

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

DANIEL CAMPBELL DAUBE, JR.,
M.D.,

Petitioner,

v.

DEPARTMENT OF HEALTH,

Respondent.

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

CASE NO. 1D05-0251

Opinion filed May 19, 2005.

Petition for Review- Original Jurisdiction.

Lisa Shearer Nelson of Holtzman Equels, Tallahassee; Julie Gallagher of
Greenberg Traurig, P.A., Tallahassee, for Petitioner.

Dana Baird, Senior Attorney, Appellate Section, DOH Bureau of Health Care,
Prosecution Services Unit, Tallahassee, for Respondent.

PER CURIAM.

Petitioner Dr. Daniel Daube petitions this Court for review of the Department
of Health's emergency order issued under section 120.60(6), Florida Statutes (2004).

The Department initially issued an Order of Emergency Suspension of License on
January 14, 2005. Petitioner also motioned this Court for a stay of the emergency

order pending review, which this Court granted in an unpublished order, followed by a written opinion. Daube v. Dep't of Health, 30 Fla. L. Weekly D514 (Fla. 1st DCA Feb. 22, 2005)) ("Daube I"). In the opinion, this Court stated that "[b]ecause the agency's emergency order was broader than that 'necessary to protect the public interest under the emergency procedure' as provided in section 120.60(6)(b), a more narrowly tailored emergency order is appropriate." Id. The Court indicated that the stay was granted on the "condition that [petitioner] immediately halt all use of the unapproved product and that any wrinkle reduction treatment by petitioner be limited to the use of BOTOX®." Id. The Department was authorized to monitor this condition and to set restrictions on petitioner's use of BOTOX®. Id.

Subsequently, the Department modified the order suspending petitioner's license to conform to this Court's opinion in Daube I after this Court relinquished jurisdiction for this purpose. This second order lifted the emergency suspension of petitioner's license and instead imposed restrictions on petitioner's license, prohibiting petitioner from using any products the Food and Drug Administration has not approved for wrinkle reduction treatments. In doing so, the Department's second order largely mooted the petitioner's arguments. To the extent petitioner's arguments also pertain to the second order, we reject them without further comment.

PETITION DENIED.

DAVIS, LEWIS AND POLSTON, JJ., CONCUR.