

>> THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION.

PLEASE BE SEATED.

>> THE COURT WILL NOW CONSIDER  
THE THIRD CASE ON TODAY'S DOCKET  
AND THE AGENCY FOR HEALTHCARE  
ADMINISTRATION, THE CLEVELAND  
CLINIC AND ACCIDENT CLINIC.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT.

MY NAME IS TRACY GEORGE AND I  
REPRESENT THE AGENCY FOR  
HEALTHCARE ADMINISTRATION, THE  
APPELLATE IN THIS CASE.

I WOULD LIKE TO TAKE 5 MINUTES  
TO THE DEPUTY SOLICITOR GENERAL  
WHO REPRESENTS THE DOMINICA  
STATE OF FLORIDA.

THE QUESTION BEFORE THE COURT IS  
WHETHER THE FINAL ORDER DEEMING  
A LICENSURE RENEWAL APPLICATION  
INCOMPLETE AND WITHDRAWN FROM  
FURTHER CONSIDERATION IS AN  
AGENCY DECISION THAT HAS THE  
EFFECT OF PURPOSES OF SECTION  
126 ON SUPER SEEDIEST PROVISION.

THE CLINIC DID NOT FINISH ITS  
LICENSURE RENEWAL APPLICATION.  
AS REQUIRED BY THE HEALTHCARE  
LICENSING LAWS, ACA DEEMED THE  
APPLICATION INCOMPLETE AND  
WITHDRAWN FROM REVIEW BY FINAL  
ORDER AND EXERCISED ITS  
DISCRETIONARY AUTHORITY TO GRANT  
A 30 DAY GRACE PERIOD ON THE  
LICENSE SO THE FACILITY COULD  
WRAP UP OPERATIONS AND SAFELY  
DISCHARGE ITS CLIENTS.

YBOR CLINIC APPEALED FOR A STAY  
OF THE FINAL ORDER AS A MATTER  
OF RIGHT PURSUANT TO THE SUPER  
SEEDIEST PROVISION.

THE PROVISION WAS INAPPLICABLE  
AND A STAY IS DISCRETIONARY UPON  
CONSIDERATION OF CASE LAW  
FACTORS THE SECOND DCA DISAGREED  
AND CERTIFIED CONFLICT WITH THE  
FIRST DCA'S ORDER.

AHCA SOUGHT REVIEW IN THIS  
COURT GRANTED JURISDICTION.

AS THIS COURT RECOGNIZED  
PREVIOUSLY DISCIPLINARY  
PROCEEDINGS IN WHICH AN AGENCY

SUSPENDS OR REVOKES AN EXISTING LICENSE IN THE BUNDLE OF RIGHTS ASSOCIATED WITH THAT LICENSE IN REGULATORY PROCEEDINGS IN WHICH AN AGENCY CONSIDERS AN APPLICATION FOR PROSPECT OF LICENSE THE APPLICANT HAS NO LEGAL RIGHT OR EXPECTATION TO OR FUNDAMENTALLY DISTINCT AND FOLLOW SEPARATE TRACKS.

THERE ARE DIFFERENT THINGS AT STAKE, DIFFERENT BURDENS THAT APPLY DIFFERENT PARTIES WITH DIFFERENT STANDARDS.

WHEN YOU ARE TALKING ABOUT DISCIPLINARY ACTION INVOLVING SUSPENSION OR REVOCATION OF EXISTING LICENSE THE LICENSEE HAS LEGAL RIGHT AND LEGAL EXPECTATION FOR LICENSE FOR THE AFFECTED PERIOD OF THE LICENSE. THAT IS THE BUNDLE OF RIGHTS THEY HAVE.

WHEN AHCA SUSPENDS A LICENSE IT IS TAKING AWAY THOSE RIGHTS. THAT'S WHY THERE'S A HEIGHTENED STANDARD.

>> YOU SAID YOU ACKNOWLEDGE THE EFFECT OF LANGUAGE EXPANDS THE CATEGORY OF AGENCY DECISIONS BEYOND EXPLICIT SUSPENSION OR REVOCATION.

YOU GAVE AN EXAMPLE OF SOMETHING SO RESTRICTIVE ARE LIMITED, BUT WHAT THEY ARE LOOKING AT THAT AUTHORIZE AGENCIES TO DO THINGS THAT ARE NOT SUSPENSION THAT HAS THAT EFFECT.

>> SOME AGENCIES PERMITTED TO WITHDRAW LICENSE.

THE STATUTE WOULD APPLY TO DISCIPLINE, THEY ISSUED TOO MANY, THERE IS - UNDER 616.153 THE DEPARTMENT OF AGRICULTURE FOR FAIR ASSOCIATION.

TO CREATE ANNUAL PUBLIC FAIR IF IT FINDS THERE'S ANOTHER ASSOCIATION APPLICATION. SOMEONE TO THEIR LICENSE, TO THE PERMIT, IT IS NOT SUSPENSION OR REVOCATION.

WHAT WAS APPLIED SPECIFICALLY, THERE WERE OTHER APPLICATIONS.

>> SEEMS LIKE A RECURRING EVENT.

I IMAGINE AN EXPECTATION FOR THE PERMIT HOLDER AND IT'S A FAIR, FOR THE RIGHT TO OPERATE.

>> CERTAINLY THAT COULD HAPPEN, EQUAL EXPECTATION IT IF YOU FILE YOUR APPLICATION IT IS INCOMPLETE AND WILL BE WITHDRAWN.

THE STATUTE REQUIRES US TO DO THAT.

I DON'T THINK THE AMOUNT OF TIMES THINGS HAPPEN IS NECESSARILY DETERMINATIVE WHETHER THE STATUTE WOULD APPLY.

KEEP IN MIND, WHEN AN AGENCY DOES SOMETHING IT SHOULDN'T, ONE OF THE JUSTICES POINTED OUT IF THE AGENCY PUT LIMITATIONS ON LICENSES THAT WERE SO RESTRICTIVE THE INDIVIDUAL COULDN'T USE IT.

THAT IS AN EXAMPLE WHERE THE AGENCY SUSPENDED OR REVOKED A LICENSE BUT HASN'T CALLED IT THAT SO IT HAS THE SAME EFFECT. THE STATUTE IS NOT NECESSARILY INTENDED ALWAYS TO ADDRESS SOMETHING THAT HAPPENS BUT MAYBE TO ADDRESS SOMETHING THAT SHOULDN'T HAPPEN.

DOING SOMETHING THAT THEY ARE SUPPOSED TO BE DOING.

REGULATORY ACTIONS INVOLVING APPLICATION, THE APPLICANT HAS NO LEGAL EXPECTATION FOR CONTINUED LICENSURE, IF YOU DON'T FILE APPLICATION ON TIME, TO STAY IN THESE SITUATIONS YOU ARE GRANTING RIGHTS THAT THE INDIVIDUAL DOESN'T HAVE OTHERWISE WHICH IS DIFFERENT FROM REVOCATION WHERE YOU ARE HAVING TO PRESERVE THE STATUS THAT SOMEONE HAS FOR A PERIOD OF TIME.

THIS PARTICULAR APPLICANT IN THIS CASE, WAS IN OCTOBER OF 2019.

THEY HAVE TWO YEARS OF LICENSURE, WITHOUT HAVING TO PROVE THEY MET MINIMUM REQUIREMENTS OF LAW, THAT IS PROBLEMATIC.

HOW MANY APPLICATIONS THERE ARE

FOR DIFFERENT AGENCIES, OUR AGENCY IN PARTICULAR, 18,600 FACILITIES, HEALTHCARE FACILITIES THROUGH THE STATE, 5000 RENEWAL APPLICATIONS A YEAR, WITH CHANGE OF OWNERSHIP. THAT IS A LOT OF APPLICATIONS. THIS IS NOT A NORMAL SITUATION FOR US, IT WAS INCOMPLETE AND WITHDRAWN FROM REVIEW. IT IS NOT A SITUATION WHERE THE AGENCY IS WANTING TO NOT GRANT LICENSES.

THE APPLICANT DOESN'T MEET STATUTORY APPLICATION TO FILE A COMPLETE APPLICATION.

WE BELIEVE THE STATE SHOULD BE DISCRETIONARY IN THESE CIRCUMSTANCES BECAUSE IT IS UNNECESSARY TO PRESERVE THE STATUS QUO OF AN APPLICATION, THAT WAS ENTITLED UNDER THE HEALTHCARE STATUTE.

ALL THIS WITHOUT CONSIDERING CASE LAW SUCH AS SUCCESSIVE LIKELIHOOD ON THE MERITS OF THE CASE.

>> IT MAY OR MAY NOT SENSE TO HAVE THE STATUS QUO BUT LEGISLATURE DOES NOT AUTOMATICALLY - IF WE DEFINE THE STATUS QUO FOR THE APPLICATION STILL BEING ALIVE WHICH HAS THE EFFECT OF KEEPING THE EXISTING LICENSE, THE STATUS QUO WE ARE TALKING ABOUT.

>> I WOULD DISAGREE BECAUSE THE INDIVIDUAL MAY HAS A RIGHT TO LICENSE FOR THE LENGTH OF THE LICENSE, THE 2-YEAR PERIOD. IT IS EXTENDED BY OPERATIONS AND STATUTE, EXTENDED UNDER OUR DISCRETION.

WE ONLY HAVE A RIGHT, IF WE WERE TO GRANT THAT LICENSE, IT WOULDN'T BE WE START TWO YEARS LATER.

>> THE STATUTE SAYS DURING THE PENDENCY OF THE AGENCY REVIEW THE EXISTING LICENSE IF IT WERE TO EXPIRE DURING THE TENDENCY OF REVIEW, IT GETS TOLD.

IF YOU ADMINISTRATIVELY WITHDRAW AN APPLICATION IF THERE WERE AN

AUTOMATIC STAY, THE EFFECT WOULD NOT KEEP THE APPLICATION ON WITHDRAWN WHICH WOULD BE IN THE PREEXISTING LICENSE.

MY POINT IF THE STATUS QUO, THE LIKELIHOOD, THE AGENCY HASN'T BEEN WRONG, THE FACT IS THEY LOOK AT, IF IT SEEMS TO THE APPEALS COURT, DO THEY ESTABLISH THAT?

>> THERE'S TWO POINTS I WOULD LIKE TO RESPOND TO WITH. KEEP IN MIND 120 IS A VERY BROAD STATUTORY SCHEME THAT APPLIES TO EVERY AGENCY.

I THINK THIS PARTICULAR PROVISION IS NOT CONSISTENT WITH THE HEALTHCARE LICENSING PROCEDURES ACT WHICH MAKES IT CLEAR YOU GIVE IT TO YOUR LICENSE IF YOU DON'T COMPLETE YOUR APPLICATION THE AGENCY HAS NO DISCRETION BUT TO WITHDRAW IT.

I THINK THEY ARE INCONSISTENT. THE SECOND THING, OH GOODNESS, I'VE LOST MY TRAIN OF THOUGHT. THE SECOND THING IS THERE ARE ADDITION OF NEGATIVE LEGAL CONSEQUENCES THAT COME ALONG SUSPENDING OR REVOKING A LICENSE THAT YOU DO NOT SEE IN THE WITHDRAWAL SITUATION.

FOR INSTANCE YOU LOSE YOUR LICENSE FOR SHORT PERIOD DURING EITHER ONE ALTHOUGH IF YOU FILE A SECOND APPLICATION WE COULD HAVE PROCESSED THAT BEFORE YOUR LICENSE EXPIRED BUT WHEN YOU SUSPEND OR REVOKE A LICENSE THE AGENCY CAN DENY FUTURE LICENSES THAT YOU APPLY FOR EVEN IF IT IS A DIFFERENT LICENSE TYPE FOR YOU OR YOUR CONTROLLING INTEREST. THAT'S A BIG DEAL.

IT INTERRUPTS THINGS THAT COINCIDE WITH A LICENSE LIKE AN INSURANCE AGREEMENT OR THINGS LIKE THAT, THEY ARE SUPPOSED TO GO ALONG WITH THE 2-YEAR RENEWAL PERIOD.

THEY CAN CAUSE YOU TO EXPERIENCE OTHER LEGAL ACTIONS LIKE MEDICARE AND MEDICAID COULD

WITHDRAW PARTICIPATION WITH  
CAUSE AND THERE IS STIGMA  
INVOLVED WHEN YOU REVOKE OR  
SUSPEND A LICENSE.

>> IF YOU DON'T WANT TO BE  
LOOKING AT, ISN'T THIS THE  
INTERPRETIVE QUESTION WHETHER  
THE AGENCY DECISION HAS THE  
EFFECT OF TAKING AWAY SOMEONE'S  
LEGAL AUTHORITY TO OPERATE?  
ONCE WE START GETTING INTO ALL  
THESE SECONDARY EFFECTS OF  
LOSING LICENSE, THAT PLAYS INTO  
THE ARGUMENT THAT WE SHOULD BE  
COMPARING THE PREDICAMENT OF  
SOMEONE WHO DOESN'T GET THEIR  
LICENSE RENEWED TO THE  
PREDICAMENT IF IT IS SUSPENDED.  
THAT ABSTRACT UNDERSTANDING OF  
THE EFFECTS OF WITHDRAWAL OR  
REVOCATION OR SUSPENSION HELPS  
THEM.

>> THE DIFFERENCE IS THAT HERE  
WE ARE NOT ACTING ON THE  
LICENSE.

IT HAS TO HAVE THE EFFECT OF  
SUSPENDING OR WITHDRAWING A  
LICENSE.

HERE THE AGENCY HAS DONE NOTHING  
THAT HAS THAT EFFECT ITSELF.  
THE EXPIRATION IS BY STATUTE.  
SO WE ARE NOT ACTING ON THE  
LICENSE.

WE ARE ACTING ON AN APPLICATION  
IN THE LICENSING PROCEDURES ACT  
WHICH THOSE OF THE INDIVIDUAL  
DOESN'T COMPLETE THE APPLICATION  
THEN THE AGENCY MUST SUSPEND OR  
WITHDRAW.

IT DOES NOT MAKE SENSE IF  
HEALTHCARE LICENSING PROCEDURES  
ACT SAYS YOU GET TO YOUR LICENSE  
TO BUY PURSUANT TO A STATE TO  
HAVE AN ACTUAL 3 TO 5 YEAR  
LICENSE BECAUSE OF THE TYPES OF  
PROCEEDINGS THIS STAYS.

THINK OF IT THIS WAY.

IF WE WERE TO APPLY THE  
PRESUMPTIVE SUPER SEEDIEST  
PROVISION TO THESE INCOMPLETE  
APPLICATIONS, WHAT WOULD HAPPEN?  
IF AN INDIVIDUAL THINK THEIR  
LICENSE IS LIKELY TO EXPIRE THEY  
COULD BASICALLY SUBMIT AN

APPLICATION WITH THEIR NAME ON IT AND SIT BACK FOR 5 YEARS WHILE THEY GO THROUGH THE LITIGATIVE PROCESS.

>> YOU ARE IN YOUR REBUTTAL TIME.

>> I'M SORRY.

I DIDN'T --

>> SHE'S GOT HER TIME.

>> THANK YOU.

>> MISTER CHIEF JUSTICE, MAY IT PLEASE THE COURT.

I'M RACHEL SIEGEL AND I AM APPEARING FOR THE STATE TODAY IN SUPPORT OF THE AGENCY.

WITH THE FEW MINUTES I HAVE I WOULD LIKE TO FOCUS ON A FEW KEY POINTS.

I WOULD LIKE TO BEGIN BY RESPONDING TO A QUESTION POSED BY JUSTICE MINIS ABOUT OTHER STATUTES WE CAN LOOK AT THAT AUTHORIZE ACTIONS ON A LICENSE THAT AREN'T JUST SUSPENSIONS OR REPUTATIONS AND I DIRECT YOU TO CHAPTER 120, LICENSING PROVISIONS 5 AND 6, MENTION REVOCATION, SUSPENSION AND WITHDRAWAL OF LICENSES AND SECTION 6 TALKS ABOUT THE RESTRICTION OR LIMITATION OF LICENSE.

THE TEXT OF THE AUTOMATIC STAY PROVISION, THE BROADENING EFFECT OF THE WORDS HAS THE EFFECT OF REVOCATION OR SUSPENSION WAS MEANT TO ENCOMPASS TERMS SUCH AS THESE.

IT IS ALSO IMPORTANT TO KEEP IN MIND THE AUTOMATIC STAY PROVISION IS IN THE APA GENERALLY BUT IT IS MEANT TO APPLY TO ALL AGENCIES STATEWIDE AND MANY OF THOSE AGENCIES HAVE THEIR OWN GOVERNING STATUTORY REGIMES AND CERTAINLY MAY HAVE THEIR OWN TERMS THAT THEY WOULD USE INSTEAD OF SUSPENSION OR REVOCATION.

BUT I WOULD LIKE TO EMPHASIZE THAT THE TEXT OF THE STATUTE USES THE WORDS SUSPEND OR REVOKE AND WHAT IS IMPORTANT IS BOTH OF THOSE WORDS ARE ABOUT CUTTING

SHORT OR TAKING BACK SOMETHING THAT WAS PREVIOUSLY BESTOWED UPON THE LICENSING SO IT IS WRONG TO SAY THAT THE EFFECT OF A REVOCATION OR SUSPENSION OF A LICENSE IS THE DOWNSTREAM ATTENUATED CONSEQUENCE OF THE SHUTTING DOWN OF A BUSINESS.

THE AFFECT OF REVOKING OR SUSPENDING A LICENSE, IS THE LEGAL EFFECT OF THAT ACT, NAMELY, NO LONGER HAVE THE LICENSE.

THAT IS ALL IT IS DOING, TAKING BACK THE LICENSEE'S RIGHT TO OPERATE UNDER THE LICENSE AND IT CHANGES.

IT DOESN'T NECESSARILY PREVENT THE LICENSEE FROM CONTINUING TO OPERATE.

IT IS JUST AT THE LICENSEE'S OWN RISK BECAUSE IT NO LONGER HAS A LICENSE.

AND THE REASON WHY DENIALS OR WITHDRAWALS OF RENEWAL APPLICATIONS DO NOT ENTITLE AN APPLICANT TO A NOT A MADDOX DAY IS BECAUSE THERE IS NO RIGHT THAT IS BEING CUT SHORT WERE TAKEN BACK.

THE LICENSE, IF PETITIONER HERE, IF HE WERE HERE HAD APPLIED EARLIER IN THE PROCESS OR THE RENEWAL LICENSE, THE ORIGINAL LICENSE WAS STILL IN EXISTENCE BEFORE THE EXPIRATION DATE, IT WOULD NOT HAVE HAD THE EFFECT OF PUTTING THEM OUT OF BUSINESS.

IT WOULD HAVE STILL CONTINUED TO OPERATE UNDER THE TERMS OF THE ORIGINAL LICENSE.

THEY HAD THE RIGHT THAT THEY ALWAYS HAD FROM THE AGENCY AND THAT NEVER CHANGED AND THAT DOESN'T CHANGE.

IT IS AN APPLICATION OF 11s AND WHEN YOU SUBMIT AN APPLICATION YOU DON'T HAVE A RIGHT TO ANYTHING.

I WOULD ALSO LIKE TO SPEND A MOMENT, ACTUALLY, I WON'T SPEND A MOMENT.

I SEE MY TIME HAS EXPIRED.

>> I GIVE YOU ANOTHER 30 OR 45

SECONDS.

>> THANK YOU, MISTER CHIEF  
JUSTICE.

I WANT TO SPEND A MOMENT TO TALK  
ABOUT THE STATUTORY GRACE PERIOD  
WHILE A RENEWAL APPLICATION IS  
PENDING.

THE FACT THAT THE STATUTORY  
GRACE PERIOD EXISTS AND ALLOWS A  
LICENSEE TO CONTINUE OPERATING  
PAST THE EXPIRATION DATE ON THE  
LICENSE ITSELF SO LONG AS THE  
AGENCY IS STILL CONSIDERING ITS  
RENEWAL APPLICATION, DOES NOT  
HAVE THE EFFECT OF A REVOCATION  
OR SUSPENSION BECAUSE THE  
DURATION OF THE STATUTORY GRACE  
PERIOD HAS ALWAYS BEEN TIED TO  
HOW ARE LONG IT WILL TAKE THE  
AGENCY TO ON THE APPLICATION AND  
THE POTENTIAL LICENSEE HAS NO  
IDEA HOW LONG YOU MIGHT STAY  
OPEN.

THERE IS NO EXPECTATION CREATED,  
THERE IS CERTAINLY NO RIGHT.

WHENEVER THE AGENCY RULES, THE  
STATUTORY GRACE PERIOD ENDS AND  
THAT IS THE END OF THE MATTER.

NO LEGAL RIGHT, THAT IS WHY THE  
STATE DOESN'T APPLY.

>>

>> THANK YOU.

MAY IT PLEASE THE COURT.

MY NAME IS FRANK BAIN WITH LEGAL  
SERVICES.

I REPRESENT YBOR ACCIDENT  
CLINIC.

MY NAME IS JOHN E. TERREL.

I TO REMIND THE CLINIC.

EVERY 2 YEARS, THEY RENEW THEIR  
LICENSE, THE MOST RECENT RENEWAL  
PROGRAM.

AND DRAWN BY THE AGENCY  
QUALIFIES FOR THE PRESUMPTION,  
126.83.

AND IF THE AGENCY, PROVOKING A  
LICENSE.

THE SECOND A STICK RULED IN THE  
JOHN E. TERREL -- YBOR CLINIC  
CASE THAT THE AGENCY DOES  
QUALIFY.

THE AGENCY DOES QUALIFY,  
WITHDREW, THE RENEWAL  
APPLICATION, CLOSING A BUSINESS

AS THE LICENSE PASSES THE  
REVOCATION.

>> IT IS WHETHER IT HAS THE  
EFFECT OF REVOCATION OR  
SUSPENSION.

SEEMS TO ME TO BE CATEGORICALLY  
DIFFERENT.

IT MAY HAVE THE SAME REAL WORLD  
CONSEQUENCES, OTHER THINGS IN  
THE STATUTE, OTHER TERMS THAN  
SUSPENSION OR REVOCATION USED  
THAT ARE THE EQUIVALENT EFFECT  
OF AN EXISTING LICENSE.

IT SEEMS TO SPAN THE SCOPE TO  
THIS RENEWAL PROCESS, STRETCHING  
THE LANGUAGE.

TELL ME WHY I AM WRONG, TELL ME  
WHY.

>> THE CLINIC HAS BEEN IN  
OPERATION FOR 19 YEARS AND THE  
EFFECT IS TAKEN IN THE CONTEXT  
OF A STAY THE PURPOSE OF WHICH  
IS TO PRESERVE THE STATUS QUO  
AND THE REASON YOU PRESERVE THE  
STATUS QUO BELOW THE APPEAL  
COURT, THEY HAVE TIME TO MAKE  
THEIR DECISION.

IT CAN TAKE EFFECT.

IT IS AN EXCEPTION INVOLVING  
LICENSING.

THE REASON THE LEGISLATURE DID  
IT.

IF LICENSING GOES OUT OF  
BUSINESS ANY DECISION THE  
APPEALS COURT MIGHT MAKE WOULD  
BE RENDERED INEFFECTIVE BEFORE  
IT IS EVEN MADE.

THE EFFECT THAT IS IMPORTANT IN  
THIS CASE IS THE EFFECT OF  
SHUTTING DOWN THE BUSINESS.

>> UNDER YOUR THEORY - THERE IS  
DENIAL.

>> A DENIAL OF THE APPLICATION,  
IT HAS THE EFFECT OF SHUTTING  
THE BUSINESS DOWN, SECTION  
120.68.

>> A STRANGE WAY TO GET THE  
LANGUAGE TO OPERATE BECAUSE  
YOU'VE GOT THIS EXISTING LICENSE  
AND THEN YOU'VE GOT A NEW  
LICENSE, RENEWED LICENSE AND A  
DENIAL IN THE SAME WAY THAT YOU  
WOULD TREAT THE NEW LICENSE AND  
THE SUSPENSION, THE LEGISLATURE

WOULD HAVE THOUGHT ABOUT THAT SEPARATELY.

>> WE SEE A DISTINCTION WITH AN ACTUAL NEW LICENSE.

THERE IS A DIFFERENCE BETWEEN SHOW CLUB WHICH IS THE CASE WHERE A BUSINESS WAS MAKING AN INITIAL APPLICATION FOR A LICENSE AND IF SUCH A LICENSE IS DENIED IT DOESN'T SHUTDOWN A GROWING CONCERN, A BUSINESS THAT IS IN OPERATION BUT A RENEWAL LICENSE IS DIFFERENT BECAUSE THE BUSINESS IS IN OPERATION AND HAS THE EFFECT OF A SUSPENSION OR REVOCATION BECAUSE IT IS A BUSINESS THAT IS UP AND OPERATING IT HAS TO SHUT ITS DOORS.

>> AS YOUR COLLEAGUE ON THE OTHER SIDE NOTED AND I UNDERSTAND IN THE REAL WORLD THINGS MAY NOT HAPPEN THIS QUICKLY VERY OFTEN BUT IF THE LICENSEE APPLIES ON DAY 120 THE AGENCY COULD ADMINISTRATIVELY WITHDRAW OR DENY THE LICENSE APPLICATION WITH SUFFICIENT TIME THE ORIGINAL LICENSE HASN'T EXPIRED AND SO IN THAT SCENARIO AGENCY'S DECISION LITERALLY HAS NO EFFECT WHATSOEVER ON THE LICENSE AND DOESN'T CAUSE ANYONE TO GO OUT OF BUSINESS OR ANYTHING.

ASSUMING IN THE REAL WORLD YOU HAVE ENOUGH TIME TO GET A NEW APPLICATION, WHENEVER THAT MIGHT HAPPEN.

THERE ARE SCENARIOS WHERE THERE IS NO EFFECT WHATSOEVER ON THE LICENSE AND YOU ARE ASKING US TO SAY THAT HAS THE EFFECT OF SUSPENDING OR REVOKING, THAT DOESN'T SEEM POSSIBLE.

>> THE EFFECT ON THE BUSINESS OF SHUTTING DOWN THE BUSINESS. THERE SEEMS TO BE A DISAGREEMENT BETWEEN AHCA AND YBOR CLINIC. THE EFFECT IS ON THE BUSINESS BY SHUTTING IT DOWN.

>> YOU AGREE THE STATUTE REFLECT A LEGISLATIVE CHOICE, THE LEGISLATURE COULD HAVE SAID ANY

RULING OR DECISION THAT HAS THE EFFECT OF SUSPENDING BUSINESS OPERATIONS.

DOESN'T SAY THAT.

ALL IT SAYS IS THAT IT HAS THE EFFECT OF REVOCATION OF THE LICENSE WHICH SEEMS TO ME TO BE A PURPOSEFUL LEGISLATIVE CHOICE TO FOCUS ON THE LICENSURE RATHER THAN THE OPERATIONS OF THE BUSINESS.

HELP ME UNDERSTAND WHY THAT IS WRONG?

LEGISLATURE COULD HAVE SAID WHAT YOU ARE SAYING BUT DOESN'T SAY THAT.

>> ALLEGEDLY WOULD HAVE BEEN HELPFUL IF THEY MENTIONED WHAT SORT OF AFFECT THEY HAD IN MIND. THE SECOND DISTRICT AFFECT WAS UPON BUSINESS.

THE LICENSE ITSELF I UNDERSTAND THEY EXPIRE EVERY TWO YEARS BUT THEY DON'T AUTOMATICALLY EXPIRE. THERE ARE PROVISIONS THAT PREVENT THEM GOING INTO EXPIRATION, GETTING YOUR APPLICATION IN AND RENEWING PRIOR TO THE TIME OF THE EXPIRATION DATE.

IF THE AGENCY ISSUES THE ORDER AND STOPS THE PROCESS, THE BUSINESS HAS TO SHUTDOWN OR GO INTO LITIGATION.

IF THAT ANSWERS YOUR QUESTION.

>> I THINK IT POINTS TO A WEAKNESS IN YOUR POSITION. AS YOU SAID, IT COULD ENTER LITIGATION.

THE RESULT OF HAVING YOUR APPLICATION FOR A RENEWAL LAPSE OR BE WITHDRAWN MIGHT LEAD TO SOMETHING OTHER THAN THE BUSINESS BEING SHUTDOWN.

YOU MIGHT SUE, YOU MIGHT UNDERTAKE SOME SORT OF UNLICENSED OPERATION FOR THE TIME BEING OR SHIFT INTO ANOTHER LINE OF BUSINESS AS THE MATTER IS PENDING LITIGATION.

IT DOESN'T SEEM TO ME TO BE CONTIGUOUS WITH SHUTTING THE BUSINESS DOWN.

OF THE LEGISLATURE HAD INTENDED,

IF THE LEGISLATIVE BARGAIN HAD BEEN THAT IS WHAT WE WANT, THAT IS WHAT THE WORDS OF THE STATUTE WOULD SAY, SEEMS TO ME.

>> THE LEGISLATURE WROTE THE WORDS HAVING THE EFFECT OF. WE HAVE A FULL OF 9.90.

I FORGET THE EXACT DATA. WHERE THEY SAY IF IT IS AN ACTUAL REVOCATION OR AN ACTUAL SUSPENSION, THEN SUPER CDS IS GRANTED AS A MATTER OF RICE, THIS PARTICULAR STATUTE, 120.683 BROADENS THE NUMBER OF LITIGANTS INCLUDED UNDER THE SAME UMBRELLA.

BY INCLUDING PEOPLE OTHER THAN PEOPLE WHO HAVE AN ACTUAL SUSPENSION OR REVOCATION. IT HAS TO INCLUDE ALL KINDS OF CASES BESIDES JUST THOSE TWO. AND WE PRESUME A CASE LIKE THIS WHERE A GOING CONCERN IS SHUTDOWN SHOULD BE INCLUDED UNDER THAT SUPERCILIOUS PROVISION OF 126.68.

>> THE ACTION IS BY IN THIS CASE YOUR CLIENT, ALLOWING THE APPLICATION PROPERLY, NOT THAT THE AGENCY DID ANYTHING TO PULL BACK ARE RIGHT THAT THEY HAD BUT SOMETHING YOUR CLIENT HAD TO DO PROACTIVELY TO RENEW AN APPLICATION THEY DIDN'T DO PROPERLY AND HER STATUTE -- SO I'M STILL NOT SURE HOW THAT HAS THE EFFECT OF SUSPENDING OR REVOKING A LICENSE.

YOUR ORIGINAL LICENSE IS IN EFFECT, AND THE FACT THAT YOU DIDN'T HAVE AN APPLICATION PENSION ANYMORE TO GET A NEW LICENSE DOESN'T SEEM TALK ABOUT REVOKING THE LICENSE ITSELF BY THE AGENCY.

>> WELL, THE AGENCY DID ISSUE AN ORDER DEEMING THE LICENSE INCOMPLETE AND WITHDRAWING FROM FURTHER CONSIDERATION.

SO THERE WAS AN ACTUAL ORDER COMING FROM THE AGENCY. ELIMINATING THE OPPORTUNITY OF HAVING THAT PARTICULAR LICENSE APPLICATION REVIEWED.

>> ESSENTIALLY, IT WAS JUST THE FACT THAT THEY ISSUED AN ORDER AT ALL, YOU THINK THAT AFFECTS THE LICENSE OR THE PROCESS OF RUNNING THE BUSINESS IN ANY WAY FALLS UNDER THIS PRESUMPTIVE THING.

>> WELL, THE STATUTE ITSELF, THE WORDING OF THE STATUTE SAYS IT HAS TO BE AN ORDER, AND THE ORDER HAS TO HAVE, HAS TO COME FROM AN AGENCY.

AND THE ORDER FROM THE AGENCY HAS TO HAVE THE EFFECT OF A SUSPENSION OR REVOCATION.

AND THE FIRST TWO PARTS OF THE THREE-PRONGED TEST IS, YES, WE HAVE AN ORDER, AND YOU HAVE IT COMING FROM AN AGENCY.

I THINK THE REAL CRUX OF THE ISSUE IS THE MEANING OF THE LANGUAGE HAVING THE EFFECT OF A SUSPENSION OR REVOCATION.

AND OUR POSITION, OF COURSE, IS THAT SHUTTING DOWN THE BUSINESS IS HAVING THE EFFECT THAT A SUSPENSION OR REVOCATION WOULD HAVE UPON THAT BUSINESS.

>> LET ME PROPOSE AN ALTERNATE READING THAT YOUR COLLEAGUES ON THE OTHER SIDE MAKE AND PERHAPS YOUR RESPONSE TO IT.

WHAT SENSE IN WHICH ONE ACTION OR ONE AGENCY DETERMINATION MIGHT HAVE THE EFFECT OF A REVOCATION.

A REVOCATION IS PUNITIVE, RIGHT? IT'S A PENALTY THAT ATTACHES TO SOME DEVIATION FROM APPROPRIATE LICENSE--

[INAUDIBLE]

WHAT HAPPENED TO YOUR CLIENT IS NOT PUNITIVE.

>> CORRECT.

>> SO IT DOESN'T HAVE THE EFFECT OF A PUNISHMENT, RIGHT?

>> THAT'S CORRECT.

IT DOESN'T HAVE THE EFFECT OF A PUNISHMENT, BUT IT HAS THE EFFECT OF PUTTING THE BUSINESS OR STOPPING THE BUSINESS DURING THE PERIOD-- THE PENDENCY OF THE APPEAL.

>> I UNDERSTAND THAT THAT'S ONE

EFFECT OF IT, BUT I GUESS WHAT THE STATUTE SAYS IS A LITTLE LESS HELPFUL TO YOUR POSITION. IT HAS THE EFFECT OF REVOCATION. AND I GUESS WHAT I'M, WHAT I'M CURIOUS ABOUT YOUR ANSWER TO IS WHAT IF THE RELEVANT EFFECT OF REVOCATION THAT WE'RE TALKING ABOUT IN THE STATUTE IS PENALTY AS OPPOSED TO SOME IMPACT ON THE PROFITABILITY OF THE ENTERPRISE?

>> WE DON'T THINK THE RELATIVE EFFECT IS THAT IT'S RELEVANT WHETHER OR NOT IT'S PUNITIVE OR WHETHER IT'S REGULATORY. WE THINK THE THING THAT MATTERS IS WHETHER A BUSINESS IS ABLE TO STAY OPEN DURING THE PENDENCY OF ITS APPEAL.

THIS WHOLE STATUTE IS ABOUT SUPERSEDEAS, IT'S ABOUT THE ISSUANCE OF A STAY.

AND THE ISSUANCE OF A STAY HAS A PURPOSE, TO KEEP PEOPLE-- TO PRESERVE THE STATUS QUO SO THAT THE DECISION CAN BE MADE WITHOUT HAVING THE DECISION BE MADE BY HAVING THE APPELLANT BE DRIVEN INTO BANKRUPTCY SO THAT THE APPELLATE COURT-- SO THAT THE DECISION WOULD BE RENDERED INEFFECTIVE.

I'D ALSO ADD THAT THAT WOULD BE A WASTE.

NOT ONLY WOULD THAT BE AN INJUSTICE TO THE APPELLANT BUSINESS THAT IS SHUT DOWN, BUT IT WOULD ALSO BE A WASTE OF JUDICIAL RESOURCES FOR THE DISTRICT COURTS IF THEY TAKE AN APPEAL AND THEN WHEN THEY GET THROUGH A PORTION OF IT, ALL OF A SUDDEN THE APPELLANT IS BANKRUPT, AND THE CASE JUST KIND OF GOES UP IN A PUFF OF SMOKE, AND THEY'VE WASTED THEIR TIME ON IT.

I'D LIKE TO MENTION, I GUESS, JUST SHORTLY ADDRESS THE AMICUS BRIEFS FILED BY THE ATTORNEY GENERAL'S OFFICE IN THIS CASE. TO QUOTE THEIR AMICUS BRIEF, THEY FEEL THAT THE SECOND DISTRICT'S INTERPRETATION OF

SECTION 120.68 RISKS SERIOUSLY DAMAGING THE EFFICIENT OPERATION OF THE ADMINISTRATIVE SCHEME. THEIR POINT SEEMS TO BE THAT THE SECOND DISTRICT'S READING OF 120.68 WOULD INTRODUCE A KIND OF MORAL HAZARD WHERE UNDESERVING RENEWAL APPLICANTS WOULD SIMPLY EXTEND THEIR LICENSES BY FILING AN APPEAL AND IN THE PROCESS FLOOD THE SYSTEM WITH MERITLESS APPEALS.

WE'D LIKE TO POINT OUT THAT THERE'S AN OFFICE AT HAZARD. THAT IF THE FIRST DISTRICT'S INTERPRETATION OF THE STATUTE IS AFFIRMED, THEN MANY DESERVING RENEWAL APPLICANTS WILL SUCCUMB TO FINANCIAL RUIN BEFORE THE COURT CAN RULE ON--

>> YOU NEED TO SUM UP.

HE'S NOT TAKING YOUR TIME, DON'T WORRY.

[LAUGHTER]

I'M GOING TO KEEP YOUR TIME.

IF YOU'RE-- YOU CAN SUM UP IN ANOTHER 30 SECONDS.

>> I'M ACTUALLY FINISHED ANYWAY.

>> OKAY, THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS JOHN TERREL.

I REPRESENT YBOR MEDICAL CLINIC.

I WANT TO GO BACK TO THE QUESTION OF WHETHER THIS IS A NEW LICENSE OR A CONTINUATION. AND IT'S SOMETHING THAT AHCA DID NOT COVER, BUT I'D LIKE TO COVER, IS THAT WHEN THESE APPLICANTS APPLY FOR AN INITIAL LICENSE, THERE'S A LOT MORE INVOLVED THAN THAT.

THE NEW APPLICANT HAS TO FILE PAPERWORK, AND THIS IS 408.810 ON THEIR FINANCIAL ABILITY TO PRACTICE FOR TWO YEARS.

SO THEY HAVE TO GO THROUGH THAT BURDEN AND SHOW THAT THEY CAN MAINTAIN THE BUSINESS, AND SO THEY HAVE TO DO A LOT OF FINANCIAL STUFF ON THAT.

THEY NEEDED TO DO ZONING.

THAT'S A WHOLE NEW, DIFFERENT THING.

AND BACKGROUND SCREENING IS MUCH

MORE COMPLICATED.

WHEN YOU GET TO THE RENEWAL LICENSE-- AND THIS IS WHY I THINK THEY KEEP THE NUMBER THE SAME-- THE RENEWAL LICENSE IS A WHOLE LOT EASIER.

YOU JUST HAVE TO-- YOUR ZONING'S DONE, YOU DON'T HAVE TO WORRY ABOUT THE FINANCIALS. YOU'VE BEEN IN BUSINESS FOR TWO PLUS YEARS, ENOUGH TO SHOW THAT-- YOU'VE SHOWN THAT YOU'VE MET THE MINIMUM REQUIREMENTS FOR PRACTICING IN WHATEVER FIELD YOU'RE IN.

IT'S A WHOLE LOT EASIER.

SO WHEN THEY SAY, OH, NO, NOTHING-- THERE'S NO EFFECT ON YOU IF WE DO THIS WITHDRAWAL, YES, THERE IS.

BECAUSE IF THEY WITHDRAW IT AND THERE'S NO STATE GRANTED AND YOU START ALL OVER, YOU HAVE THAT LONG LIST OF THINGS TO DO.

WHEREAS, AND GOING BACK TO THE QUESTION HERE, IS THAT THESE WITHDRAWALS, THEY'RE TREATED JUST LIKE DENIALS.

YOU GET YOUR 120 RIGHTS, YOUR 120.57, 120.569 WHERE YOU CAN CONTEST WHAT THE AGENCY SAID IS MISSING FROM YOUR APPLICATION.

SO THAT'S WHAT WE'RE REALLY LOOKING AT IS, IS THIS A LICENSE THAT CONTINUES?

YES, IT IS.

THE RENEWALS ARE A WHOLE LOT EASIER BECAUSE YOU'VE ALREADY PROVEN YOUR ABILITY TO PRACTICE.

IT'S JUST MUCH, MUCH EASIER.

AND THEN WHEN-- I KNOW THE AGENCY MENTIONED AT ONE POINT THAT THERE'S POSSIBLY PUBLIC HARM.

I WOULD DISAGREE WITH THAT BECAUSE WHEN YOU'RE LOOKING AT THESE STAYS, FIRST, WHATEVER APPLICANT IS IN FRONT OF YOU, THEY'RE BEEN PRACTICING FOR AT LEAST TWO YEARS.

AND IN THIS CASE, TEN PLUS YEARS.

SO THEY'VE BEEN PROVING THAT THEY CAN PRACTICE WITH THE

STANDARDS THAT THEY NEED TO TO OPERATE SAFELY.

THEN WHAT AHCA IS COMPLETELY IGNORING IS THEIR WHOLE ENFORCEMENT PORTION OF IT. NOT ONLY CAN THEY COME TO THE COURT AND SAY WE NEED TO MODIFY THIS THAT STAY BECAUSE THERE'S SOME KIND OF SAFETY ISSUE, THEY HAVE EMERGENCY SUSPENSION ORDERS, THEY HAVE MORATORIUMS, THEY HAVE ADMINISTRATIVE COMPLAINTS, AND DURING THIS STAY PERIOD THERE'S NOTHING IN THE LAW THAT SAYS THAT THEY CAN'T GO AND FILE ADMINISTRATIVE COMPLAINTS OR ORDERS AGAINST THESE FACILITIES IF THEY THINK THERE'S SOMETHING OPERATING, IF THEY'RE CAUSING A DANGER TO THE PUBLIC.

SO THAT'S ANOTHER CRUCIAL THING IS THAT, YOU KNOW, THERE'S THIS PERCEPTION MADE BY AHCA THAT, YOU KNOW, GRANTING THESE STAYS COULD CAUSE PROBLEMS.

I DON'T THINK SO.

I THINK WHAT WE'RE LOOKING AT IS EXACTLY WHAT'S IN THAT STATUTE. WHAT THEY'RE DOING, WHICH IS A WITHDRAWAL, IS VERY SIMILAR TO A DENIAL IS HAVING THE EFFECT OF PUTTING THIS PLACE NOT ONLY OUT OF BUSINESS, BUT BASICALLY AT GROUND ZERO.

YOU'RE A NEW APPLICANT, YOU START ALL OVER.

IT'S A HURDLE.

AND THE BURDEN OF PROOF FOR AN INITIAL APPLICANT IS HIGHER THAN, IS HIGHER THAN FOR RENEWAL APPLICATION.

SO I THINK THAT'S SOME OF THE EFFECTS THAT, JUDGE, I WOULD BRING UP HERE AS FAR AS WHEN YOU WANT TO SAY "EFFECT OF."

AND INTERESTINGLY, WHILE WE WERE WAITING IN THE LOUNGE I HAPPENED TO LOOK AT THE BLACK'S LAW DICTIONARY JUST TO SEE WHAT "EFFECT" MEANT, AND IT WAS OUTCOME OR CONSEQUENCE.

AND, QUITE FRANKLY, WHEN THEY DO THIS KIND OF WITHDRAWAL, THE

OUTCOME AND CONSEQUENCE IS NOT ONLY ARE THEY OUT OF BUSINESS, BUT THEY START AT GROUND ZERO AGAIN IN THE WHOLE APPLICATION PROCESS.

AND THAT IS AN EFFECT THAT'S VERY SIMILAR TO SUSPENSION AND REVOCATION.

THAT'S IT, THANK YOU.

>> THANK YOU.

REBUTTAL?

>> I WOULD HAVE TO DISAGREE WITH MY COLLEAGUE HERE ABOUT NEW APPLICATIONS STARTING FROM GROUND ZERO.

WHAT HAPPENS WHEN SOMEONE HAS TO FILE A NEW INITIAL APPLICATION, FOR INSTANCE, IF THEY DID--

[AUDIO DIFFICULTY]

IS THAT THE AGENCY CAN EXPEDITE THE PROCESS FOR REVIEWING THAT APPLICATION.

THEY MAY BE FINED FOR A FEW DAYS IF THEY'RE OPERATING WITHOUT A LICENSE OR THEY MAY NOT BE ABLE TO BILL, BUT THEY DON'T HAVE TO COMPLETELY DISBAND THEIR OPERATIONS.

THERE MAY BE A FEW MORE THINGS THEY'D HAVE TO INCLUDE IN THEIR INITIAL APPLICATION, BUT GUESS WHAT?

THEY'VE HAD HERE THE LITIGATION'S BEEN GOING ON HOW LONG IN THEY CAN GET ALL THEIR DUCKS IN A ROW AND FILE THIS APPLICATION TOMORROW.

THERE'S NOT-- THIS IS NOT A HUGE EFFECT ON THE BUSINESS.

AND THE LEGISLATURE'S ALREADY MADE THE POLICY DECISION THAT WHEN SOMEONE FAILS TO GET THEIR RENEWAL APPLICATION IN ON TIME AND COMPLETE IT, THAT THEY DO HAVE TO FILE A NEW INITIAL APPLICATION AND THAT THE BURDEN IS ON THE APPLICANT TO DO THAT.

AND IT'S NOT ON THE AGENCY TO GO AROUND CHASING EVERYONE SAYING YOU NEED TO GET YOUR APPLICATION IN.

OH, AND, BY THE WAY, YOU GET A STAY FOR A REALLY LONG TIME, AND WE'RE GOING TO-- THE AGENCY'S

GOING TO HAVE TO GO OUT THERE  
AND MONITOR YOU AND MAKE SURE  
YOU'RE FOLLOWING THE LAW DURING  
THAT PERIOD BECAUSE YOU DIDN'T  
SHOW US THAT YOU MET THE INITIAL  
MINIMUM REQUIREMENTS FOR  
LICENSURE.

SO THIS IS A BURDEN THING,  
RIGHT?

YOU'RE PUTTING THE BURDEN ON THE  
AGENCY TO ALLOW THEM TO STAY  
OPERATING WHEN THE BURDEN WAS ON  
THEM TO STAY OPERATING.

TO COMPLETE THEIR APPLICATION.

AND I THINK THAT THAT DOES  
INTERFERE WITH THE WHOLE  
APPLICATION RENEWAL SYSTEM THAT  
THE LEGISLATURE PUT IN PLACE,  
PARTICULARLY WITH THIS HEALTH  
CARE LICENSING STATUTE.

IF NO ONE HAS ANY OTHER  
QUESTIONS, I WILL REST ON MY  
BRIEF.

>> THANK YOU.

WE THANK YOU ALL FOR YOUR  
ARGUMENTS IN THIS CASE TODAY.