STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GALEN OF FLORIDA, INC. and COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,	)	
Petitioners,	)	
vs.	)	CASE NO. 94-0404RX
AGENCY FOR HEALTH CARE ADMINISTRATION,	)	
Respondent,	)	
and	)	
NORTH BROWARD HOSPITAL DISTRICT, and SOUTH BROWARD HOSPITAL DISTRICT,	)	
Intervenors.	)	

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on April 12, 1994, at Tallahassee, Florida, by James W. York, duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: John D.C. Newton, II, Esquire
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STATEMENT OF THE ISSUES

Whether Rule 59C-1.008(1)(n), Florida Administrative Code, constitutes "an invalid exercise of delegated legislative authority." 1/

PRELIMINARY STATEMENT

Prior to the filing of the rule challenge petition in this case, petitioners were engaged in a proceeding pursuant to Chapter 120, Florida Statutes, to contest the Florida Agency for Health Care Administration's (AHCA) denial of a Certificate of Need (CON) application submitted by Galen of Florida, Inc., d/b/a Westside Regional Medical Center (Galen) in Division of Administrative Hearings (DOAH) Case No. 93-4880. That proceeding was consolidated with DOAH Case No. 93-4881 on September 3, 1993. On January 7, 1994, a Motion for Summary Recommended Order was filed in the consolidated case, seeking to dismiss Galen's petition based on a change in the applicant/license holder of Westside Regional Medical Center. 2/ Subsequently, Galen filed a Petition for Administrative Determination of Invalidity of Adopted Rules. The allegations in the rule challenge petition are the subject of the instant proceeding.

At the final hearing, the parties entered into evidence Joint Exhibit Nos. 1-6. Galen presented the testimony of Daniel J. Sullivan, tendered and accepted as an expert in the area of health care planning and health care finance. Galen also entered into evidence Exhibits 1-3, which included the deposition testimony of employee Elizabeth Dudek, chief of the certificate of need and budget review (Petitioner's Exhibit No. 1), the curriculum vitae of Daniel J. Sullivan, and a corporate organization chart, admitted solely as demonstrative evidence.

All parties were afforded the opportunity file proposed final orders and agreed to file such proposals by May 27, 1994, thereby waiving the statutory requirement that the Final Order be rendered within the thirty day time period provided in Section 120.56, Florida Statutes. South Broward Hospital District and Galen each filed proposed final orders. North Broward Hospital District, d/b/a Broward General medical Center and the AHCA filed a joint proposed final order. All proposed final orders were filed within the established time frame. The proposed final orders of all parties were considered and specific rulings on the proposed findings of fact submitted by the parties are contained in the Appendix to this Order.

FINDINGS OF FACT

1. On January 24, 1994, Petitioners filed a Petition for Administrative Determination of Adopted Rules, pursuant to Section 120.56, Florida Statutes.

2. The parties have stipulated that all parties to the proceeding have standing.

3. The rule at issue in this proceeding, Rule 59C-1.008(1)(n), Florida Administrative Code, states as follows:

> The applicant for a project shall not change from the time a letter of intent is filed, or from the time an application is filed in the case of an expedited review project, through the time of the actual issuance of a Certificate of Need. Properly executed corporate mergers or changes in the corporate name are not a change in the applicant.

4. The representative designated to testify regarding the validity of the challenged rule is Elizabeth Dudek, chief of the CON and budget review for the AHCA.

5. According to Ms. Dudek, by operation of the rule, if an applicant files a letter of intent and application for CON, if the applicant facility is subsequently sold and the purchaser has the applicant license reissued in the name of the new owner prior to issuance of the CON, the agency dismisses the application.

6. Ms. Dudek testified that the AHCA applies the rule in question to dismiss an application for CON where the applicant/license holder changes during the pendency of the application even if there is no change in staffing, management, services or assets of the facility in question.

7. Ms. Dudek explained that while a new license holder might, at a minimum, possess the assets of the original license holder, the entity might also have more capital projects and, consequently, the proposed project might be less financially feasible.

8. The specific rule challenged in this case could not apply to dismiss an application where the identity of the applicant license holder does not change while the CON is pending, even though the facility in question might completely replace management and staff, renovate the facility, and deplete its assets.

9. Ms. Dudek has not experienced a situation where the corporate merger/corporate name change exception to the application of the rule has been applied.

10. Ms. Dudek was not involved in the development and promulgation of the rule. Ms. Dudek has, however, been involved in the CON review process for ten years and believes that the rule is designed to avoid the recurrence of problems encountered when a CON has been issued to the license holder of a facility owned by another entity, or in cases where a CON was issued to the facility's owner as opposed to the license holder.

11. The identity of the applicant/license holder in the CON application process is one of many facts and circumstances involved in the process of agency review and consideration.

12. The AHCA interprets the language in the rule which prohibits a change in applicant from the time a letter of intent is filed until the actual issuance of the CON, to include the time consumed in an appeal to a district court of appeal and any remand to the agency for further proceedings.

13. CON proceedings are often lengthy and hotly contested, and often a year or more passes between the time a party files a letter of intent and the time a CON is finally issued.

14. Ms. Dudek testified that the challenged rule implements the following statutes:

> Section 408.034(5), Florida Statutes, which authorizes the agency to create rules;
>
> Section 408.035, Florida Statutes, which sets forth statutory CON review criteria;
>
> Section 408.037, Florida Statutes, which sets forth minimum CON application content; and
>
> Section 408.039, Florida Statutes, which sets forth the CON review process.

15. Elizabeth Dudek testified that pursuant to Section 408.037, Florida Statutes, AHCA is required to examine the applicant's board resolution, audited financial statements and capital project lists.

16. Ms. Dudek's uncontroverted testimony establishes that where the license holder changes during the review process, the agency would not have been provided with a board resolution, financial statements and capital projects lists from the new license holder pursuant to the requirements of Section 408.037.

17. Ms. Dudek's uncontroverted testimony showed that where the license holder changes during the pendency of the CON application, AHCA would not have examined or reviewed the mandatory content information for the current license holder, another requirement of Section 408.037.

18. Ms. Dudek agreed that, while there might be material changes in some factors considered during the CON review process which do not involve a change in the applicant, mechanisms exist to examine those changes. No mechanism exists to consider changes in the applicant itself.

19. Section 408.039, Florida Statutes, sets forth the review process for CON applications, providing in part:

> (2) LETTERS OF INTENT
> (a) ... a letter of intent shall be filed by the applicant ...
> (c) Letters of intent shall describe the proposal with specificity, including ... identification of the applicant, including the names of those with controlling interest in the applicant and ... a certified copy of a resolution by the board of directors of the applicant ... authorizing the filing of the application described in the letter of intent; authorizing the applicant to incur the expenditures necessary to accomplish the proposed project; certifying that if issued a certificate, the applicant shall accomplish the proposed project ...and certifying that the applicant shall license and operate the facility.

20. The remaining provisions of Section 408.039, Florida Statutes, detail the CON review process, including additional applicant-specific filing and notice requirements.

21. Ms. Dudek testified that, in order to implement Section 408.039, it is necessary for AHCA to know who the applicant is at the time of review.

22. Rule 59C-1.010(2), Florida Administrative Code, provides in pertinent part:

> (b) Subsequent to an application being deemed complete by the agency, no further application information or amendment will be accepted by the agency.

23. There is no mechanism for updating or supplementing the applicant information required in a letter of intent pursuant to Section 408.039, Florida Statutes, without violating the provisions of Rule 59C-1.010(2)(b), Florida Administrative Code.

24. Ms. Dudek testified that the challenged rule has been consistently and uniformly applied since being adopted by the agency. Ms. Dudek's testimony in this regard is uncontroverted.

25. Petitioner presented the testimony of Daniel J. Sullivan, a health care consultant. Mr. Sullivan was accepted as qualified to render opinions in the areas of health care planning and finance.

26. Mr. Sullivan testified that health care is in a period of rapid and accelerating change. Market forces and government regulation are changing how health care services are provided as well as who provides such services. Methods of compensating health care professionals are also changing due to such market forces and regulation. These changes and others are creating incentives for, or in some cases requiring, new types of arrangements and relationships among health care providers.

27. According to Mr. Sullivan, the creation of Community Health Purchasing Alliances under Florida law is also changing the provision of health care services.

28. Mr. Sullivan is of the opinion that the rule in dispute has a chilling effect on the actions required in today's changing health care industry. This testimony is not persuasive and, even if it were, does not, under the facts presented, indicate that the rule is arbitrary, unreasonable or otherwise an invalid exercise of delegated legislative authority.

29. Mr. Sullivan acknowledged that a change in the license holder during the pendency of a CON application could affect the following CON review criteria found in Section 408.035, Florida Statutes:

> Section 408.035(1)(a), Florida Statutes, pertaining to the need for the project in relation to the applicable state and district health plans;

Section 408.035(1)(c), Florida Statutes, pertaining to the applicant's history and ability in providing quality of care;

Section 408.035(1)(e), Florida Statutes, pertaining to probable economies and improvements in service that may be derived from operation of joint, cooperative, or shared health resources;

Section 408.035(1)(g), Florida Statutes, pertaining to the need for research and educational facilities;

Section 408.035(1)(h), Florida Statutes, pertaining to the availability of resources and the applicant's ability to provide the necessary resources to successfully implement the proposed project;

Section 408.035(1)(i), Florida Statutes, pertaining to the immediate and long term financial feasibility of the proposal;

Section 408.035(1)(j), Florida Statutes, pertaining to the needs and circumstances of health maintenance organizations;

Section 408.035(1)(k), Florida Statutes, pertaining to entities that provide a substantial portion of their services to individuals not residing within the service district;

Section 408.035(1)(l), Florida Statutes, pertaining to the impact of the proposed project on the costs of providing the health services proposed;

Section 408.035(1)(n), Florida Statutes, pertaining to the applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent; and

Section 408.035(1)(o), Florida Statutes, pertaining to an applicant's past and proposed provisions which promote a continuum of care.

30. Mr. Sullivan testified that the remaining statutory criteria [Section 408.035(1)(b), (d), (f), and (m)] are "need" oriented, and would not be affected by a change in the license holder.

31. Mr. Sullivan conceded that there would be times where a change in the license holder could affect an applicant's ability to consistently meet the provisions of Section 408.035, Florida Statutes.

32. Mr. Sullivan also conceded that, where the license holder changes during the pendency of the CON application review process, the initial license holder would no longer be in a position to implement the proposed project, and could not legally operate the project pursuant to the requirements of Section 408.037, Florida Statutes.

33. Mr. Sullivan further acknowledged that, where there is a change in the license holder after the letter of intent is filed, the new license holder could not provide the mandatory statutory content items such as the letter of intent and a resolution of the new license holder's board of directors pursuant to Chapter 408, Florida Statutes, without amending or updating the CON application.

34. In fact, the majority of the review criteria in Section 408.035, Florida Statutes, relate to the identity of the applicant and the applicant's ability to carry out the proposed project.

35. Mr. Sullivan proposed that a new license holder can demonstrate that it meets the mandatory content requirements by providing a hearing officer with updated information during an administrative hearing. However, Mr. Sullivan conceded that agency Rule 59C-1.010(2)(b) prohibits the updating of applications once AHCA has deemed the application complete.

36. The greater weight of the evidence demonstrated that if the identity of a license holder changes during the CON review process, AHCA can not fulfill its statutory responsibility to conduct a review of the information and data provided by the original applicant.

37. Mr. Sullivan testified, in sum, that it is his opinion the rule goes too far in focusing on one issue (change in applicant/license holder) and that the rule should focus on all substantial change that occurs in the ability of the applicant to perform. This testimony is not persuasive. Mr. Sullivan concedes that Chapter 408, Florida Statutes, is "applicant specific" in provisions of the statute pertinent to this proceeding.

38. Petitioner has failed to prove that the challenged rule is not rationally related to the authority delegated to AHCA by the Legislature pursuant to Chapter 408, Florida Statutes. Therefore, Petitioner has failed to prove that the rule is arbitrary or capricious.

39. Petitioner has also failed to prove that the rule in question enlarges, modifies or contravenes Chapter 408, Florida Statutes, or that the rule is vague, fails to establish standards for the agency's decisions or vests unbridled discretion with the agency.

40. Florida Administrative Code Rule 59C-1.008(1)(n) has been in full force and effect in its current form from January 31, 1991 to the present as contained in the Certified Copy of Rule by the Secretary of State of Florida, Department of State, Division of Elections, February 21, 1994.

CONCLUSIONS OF LAW

41. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings, pursuant to Section 120.56, Florida Statutes.

42. The parties to this proceeding have stipulated that each party has standing.

43. The rule challenged in this case provides:

> The applicant for a project shall not change from the time a letter of intent is filed, or from the time an application is filed in the case of an expedited review project, through the time of the actual issuance of a Certificate of Need. Properly executed corporate mergers or changes in the corporate name are not a change in the applicant.

44. In the amended petition, Petitioner has alleged that Rule 59C-1.008(1)(n), Florida Administrative Code, is an invalid exercise of delegated legislative authority as that term is defined in Section 120.52(8), Florida Statutes, which provides, in pertinent part:

> (8) "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one or more of the following apply:
> (a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(7);
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);
> (d) The rule is vague, fails to establish adequate standards for agency decision vests unbridled discretion in the agency; or
> (e) The rule is arbitrary or capricious.

45. Therefore, Petitioner in this case has the burden to prove, by a preponderance of the evidence, that the challenged rule violates one or more of the cited provisions of Section 120.52(8), Florida Statutes. Agrico Chemical Co. vs. Department of Environmental Regulation, 365 So.2d 159 (Fla. 1st DCA 1978).

46. In this proceeding, Petitioner has attempted to show that the challenged rule exceeds the agency's grant of rulemaking authority pursuant to Chapter 408, Florida Statutes, in that the rule does not relate to the implementation of Sections 408.031-408.045, Florida Statutes.

47. The record in this case reflects, however, that the rule in question relates specifically to the review criteria outlined in Section 408.035, Florida Statutes. The rule provides that the applicant for a CON may not change from the time a letter of intent is filed through the time of actual issuance of the CON in question. Information regarding the past, present, or future status of a

specific applicant is required in several statutory provisions contained in Section 408.035. See, Section 408.035(1)(c), (h), (i), (k), (n), and (o), Florida Statutes.

48. The rule in question is therefore directly and rationally related to the AHCA's grant of authority pursuant to Section 408.035 as well as to the legislative mandate to the agency contained in this statutory provision. It would be extremely difficult for the agency to competently meet its statutory duty to compile and maintain required applicant information if specific applicants were substituted during the period that CON applications were pending.

49. The challenged rule also directly relates to the agency's statutory duties outlined in Section 480.039, Florida Statutes. The provision of the statute deals with the required information to be filed in the letter of intent which is to be filed by the applicant prior to the submission of the CON application. Sections 408.037 and 408.039 contain detailed information submission required which relate directly to the specific applicant. Thus, the rule in question provides a mechanism for the AHCA to preserve the accuracy of statutorily required information as it meets its statutory mandate to oversee the CON process from its inception until the CON is issued.

50. Petitioners further allege that the rule is arbitrary and capricious. An arbitrary act is one not supported by facts or logic. Agrico, supra, at 763. The record in this case demonstrates that the agency logically bases the rule in question upon its statutory rulemaking authority and upon its statutory duties pursuant to Chapter 480, Florida Statutes.

51. At best, the proof offered by Petitioner suggests that the rule concentrates too much on one aspect of the application process (identity of the applicant) and that there are other more important considerations relating to statutory review criteria that the rule does not address. But the agency's interpretation of Chapter 408, as evidenced by the rule at issue, need not be the sole possible or even most desirable course of action, it need only be within the range of possible interpretations of the authorizing statute, Department of Professional Regulation vs. Durran, 455 So.2d 515 (Fla. 1st DCA 1984). Where, as here, the agency has interpreted the statute through formal rulemaking, the presumption of validity is even stronger. See, Department of Administration vs. Nelson, 424 So.2d 852, 858 (Fla. 1st DCA 1982).

52. Agencies are afforded wide discretion in the interpretations of statutes which they administer. Pan American World Airways, Inc. vs. Public Service Commission and Florida Power and Light, 474 So.2d 379 (Fla. 1st DCA 1985). In this case the Petitioner has failed to establish that the disputed rule is an excess or abuse of the discretion afforded the AHCA by the Legislature.

53. Finally, it is important to note that Rule 59C-1.008(1)(n) was in effect prior to 1992. Therefore, the challenged rule was in effect when the Florida Legislature, pursuant to Chapter 92-33, Laws of Florida, created the AHCA and transferred CON responsibility from the Florida Department of Health and Rehabilitative Services to the new agency. Section 19 of Chapter 92-33, Laws of Florida, is now codified as Section 408.0455, Florida Statutes (1993), and states, in pertinent part:

> (1) Nothing contained in ss. 408.031-408.045 is intended to repeal or modify any of the existing rules of the Department of Health and Rehabilitative Services, which shall remain in effect and shall be enforceable by the Agency for Health Care Administration ... unless, and only to the extent that, there is a direct conflict with the provisions of ss. 408.031-408.045.

54. The 1994 case of Manatee Hospital and Health Systems vs. Agency for Health Care Administration, (DOAH Case No. 93-7094RX, Feb. 21, 1994), involved a challenge to other portions of Rule 59C-1.008. In the Manatee Hospital Final Order, the Hearing Officer noted the application of Section 408.0455 to the challenge to the rule in question and accurately concluded that:

> 18. The effect of this statutory mandate is irrefutable. Since Rules 59C-1.008(1)(k)1. and 2. and Rule 59C-1.008(4), F.A.C., were in effect prior to July 1, 1992, (the effective date of the savings clause) they must remain in effect and enforceable by the agency until the rules are repealed or amended by the agency, or superseded by passage of statutory language in direct conflict with such rules.

55. In this case there is no evidence of record that would suggest a direct conflict between the rule challenged and any provisions of Chapter 408, Florida Statutes. Therefore, with respect to the application of Section 408.0455, Florida Statutes, to the challenge to 59C-1.008(1)(n), there is no basis to distinguish the above cited conclusion of the Hearing Officer in Manatee Hospital.

56. Petitioner has failed to prove that the challenged rule exceeds the rulemaking authority granted to the AHCA, that the rule enlarges, modifies, or contravenes specific provisions of Chapter 408, Florida Statutes, that the rule is vague, fails to establish adequate standards for agency decisions, that the rule vests unbridled discretion in the agency, or that the rule is arbitrary or capricious.

ORDER

Based upon the foregoing findings and conclusions, it is hereby

ORDERED:

The petition for determination of the invalidity of Rule 59C-1.008(1)(n) is DENIED.

DONE and ENTERED this 9th day of June, 1994, in Tallahassee, Florida.

JAMES W. YORK
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 9th day of June, 1994.

ENDNOTES

1/ At the final hearing in this case, Petitioner moved to amend its petition in order to add the allegation that the challenged rule denies Petitioner the due process of law guaranteed by Article I, Section 9 of the Florida Constitution and the Fourteenth Amendment to the United States Constitution by creating an irrebuttable presumption. By the filing of an Amended Petition, Petitioner seeks to preserve the constitutional issues for appellate review. Over the objection of the other parties, Petitioner's motion to file an Amended Petition was granted. The objection of the parties to the granting of the motion to amend is also preserved.

2/ The Motion for Summary Recommended Order was subsequently granted after an evidentiary hearing, and a Summary Recommended Order was issued in DOAH Case No. 93-4880 on May 11, 1994.

APPENDIX

Rulings on proposed findings of fact submitted by the parties are as follow:

Petitioners' Proposed Findings of Fact

1-2. Petitioners' proposed findings of fact 1 and 2 are adopted in paragraphs 2 and 3 of the Final Order.

3. Sentence one in Petitioners' proposed finding of fact 3 is hereby adopted. Sentence two is specifically adopted in paragraph 12 of the Final Order.

4. Petitioners' proposed finding of fact 4 is hereby adopted.

5. Petitioners' proposed finding of fact 5 is adopted, in material part, in paragraph 8 of the Final Order.

6. Petitioners' proposed finding of fact 6 is accepted only to the extent that the challenged rule would not apply under the hypothetical presented. The record does not support a finding that the agency would take no action based on the facts contained in the hypothetical. This proposal is adopted, in part, in paragraphs 6 and 8 of the Final Order.

7. Petitioners' proposed finding of fact 7 is hereby adopted.

8. Petitioners' proposed finding of fact 8 is not supported by the record and Mr. Sullivan's opinion in this regard is not persuasive, therefore, not accepted.

9. Petitioners' proposed finding of fact 9 is addressed in paragraphs 11 and 37 of the Final Order.

10. Petitioners' proposed finding of fact 10 is hereby adopted.

11. Petitioners' proposed finding of fact 11 is not supported by the record; Mr. Sullivan's opinion in this regard is not persuasive. Sentence two of this proposal is neither relevant nor material.

12. Petitioners' proposed finding of fact 12 is adopted in paragraph 13 of the Final Order.

13-14. Petitioners' proposed findings of fact 13 and 14 are adopted in paragraphs 26 and 27 of the Final Order.

15. Petitioners' proposed finding of fact 15 is adopted in paragraph 26 of the Final Order.

16. Petitioners' proposed finding of fact 16 is not adopted and is addressed in paragraph 28 of the Final Order.

17. Petitioners' proposed finding of fact 17 is adopted, in material part, in paragraph 9 of the Final Order.

18-19. Petitioners' proposed findings of fact 18 and 19 are not supported by the record and are not adopted.

Respondent AHCA and Intervenor, North Broward Hospital District, d/b/a Broward General Medical Center's Joint Proposed Findings of Fact

1. Joint proposed finding of fact 1 is addressed in Endnote 2 in the Final Order and is otherwise hereby adopted.

2. Joint proposed finding of fact 2 is adopted in paragraph 1 of the Final Order.

3-5. Joint proposed findings of fact 3-5 are hereby adopted.

6. Joint proposed finding of fact 6 is adopted in paragraph 3 of the Final Order.

7. Joint proposed finding of fact 7 is adopted in paragraph 40 of the Final Order.

8. Joint proposed finding of fact 8 is adopted, in pertinent part, in paragraph 4 of the Final Order.

9. Joint proposed finding of fact 9 is hereby adopted.

10-14. Joint proposed findings of fact 10-14 are adopted, in material and pertinent part, in paragraphs 11-24 of the Final Order.

15. Joint proposed finding of fact 15 is adopted in part in paragraph 15 of the Final Order, otherwise, hereby adopted.

16. Joint proposed finding of fact 16 is adopted in paragraph 19 of the Final Order.

17. Joint proposed finding of fact 17 is hereby adopted.

Respondent South Broward Hospital District's Proposed Findings of Fact

1. Respondent SBHD's proposed finding of fact 1 is adopted in paragraph 1 of the Final Order.

2-7. Respondent SBHD's proposed findings of fact 2-7 are hereby adopted.

8. Respondent SBHD's proposed finding of fact 8 is adopted in paragraph 2 of the Final Order.

9. Respondent SBHD's proposed finding of fact 9 is adopted in paragraph 3 of the Final Order.

10. Respondent SBHD's proposed finding of fact 10 is adopted, in material part, in paragraph 12 of the Final Order.

11. Respondent SBHD's proposed finding of fact 11 is adopted in paragraph 10 of the Final Order.

12. Respondent SBHD's proposed finding of fact 12 is adopted in paragraph 14 of the Final Order.

13. Respondent SBHD's proposed finding of fact 13 is adopted in paragraph 29 of the Final Order.

14. Respondent SBHD's proposed finding of fact 14 is adopted in paragraph 30 of the Final Order.

15. Respondent SBHD's proposed finding of fact 15 is adopted in material part in paragraph 31 of the Final Order.

16. Respondent SBHD's proposed finding of fact 16 is adopted in material part in paragraph 34 of the Final Order.

17. Respondent SBHD's proposed finding of fact 17 is adopted in material part in paragraph 36 of the Final Order.

18. Respondent SBHD's proposed finding of fact 18 is adopted, in material part, in paragraphs 38 and 39 of the Final Order.

19. Respondent SBHD's proposed finding of fact 19 is hereby adopted.

20. Respondent SBHD's proposed finding of fact 20 is adopted in paragraph 15 of the Final Order.

21. Respondent SBHD's proposed finding of fact 21 is adopted in paragraph 16 of the Final Order.

22-23. Respondent SBHD's proposed findings of fact 22 and 23 are adopted in paragraph 35 of the Final Order.

24. Respondent SBHD's proposed finding of fact 24 is adopted in paragraph 7 of the Final Order.

25. Respondent SBHD's proposed finding of fact 25 is adopted in paragraph 17 of the Final Order.

26. Respondent SBHD's proposed finding of fact 26 is adopted in paragraph 18 of the Final Order.

27. Respondent SBHD's proposed finding of fact 27 is adopted in paragraph 32 of the Final Order.

28. Respondent SBHD's proposed finding of fact 28 is hereby adopted.

29. Respondent SBHD's proposed finding of fact 29 is adopted in paragraph 19 of the Final Order.

30. Respondent SBHD's proposed finding of fact 30 is adopted in paragraph 20 of the Final Order.

31. Respondent SBHD's proposed finding of fact 31 is adopted in paragraph 21 of the Final Order.

32. Respondent SBHD's proposed finding of fact 32 is adopted, in material part, in paragraph 33.

33. Respondent SBHD's proposed finding of fact 33 is adopted in paragraph 23 of the Final Order.

34. Respondent SBHD's proposed finding of fact 34 is adopted in paragraph 22 of the Final Order.

35. Respondent SBHD's proposed finding of fact 35 is hereby adopted.

36. Respondent SBHD's proposed finding of fact 36 is adopted, in material part, in paragraph 24 of the Final Order.

37-40. Respondent SBHD's proposed findings of fact 37-40 are hereby adopted.

41. Respondent SBHD's proposed finding of fact 41 is adopted, in material part, in paragraph 38 of the Final Order.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.