPherson, Jr., Executive Director
For ROBERT CLINE, M.D., CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Corliss Ann Rupp, M.D., 137 Maracaibo Lane, Cudjoe Key, Florida 33042; to Michael R. Barnes, Esquie 801 Whitehead Street, Key West, Florida 33040; to Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalchee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 3rd day of September, 2008.

Deputy Agency Clerk

Sanford, Crystal

From: McPherson, Larry
Sent: Wednesday, August 27, 2008 2:54 PM
To: DL MQA Management Team
Cc: Sanford, Crystal; Prine, Chandra; Gray, Melinda; Trexler, JoAnne; Nelson, Gloria J; Taylor, Natalie; 'Ed Tellechea'; Sanders, Sylvia (MQA)
Subject: Board of Medicine Delegation

Citizen Regulators,

During my absence on Thursday, August 28, 2008, through Monday, September 8, 2008, Board of Medicine Executive Director authority is delegated to Crystal Sanford, CPM, Program Operations Administrator, 245-4132.

Larry McPherson
Executive Director
Board of Medicine

PRACTITIONER REGULATION
LEGAL

2008 AUG -8 AM 9:30

STATE OF FLORIDA
DEPARTMENT OF HEALTH

CORLISS A. RUPP, M.D,

Petitioner,

v.

DOH Case No. 2004-38830
DOAH Case No. 06-1931PC

DEPARTMENT OF HEALTH,

Respondent,

_____/

SETTLEMENT AGREEMENT

Corliss A. Rupp, M.D., referred to as the "Petitioner," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement "Agreement" in this matter.

STIPULATED FACTS

1. On or about March 29, 2006 a Recommended Order was filed recommending that a final order be entered finding that Dr. Rupp violated sections 458.331(1)(b) and 458.331(1)(kk), Florida Statutes; providing for the issuance of a letter of concern; and imposing an administrative fine of $500.

2. On June 20, 2006 a final order was filed with the Department of Health adopting the Administrative Law Judge's Recommended Order.

3. Petitioner appealed the Respondent's final order to the Third District Court of Appeal.

4. On July 18, 2007, an opinion from the Third District Court of Appeal in case number 3D06-1769, Corliss A. Rupp, M.D., vs. Department of Health was filed reversing the final order and remanding the case with instructions that judgment be entered in Dr. Rupp's favor.

5. On August 2, 2007, the Third District Court of Appeal granted Appellant/Petitioner's motion for sanctions only as to an award of attorney's fees in favor of appellant, and remanded to the lower tribunal to fix the amount.

6. On August 28, 2007, the Third District Court of Appeal entered a mandate in furtherance of their August 2, 2007 opinion.

7. On January 3, 2008, Petitioner filed a motion for award of attorney's fees and costs in the Division of Administrative Hearings.

8. On April 10, 2008, Respondent forwarded a letter to the Administrative Law Judge indicating that pursuant to a March 6, 2008 hearing the parties were to engage in settlement negotiations, unfortunately the settlement negotiations were unsuccessful and Division of Administrative Hearings case number 08-1933FC was established.

9. On April 16, 2008, an Administrative Law Judge was assigned, and the case Corliss A. Rupp, M.D., vs. Department of Health case number 08-1933FC, was established.

10. On May 16, 2008, Administrative Law Judge Susan B. Harrell entered an order limiting the attorney fees to those fees incurred after the filing of the Recommended Order of March 29, 2007, and the mandate of the Third District

Court of Appeal issued on August 28, 2007. The order of the Third District Court of Appeal did not include an award of costs; thus, costs were to not be considered in the proceeding. The order ordered the parties to advise the Administrative Law Judge of available dates for a final hearing on the amount of attorney's fees to be awarded.

11. A hearing was set for July 16, 2008 at 9:00 am in Key West Florida.

12. On July 15, 2008, Petitioner and Respondent entered into a settlement Agreement, thus eliminating the need for a hearing to set the amount of attorney's fees to be awarded.

13. The parties agree that the Stipulated Disposition in this case is fair, appropriate and acceptable to the parties.

STIPULATED DISPOSITION

1. Respondent agrees to pay Petitioner $40,389.00 in full and final settlement of this action for the award of attorney's fees related to case number 08-1933FC.

2. The Department agrees to provide Petitioner a letter stating:

With regard to the action by the Department of Health, it has been determined that Dr. Rupp was without fault. The Department of Health required Dr. Rupp to take an administrative action of which she was unaware and which was therefore impossible for her to take. Nothing having to do with this matter concerned or reflected in any adverse manner, Dr. Rupp's care of her patients. Dr. Rupp is a physician with an unblemished

disciplinary record. The Florida Department of Health/Board of Medicine has withdrawn its "Letter of Concern" in all respects and asks that it be treated as though it were never issued.

STANDARD PROVISIONS

1. **Appearance**: Petitioner is not required to appear before the Board at the meeting of the Board where this Agreement is considered.

2. **Purpose of Agreement** – Petitioner and Respondent agree, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes the terms of the agreement.

3. **Waiver of attorney's fees and costs** - Upon the Board's consideration and or adoption of this Agreement, the parties hereby agree that with the exception of attorneys fees noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Petitioner waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

4. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Petitioner 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 Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 7th day of August, 2008.

Corliss A. Rupp, M.D.

Before me, personally appeared Corliss A. Rupp, M.D., whose identity is known to me by Driver's license (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 7th day of August, 2008.

NOTARY PUBLIC

JESSICA WATKINS NOTARY PUBLIC WALTON COUNTY, GEORGIA

My Commission Expires:

APPROVED this ___ day of

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

By: Josefina M. Tamayo
General Counsel
Department of Health

M A N D A T E

DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

DCA # 3D06-1769

CORLISS A. RUPP, M.D.,

vs.

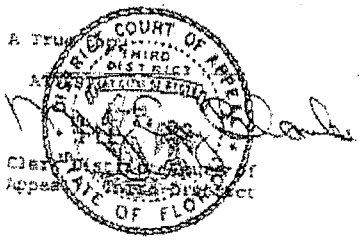
DEPARTMENT OF HEALTH,

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause in accordance with the opinion of this Court attached hereto and incorporated as part of this order, and with the rules of procedure and laws of the State of Florida.

Case No. DOAH 05-3242PL, DOH 04-35830

WITNESS, The Honorable DAVID M. GERSTEN, Chief Judge of said District Court and seal of said Court at Miami, this day August 28, 2007.



la

Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed July 18, 2007.
Not final until disposition of timely filed motion for rehearing.

No. 3D06-1769
Lower Tribunal Nos. 04-35830 & 05-3242

Corliss A. Rupp, M.D.,
Appellant,

vs.

Department of Health,
Appellee.

An Appeal from the State of Florida, Department of Health.

Hicks & Kneale, and Brett C. Powell; Michael R. Barnes, for appellant.

Philip Monte (Tallahassee), for appellee.

Before RAMIREZ, CORTIÑAS, and ROTHENBERG, JJ.

RAMIREZ, J.

Dr. Corliss A. Rupp, M.D. appeals to this Court the Florida Department of Health, Board of Medicine's Order, which imposed certain penalties on Dr. Rupp

for her failure to report timely an administrative disciplinary action taken against her in the State of Virginia. We reverse, finding that the Board's punishment is inappropriate because it punishes Dr. Rupp for failing to do something which the Order itself admits was impossible to do. Moreover, we find that the Board erred in adopting the findings and recommendations of the Administrative Law Judge's erroneous Recommended Order, without allowing Dr. Rupp the opportunity to be heard.

Dr. Rupp has twenty years experience as a medical doctor and is a practicing psychiatrist with an unblemished record. When the subject events took place, Dr. Rupp was a sole practitioner providing psychiatric care to the poor of the Florida Keys. Before moving her practice there, Dr. Rupp worked with a company providing her services on a temporary basis, which required her to become licensed in a number of states, including Virginia, Georgia and Florida. She contracted with an Atlanta-based firm, Daniel and Yeager, which was responsible for ensuring that Dr. Rupp's medical licenses remained current. Among Daniel and Yeager's responsibilities was to notify the various states in which Dr. Rupp was licensed of Dr. Rupp's address changes.

In March 2003, Dr. Rupp moved to Florida and subsequently advised the State of her change of address in April 2003. Dr. Rupp also requested that Daniel and Yeager notify the State of Virginia of this address change. However, Daniel

and Yeager failed to notify the State of Virginia of Dr. Rupp's change in address. In early 2004, Daniel and Yeager closed their Atlanta office without notifying Dr. Rupp. As of July 9, 2004, Dr. Rupp's official address on file with the Virginia Board of Medicine was 8010 Roswell Road, Suite 320, Atlanta, Georgia, 30350, which was the address of the defunct Daniel and Yeager firm.

Dr. Rupp subsequently learned that the Virginia Board of Medicine charged and convicted her in absentia of violating Virginia's statutory requirement to advise the Virginia Board of Medicine within thirty days of any address change. In its August 18, 2004 Order, the Virginia Board of Medicine concluded that Dr. Rupp failed to provide the required notification and ordered her to pay a $1,500.00 monetary penalty. Because the Virginia Board of Medicine continued to use the Daniel and Yeager address in trying to contact Dr. Rupp, Dr. Rupp was not notified of the Virginia disciplinary action until almost two months after its conclusion.

On October 11, 2004, Dr. Rupp received a letter in a plain envelope at her Florida address. The letter, dated September 22, 2004, and addressed to Dr. Rupp at the Atlanta address, was from the Virginia Compliance Unit of the Department of Health Professions referring to the Virginia Final Order. This was the first time Dr. Rupp became aware of the Virginia disciplinary action. Dr. Rupp physically did not receive notice of the disciplinary action taken against her until almost two

months after the order was entered. She provided notice to Florida's Department of Health within thirty days of the date that she received notice from Virginia.

On November 2, 2004, the Florida Board of Medicine advised Dr. Rupp that the Board was initiating an investigation into her failure to notify the Board of the Virginia disciplinary action. Dr. Rupp attended a hearing before the Administrative Law Judge to answer the Florida Board of Medicine's complaint. After the Judge entered its Recommended Order, Dr. Rupp filed a timely Response. The Response did not contain any exceptions to the Judge's findings of facts or conclusions of law, but contained legal arguments challenging the propriety of the Judge's recommended disciplinary action.

The Board held a hearing on June 2, 2006, supposedly to conduct the Board's de novo review of the record and Recommended Order in Dr. Rupp's case. Pursuant to the Board's conclusion that Dr. Rupp's Response was an exception rather than a pleading, the Board refused to allow Dr. Rupp or her counsel to address the Board regarding the propriety of the Judge's recommendations.

The Board adopted the Judge's findings of fact. The Judge's Recommended Order specifically states in paragraph 20:

> 20. Dr. Rupp physically did not receive notice of disciplinary action taken against her until almost two months after the order was entered. Therefore, she could not have notified the Department within 30 days of the date the order was entered. She did provide notice to the

Department within 30 days of the date that she received notice from Virginia.

On June 19, 2006, the Board issued its Final Order imposing a $500 administrative fine against Dr. Rupp. It further stated that a letter of concern would be issued to Dr. Rupp by the Board, and it imposed $10,118.19 in costs to be paid by Dr. Rupp within one year from the date of the Final Order. This appeal followed.

With regard to the standard of review, this Court reviews a lower court's interpretation of a statute de novo. See Romine v. Fla. Birth Related Neurological Injury Comp. Ass'n., 842 So. 2d 148 (Fla. 5th DCA 2003). Furthermore, an agency abuses its discretion when it ignores findings of fact based upon competent substantial evidence. See Strickland v. Florida A & M Univ., 799 So. 2d 276, 277 (Fla. 1st DCA 2001).

First, Dr. Rupp contends on appeal that the Judge's Recommended Order is invalid because it imposes sanctions on her for failure to take actions that the Order acknowledges were impossible to perform. We are in complete agreement with Dr. Rupp on this issue.

Florida law is clear that the law does not impose penalties upon an individual for failing to take certain actions which it is physically impossible for that individual to take. See Shevin v. Int'l Inventors, Inc., 353 So. 2d 89, 93 (Fla. 1977)(invalidating regulatory statute due to its "substantial impossibility of compliance"); Ford v. State, 801 So. 2d 318, 321 (Fla. 1st DCA

2001)("[R]equiring the state to prove *which* crime caused a defendant to flee 'would place upon the State an impossible burden to prove that one charged with multiple violations of the law fled solely because of his consciousness that he committed one particular crime.' "); Aspen-Tarpon Springs Ltd v. Stuart, 635 So. 2d 61, 67-8 (Fla. 1st DCA 1994)(finding that regulatory scheme constituted an unconstitutional taking because it prohibits landowners' use of their property unless the landowner satisfies impossible requirements); Freeman v. Freeman, 615 So. 2d 225, 226 (Fla. 5th DCA 1993)("[W]e hold that in the context of child support modification, the requirement that the change of circumstances is permanent does not require a showing that the change is forever. That would be an impossible burden because no one can testify to the future; ..."); Indian Trail Homeowners Ass'n., Inc. v. Roberts, 577 So. 2d 998, 999 (Fla. 4th DCA 1991)("...a party cannot be required to do the impossible."); Abbey Park Homeowners Ass'n. v. Bowen, 508 So. 2d 554, 555 (Fla. 4th DCA 1987)(reversing order granting injunction because "Abbey Park does not have the ability to comply with the injunction, and therefore, the injunction is improper."); Ivaran Lines, Inc. v. Waicman, 461 So. 2d 123, 125 (Fla. 3d DCA 1984) ("The law does not require the performance of impossibilities as a condition to assertion of acknowledged rights, and if a statute requires performance of something which cannot be performed, the court may hold it inoperative.").

Here, the Judge's Recommended Order is incorrect because it seeks to impose liability upon Dr. Rupp for not doing what was impossible for her to do. The Recommended Order specifically finds that Dr. Rupp should be punished for failing to do that which the Judge's own Recommended Order specifically acknowledges could not be done. The Recommended Order thus seeks to punish Dr. Rupp for non-compliance with the notification requirements of section 458.331(1)(kk), Florida Statutes, despite the fact that Dr. Rupp was physically unable to comply with these requirements. It simply defies logic that Dr. Rupp's noncompliance with the notice requirements would not be excused when she did not know, nor could she have known, that the Virginia action had taken place.

Second, Dr. Rupp contends that the Board erred in failing to conduct a de novo review of the Judge's recommended order. Dr. Rupp is correct that the Board was required to conduct a de novo review of the record in this case which, by its own admission, it did not do.

Pursuant to section 120.57, Florida Statutes (2006), the Board of Medicine is required to conduct a de novo review of the Judge's findings of fact and law in determining whether or not a recommended penalty is appropriate. See § 120.57(k), Fla. Stat. ("All proceedings conducted under this subsection shall be de novo."). The Board's admitted failure to conduct this review constitutes a material error in procedure which made it impossible for Dr. Rupp to obtain a fair hearing.

See § 120.68(7)(c), Fla. Stat. (reversal of agency decision or dismissal of case required where "[t]he fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.").[1] Furthermore, prior to the hearing, the parties were provided with "Instructions For Recommended Orders (No Exceptions)", which read as follows:

> THE PURPOSE OF THIS PROCEEDING IS TO CONSIDER THE RECOMMENDED ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IN THIS CAUSE. NO NEW EVIDENCE WILL BE ADMITTED BECAUSE THIS PROCEEDING IS NOT [sic] A DE NOVO REVIEW. IT MUST BE CONFINED TO THE RECORD TOGETHER WITH THE RECOMMENDED ORDER. THE RECORD CONSISTS OF NOTICES, PLEADINGS, MOTIONS AND RULINGS BY THE ALJ; EVIDENCE ADMITTED (THE TRANSCRIPTS AND EXHIBITS); MATTERS OFFICIALLY RECOGNIZED; EXCEPTIONS AND RESPONSES THERETO, IF ANY.

Thus, the instructions erroneously declare that the hearing is not a de novo review, while stating that the full record before the Judge would be reviewed.

Here, the Judge specifically found that it was physically impossible for Dr. Rupp to have complied with the requirements of section 458.331(1)(kk), Florida Statutes. Therefore, Dr. Rupp was entitled to present her arguments as to why this

[1] In addition, at the hearing itself, Board Chairman Dr. Zachariah clearly explained "[t]his hearing is being conducted pursuant to 120.569 and 120.57(1) of the Florida Statutes. ... No new evidence will be admitted because this is a de novo review. It must be confined to the record, together with the Recommended Order." (App. A-2, p. 4).

finding did not justify punishment. Because Dr. Rupp was entitled to a de novo review of the record in this case, and because the Board undisputedly did not conduct such a review, the Board's failure in this regard requires reversal. See § 120.68(7)(c), Fla. Stat. ("The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that ... The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure."); Dep't of Highway Safety & Motor Vehicles v. Stenmark, 941 So. 2d 1247 (Fla. 2d DCA 2006)(application of improper standard of review in administrative action constitutes a departure from the essential requirements of the law which requires reversal).

Dr. Rupp did not file "exceptions" because she recognized that the Judge's findings of law and fact were accurate, as she tried to explain at the hearing. She does not dispute the sequence and timing of events as detailed in the Recommended Order, and she does not take issue with the Judge's conclusion of law that "[s]ubsection 458.331(l)(kk), Florida Statutes, does not provide that notice must be given within 30 days of receipt of the disciplinary action, but within 30 days of the action being taken." Dr. Rupp could not have filed an "exception" to these findings and conclusions because she did not disagree with the Judge's

findings of fact or conclusions of law. As such, Dr. Rupp sought a de novo review of the Judge's recommended penalty.

It is undisputed that Dr. Rupp timely responded to the Department's motions. Therefore, there was no reason why the Board denied Dr. Rupp the opportunity to be heard at this hearing. Instead, the Board made it clear that it intended to adopt the Judge's order without conducting the required examination. Various board members refused Dr. Rupp her right to be heard on the procedural basis that her challenges were untimely filed exceptions to the Judge's findings of fact. Moreover, the Board refused to allow Dr. Rupp to be heard on the issue of the impropriety of punishing Dr. Rupp under the facts of this case. And finally, the Board decided the issue of imposing a cost judgment against Dr. Rupp without allowing Dr. Rupp any opportunity to be heard.

The Board's failure to follow its own procedure as mandated by statute denied Dr. Rupp her right to due process and resulted in an unjust punishment. See J.B. v. Dep't of Children & Fam. Servs., 768 So. 2d 1060, 1064 (Fla. 2000)(due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure before judgment is rendered); Curbelo v. Ullman, 571 So. 2d 443, 445 (Fla. 1990)(violation of the due process guarantee of notice and an opportunity to be heard renders a judgment void); Armesto v. Weidner, 615 So. 2d 707, 709 (Fla. 3d DCA 1992)(state agency violates a person's due

process rights if it ignores rules promulgated thereby which affect individual rights). Here, the Board violated Dr. Rupp's right to due process by refusing her the opportunity to present her case. See Ryan's Furniture Exch. v. McNair, 162 So. 483, 487 (Fla. 1935)("In observing due process of law, the opportunity to be heard must be full and fair, not merely colorable or illusive."); Haigh v. Planning Bd. of Town of Medfield, 940 So. 2d 1230 (Fla. 5th DCA 2006)(trial court's entry of a final judgment establishing a foreign judgment without an evidentiary hearing or trial violated judgment debtor's due process rights); Cook v. City of Winter Haven Police Dep't, 837 So. 2d 492 (Fla. 2d DCA 2003)(circuit court, acting in its appellate capacity, violated petitioners' due process rights in refusing to consider evidence presented in late-filed appendix to petition).

Because the Board failed to allow Dr. Rupp an opportunity to present her case to the Board, and instead adopted the Judge's Recommended Order without a de novo review of that order, the Board violated Dr. Rupp's right to due process. The resulting Final Order cannot stand because it imposes serious disciplinary penalties on Dr. Rupp for her failure to do what the Order itself recognizes was impossible.

In sum, given that Dr. Rupp was sanctioned for a failure to take actions which were admittedly impossible to take, we reverse the Department of Health, Board of Medicine's Final Order and remand the case for entry of judgment in Dr.

Rupp's favor, thereby disposing of this matter in its entirety and avoiding another hearing.[2] We further comment that this case has been a shocking waste of everyone's resources. Dr. Rupp is a physician with an unblemished record providing services to the poor, who took the step of hiring a firm to keep her licenses current, and yet was disciplined for not doing the impossible. The Florida Department of Health, Board of Medicine, should be encouraging other physicians to do what Dr. Rupp has been doing. The Department, after all, has the traditional mandate of providing primary medical care for the poor. It should exercise better judgment in deciding whether to file such a frivolous case and instead focus its energies on tracking down and disciplining those physicians who truly deserve punishment.

Reversed and remanded with instructions that judgment be entered in Dr. Rupp's favor.

[2] See § 120.68(7)(c), Fla. Stat. ("The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that...[t]he fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.) (emphasis supplied).