



# Florida

## Department of Highway Safety and Motor Vehicles

### *Division of Motorist Services Manufactured Housing Section*

<b>PROCEDURE:</b>  MHS - 19	<b>SUBJECT:</b>  ADMINISTRATIVE COMPLAINTS
<b>DESCRIPTION AND USE:</b>  This procedure concerns the imposition of administrative complaints against licensed manufacturers, dealers and installers and administrative actions against unlicensed installers.	

#### I. PROVISIONS OF LAW:

- A. **Mobile Home Manufacturers** - Section 320.8225(7)(g), F.S., provides that a license mobile home manufacturer must comply with the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 (currently, the National Manufactured Home Construction and Safety Standards Act) and any rules of the U.S. Department of Housing and Urban Development (HUD) promulgated thereunder.
- B. **Mobile Home Manufacturers** - Section 320.8225(8), F.S., provides that: "The department shall suspend or, in the case of subsequent offense, shall revoke any license upon a finding that the licensee violated any provision of this chapter or any other law of this state regarding the manufacture, warranty, or sale of mobile homes..."
- C. **Mobile Home Dealers** - Section 320.77(5)(g), Florida Statutes (F.S.), provides that a licensed mobile home dealer must comply with the provisions of the National Manufactured Housing Construction and Safety Act of 1974 and any rules of the U.S. Department of Housing and Urban Development (HUD) promulgated thereunder.

*Revisions to this procedure: References to Community Assistance Consultant updated to Public Safety Consultant. References to Section Supervisor updated to Field Services Manager. References to Program Supervisor updated to Program Manager. Page 9- Updated process for request for administrative complaint. Pages 17-20- Attachment A- Replaced with new example of administrative complaint. Page 21-25 - Attachment B- Replaced with new example of a final order. Page26 –29- Attachment C- Replaced with new example of stipulated agreement.*

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- D. **Mobile Home Dealers** - Section 320.77(10), F.S., provides that a licensed mobile home dealer "...may perform setup operations only as defined in s. 320.822 and the department shall provide by rule for the uniform application of all existing statutory provisions relating to licensing and setup operations."
- E. **Mobile Home Dealers** - Section 320.77(13), F.S., provides that: "The department shall as it deems necessary, either suspend or revoke any license issued hereunder upon a finding that the licensee violated any provision of this section or of any other law of this state having to do with dealing with mobile home or perpetrated a fraud upon any person as a result of such dealing in mobile homes."
- F. **Mobile Home Dealers** - Section 320.77(14), F.S., provides that: "In addition to the exercise of other powers provided in this section, the department is authorized to assess, impose, levy, and collect by legal process fines, in an amount not to exceed \$1,000 for each violation, against any licensee if it finds that a licensee has violated any provision of this section or has violated any other law of this state..."
- G. **Mobile Home Installers** - Section 320.8249(7), F.S., provides that "No person shall:
- a. Falsely hold himself or herself or a business organization out as a licensed mobile home installer.
  - b. Falsely impersonate a licensed mobile home installer.
  - c. Present as his or her own the mobile home installers license of another.
  - d. Knowingly give false or forged evidence to the department.
  - e. Use or attempt to use a mobile home installer license which has been suspended or revoked, or
  - f. Engage in the business or act in the capacity of a licensed mobile home installer or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a mobile home installer without being duly licensed."
- H. **Mobile Home Installers** - Section 320.8249(8), F.S., provides that: "Any unlicensed person who violates any of the provisions of subsection (7) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.1
- I. **Mobile Home Installers** - Section 320.8249(9), F.S., provides that: "No licensed person or applicant shall:
- a. Obtain a mobile home installers license by fraud or misrepresentation.

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- b. Be convicted or found guilty of, or enter a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of mobile home installation or the ability to practice
  - c. Violate any law or rule relating to installing, repairing, or dealing in mobile homes or any lawful order of the department.
  - d. Commit fraud or deceit in the practice of contracting.
  - e. Commit incompetence or misconduct in the practice of contracting.
  - f. Commit gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.
- J. **Mobile Home Installers** - Section 320.8249(10), F.S., provides that: "Any licensed person or license applicant who violates any provisions of subsection (9), may have any of the following disciplinary penalties imposed by the department:
- a. License revocation.
  - b. License suspension.
  - c. A fine not to exceed \$1,000 per violation.
  - d. A requirement to take and pass, or retake and pass, the department-approved examination.
  - e. Probation.
  - f. Probation subject to such restrictions of practice as the department chooses to impose.
  - g. A notice of noncompliance, or
  - h. Refusal of licensure application."
- K. **Mobile Home Installers** - Rule 15C-2.0073(6), Florida Administrative Code (F.A.C.) provides that: "Each installer who installs a mobile/manufactured home shall warrant the installation and weather sealing, including sealing the bottom board of the home to prevent air infiltration of the home for a period of twelve (12) months beginning on the date of installation."
- L. **Mobile Home Installers** - Rule 15C-2.0072(5), F.A.C., provides that any violations of the standards for installation of mobile/manufactured homes shall be investigated and appropriate action taken by the department.
- M. **Any Licensee** - Section 320.8225(9), F.S., provides that: "In addition to the exercise of other powers provided in this section, the department is authorized to assess, impose, levy, and collect by legal process fines, in an amount not to exceed \$1,000 for each violation, against any licensee if it finds that a licensee has violated any provision of this section or has violated any other law of this state..."

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### II. POLICY:

- A. It is the policy of the Division of Motorist Services (DMS) and the Manufactured Housing Section (MHS) to file an administrative complaint against any licensed mobile/manufactured home manufacturer, dealer or installer for violations of the law governing these businesses and to impose the sanctions authorized against such a licensee.
- B. Any sanctions imposed on a licensee require an administrative complaint which is a formal procedure subject to the provisions of the Administrative Procedures Act (chapter 120, F.S.).
- C. If legal violations by a manufacturer or dealer involves contractual matters (e.g., failure to transfer title or obtain registration), the complaint will be referred to the relevant regional office of the Bureau of Motor Vehicle Field Operations for administrative action.
- D. The appropriateness of situations leading to administrative action requests are, for the most part, decisions left to the discretion of the Field Services Manager, however, such decisions may also be made by the Program Manager, Bureau Chief, the hearing officer of the DMS, or the Division Director. Normally, anyone in DMS headquarters making such a determination will consult with the Section Supervisor or Section Manager.
- E. Discipline or sanctions are last resort actions used only if a licensee's cooperation or correction of conduct cannot be obtained any other way.
- F. It is the policy of the Division of Motorist Services that the least severe disciplinary action or sanctions should be used which will ensure the future cooperation of the manufacturer, dealer or installer.
- G. Theoretically, any provable violation of Chapters 319 or 320, Florida Statutes, or any rule of the Division of Motorist Services may serve as the basis for initiating administrative action. However, the use of administrative action should be tempered with an understanding of its purpose and function.
  - 1. It is to be remembered that the Manufactured Housing Section's (MHS) primary goal in complaint cases is to assist in a satisfactory resolution of complaints. Administrative action, designed to sanction manufacturers, dealers or installers who violate applicable laws or rules, is secondary in importance to resolving complaints.
  - 2. Discipline of any kind is designed to gain the cooperation of licensees

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to avoid repetition of conduct that violates the statutes or rules administered by the agency. It may be that a letter of warning/reprimand or a Uniform Traffic Citation (UTC) will serve that purpose. Failing in the first purpose, discipline is then designed to sanction a licensee for his or her violative conduct. It is always difficult to determine before-hand what will work and what will not work. In deciding whether to request administrative action against a licensee, the following factors should be considered:

- a) The nature of the violation,
- b) The seriousness of the violation,
- c) The number of previous similar violations,
- d) Any previous administrative actions,
- e) Other violations committed by the licensee,
- f) Total previous history of the licensee, and
- g) The cooperativeness of the licensee in resolving complaints, producing records, correcting problems, or the like.

### **IV. DISCIPLINARY ACTION AND SANCTIONS AVAILABLE:**

- A. There are disciplinary actions that can and should, if facts and circumstances justify, be initiated before a section supervisor requests administrative action. These include:
  1. A letter of warning/reprimand from the program manager or field services manager,
  2. Issuance of a Uniform Traffic Citation (UTC),
  3. A conference with the licensee to discuss the problems and seek a solution at the local level which may include an agreement that the licensee will submit a plan, describing how he or she intends to change business practices so as to avoid repetitions of the violations.
  4. A letter of warning/reprimand from the Director of the Division of Motorist Services.
  
- B. The statutes provide and allow for much more serious sanctions for licensees and unlicensed persons. They are as follows:
  1. Licensed manufacturer, dealer or installer:
    - a) Fine-up to \$1,000 per violation,

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- b) License Suspension-may be for a definite period of time or indefinitely,
  - c) Summary License Suspension-may be imposed by the Director in very serious cases to protect the public. This is an immediate suspension pending a request from the licensee for a hearing.
  - d) Revocation of license, and
  - e) Criminal charges against anyone who violates the provisions of the National Manufactured Housing Construction and Safety Standards Act, pursuant to section 320.831, F.S., which is a misdemeanor of the first degree.
2. Unlicensed person:
- a) Injunction, and/or
  - b) Deceptive and unfair trade practices case from the Attorney General or State Attorney.
    - (1) Cease and desist order, and/or
    - (2) For unfair and deceptive trade practice, up to \$5,000 fine per violation.
- C. The more serious administrative actions and sanctions are initiated by an **Administrative Complaint**.

### V. APPROPRIATENESS OF SANCTIONS:

A number of questions have arisen regarding the appropriateness of requesting administrative complaints in specific cases. Those questions and the answers are presented here and are to be considered only as general guidelines and “food for thought.” Field Staff, Program Managers and Field Services Managers are encouraged to carefully examine the reasoning given for each answer.

**Question: Can an administrative complaint be requested against a licensee who now has criminal charges pending against him or her?**

**Answer:** Yes, **But**...it may be more advisable to wait for the results of a trial. The fact that an individual is arrested or charged, does not mean he or she is guilty. The agency cannot take action against a license until guilt is established. Only if the agency is in possession of sufficient **proof** that the licensee has violated the provisions of Chapter 319 or 320, F.S., or the rules of the agency, should a request for administrative action be initiated before the results of the trial are known.

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**Question: Can an administrative complaint be requested against a licensee who has had an adjudication withheld in a criminal trial?**

**Answer:** Maybe! By statute and case law in Florida, one who has had an adjudication withheld has not been convicted of a crime; therefore administrative action cannot be based on any conviction. However, Compliance Examiners, Program Manager, Safety Program Consultants, and the Field Services Manager should look to other statutory provisions as a basis for taking action.

**Question: May an administrative complaint be taken even if a case does not involve consumer complaints?**

**Answer:** Yes. If violations are provable, administrative action can be taken. The case may be referred from a law enforcement agency, state attorney's office, or any other person or agency.

**Question: What happens when a licensee goes out of business during an administrative complaint case?**

**Answer:** Since revocation of a license is the ultimate penalty the agency can impose, and because the agency no longer has regulatory jurisdiction once a licensee goes out of business, it is the policy and practice of the MHS to close the case. The agency retains the right to seek criminal charges against the licensee but this authority is only used sparingly and is reserved for extremely serious violations. In addition, it should be noted that if a fine is imposed against a licensee who then goes out of business, the agency has the right to file an action in circuit court to compel payment of the fine. This action is also used sparingly. Any former licensee who went out of business owing the agency fine money would not be considered for re-licensure under any circumstances unless the outstanding fine is paid.

**Question: Can administrative complaint be taken upon finding that a licensee is not keeping records or not keeping good records?**

**Answer:** Yes. The Records Inspection Rule provides that if problems are not corrected, a request for administrative action may be initiated.

**Question: Can a request for administrative complaint be initiated at the same time or right after a letter of warning/reprimand has been sent to a licensee?**

**Answer:** Yes, But...the purpose of the letter of warning/reprimand is to encourage the future cooperation of the licensee. If sending the letter was thought to be the best course of action to follow at the time, it is suggested that the licensee be given the opportunity to comply before seeking administrative action. If administrative action was justified, there was no need to send the letter of warning/reprimand.

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**Question: May an administrative complaint be initiated before the licensee is sent a letter of warning for a violation?**

**Answer:** Yes. The nature and seriousness of the violation(s), previous violations, previous administrative actions, degree of cooperativeness and all other facts and circumstances must be considered in any decision to issue a letter of warning/reprimand, a UTC, request administrative action or seek any other disciplinary solution or sanction.

**Question: Are there a minimum number of letters of warning/reprimand which must be issued to a licensee for similar violations before a request for administrative complaint may be initiated?**

**Answer:** No.

**Question: Is it true that an administrative complaint may only be initiated on violations that occur during the current license year?**

**Answer:** No. But it doesn't make sense to wait a year or two after the last violation before submitting a request for administrative action. If transactions dating back two or three years are part of a pattern of violations by the licensee, they may be used as a basis for and a part of an administrative case.

### **VI. INITIATING A REQUEST FOR ADMINISTRATIVE COMPLAINT:**

A. A request for administrative complaint may be initiated from a regional office, MHS headquarters office or DMS headquarters.

A request shall include:

1. A Request for Administrative Complaint Cover Memo which briefly summarizes the violations of law that the licensee is responsible for and recommends an administrative action such as a fine or Summary Suspension of the license. The memo should include the licensee name, address, and license number.
2. An investigative report on form HSMV-81030, the form used by the MHS for mobile/manufactured home construction defects investigations; HSMV-81411, the form used for installer investigations, or HSMV-81410, the form used by Bureau of Motor Vehicle Field Operations (BMVFO); and

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3. All supporting materials and exhibits documenting the investigative results.
- B. Requests for administrative complaint shall be sent from the Safety Program Consultant to the Field Services Manager responsible for the applicable program who will review the file for completeness and appropriateness of the action requested and, when satisfied the file is ready for processing, will forward it to the Government Operations Consultant in the Office of General Counsel. This section will prepare the administrative complaint for the signature of the division director.

### **VII. PROCESSING REQUESTS FOR ADMINISTRATIVE COMPLAINT:**

- A. Upon receipt at the Office of General Counsel in the office of the hearing officer, the request will immediately be assigned a sequential case number with a fiscal year prefix (e.g. 99-29) and a case file will be opened. The regional office will be informed of the case number assigned.
- B. The licensees file will be removed from the general file and placed in a pending status where it will remain until final disposition of the administrative complaint case, so that any inquiries will reflect that the file is with the division director's designee.
- C. The case will then be reviewed. The review consists of reading the case file and determining:
1. If the file is complete – have all facts been gathered? Are there any unanswered questions? Are all supporting documents attached and do they support the facts contained in the investigative report?
  2. The number of violations alleged in the investigation.
  3. The nature and seriousness of the violations.
  4. Previous administrative actions against the licensee.
  5. Previous complaint history of the licensee.
  6. The degree of cooperation shown by the licensee in the investigation.
- D. If the file is incomplete, if questions have not been answered, or if documentation is incomplete, the regional office will be contacted by telephone or mail with a request for

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the additional information or for further investigation. In either case, the region must respond as soon as possible but, in no case, longer than 30 days. Any case held open for 30 days awaiting additional information or investigation will be closed.

- E. If, after a discussion with the Section Supervisor, it is determined that the case does not warrant further action, the case will be closed.
- F. If, after a discussion with the Section Supervisor, it is determined that the case does not warrant issuance of an administrative complaint but does warrant a letter of reprimand from the Division Director, such a letter will be prepared for the Director's review and signature. Once signed and mailed, a copy will be put in the licensee's license file. The regional office will be copied and the case will be closed.
- G. If the case involves a series of minor violations which have been resolved, but the Section Supervisor believes that a fine will encourage the licensee to be more careful and not repeat the same violations, the Section Supervisor may, when requesting an administrative complaint, request that the director issue a Notice of Intent to Impose Administrative Sanctions. This document is a form of discipline that provides the licensee an opportunity to settle the disciplinary request by paying a fine. If the licensee agrees, he or she signs the form and pays the fine. Instead of agreeing, the licensee may request a hearing (described later).
- H. If the facts warrant further action, an administrative complaint will be prepared and submitted to the Director for review and signature (**see Attachment A on page 17**). An administrative complaint is a legal document containing three parts;
  - (1) the specific actions alleged to have been committed by the licensee,
  - (2) the specific statutes and rules violated and
  - (3) the notification of the licensee's rights to a hearing. This document is signed by the division director.
- I. If the case revolves around such serious violations that to allow the licensee to continue in business while awaiting a hearing on the charges may be detrimental to the welfare of the public, the Director may require that the administrative complaint be accompanied by an Order of Summary Suspension which immediately suspends the licensee's right to do business pending the outcome of a hearing and the issuance of a final order. Orders of Summary Suspension are issued very sparingly and only in cases where allowing the licensee to remain in operation may cause irreparable harm (loss of money) to the public who may continue to purchase homes from the manufacturer or dealer or have homes installed by the installer involved. Most such cases involve fraudulent practices, such as when a dealer diverts purchase money that is supposed to be used to pay off a lien or "floor-plan" and consequently does not transfer title. In the case of installers, the public would be at risk by having homes installed improperly.

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- J. Once signed, a copy of the administrative complaint is sent to the licensee by certified mail. The original is always kept with the case file. Copies are also sent to the regional office, the Section Supervisor or Section Manager and to the licensee file. Occasionally a copy will be sent to the Office of General Counsel and occasionally a copy will be sent to a complainant whose case is still active. If later acquired information shows that the licensee never received the certified mail, a copy of the complaint will be hand delivered by a compliance examiner or community assistance consultant if possible.
  
- K. A licensee named in an administrative complaint is given twenty-one days from **receipt** of the complaint in which to request a hearing. If no request is received in that time period, a final order is prepared for the Director's review and signature. The order will be based on the totality of information available to the agency, which is generally that information contained in the investigative file and the administrative complaint.
  
- L. Within the twenty-one day period, the licensee may request a hearing which will not dispute the facts or a hearing in which the licensee intends to dispute the facts.
  
- M. If the licensee notifies the Director of the selection of a **hearing in which he will not dispute the facts**, such a hearing will be scheduled by the division's hearing officer. Such hearings are normally held in the regional office serving the licensee's location. When scheduled, the licensee will be sent a Notice of the hearing by certified mail which informs him or her of the date, time and place of the hearing.
  
- N. A hearing where there is no dispute of facts generally takes the form of an informal discussion during which the licensee is given the opportunity to explain his or her side of the issues and explain extenuating circumstances raised in the complaint. Rules of evidence and procedure are normally not followed. Informal hearings generally last one to two hours. Upon conclusion of the hearing, the hearing officer will draft a final order for the Director's review. This draft is based on the hearings officer's recommendations.
  
- O. If the licensee requests a **hearing to dispute the facts**, the entire case file is copied and, with a transmittal letter, is sent to the Division of Administrative Hearings (DOAH), a division of the Department of Management Services. That division assigns an administrative law judge to the case. The administrative law judge schedules the hearing and presides over it. The hearing is formal in nature like a court trial. Rules of evidence and procedures are closely followed. A court reporter is present for the proceedings. Both the licensee and the agency are normally represented by attorneys. The Office of General Counsel of the Department represents the Division of Motorist Services in a prosecutorial role. When the hearing is concluded, the DOAH hearing officer has 90 days in which

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to prepare and submit a Recommended Order to the agency including the recommended penalty, if any. All parties are then given 10 days in which to file exceptions to the recommended order after which the Director of the Division of Motorist Services issues a final order. The DMS Director may disagree with the recommended order but must have justifiable grounds for doing so if the final order is challenged. In general, requests for DOAH hearings are fairly rare.

- P. The final order (**see Attachment B on page 21**) issued by the director, whether resulting from a formal or an informal hearing, may provide any one or a reasonable combination of the following findings and orders:
1. That the licensee **did** commit all or some of the violations alleged in the administrative complaint.
  2. That the licensee **did not** commit the violations alleged in the administrative complaint.
  3. That the licensee **did** commit all or some of the violations alleged in the administrative complaint **but** there existed mitigating circumstances which explained the reasons for the violations and which were acceptable to lessen the penalty.
  4. A dismissal of the case.
  5. A reprimand and dismissal of the case.
  6. A fine.
  7. Submission of a plan or letter describing how the licensee intends to avoid repetitions of the violations.
  8. A suspension for a definite period of time.
  9. A revocation of the licensee's license.
- Q. When a final order is written, all fines and plans are deliverable to the Program Supervisor of the region in which the licensee is located except fines of installers which are deliverable to the Section Supervisor of the Installer Section. This is designed to strengthen the relationship between the licensee and the regional office. All fines are payable and all plans must be submitted within 30 days of the date of the final order. Final orders issued by the Director further provide that if a fine is not paid and/or a plan submitted within 30 days, the licensee's license is automatically suspended until such time as the fine is paid and/or the plan is submitted. If there is still no compliance with the final order after 60 days, the licensee's license is revoked without further notice. The regional office and all other affected parties are copied with the final order.

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- R. Final orders resulting from either type of hearing are appealable to the District Courts of Appeal in Florida. Final orders contain a statement notifying the licensee that the order may be appealed. Final orders do not truly become final until the time for appeal has passed. If an appeal is filed, the final order is most often put on hold until disposition of the appeal. There are exceptions. The agency has the discretion to request the court of appeals not to “stay” the agency’s final order because of the potential damage the licensee could still cause the public while the appeal is pending.
  
- S. In some cases after a licensee has asked for a hearing, the attorney representing the licensee will contact the agency and ask what would be necessary to settle the case. As a result of negotiations, the licensee and the department may agree on a resolution which can involve any of the penalties described previously. In addition, the agreement may provide that the licensee voluntarily relinquish his or her license and/or agree not to apply to be a manufacturer, dealer or installer in this state for a specific period of time or ever again. The document resulting from the settlement is called a Stipulated Final Order or Consent Final Order (**see Attachment C on page 26**).
  
- T. Copies of administrative complaints accompanied by a summary suspension and copies of all final orders containing suspensions or revocations are to be immediately given to the Dealer License Section in the Bureau of Motor Vehicle Field Operations to enable the appropriate information to be entered in the Dealer License Data Base or, in the case of manufactured home installers to the Installers License Section of the bureau.
  
- U. The procedures described above may appear to be time consuming and troublesome but, since the agency’s authority to issue and cancel licenses affects an individual’s business and livelihood, it is extremely important that all opportunities for due process are afforded the licensee.

### VIII. FOLLOW-UP ON FINAL ORDERS - REGIONAL OFFICE RESPONSIBILITIES:

- A. Each regional office is responsible for monitoring the final orders affecting licensees in its region.
  
- B. When civil fines are paid through a regional office, the region shall retain a photocopy of the check and forward the original, with a transmittal memo, by certified mail, to the division director or his designee at DMS headquarters. The payment will then be processed through the Bureau of Accounting, Division of Administrative Services.

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- C. If a plan is submitted by a licensee and is received in a regional office, the region shall retain the original and send a copy, with a transmittal memo, to division's hearing officer for inclusion in the administrative case file.
- D. In the case of suspensions or revocations of manufactured home dealer licenses, staff in the relevant Bureau of Motor Vehicle Field Operations (BMVFO) regional office shall pick up the licensee's license, dealer plates and all temporary tags in the dealer's possession. In case of a revocation, a refund request shall be processed for the temporary tags, if applicable. The BMVFO regional office shall ensure that the dealer ceases and desists doing business on the effective date of the suspension or revocation and shall notify the appropriate tax collectors' office(s) to stop accepting title and registration transactions from the dealer. In the case of manufacturer or Installer license revocation staff of the MHS shall pick up the licenses.
- E. In the case of an indefinite suspension resulting from a failure of a licensee to pay a civil fine or submit a plan in a timely manner, the region may return all items and reinstate the licensee's right to conduct business upon the payment of the fine and/or submission of the plan.
- F. A suspended dealer license picked up by a regional office shall be retained in the regional office but a memo shall be sent to the Dealer Licenses Section in DMS headquarters immediately after the license is obtained giving the dealer's name, address and license number and the period of suspension. The memo will be put in the dealer's license file. A copy is also to be sent to the division's hearing officer for inclusion in the administrative case file. A suspended manufacturer license shall also be sent to the Dealer Licenses Section. A suspended installer license shall be sent to the Installer Section in MHS headquarters.
- G. When a revoked license is picked up, it shall be sent to the Dealer Licenses Section or Installer Section, as applicable by the regional office with a transmittal memo. A copy of the memo is to be sent to the division's hearing officer.

### **IX. REQUESTS FOR ACTION AGAINST UNLICENSED PERSONS:**

- A. It is the policy of both the division and the bureau that any person, firm, business or organization who is unlicensed and who is buying, selling, offering for sale or dealing in motor vehicles, mobile homes, or recreational vehicles under conditions which would require such person, firm, business or organization to be licensed, shall be thoroughly investigated. The bureau does have jurisdiction to pursue several courses of action including the filing of an injunction against such unlicensed person and/or the filing of a deceptive and unfair trade practices case under the provisions of Part II, Chapter 501, Florida Statutes. In such cases, if an investigation reveals that a person is engaging in the business of dealing in motor vehicles, mobile homes, or recreational vehicles without a

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license, an investigative report shall be prepared. When such document is forwarded to division director or his designee, a determination will be made whether to seek an injunction to prevent the individual from continuing to engage in such business and/or prepare a case based on deceptive and unfair trade practices. Injunctions against unlicensed mobile/manufactured home dealers are generally requested by the BMVFO. Injunctions against mobile/manufactured home manufacturers or installers are generally requested by the MHS.

- B. An injunction is a judicial command to an individual to cease and desist an activity. One who violates an injunction will be held in contempt of court. A request for an injunction against an unlicensed mobile home manufacturer, dealer or installer initiated at a regional level, shall be presented to bureau headquarters in the same manner as a request for administrative complaint. The request must be based on a thorough investigation and report.
  
- C. Requests for injunctions and the associated investigative reports are sent to the Bureau Chief who, upon approval, forwards them to the office of the department's general counsel. The general counsel's office prepares the paperwork necessary to request an injunction from a circuit court. The complaint is then filed with the clerk of court with a check issued by the department for payment of the filing fee. Once the complaint is filed, it will be taken to the sheriff's department. The defendant (unlicensed person) then has 20 days in which to file an answer to the complaint and request a hearing. If the defendant fails to answer within the specified time, the agency, through the Office of General Counsel, will file a Motion for Default and ask the court to enter a Default Judgment which is the injunction.
  
- D. If the defendant requests a hearing, the court will schedule one. A trial will be held and the judge will either dismiss the case or issue the injunction.
  
- E. Enforcement of an injunction is the responsibility of the court but the region must continually monitor the situation to ensure that the defendant has ceased doing business. Violations of the injunction are to be reported to the division hearing officer on an investigative report form.
  
- F. A deceptive and unfair trade practices case may also be prepared by the office of the department's General Counsel in headquarters. It will involve the submission of a completed investigative report and all supporting documents to the state attorney in the judicial circuit in which the violations are occurring or have occurred. Upon review by the state attorney's office, a determination will be made whether or not to file a case. If a determination is made not to pursue action at that level, or if no action is taken by the state attorney's office within ninety days, or if the state attorney's office will provide a letter indicating that they do not intend to pursue action, or, if the violations involve more than one

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judicial circuit in the state, the case shall be referred back to the division director or his designee as soon as possible. The hearing officer will then contact the Consumer Section, Economics Crime Litigation Unit in the Office of the Attorney General. A determination will then be made if the case will be processed at that level seeking civil action for deceptive and unfair trade practices. Civil remedies in these cases may include cease and desist orders and fines up to \$5,000 per violation.

- G. The general counsel's office may also prepare a request for criminal prosecution by the Florida Highway Patrol, local law enforcement agency or state attorney. For example, an unlicensed mobile/manufactured home installer is guilty of a misdemeanor of the first degree pursuant to section 320.8249(8), F.S.

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**ATTACHMENT A  
EXAMPLE ADMINISTRATIVE COMPLAINT**

**STATE OF FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES  
DIVISION OF MOTORIST SERVICES**

**DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES,  
DIVISION OF MOTORIST SERVICES**

**Petitioner,**

**Case No.: MS-15-9999  
License No.: IH-9025999**

**v.**

**JOSEPH M. SMEDLEY**

**Respondent.**

\_\_\_\_\_ /

**ADMINISTRATIVE COMPLAINT**

Petitioner, the Department of Highway Safety and Motor Vehicles, Division of Motorist Services, files this Administrative Complaint against, Joseph M. Smedley, Respondent, and alleges:

1. Petitioner is the state agency charged with regulating the business of mobile home installation pursuant to section 20.24 and chapter 320, Florida Statutes, and Rules 15C-1, 15C-2, and 28-106.2015, Florida Administrative Code.
2. Respondent is, and has been at all times material hereto, a licensed mobile home installer in the State of Florida, having been issued license number IH-9025999. The address of record is 999 50<sup>th</sup> Street, Plant City Florida 33565.
3. Section 320.8249(9)(c), Florida Statutes, states in part, a licensed person may not violate any law or rule relating to installing, repairing, or dealing in mobile homes.
4. On or about January 6, 2015, Rick Longbrake, Division of Motorist Services Safety Program Consultant, inspected a mobile home respondent installed for CWMV, Ltd. at 2715 Pantucket Drive, Tarlton, Florida.

**MANUFACTURED HOUSING SECTION**

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5. At the time of his inspection, Mr. Longbrake noted the following violations:
- a. No Installer decal was affixed to this home, the home was completely installed and signed off by the County, in violation of Rule 15C-2.0073(7)(d), Florida Administrative Code;
  - b. One or more loose mating line piers, need shimmed tight, in violation of Rule 15C-1.0103(1)(b), Florida Administrative Code;
  - c. Gaps between the mating line floors exceed 1/2" and there are no shims installed, in violation of Rule 15C-1.0102(1), Florida Administrative Code;
  - d. Mating line roof close-up incorrect. The felt paper across the ridge and metal flashing is located between the cut caps and last course of shingles. Suspect the last courses of shingles are bent down between the two halves creating a gap, in violation of Rule 15C-2.0073(6), Florida Administrative Code;

6. Based on the foregoing, Respondent violated section 320.8249(9)(c), Florida Statutes, through a violation of section 320.8249(13), and Rule 15C-2.0073(7)(d), Florida Administrative Code by failing to affix the installation decal to the manufactured home or mobile home prior to installation, and by violating the installation standards contained in Rules 15C-1.0102 to 15C-1.0104, Florida Administrative Code.

**EXPLANATION OF RIGHTS**

You have the right to request a hearing to be conducted in accordance with sections 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(s) and subpoena(s) duces tecum issued on your behalf if a hearing is requested. In response to the allegations set forth above, you must make one of the following elections and file your response within 21 days from the date of your receipt of this Administrative Complaint.

**MANUFACTURED HOUSING SECTION**

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Please make your election on the enclosed Election of Rights form and ensure that the Department receives it within 21 days.

1. If you **admit** the material fact(s) alleged in this Administrative Complaint, you may request a hearing, pursuant to section 120.57(2), Florida Statutes, before the Division of Motorist Services Hearing Officer. At this hearing, you would be given an opportunity to challenge the conclusions of law and/or present written and/or oral evidence in mitigation of any proposed penalty. A request for this type of hearing, in which no material facts are in dispute, should be directed to the Office of the General Counsel by checking the appropriate space, marked as "1" on the Election of Rights form, and ensuring that the Department receives it within 21 days from the date of your receipt of this Administrative Complaint.

2. If you **dispute** any material fact alleged in this Administrative Complaint, you must present sufficient evidence of your dispute and you may request a hearing, pursuant to section 120.57(1), Florida Statutes, at the Division of Administrative Hearings before an Administrative Law Judge. A request for this type of evidentiary hearing, in which material facts are in dispute, should be directed to the Office of the General Counsel by checking the appropriate space, marked as "2" on the Election of Rights form, **specifying the material allegations of fact you are disputing -- a general denial is not sufficient --** and ensuring that the Office of the General Counsel receives it within 21 days from the date of your receipt of this Administrative Complaint. If you elect an evidentiary hearing, you must keep the Office of the General Counsel informed of your current mailing address; failure to do so may be considered a waiver of your right to an evidentiary hearing.

3. If you wish to **settle this matter now**, indicate this by checking the appropriate space, marked as "3" on the Election of Rights form, and ensure that the Department receives it, the signed Settlement Stipulation, and any required check made payable to the Division of Motorist Services within 21 days from the date of your receipt of this Administrative Complaint.

In the event you fail to file your election in this matter with the Department within 21 days from your receipt of this Administrative Complaint, **your failure may be considered a waiver of your right to dispute the alleged facts and the Department may proceed to enter a Final Order based upon the allegations contained in the Administrative Complaint.**

Pursuant to section 120.573, Florida Statutes, mediation is not available for this proceeding.

WHEREFORE, the Department hereby gives notice of its intent to enter an Order imposing one or more of the following penalties: revocation or suspension of Respondent's

**MANUFACTURED HOUSING SECTION**

<b>Subject:</b> ADMINISTRATIVE COMPLAINTS	<b>Procedure #</b> MHS-19	<b>Page #</b> Page 20 of 29
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license, imposition of an administrative fine, placement of Respondent on probation, imposition of testing requirements and/or any other relief deemed appropriate.

  
\_\_\_\_\_  
Danielle M. Roth  
Assistant General Counsel  
Department of Highway Safety and  
Motor Vehicles  
Neil Kirkman Building, Room A430  
Tallahassee, Florida 32399  
Telephone: (850) 617-3006  
Fla. Bar No.: 91628

Filed in the official records of the  
Division of Motor Vehicles  
This 19<sup>th</sup> day of February, 2015.

DMR:bab

Copies furnished:

Cathy Griner, Highway Safety Specialist  
Division of Motorist Services

James McGowan, Field Service Manager  
License Installer Program

By certified mail to:

Joseph M. Smedley  
999 50<sup>th</sup> Street  
Plant City, Florida 33565

**MANUFACTURED HOUSING SECTION**

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**ATTACHMENT B  
EXAMPLE OF A FINAL ORDER**

**STATE OF FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES  
DIVISION OF MOTORIST SERVICES**

**FINAL ORDER NUMBER: HSMV-15- 9999 -FOI-MS**

**DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES, DIVISION  
OF MOTORIST SERVICES**

**Petitioner,**

**Case No.: MS-15-9999**

**License No.: IH-9025999**

**v.**

**JOSEPH M. SMEDLEY**

**Respondent.**

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**FINAL ORDER**

Administrative Hearing Officer, Lorinna Metro conducted the administrative hearing of this case on March 4, 2015, on behalf of the Department of Highway Safety and Motor Vehicles, Division of Motorist Services, pursuant to the Respondents request for a hearing pursuant to section 120.57(2), Florida Statutes.

**STATEMENT OF THE ISSUES**

The issues presented are whether there are aggravating or mitigating circumstances involved in the violations contained in the Administrative Complaint.

**PRELIMINARY STATEMENT**

On January 9, 2015, Petitioner, Division of Motorist Services, filed an Administrative Complaint which was served on Respondent on January 14, 2015. Respondent filed an Election of Rights denying the allegations of fact in the Administrative Complaint and requested a 120.57(2) Administrative Hearing before an Administrative Law Judge. Because Respondent did not provide proof of facts disputed, the Department entered an Order Denying Request for Evidentiary

**MANUFACTURED HOUSING SECTION**

<b>Subject:</b> ADMINISTRATIVE COMPLAINTS	<b>Procedure #</b> MHS-19	<b>Page #</b> Page 22 of 29
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**ATTACHMENT B  
EXAMPLE FINAL ORDER**

Hearing and Notice of Hearing. Based upon said order for hearing, a telephonic hearing, pursuant to section 120.57(2), Florida Statutes, was conducted on March 4, 2015, at the Division of Motorist Services Office, Tampa, Division of Administrative Hearings, Fort Pierce, and Division of Motorist Services Headquarters, Tallahassee.

At the hearing, Petitioner presented the testimony of Ronnie Crum, Engineer IV and James McGowan, Field Service Manager. Respondent presented testimony of Joseph Smedley. Four documents were admitted into evidence.

**EVIDENCE RECEIVED**

MS-1	Administrative Complaint
MS-2	Proof of service by certified mail
MS-3	Election of Rights
MS-4	Facsimile

**FINDINGS OF FACT**

1. Petitioner is the state agency charged with regulating the business of mobile home installation pursuant to section 20.24 and chapter 320, Florida Statutes, and Rules 15C-1, 15C-2, and 28-106.2015, Florida Administrative Code.

2. Respondent is, and has been at all times material hereto, a licensed mobile home installer in the State of Florida, having been issued license number IH-9025999. The address of record is 999 50<sup>th</sup> Street, Plant City, Florida 33565.

3. Ronnie Crum, Engineer IV testified that on September 4, 2014 he conducted an inspection of a home installed by Respondent. Mr. Crum further testified that he found ten code violations. Mr. Crum further testified that he drafted a report of his inspection.

**MANUFACTURED HOUSING SECTION**

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**ATTACHMENT B  
EXAMPLE OF A FINAL ORDER**

Mr. Crum further testified that on October 23, 2014, he re-inspected the home in question and six of the ten violations had not been corrected.

4. James McGowan, Field Services Manager testified that Mr. Smedley was the contractor of record for the home inspected and that it is the contractor's responsibility to ensure that all codes of mobile home installations are in compliance with Florida Statutes. Mr. McGowan further testified that a total of five letters were sent to the Respondent regarding the violations contained in the Administrative Complaint dated January 9, 2015. Mr. McGowan further testified that four inspections were done on the home initially inspected by Mr. Crum on September 4, 2014, before all violations were corrected.

5. Respondent testified that he understands that he is responsible for insuring that all codes are in compliance.

6. Respondent further testified that he will have meetings with the supervisors of his set up crews to ensure they understand what caused the code violations so as to correct these issues in the future.

**CONCLUSIONS OF LAW**

7. Petitioner is the agency responsible for disciplinary enforcement of the laws regulating mobile home installers pursuant to section 320.8249, Florida Statutes. Respondent is a licensed mobile home installer subject to the proposed disciplinary action pursuant to section 320.8249, Florida Statutes.

8. The Division of Motorist Services has jurisdiction over the parties and the subject mater of this proceeding pursuant to section 120.569, 120.57(1) and 120.52(2), Florida Statutes. The Division of Motorist Services provided the parties adequate notice of the administrative hearing.

**MANUFACTURED HOUSING SECTION**

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**ATTACHMENT B  
EXAMPLE OF A FINAL ORDER**

Accordingly, it is

**ORDERED** and **ADJUDGED** that

1. Respondent shall be placed on probation for a period of six months from the date of this Final Order. If at any time during the six month probationary period Respondent violates any provision in chapter 320, Florida Statutes, and Rules 15C-1 and 15C-2, Florida Administrative Code, regarding mobile home installation, Respondent's mobile home installer license shall be suspended for a period of thirty (30) days for the first violation and a period of sixty (60) days for a second violation.

2. Respondent shall pay an administrative fine in the amount of \$750.00 (seven hundred fifty dollars), to be paid on or before April 30, 2015, by returning a copy of the order with payment to:

Department of Highway Safety and Motor Vehicles  
Office of the General Counsel  
2900 Apalachee Parkway, Room A432, MS-2  
Tallahassee, Florida 32399

3. If Respondent fails to pay in full the fine in paragraph two above, by April 30, 2015, Respondent's mobile home installer license shall be suspended until such time as the fine is paid or until May 30, 2015. In the event the administrative is not paid on or before May 30, 2015, Respondent's mobile home installer license shall be revoked without further notice.

4. If the Department suspends or revokes Respondent's mobile home installer's license for non-payment as specified in paragraph three, said suspension or revocation shall be without recourse to the Respondent and Respondent hereby expressly waives any right to appeal or otherwise contest the suspension and revocation.

MANUFACTURED HOUSING SECTION

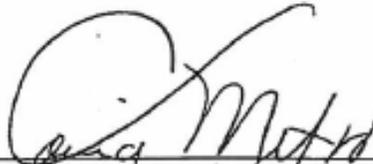
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ATTACHMENT B  
EXAMPLE OF A FINAL ORDER

DONE AND ENTERED this 9<sup>th</sup> day of March, 2015, in Tallahassee, Leon County,  
Florida.

Filed in the official records of the Division of  
Motorist Services this 9<sup>th</sup> day of March,  
2015.

Nalini Vinayak  
Nalini Vinayak, Dealer License Administrator

  
Lorinna Metro, Certified Hearing Officer  
Department of Highway Safety  
And Motor Vehicles  
1299 West Lantana Road  
Lantana, Florida 33462

Copies furnished:

James McGowan  
Program Manager  
Mobile Home Installer Program

Joseph M. Smedley  
999 50<sup>th</sup> Street  
Plant City, Florida 33565

NOTICE OF APPEAL RIGHTS

Judicial review of this order may be had pursuant to section 120.68, Florida Statutes, in the District Court of Appeal for the First District, State of Florida, or in any other district court of appeal of this state in an appellate district where a party resides. In order to initiate such review, one copy of the notice of appeal must be filed with the Department and the other copy of the notice of appeal, together with the filing fee, must be filed with the court within thirty days of the filing date of this order as set out above, pursuant to Rule 9.110, Rules of Appellate Procedure.

LM/wev

**MANUFACTURED HOUSING SECTION**

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**ATTACHMENT C  
EXAMPLE STIPULATED AGREEMENT**

**STATE OF FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES  
DIVISION OF MOTORIST SERVICES**

**DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES,  
DIVISION OF MOTORIST SERVICES,**

**Petitioner,**

**Case No.: MS-15-035  
License No.: IH-9025999**

**v.**

**JOSEPH M. SMEDLEY**

**Respondent.**

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**SETTLEMENT STIPULATION**

Joseph M. Smedley, hereinafter referred to as "Respondent," and the Department of Highway Safety and Motor Vehicles, Division of Motorist Services, hereinafter referred to as "Department," hereby stipulate and agree to the following joint Settlement Stipulation and Final Order of the Department incorporating this Settlement Stipulation in the above-styled matter.

**STIPULATED FACTS**

1. For all times pertinent hereto, Respondent was licensed as a mobile home installer in the State of Florida, having been issued license number IH-9025999.
2. Respondent was charged by an Administrative Complaint, filed by the Department and properly served upon Respondent, with violations of section 320.8249, Florida Statutes and the rules enacted pursuant thereto.
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

**MANUFACTURED HOUSING SECTION**

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**ATTACHMENT C**  
**EXAMPLE STIPULATED AGREEMENT**

**STIPULATED CONCLUSIONS OF LAW**

1. Respondent, in its capacity as a licensed mobile home installer, admits that in such capacity it is subject to the provisions of section 320.8249, Florida Statutes, the rules enacted pursuant thereto, and the jurisdiction of the Department.

2. Respondent admits that the facts set forth in the Administrative Complaint filed in this matter, if proven, constitute violations of section 320.8249, Florida Statutes, as alleged in the Administrative Complaint.

**STIPULATED DISPOSITION**

1. Respondent shall not in the future violate section 320.8249, Florida Statutes, and the rules promulgated pursuant thereto.

2. Respondent must satisfy, resolve and bring into compliance all issues, which are the subject of the current Administrative Complaint on or before the date specified in the Final Order entered herein.

3. Due to the severity of the violations, Count One Item 5-c and Count Two Item 7-b, which demonstrates repeated negligence on the part of the Respondent. Also, to the lack of response to Department correspondence in reference to the violations, the Respondent shall pay an administrative fine of **Two Thousand Two Hundred and Fifty dollars (\$2,250.00)**, on or before the date specified in the Final Order entered herein.

4. It is expressly understood that this Settlement Stipulation has no force and effect until the Department enters a Final Order adopting same.

5. If Respondent satisfies the outstanding complaint referred to in paragraph two above and pays the amount specified in paragraph three above within the specified time frame,

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**ATTACHMENT C**  
**EXAMPLE STIPULATED AGREEMENT**

the Department will impose no further penalties or sanctions against Respondent. However, if Respondent fails to satisfy the outstanding complaint specified in paragraph two above, or fails to pay the amount specified in paragraph three above, or both, within 30 days of the entry of the Final Order, on the 31<sup>st</sup> day following the entry of the Final Order, Respondent's mobile home installer license will be automatically suspended and Respondent will cease to do business as a mobile home installer.

6. If after suspension, Respondent satisfies the outstanding complaint specified in paragraph two above and pays the amount specified in paragraph three above, within 30 days following the date of suspension, its mobile home installer license will immediately be reinstated without further penalties or sanctions. However, if Respondent fails to satisfy the outstanding complaint or fails to pay the amount due, or both, by the 30<sup>th</sup> day following the date of suspension, on the 31<sup>st</sup> day following the date of suspension Respondent's mobile home installer license shall be revoked by the Department without further notice.

7. If the Department suspends or revokes Respondent's mobile home installer license for not satisfying the outstanding complaint or non-payment, or both, as specified in paragraph five and six above, said suspension or revocation shall be without recourse to the Respondent and Respondent hereby expressly waives any right to appeal or otherwise contest the suspension or revocation.

8. Respondent and the Department fully understand that this Settlement Stipulation, and the subsequent Final Order incorporating same, will not in any way preclude additional proceedings by the Department against Respondent for acts or omissions not specifically detailed in the Administrative Complaint filed in this matter.

**MANUFACTURED HOUSING SECTION**

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**ATTACHMENT C**  
**EXAMPLE STIPULATED AGREEMENT**

9. Respondent and the Department expressly waive all further procedural steps and Respondent expressly waives all rights to seek judicial review of or otherwise challenge or contest the validity of this Settlement Stipulation and the Final Order of the Department.

10. Respondent waives the right to see any attorney's fees or costs from the Department in connection with this administrative hearing.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2015

Signed this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Nalini Vinayak, Program Manager  
Bureau of Issuance Oversight

\_\_\_\_\_  
Joseph M. Smedley  
Respondent

SIGNED this \_\_\_\_\_, day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Damaris E. Reynolds  
Assistant General Counsel  
Florida Bar #37176  
Department of Highway Safety and  
Motor Vehicles  
  
Attorney for the Petitioner