

State Ordered to Grant DUI Course Provider Approval for New Broward Program

Boca Bay DUI Program Inc. Receives Florida Dept. of Highway Safety & Motor Vehicles' First DUI-Education program license in 17 years

Boca Bay DUI Program Inc., a Broward County-based company hoping to open a new DUI education program, has prevailed in its formal complaint against the Florida Department of Highway Safety and Motor Vehicles (FDHSMV). On April 9, Florida Administrative Law Judge Mary Li Creasy issued a Recommended Order directing the Department to grant Boca Bay the license to operate the DUI program in Broward County. On April 24, 2014, the Department's Director entered a Final Order adopting the Recommended Order and granting the license.

Judge Creasy agreed with Boca Bay's claims that the Department incorrectly denied its licensure application to open the first new "driving under the influence" program to serve residents of northern Broward and southern Palm Beach counties. Never before had a DUI program challenged the Department's licensure determination to final hearing, and the Department had not issued a new license to anyone in Florida since 1997.

"We're very pleased with the findings and order of the administrative law judge. Boca Bay presented an application and business plan that met the requirements of the statute and the Department's regulations for issuance of a license, and will greatly enhance the services available to the local population of northern Broward and southern Palm Beach counties," said William G. Salim, Jr., Boca Bay's counsel with Moskowitz, Mandell, Salim & Simowitz P.A., in Fort Lauderdale. "Yet, at every turn, the Department of Highway Safety and Motor Vehicles denied the application for licensure with unsubstantiated points and what the judge herself called irrational arguments that seemed to protect an existing monopoly."

The complaint, which had been filed with the State of Florida Division of Administrative Hearings, sought to have overturned the DHSMV's February 2013 denial of Boca Bay's application. Boca Bay executives and company attorneys claimed the Department overlooked market needs and specific course offerings that would provide important court-ordered services to a large part of South Florida currently underserved by existing programs.

Boca Bay's original application sought to provide Level I and Level II DUI education classes, substance abuse evaluations, special supervision and IID monitoring, services ordered by the court in cases of DUI.

For those with suspended driving privileges, a location near mass transit and on a heavily trafficked road would reduce the hardship of attending programs. Boca Bay's November 2012 application seemed to be a perfect fit for the area. The new location was proposed for Military Trail at the intersection of West Hillsboro Blvd., blocks from the North Regional Courthouse, a short walk from the TriRail station and

1,000 yards south of the Palm Beach County line. The nearest programs were no closer than 14 miles north or south. Moreover, an enhanced schedule of classes was proposed, including in English, Spanish and Portuguese, with classes limited to 4-hour sessions to promote retention (versus the 6-hour sessions offered by existing providers). Although the DUI program curriculum is largely standardized by the Department's regulations, Boca Bay proposed providing individualized counseling to meet the particular needs of its students and a testing requirement.

State administrative code allows students to attend a DUI program where they reside, work or go to school. Though proposed for North Broward, in Florida's 17th Judicial Circuit, those residing in South Palm Beach County, part of the 15th Judicial Circuit, who work or go to school in Broward County, legally could attend courses there.

In its denial, the DHSMV made numerous errors and assumptions. The Department ignored the requirements of applicable statutes and rules when reviewing and denying the application. It relied on incomplete, insufficient and constantly changing client data compiled by the Department from existing DUI program vendors. The denial noted that program vendors can only serve one judicial circuit, even though the regulations allow students to attend for convenience based on where they live, work or attend school, even if those cross circuit boundaries.

"Contrary to the Denial Letters, approval of the Application and grant of a DUI program license to [Boca Bay] will improve service to residents in the 17th Judicial Circuit in and for Broward County, Florida, and will also improve service in the 15th Judicial Circuit in and for Palm Beach County, Florida," Judge Creasy wrote in her recommendation that Boca Bay be awarded a license to operate the program. "The Department failed to properly assess any of these factors in the evaluation process. Petitioner demonstrated by a preponderance of the evidence that it met all relevant criteria."