

Indigo Float Timeline Related to Department of Health Issues

Note: There are 4 parallel cases discussed below (1. Circuit court / temporary injunction and related counterclaims; 2. Administrative court / we brought this case to challenge our permit denial and later, a rule challenge; 3. County court / landlord eviction; and 4. Federal court / bankruptcy)

- 2018 – First interaction with DOH, pre-opening. DOH provided public pool permit applications. We expressed concerns about using pool chemicals in enclosed float pods.
- 2019 – Received Certificate of occupancy from City of Jax in January. Opened to the public. Received Cease and Desist from DOH in March. Met with DOH in person; in this conversation, in response to a question about having an entry point to the conversation about using chlorine in float pods, **Chief Legal Counsel Amy Meyer told Matt he could do as he's told, or she will get an injunction and shut him down.** In the subsequent months, the DOH did just that. They filed a complaint in Circuit Court, and we filed a counterclaim.
- 2020 – COVID delayed the Circuit Court proceedings. The hearing was eventually held in November with Judge Wilkinson. We remained open in the interim (besides a ~2 month COVID closure). Attorneys for both sides submitted "proposed orders" to the Judge for consideration after the hearing.
- February 2021 – **Judge Wilkinson signed Ms. Meyer's proposed order, which contained material misrepresentations** about the permitting status of the Floatspas of sister company formerly known as Indigo Float Orlando (the proposed order painted a picture of us being the only difficult float centers, unwilling to follow the permitting process, which was not true... DOH had not even inspected the Orlando facility, much less permitted its Floatspas). **This meant we now had a court order preventing us from operating our Floatspas for the public.** We immediately shut down the pods, and submitted new permit applications and a variance application (required by the DOH process). Our customers sent more than 50 emails (to DOH, state and local officials) requesting the pods be reopened for various health and therapy reasons – to our knowledge, not one single email received a response.
 - On Feb. 10 2021 **the DOH initiated a code enforcement visit spearheaded by the JSO VICE Unit (with the Fire Marshal, COJ building officials, JEA, etc). A group of 8 city officials swarmed our young employee as he arrived to unlock the space for his personal use** (we were not even open). They entered and searched the space without permission; we arrived 20 minutes later and showed them the judge's order, which only prevented us from operating the pods for the public. It did not prohibit us from operating our other services; upon learning this, JSO and the rest of the group left without issue.
- March 2021 – Variance board denied our request; we flew in a special independent inspector as required by the DOH to certify the electrical components of the Floatspas. We also consulted pool professionals to discuss the various modifications required by DOH including adding brominators and potentially modifying our pod drains (Floatspa pods empty completely like a bathtub, unlike traditional float pods which keep all float solution in the tub). We did add brominators (which has resulted in nothing but leaks and malfunctioning... pool equipment is not made to be used with dense Epsom salt solution) but we could not satisfy the drain modification requirements according to the advice we received, as well as the guidance from our manufacturer.

- April 2021 – On 4/2 the **DOH issued a 60 day temporary operating permit** (though we did not receive it in the mail until 4/9). On 4/6 the DOH issued a variance. On 4/8 the DOH inspected our Floatspas and the inspector agreed we were trying to “put a square peg into a round hole” with regard to modifying the Floatspa drain to meet pool requirements. We resumed floating in April after receiving the permit on 4/9.
- June 2021 – **upon expiration of the temporary permit, the DOH Health Officer met with us and agreed to allow us to keep operating** so long as we continued working on the drain issue. We met on a weekly basis throughout the summer of 2021, relaying the various progress made, and also the challenges faced.
- August 2021 – the weekly calls from DOH stopped; witness testimony later indicated this was because of COVID spikes and the availability of the Health officer. We continued operating and exploring solutions for the drain issue.
- October 2021 – the **DOH abruptly and without warning withdrew its permission to operate** and notified us we must become fully permitted within 10 days or they would **seek Contempt of Court** claims against us personally.
- November 2021 – We retained new counsel, then chose to voluntarily shut down the pods to show good faith cooperation.
- December 2021 – **The DOH sent a spy** to try to float at Indigo to try to prove we were operating in Contempt. A DOH employee, believed to possibly work directly for Chief Legal Counsel Ms. Meyer, called the spa and booked an appointment (we were still booking out future dates, and then canceling appointments closer to the appointment date if we still were not able to float). The individual never floated, as we were not actually floating customers at the time.
 - **Filed Emergency motion for hearing to terminate temporary injunction #1 (filed with Judge Wilkinson)**; at the hearing, Judge Wilkinson stated he mis-read the motion and decided the allotted time for the hearing was not enough time to hear it (so it was continued)
 - Also heard at this hearing was the DOH’s motion for Contempt – we were found NOT to be in Contempt.
 - Judge Wilkinson then transferred to Clay County in Duval; Judge Sharritt (new to Duval County) took over our case.
- January 2022 – **Filed Emergency motion for hearing to terminate temporary injunction #2 (filed with the new Judge Sharritt)**; hearing scheduled for March 2022
- March 2022 – Hearing held, **Judge Sharritt opted not to rule on the motion to terminate** until the Administrative Case played out (Administrative Case challenging the permit denial was originally scheduled for May 2022... we were still forced to remain closed in the interim)
 - **During all of this time, we were unable to generate revenue because our four pods remained closed to the public, and we could not keep up with contractual obligations such as rent and loan payments**
- March/April 2022 – **Shopping center landlord eviction action in County Court; We filed Bankruptcy on Good Friday to protect against eviction**
- May 2022 – Administrative Case was continued to June due to DOH stalling (attempted to limit our witnesses, claimed they needed more time for preparation/discovery); **DOH attorney Ms. Meyer lied to the Administrative Law Judge about the Circuit Court order, said Judge Wilkinson made a “misstatement” in his order... even though Ms. Meyer wrote the order for him** (we

have the transcript/it's also cited in our 11/30/22 Motion). On 5/7/22, we filed the November 2020 hearing transcripts with Judge Sharrit, explaining that DOH never argued that our pods created a significant risk to the public (a necessary requirement to shut down a public pool) and *again* requested Judge Sharrit grant our motion to terminate the injunction. **Judge Sharritt never ruled on our motion.**

- June 2022 – Added a rule challenge to our Administrative claim on permit denial; case was continued to August due to DOH claiming they needed to add a rule challenge attorney.
- August 2022 – **Administrative hearing was held** on both claims at the same time, hearing lasted more than 3 days and involved numerous expert witnesses (we continued to be closed throughout this whole time period... landlord is still attempting to evict). Filed May ALJ transcript with Judge Sharritt (showing DOH counsel lied).
- September/October 2022 – no significant legal activity, was waiting for ALJ orders, still could not float.
- November 2022 – **We WON both Administrative Cases** (Final Order for the Rule Challenge, Recommended Order on the permit denial challenge); immediately **filed Emergency motion for hearing to terminate temporary injunction #3 (filed with Judge Sharritt)** to allow us to reopen the Floatspas.
 - Based upon the good news, our Bankruptcy judge opted not to lift the eviction protections (as requested by landlord) conditioned on us paying adequate protection/rent payments. **Believing we could reopen the pods and float again, we committed to paying full rent beginning in December.** We expected we would be able to take advantage of the busy holiday season and make up some lost ground with our rent arrears. But the DOH did not allow us to resume floating, and we eventually created a Go Fund Me campaign to help us survive December.
- December 2022 – DOH responded to our Circuit court motion, citing only the ALJ's Recommended Order (not the Final Order), and argued the Administrative matter is not yet final, so Circuit Court action should not be taken yet – also argued our circumstances have not changed so as to warrant an emergency hearing. Our Bankruptcy attorney joined the Circuit Court case, and **filed yet another Emergency motion for hearing to terminate temporary injunction #4 (filed with Judge Sharritt)**
 - We filed a 525 motion in federal court; requesting a temporary restraining order against the DOH
- January 2022 – **To date, Judge Sharritt has not scheduled a hearing on our urgent motions,** opting instead to continue to wait and observe what happens in the Administrative case (the Recommended Order is pending DOH review)... but this ignores the valid FINAL Order. We're actively preparing another motion for the Circuit Court.

We remain unable to float – despite winning the rule challenge, which should mean the DOH can no longer rely on its existing regulations. The implication is that the DOH should now undertake formal rulemaking to determine *proper* regulations for float pods, yet we remain handcuffed by the same unadopted rule the Administrative Judge rejected.