

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DAVID S. KAHN,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D03-5062

STATE OF FLORIDA, OFFICE OF
INSURANCE REGULATION,

Appellee.

Opinion filed September 8, 2004.

An appeal from an order of the Department of Insurance.

D. Stephen Kahn, Tallahassee, for Appellant.

S. Marc Herskovitz, Division of Legal Services, Office of Insurance Regulation,
Tallahassee, for Appellee.

PER CURIAM.

Appellant, David S. Kahn, appeals an order of the Office of Insurance Regulation ("OIR") dismissing his petition for declaratory statement because OIR does not have substantive jurisdiction and the petition seeks approval or disapproval of conduct that already occurred. Because the appellant's petition essentially challenges the correctness of OIR's approved rate increase to his single-life, small

group HMO plan, we agree with OIR that the petition for declaratory statement should be dismissed. See B.J.L. v. Department of Health and Rehabilitative Services, 558 So. 2d 1078 (Fla. 1st DCA 1990)(ruling that a "petition for declaratory statement under Section 120.565 is not the appropriate means to challenge agency decisions"). Therefore, we affirm, without prejudice to the appellant's right to file a petition pursuant to sections 120.569 and/or 120.57, Florida Statutes.¹

AFFIRMED.

DAVIS, PADOVANO and POLSTON, JJ., CONCUR.

¹We do not comment on the legality of such a petition or any of the related issues.