

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE HOSPITALS & HEALTH SYSTEMS, )  
INC., d/b/a MANATEE MEMORIAL )  
HOSPITAL, )  
 )  
Petitioner, )  
 )  
vs. ) CASE NO. 93-7094RX  
 )  
AGENCY FOR HEALTH CARE )  
ADMINISTRATION, )  
 )  
Respondent. )  
 )  
----- )  
MANATEE HOSPITALS & HEALTH SYSTEMS, )  
INC., d/b/a MANATEE MEMORIAL )  
HOSPITAL, )  
 )  
Petitioner, )  
 )  
vs. ) CASE NO. 94-0003  
 )  
AGENCY FOR HEALTH CARE )  
ADMINISTRATION, )  
 )  
Respondent. )  
----- )

RECOMMENDED ORDER (#94-0003)

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled consolidated cases on January 14, 1994, in Tallahassee, Florida.

APPEARANCES

For Petitioner: John M. Knight, Esquire  
Robert S. Weiss, Esquire  
Parker, Hudson, Rainer & Dobbs  
118 North Gadsden Street  
Tallahassee, Florida 32301

For Respondent: J. Robert Griffin, Esquire  
Agency for Health Care Administration  
The Atrium Building, Suite 301  
325 John Knox Road  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

The issue for disposition is whether Petitioner's application for a certificate of need (CON) was properly rejected by Respondent for failure to

file the application by the deadline established in rules 59C-1.008(k)1. and 2. and 59C-1.008(4), F.A.C. The parties have stipulated that if the rules are determined valid in the companion case, 93-7094RX, the agency was authorized to reject the application.

#### PRELIMINARY STATEMENT

On December 16, 1993, Petitioner, Manatee Hospitals and Health Systems, Inc., d/b/a Manatee Memorial Hospital (Manatee) filed its petition pursuant to section 120.56 to contest the validity of the subject rules. (DOAH #93-7094RX) Manatee also filed a petition pursuant to section 120.57(1), F.S., contesting the Respondent's (Agency) decision to reject for review a certificate of need (CON) application submitted by Manatee. (DOAH #94-0003)

Without objection, the two cases were consolidated for hearing in an order dated January 12, 1994. As provided in section 120.56(3), F.S., a separate final order is being issued this same date in DOAH #93-7094RX.

At the hearing the parties presented a thorough stipulation of material facts, and the testimony of Elizabeth Dudek, qualified as an expert in health planning and administration of the certificate of need program. Joint exhibits #1-6 were received in evidence; official recognition was taken of an amendment to former rule 10-5.008, F.A.C., filed on October 28, 1987, and effective November 17, 1987. Official recognition was also taken of rules 10-5.002-.024, F.A.C., as published in the Florida Administrative Weekly, Vol. 16, number 13, on March 30, 1990.

The proposed findings of fact submitted by both parties are substantially adopted here, there being no disputed issues of material fact.

#### FINDINGS OF FACT

1. Manatee Hospitals and Health Systems, Inc. d/b/a Manatee Memorial Hospital (Manatee) is a nonprofit corporation which operates a short-term general acute care hospital in Manatee County, Florida.

2. On November 1, 1993, Manatee timely and properly submitted a letter of intent to the Agency for Health Care Administration (Agency) seeking authority to convert up to 11 substance abuse beds and/or up to 28 acute care beds to 28 skilled nursing beds for review in the Nursing Home Batch Cycle, 2nd Cycle, 1993.

3. On December 1, 1993, Manatee submitted a CON application to the agency seeking authority to convert up to 11 adult substance abuse beds and/or up to 28 acute care beds to 28 skilled nursing beds for review in the nursing home batch cycle, 2nd cycle, 1993. The application included the appropriate filing fee.

4. Manatee failed to submit a copy of its CON application to the local health council by 5:00 p.m. on the application due date of December 1, 1993. Instead, the application was submitted to the local health council on December 2, 1993.

5. By correspondence from Liz Dudek, Chief, Certificate of Need and Budget Review Section, dated December 7, 1993, the agency advised Manatee that its CON application was not accepted and was being returned to Manatee because Manatee failed to submit a copy of its application to the health council by 5:00 p.m. on

the application due date of December 1, 1993, as required by rules 59C-1.008(1)(k)1., and 2., and 59C-1.008(4), F.A.C.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to section 120.57(1), F.S.

7. Section 408.039(3)(a), F.S., provides, in pertinent part:

(3) Application Processing.--

(a) An applicant shall file an application with the department, and shall furnish a copy of the application to the local health council and the department.

8. Rules 59C-1.008(1)(k)1. and 2., F.A.C. provide:

(k) Certificate of Need Application Submission. An application for a certificate of need shall be submitted on HRS Form 1455, August 1985, and HRS Form 1460, June 1991 incorporated by reference herein, and shall be provided by the agency upon request.

1. The application must be actually received by the agency by 5 p.m. local time and a copy must actually be received by the local health council by 5 p.m. local time on or before the application due date.

2. An application submitted to the agency shall not be accepted by the agency, and the application fee will be returned if a copy of the application is not received by the appropriate local health council as provided above.

Rule 59C-1.008(4), F.A.C. provides:

(4) Submission to Local Health Council. Each applicant shall submit a copy of its application to the applicable local health council at the same time the application is submitted to the agency. Failure to timely file with the local health council as set forth in Rule 59C-1.008(1)(k), F.A.C., will result in the application not being accepted by the agency.

9. The above rules have been found a valid exercise of delegated legislative authority in a separate order entered this same date in DOAH case #93-7094RX. The parties have stipulated that if the rules are determined valid, so also is the agency action in rejecting Manatee's late-filed application.

RECOMMENDATION

Based on the foregoing, it is, hereby,

RECOMMENDED:

That Petitioner's request that the agency accept its application for comparative review in the Nursing Home Cycle, 2nd cycle be DENIED.

DONE AND RECOMMENDED this 21st day of February, 1994, in Tallahassee, Leon County, Florida.

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MARY CLARK  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904)488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of February, 1994.

COPIES FURNISHED:

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J. Robert Griffin, Esquire  
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Robert L. Powell, Agency Clerk  
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1323 Winewood Boulevard  
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Kim Tucker, General Counsel  
Department of Health and  
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1323 Winewood Boulevard  
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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.

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AGENCY FINAL ORDER
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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

MANATEE HOSPITALS AND
HEALTH SYSTEMS, INC. d/b/a/
MANATEE MEMORIAL HOSPITAL,

Petitioner,

CASE NO.: 94-0003
RENDITION NO.: AHCA-94-62-FOF-CON

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

\_\_\_\_\_/

FINAL ORDER

This cause came on before me for the purpose of issuing a final agency order. The Hearing Officer assigned by the Division of Administrative Hearings (DOAH) in the above-styled case submitted a Recommended Order to the Agency for Health Care Administration (AHCA). The Recommended Order entered February 21, 1994, by Hearing Officer Mary Clark is incorporated by reference.

FINDINGS OF FACT

The agency hereby adopts and incorporates by reference the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The agency hereby adopts and incorporates by reference the conclusions of law set forth in the Recommended Order.

Based upon the foregoing, it is

ADJUDGED, that the application of Manatee Hospitals and Health Systems for a certificate of need be DENIED.

DONE and ORDERED this 4th day of April, 1994, in Tallahassee, Florida.

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Douglas M. Cook, Director  
Agency for Health Care  
Administration

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Robert A. Weiss, Esquire  
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325 John Knox Road  
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Mary Clark  
Hearing Officer  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

Elizabeth Dudek (AHCA/CON)

Alberta Granger (AHCA/CON)

Elfie Stamm (AHCA/CON)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addresses by U.S. Mail this 6th day of April, 1994.

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R. S. Power, Agency Clerk  
State of Florida, Agency for  
Health Care Administration  
325 John Knox Road  
The Atrium Building, Suite 301  
Tallahassee, FL 32303  
(904) 922-3808