

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARTIN H.M.A., INC., d/b/a)
SANDYPINES HOSPITAL,)
)
Petitioner,)
)
vs.) CASE NO. 93-1891
)
STATE OF FLORIDA, AGENCY FOR)
HEALTH CARE ADMINISTRATION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William J. Kendrick, held a formal hearing in the above-styled case on November 2, 1993, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert S. Cohen, Esquire
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For Respondent: Edward Labrador, Esquire
Richard A. Patterson, Esquire
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STATEMENT OF THE ISSUES

At issue in this proceeding is whether petitioner's request to modify its certificate of need from a 60-bed child/adolescent psychiatric hospital to a 45-bed child/adolescent and 15-bed adult psychiatric facility should be approved.

PRELIMINARY STATEMENT

By letter of March 5, 1993, respondent, Agency for Health Care Administration (AHCA), notified petitioner, Martin H.M.A., Inc., d/b/a SandyPines Hospital (SandyPines), that its request to modify Certificate of Need (CON) Number 4004 from a 60-bed child and adolescent psychiatric hospital to a 45-bed child/adolescent and 15-bed adult psychiatric facility was denied. SandyPines filed a petition for formal administrative proceedings to challenge AHCA's decision, and the matter was referred to the Division of Administrative Hearings for the assignment of a Hearing Officer to conduct a formal hearing pursuant to Section 120.57(1), Florida Statutes.

At hearing, petitioner called Gene Nelson, accepted as an expert in health care planning and certificate of need program administration, as a witness, and its exhibits 1 and 2 were received into evidence. Respondent called Elizabeth Dudek, accepted as an expert in health care planning and certificate of need program administration, as a witness, and its exhibits 1-16 were received into evidence. Official recognition was taken of the final order rendered in Florida League of Hospitals, Inc. v Department of Health and Rehabilitative Services, 12 FALR 4126. A copy of such order was marked as respondent's exhibit 17.1

The transcript of hearing was filed November 8, 1993, and the parties were granted leave until January 21, 1994, to file proposed recommended orders. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. 60Q-2.031, Florida Administrative Code. The parties' proposed findings are addressed in the appendix to this recommended order.

FINDINGS OF FACT

Case status

1. In February 1993, petitioner, Martin H.M.A., Inc., d/b/a SandyPines Hospital (SandyPines), filed an application with the respondent, Agency for Health Care Administration (AHCA), for a modification of its certificate of need (CON) from a 60-bed child/adolescent psychiatric hospital to a 45-bed child/adolescent and 15-bed adult psychiatric hospital. Upon review, AHCA concluded that SandyPines' request could not be accommodated under the modification provisions of Rule 59C-1.019, Florida Administrative Code, and required certificate of need review. Accordingly, AHCA proposed to deny SandyPines' request, and these formal proceedings to review, de novo, the agency's decision were commenced at SandyPines' request.

The applicant

2. SandyPines is the holder of certificate of need number 4004 which authorized it to construct a 60-bed child/adolescent psychiatric facility. That facility was constructed and is currently in operation in Tequesta, Martin County, Florida.

3. SandyPines is now, and has been since it commenced operations in January 1990, licensed as a Class III Special Psychiatric Hospital with 60 psychiatric child/adolescent beds. It has never provided adult inpatient psychiatric services and, until approximately October 18, 1993, had never provided any adult outpatient psychiatric services. The adult outpatient psychiatric services currently provided by SandyPines are not subject to CON review.

SandyPines's fiscal problems

4. When SandyPines opened in January 1990, no managed care organizations existed in its local market; however, with each passing year managed care has become more prevalent such that currently 45-50 percent of SandyPines admissions are covered by some form of managed care. This has significantly adversely affected SandyPines' revenues such that it lost approximately \$600,000 last fiscal year and, absent increased occupancy levels, its continued viability is, at best, questionable. Indeed, if SandyPines continues to operate as currently configured, it projects a loss for the fiscal year ending September 30, 1994, of \$1,099,777.

5. Occupancy levels are low, however, for District IX as a whole, due in large measure to the demands for managed care. For the six-month period ending June 1993, the average occupancy rate for child/adolescent psychiatric beds was 35 percent and for adult psychiatric beds 65 percent.

6. To address its faltering business, SandyPines has, as heretofore noted, begun to provide adult psychiatric services on an outpatient basis; however, unless it can combine inpatient adult psychiatric services with the program it is doubtful that its adult program will prove successful. In this regard, SandyPines offered proof, which is credited, that patients and their physicians are looking for what has been termed "one-stop shopping." The patient does not want to go to one facility for outpatient care and another facility for inpatient care, and the referring physicians would rather send all of their patients to one facility that offers a full spectrum of services. Therefore, from a marketing perspective, the addition of adult inpatient psychiatric services at SandyPines would have a positive effect.

7. Whether modification of SandyPines' CON to allow inpatient adult psychiatric services will increase the hospital's daily census and utilization sufficiently to assure its viability is, at best, fairly debatable.

8. To analyze the impact of redesignating 15 child/adolescent beds to 15 adult psychiatric beds, SandyPines made an assumption of an average daily census of 10.5 patients on the 15-bed adult psychiatric unit. Based on such assumption, SandyPines calculated a net income from that unit, for the fiscal year ending September 30, 1994, assuming it opened April 1, 1994, of \$589,664, and a net loss for the facility as a whole of \$510,113, as opposed to a net loss of \$1,099,777 without the adult unit. Based on the same assumptions, SandyPines calculated a net income for the fiscal year ending September 30, 1985, for the adult unit at \$1,111,008, and a net income for the facility as a whole with an adult unit at \$44,980.

9. As heretofore noted, SandyPines' ability to achieve an average daily census of 10.5 patients is, at best, fairly debatable. To SandyPines' credit, it has an active advertising and marketing department comprised of six people and its director of marketing and business development. This marketing group is constantly striving to develop relationships with referral sources and to develop programs to meet market needs and demands. There was, however, no proof of record to demonstrate any existent commitments in the community or any objective data to support the conclusion that SandyPines could reasonably expect to attain an average daily census of 10.5 patients. Moreover, four of SandyPines' potential competitors for adult psychiatric patients exhibited more than a 78 percent occupancy rate for the first six months of 1993, which may be reflective of among other attributes, a strong existent referral pattern, and the overall District average was only 65 percent, which reflects significant unused capacity. On balance, the proof is not compelling that SandyPines could achieve the occupancy levels it projected.

10. Whether SandyPines achieved its projected occupancy levels for adult services or some lesser level would not, however, significantly adversely impact existing providers. Moreover, the redesignation of beds and the necessary modification of the facility to meet required legal standards of separation of

adult and child/adolescent units would require no more than \$50,000-\$80,000; a capital expenditure well below that which would require CON review.

Is modification appropriate

11. Pertinent to this case, Rule 59C-1.109, Florida Administrative Code, provides:

(1) A modification is defined as an alteration to an issued, valid certificate of need or to the condition or conditions on the face of a certificate of need for which a license has been issued, where such an alteration does not result in a project subject to review as specified in . . . subsection 408.036(1) . . ., Florida Statutes.

12. Subsection 408.036(1), Florida Statutes, provides in pertinent part:

. . . all health-care-related projects, as described in paragraphs (a)-(n), are subject to review and must file an application for a certificate of need with the department. The department is exclusively responsible for determining whether a health-care-related project is subject to review under [ss.408.031-408.045].

* * *

(e) Any change in licensed bed capacity.

* * *

(h) The establishment of inpatient institutional health services by a health care facility, or a substantial change in such services . . .

* * *

(1) A change in the number of psychiatric . . . beds.

13. Finally, pursuant to the Legislature mandate of Section 408.034(3), Florida Statutes, to "establish, by rule, uniform need methodologies for health services and health facilities," AHCA has promulgated Rule 59C-1.040, Florida Administrative Code, which establishes discrete methodologies for calculating the need for the establishment of inpatient adult psychiatric services and inpatient child/adolescent psychiatric services, and provides for the identification of the number of hospital inpatient psychiatric beds for adults and children/adolescents by facility. As heretofore noted, SandyPines' license designates it as a "Class III Special Psychiatric hospital with 60 Psychiatric Child/Adolescent beds," and the inventory established pursuant to Rule 59C-1.040(11), Florida Administrative Code, has identified SandyPines' beds as child/adolescent.

14. Resolution of the parties' dispute as to whether SandyPines' proposed conversion of beds from child/adolescent to adult is subject to CON review under Section 408.036(1)(e), (h) and (1), Florida Statutes, and therefore not susceptible to modification under Rule 59C-1.109(1), resolves itself to an interpretation of Section 408.306(1), Florida statutes, and the provisions of Chapter 59C-1, Florida Administrative Code.

15. SandyPines contends that hospital inpatient psychiatric services, as used in Chapter 408, Florida Statutes, and Chapter 59C-1, Florida Administrative Code, is a generic term for the treatment of psychiatric disorders and that its proposal to treat adults, as opposed to children/adolescents, is not a change in

health services. Accordingly, SandyPines concludes that the proposed conversion does not constitute "[a] change in licensed bed capacity," "the establishment of inpatient institutional health services by a health care facility, or a substantial change in such services," or " change in the number of psychiatric beds," such that CON review would be required under Section 408.306(e), (h) and (l), Florida Statutes.

16. Contrasted with SandyPines' position, AHCA interprets the foregoing provisions of law, when read in para materia, and with particular reference to Rule 59C-1.040, Florida Administrative Code, as establishing two discrete types of inpatient psychiatric services, to wit: child/adolescent and adult.

17. The separate CON review criteria established by Rule 59C-1.040, Florida Administrative Code, for child/adolescent and adult inpatient psychiatric services is consistent with AHCA's interpretation. Indeed, the rule, among other things, establishes separate bed need methodologies, fixed need pools, bed inventories, utilization thresholds, and minimum unit sizes for child/adolescent and adult services. Granting SandyPines' request would run counter to these CON review criteria by, among other things, altering the District IX inventory of child/adolescent and adult psychiatric beds, as well as awarding adult psychiatric beds when there is no need under the established methodology. Finally, consistent with the provisions of Section 395.003(4), Florida Statutes, the agency has issued SandyPines a license "which specifies the service categories and the number of hospital beds in each bed category [60 psychiatric child/adolescent beds] for which [the] license [was issued]." Granting SandyPines' request would constitute a change in its "licensed bed capacity."

18. Considering the foregoing provisions of law, it is concluded that the interpretation advanced by SandyPines is strained, and the interpretation advanced by AHCA is reasonable. Accordingly, it is found that SandyPines' proposed conversion of 15 child/adolescent psychiatric beds to 15 adult psychiatric beds is subject to CON review because such conversion constitutes "[a] change in licensed bed capacity," "the establishment of inpatient institutional health services by a health care facility, or a substantial change in such services," or "a change in the number of psychiatric beds." Section 408.036(e), (h) and (l), Florida Statutes

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Section 120.57(1), Florida Statutes.

20. At issue in this proceeding is whether SandyPines' request for modification should be approved. As the applicant, SandyPines has the burden of demonstrating its entitlement to the modification. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So.2d 778 (Fla. 1st DCA 1981), and Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977). Here, SandyPines has failed to sustain its burden of proof.

21. Generally, an administrative construction of a statute by an agency responsible for its administration is entitled to great deference and should not be overturned unless clearly erroneous. Department of Environmental Regulation v. Goldring, 477 So.2d 532 (Fla. 1985); All Seasons Resorts, Inc. v. Division of Land Sales, Condominiums and Mobile Homes, 455 So.2d 544 (Fla. 1st DCA 1984); and Sans Souci v. Division of Land Sales and Condominiums, 421 So.2d 623 (Fla.

1st DCA 1982). The same deference has been accorded to rules and to the meaning assigned them by officials charged with their administration. Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983); and State Department of Commerce, Division of Labor v. Matthews Corp., 358 So.2d 256 (Fla. 1st DCA 1978). Moreover, the agency's interpretation does not have to be the only one or the most desirable one; it is enough if it is permissible. Pan American World Airways, Inc. v. Florida Public Service Commission, supra; and Florida Power Corp. v. Department of Environmental Regulation, 431 So.2d 684 (Fla. 1st DCA 1983).

22. Here, considering the provisions of Rule 59C-1.040, Florida Administrative Code, AHCA's interpretation of the provisions of its modification rule, and more specifically the provisions of Section 408.036(e), (h) and (l), Florida Statutes, which delineate projects subject to CON review, as precluding SandyPines' requested modification is permissible, and not clearly erroneous. Accordingly AHCA's refusal to approve SandyPines' requested modification was appropriate.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that a final order be rendered denying SandyPines' request to modify its certificate of need from a 60-bed child/adolescent psychiatric hospital to a 45-bed child/adolescent and 15-bed adult psychiatric facility.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 14th day of March 1994.

WILLIAM J. KENDRICK
Hearing Officer
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of March 1994.

ENDNOTE

1/ At hearing, certain objections to the deposition testimony of Putnam Moreman and Andy Fuhrman, received as petitioner's exhibits 1 and 2 respectively, were raised, and disposition of those objections was reserved for this recommended order. As to Mr. Moreman's deposition testimony, respondent objected to column 1 of page one of deposition exhibit 1 [the "(unaudited) Fiscal Year ended 9/30/93" data]. That objection is overruled. As to Mr. Fuhrman's deposition testimony, respondent objected to his testimony at pages 26-30 [more specifically his response at page 30, lines 3-6]. That objection is sustained.

APPENDIX

Petitioner's proposed findings of fact are addressed as follows:

1. Addressed in paragraph 1.
2. Addressed or subsumed in paragraph 15.
- 3-5. Addressed in paragraphs 6 and 9.
- 6-8. Addressed in paragraph 6.
- 9 & 10. Addressed in paragraphs 4-6, otherwise unnecessary detail.
- 11 & 12. Rejected as not relevant, there being no competent proof to demonstrate the reason for such facilities' actions.
13. Addressed in paragraphs 7-9.
14. Rejected as not persuasive.
15. Rejected as speculative.
16. Addressed in paragraph 10.
17. Addressed in paragraph 9.
- 18-20. Adopted in paragraph 8.
21. Adopted in paragraphs 7-9.
- 22-26 Addressed in paragraph 4, otherwise unnecessary detail.
- 27-29. Addressed in paragraphs 4-9.
- 30-32. Addressed in paragraph 10.
33. Not relevant.

Respondent' proposed findings of fact are addressed as follows:

1. Addressed in paragraph 3.
- 2 & 3. Addressed in paragraph 1.
4. Addressed in paragraphs 2 and 3.
- 5-9. Addressed in paragraphs 14, and 16-18.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.