

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BETHESDA MEMORIAL HOSPITAL, INC.,)
)
 Petitioner,)
)
 vs.) CASE NO. 95-2649RX
)
 AGENCY FOR HEALTH CARE)
 ADMINISTRATION,)
)
 Respondent,)
 and)
)
 NME HOSPITAL, INC., d/b/a DELRAY)
 COMMUNITY HOSPITAL,)
)
 Intervenor.)
 _____)

FINAL ORDER

This case was consolidated with Division of Administrative Hearings Case No. 95-0730 and heard by Hearing Officer Eleanor M. Hunter, on June 12-16, 1995, in Tallahassee, Florida.

APPEARANCES

For Petitioner, Kenneth G. Hoffman, Attorney
Bethesda Memorial W. David Watkins, Attorney
Hospital, Inc.: Oertel, Hoffman, Fernandez & Cole, P.A.
Post Office Box 6507
2700 Blair Stone Road
Tallahassee, Florida 32314-6507

For Respondent, John Gilroy, Attorney
Agency For Health Agency for Health Care Administration
Care 2727 Mahan Drive
Administration: Fort Knox Building 3, Suite 3431
Tallahassee, Florida 32308-5403

For Intervenor, C. Gary Williams, Attorney
NME Hospitals, Michael J. Glazer, Attorney
Inc., d/b/a MacFarlane, Ausley, Ferguson & McMullen
Delray Community Post Office Box 391
Hospital: 227 South Calhoun Street
Tallahassee, Florida 32302

STATEMENT OF THE ISSUES

1. Whether Rule 59C-1.038, the acute care bed need rule, is an invalid exercise of delegated legislative authority.

2. Whether this rule challenge should be dismissed as an untimely attack on a published fixed need pool.

PRELIMINARY STATEMENT

The Agency For Health Care Administration ("AHCA") preliminarily approved Certificate of Need ("CON") Application Number 7872 to allow NME Hospitals, Inc., d/b/a Delray Community Hospital ("Delray") to add 24 acute care beds. Delray is located in AHCA District 9, Subdistrict 5, for southern Palm Beach County, as is Bethesda Memorial Hospital, Inc. ("Bethesda"). Bethesda is the Petitioner in this challenge to the acute care bed need rule and in the case challenging the preliminary approval of Delray's CON, Division of Administrative Hearings ("DOAH") Case No. 95-0730. Bethesda filed a Motion To Consolidate the two cases and Delray filed a Petition to Intervene in the rule challenge. Bethesda's Motion To Consolidate and Delray's Petition to Intervene were granted, after a hearing held by telephone conference on June 9, 1995. Ruling was reserved on Delray's Motion To Dismiss Or, Alternatively Motion To Strike Bethesda's Petition For Administrative Determination Of The Invalidity Of Agency Rule, for disposition in this order. The Motion is denied for the reasons given in conclusion of law 31.

Although the cases were consolidated for hearing, the parties stipulated that the record for the rule challenge case would include only the testimony of the witnesses and exhibits listed in this Order. Bethesda presented the testimony of Phillip C. Rond, III, expert in health care planning and health policy research. Bethesda's exhibit 1, the challenged rule, was received in evidence and is attached as an exhibit to this order.

AHCA presented the testimony of Elizabeth Dudek, expert in health care planning and certificate of need policy and procedure (found in Volume I of the transcript of DOAH Case No. 95-0730); and Elfie Stamm, expert in health care planning. AHCA's exhibit 1, the text of a 1987 amendment to the rule, was received in evidence.

Delray presented the testimony of Daniel Sullivan, expert in health care planning. There were no Delray exhibits submitted for the rule challenge.

After the final hearing, Delray filed a Motion to Extend Post-Hearing Deadlines, to delay the filing of the transcript from July 10 to August 11, and to delay the filing of the proposed recommended and final orders until August 21, 1995. The Motion was granted, in part, and denied, in part, resulting in the filing of the transcript and proposed final orders in this case as originally scheduled, but delaying the filing of proposed recommended orders in DOAH Case No. 95-0730 until August 21, 1995.

FINDINGS OF FACT

1. In August 1994, the Agency for Health Care Administration ("AHCA") published a numeric need of zero for additional acute care beds in AHCA District 9, Subdistrict 5, for southern Palm Beach County. Pursuant to Subsection 408.034(3), Florida Statutes, AHCA is the state agency responsible for establishing, by rule, uniform need methodologies for health services and facilities.

2. In September 1994, NME Hospitals, Inc. d/b/a Delray Community Hospital, Inc. ("Delray") applied for a certificate of need ("CON") to add 24 acute care beds for a total construction cost of \$4,608,260. AHCA published its intent to

approve the application on January 20, 1995, in Volume 21, No. 3 of the Florida Administrative Weekly.

3. By timely filing a petition, Bethesda Memorial Hospital, Inc. ("Bethesda") challenged AHCA's preliminary decision in DOAH Case No. 95-0730. Bethesda is also located in AHCA District 9, Subdistrict 5. On May 24, 1995, Bethesda also filed the petition in this case challenging Rule 59C-1.038, Florida Administrative Code, the acute care bed need rule.

4. Pursuant to the acute care bed need rule, AHCA's August 1994 notice published its finding that zero additional acute care beds will be needed in the southern Palm Beach County subdistrict by July, 1999. The data, formulas, and calculations used in arriving at the number zero were not published. AHCA and Delray argue that the publication put persons on notice to inquire into the population data, occupancy rates, or the calculations leading to the published need number.

5. An AHCA rule bars a person from seeking, and AHCA from making, any adjustments to the fixed need pool number if the person failed to notify AHCA of errors within ten days of publication. Still another rule defines "fixed need pool" as the ". . . numerical number, as published. . . ."

6. Bethesda is not contesting and, in fact, agrees that the fixed need pool number as published, zero, is correct. Using AHCA's definition of the fixed need pool, Bethesda's challenge is not barred because it failed to notify AHCA of an error in the fixed need pool number within 10 days of publication.

7. Bethesda is challenging as irrational and invalid subsections (5), (6), and (7) of the acute care bed need rule. Subsection (5) directs the local health councils to determine subdistrict bed need consistent with the methodology for determining district bed need. Under that provision, total projected patient days of acute care needed in a district is calculated by adding together the projected patient care days needed in medical/surgical, intensive care, coronary care, obstetric, and pediatric beds. Each of these separate bed need projections is computed, in general, by multiplying projected population in the district for the appropriate age or gender group times a factor which is the product of the statewide discharge rate and the average length of stay for that particular type of care. After the total projected acute care patient days for district residents is computed, the number is adjusted to reflect historical patient flow patterns for acute care services, for out-of-state residents served in the district, for residents of other districts served in the district, and for residents of the district served outside the district. The rule includes specific percentages to apply for each patient flow group for each of the eleven districts. After the total number of beds needed in the district is derived, that number is decreased by the number of existing licensed or approved beds to get the number of additional acute care beds needed in the district, if any.

8. Bethesda is challenging subsections (7)(a), (b), and (c) of the acute care rule, which authorize adjustments to the calculations from subsections (5) and (6) to achieve desired occupancy levels, based on historic utilization of acute care beds in a district. Bethesda is also seeking a determination that subsections 7(d) and (e) are invalid. Each of those subsections of the rule refer to (5)(b), although AHCA's expert witness testified that they should refer to (6)(b). Subsection (7)(d) requires at least 75 percent occupancy in all hospitals in the district before new acute care beds normally are approved, regardless of the net need projected by the formulas. Subsection (7)(e) allows

approvals under special circumstances if net need is projected by the formulas and the applicant facility's occupancy rate equals or exceeds 75 percent. Subsection (7)(e), the provision directly related to the Delray application, is as follows:

(e) Approval Under Special Circumstances. Regardless of the subdistrict's average annual occupancy rate, need for additional acute care beds at an existing hospital is demonstrated if a net need for beds is shown based on the formula described in paragraphs (5)(b), (7)(a), (b), (c), and (8)(a), (b), (c), and provided that the hospital's average occupancy rate for all licensed acute care beds is at or exceeds 75 percent. The determination of the average occupancy rate shall be made based on the average 12 months occupancy rate made available by the local health council two months prior to the beginning of the respective acute care hospital batching cycle.

9. Phillip C. Rond, III, Ph.D., was the primary architect of the rule, beginning in 1981. The rule was initially published in 1982, and adopted in 1983. Constants in the rule formulas, including use rates, average lengths of stay, occupancy standards and patient flow patterns were taken from a 1979 survey of some state hospitals.

10. Because data used for the constants in the formulas was expected to change, subsection (6) also provides, in pertinent part, that:

Periodic updating of the statewide discharge rates, average lengths of stay and patient flow factors will be done as data becomes available through the institution of statewide utilization reporting mechanisms.

11. Patient flow factors were updated in March 1984 to reflect a change in the realignment of counties in Districts 5 and 8. No other constants have been updated since the rule was adopted in June 1983.

12. More current data is available. The Hospital Cost Containment Board ("HCCB") began collecting statewide hospital inpatient discharge data in the fourth quarter of 1987, which became available by the fall of 1988. AHCA now collects the data.

13. Using the rule, the projected net need for acute care beds in 1999 in District 9 is 1,442 additional beds. By contrast, with the factors updated by Dr. Rond, the projected net need is a negative 723 or, in other words, District 9 has 723 more acute care beds than it will need in 1999. The updated formulas show a need for a total of 3,676 beds in District 9, which already has 4,399 licensed or approved acute care beds.

14. Since 1983, hospital utilization has declined in both rates of admissions or discharges, and in average lengths of stay. Although the occupancy goals in the rule are 75 to 80 percent, depending on the type of hospital service, the occupancy rate achieved by using the number of beds projected by the rule methodology is 45 to 52 percent.

15. The statewide occupancy rate in acute beds is approximately 50 percent in 49,215 licensed beds. The formulas in the rule show a statewide net need for 6,000 more beds in 1999, but updated constants in the same formulas result in a total statewide need for approximately 36,000 acute care beds in 1999, or 13,000 fewer beds than currently exist.

16. Statewide utilization of acute care hospital beds declined from 1187.2 days per 1000 population in 1983 to 730.5 days per 1,000 in 1993, despite increases in the percentage of the elderly population.

17. By 1987, AHCA's predecessor realized that the need methodology in the rule was grossly overestimating need and inconsistent with its health planning objectives. Subsection (7)(d) was added to the rule to avoid having a published fixed need based on the outdated methodology in subsections (5), (6) and 7(a)-(c). The occupancy data is also, as the 1987 amendment requires, that reported for the most recent 12 months, available 2 months before the scheduled application cycle.

18. In August 1994, AHCA published a numeric need of zero for District 9, Subdistrict 5, rather than 1,442, the calculated net need predicted by the formulas in the rule, because all subdistrict hospital occupancy rates did not equal or exceed 75 percent.

19. Elfie Stamm of AHCA, who is responsible for the publication of fixed need pools, confirmed that the 1987 amendment to the rule was an efficient and cost-effective way to avoid publishing need where there was no actual need. She confirmed Dr. Rond's conclusions that the formulas are no longer valid and produce excessive need numbers, as in projecting a need for 6,000 or 7,000 more acute care beds in the state. She also confirmed that none of the constants in the formula have been updated as required by subsection 6. Ms. Stamm claims that the information needed to update the formulas cannot be obtained easily from any statewide utilization reporting mechanism. One problem, according to Ms. Stamm, is the possibility of including patients in acute care beds with comprehensive rehabilitation, psychiatric, or substance abuse problems, although it is not lawful for acute care providers to place patients with these primary diagnoses in licensed acute care beds and all data bases have some miscoding of diagnoses. She also testified that some factors required in the formulas are not included in HCCB data base. In addition, she testified that AHCA is in the process of filing a notice to repeal the acute care bed need rule. The filing of the notice of repeal, published in Volume 21, Florida Administrative Week, pp. 4179-4180 (6/23/95) was confirmed by Bethesda's Request For Official Recognition, which was filed on July 20, 1995, and is granted.

20. Ms. Stamm also noted that rules for other need-based health services have facility-specific special circumstances provisions, which are not tied to numerical need, otherwise the special circumstances are not really facility-specific. Need rules make no sense, according to Ms. Stamm, without an exception in the absence of a determination of need.

21. Subsection (7)(e) of the acute care rule requires a finding of numeric need and a 75 percent occupancy rate at the applicant facility. Ms. Stamm's records indicate that AHCA's predecessor adopted the facility-specific provisions tied to net need at the same time it adopted the 75 percent average district occupancy standard to overcome the problems with the net need formula. AHCA asserts that the admittedly irrational need methodology when combined with the 1987 amendment achieves a rational result. Because the need methodology

always over estimates numeric need, facilities exceeding 75 percent occupancy have an opportunity to demonstrate special circumstances.

22. Daniel Sullivan, Delray's expert, also testified that problems exist in extracting acute care bed from specialty bed utilization data, in hospitals which have both. He also agreed with Ms. Stamm that the 1987 amendment corrects the erroneous projections of the formula to give a rational outcome from the rule as a whole when not all hospitals in a subdistrict equal or exceed 75 percent occupancy and when one hospital, over 75 percent occupancy, attempts to establish a special circumstance, despite the fact that the need methodology itself is always wrong in projecting numeric need.

23. Ms. Stamm testified that one district is approaching 75 percent occupancy in all hospitals. Mr. Sullivan testified that, if and when that occurs, then the formula is intended to, but does not, reflect the number of additional beds needed. An alternative methodology is required to determine bed need.

24. AHCA, with its responsibility for the data base formerly collected by the HCCB, receives discharge data and financial worksheets from every hospital in the state. The claim that AHCA cannot update the formulas because its data may be unreliable is rejected as not credible. The data now available is more reliable than the 1979 data used in developing the rule, which was not collected from a formalized statewide reporting system, but from a sample of hospitals.

25. The claim that AHCA cannot use its data base from mandatory statewide reporting mechanisms to extract the data needed to update the formulas is also rejected. The rule contemplated ". . .the institution of statewide utilization reporting mechanisms." Dr. Rond's work to update the formulas before the final hearing began on May 23, 1995. Dr. Rond used a total of approximately 1.5 million acute care discharges from the AHCA (formerly, HCCB) data base for the 1992 calendar year. At the time of the final hearing, Dr. Rond had not separated days of care for medical/surgical, intensive and coronary care. The data can be taken from hospital financial data, including detailed budget worksheets which are submitted to AHCA. Separate data are anticipated in the formula because the computation of need for the different bed categories is based on different occupancy goals. For medical/surgical and intensive care beds, the goal is 80 percent occupancy, but it is 75 percent for coronary care for persons age 0 to 64. For persons 65 and older, the rule applies a combined occupancy standard of 79.7 percent for all three bed categories, which assumes that approximately 4 percent of the combined days of older patients will be spent in coronary care. Dr. Rond reasonably applied the 79.7 percent occupancy standard to the combined days for persons under 65, in arriving at the total district bed need for 3,676 beds. To check these results and to assume a worse case scenario of all patient days attributable to coronary care beds, for which more beds are needed to maintain a lower occupancy, Dr. Rond worked the formula using 75 percent occupancy as the goal for medical/surgical, intensive and care coronary care beds combined. Although the base number increased by 100, the calculations and adjustments in the rule yielded the same number of total acute care beds needed in the district, 3,676. That reliably confirms that the maximum number of acute care beds needed in District 9 is 3,676 by 1999.

26. AHCA could use its data base to update formulas and achieve rational results in the rule by using the hospital financial data to distinguish coronary care days for patients 0-64 to include in the formula, or by using a rational blended occupancy standard in a rule amending the existing methodology.

27. AHCA demonstrated that the 1987 amendment overrides the exaggerated numeric need number to yield a rational published fixed need pool in the absence of 75 percent occupancy in all acute care beds in a subdistrict. AHCA also demonstrated that because the projected need is always excessive under the formula, hospitals are allowed to demonstrate special circumstances, although it is absurd to include a requirement of numeric need in a provision for special circumstances. AHCA's claim that the excessive need projection is, therefore, irrelevant is rejected. Net need under the rule formula fails to give any rational indication of the number of beds needed when all hospitals in a subdistrict reach 75 percent occupancy.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this proceeding, pursuant to section 120.56, Florida Statutes.

29. As stipulated by the parties, the Petitioner, Bethesda, has standing to seek an administrative determination of the invalidity of the rule as provided in subsection 120.56(1), Florida Statutes.

30. Rule 59C-1.008(2)(a)2 and 3, Florida Administrative Code, provide that:

2. Any person who identifies an error in the fixed need pool numbers must advise the agency of the error within 10 days of publication of the number. If the agency concurs in the error, the fixed need pool number will be adjusted and republished in the first available edition of the Florida Administrative Weekly. Failure to notify the agency of the error during this time period will result in no adjustment to the fixed need pool number for that batching cycle. Any other adjustments will be made in the first cycle subsequent to identification of an error, including those errors identified through administrative hearings or final judicial review.

3. Except as provided in subparagraph 2. above, the batching cycle specific fixed need pools shall not be changed or adjusted in the future regardless of any future changes in need methodologies, population estimates, bed inventories, or other factors which would lead to different projections of need, if retroactively applied. (Emphasis added.)

31. In Rule 59C-1.002(27), AHCA defined the term "fixed need pool" as follows:

(27) 'Fixed Need Pool' means the identified numerical need, as published in the Florida Administratively Weekly, for new beds for services for the applicable planning horizon established by the agency in accordance with need methodologies which are in effect by rule at the time of publication of the fixed need pools for the applicable batching cycle.

Based on this definition, Bethesda can maintain this challenge to formulas and calculations which were made to determine the published numeric need, which were not themselves published and do not alter the published need. The proper application of a fixed need pool rule was not precluded from consideration in *St. Mary's Hospital v. DHRS, et al.*, DOAH Case No. 89-5115 (R.O. 3/15/91).

32. For Rule 59C-1.038, the challenged acute care bed need rule, which is attached as an exhibit to this order, AHCA cites Subsections 408.15(8), 408.34(3) and (5), and 408.039(4)(a), Florida Statutes, as specific authority. Subsections 408.34(3) and (5), Florida Statutes, provide:

(3) The department shall establish, by rule, uniform need methodologies for health facilities. In developing uniform need methodologies, the department shall, at a minimum, consider the demographic characteristics of the population, the health status of the population, service use patterns, standards and trends, geographic accessibility, and market economics.

(5) The department may adopt rules as necessary to implement ss. 381.701-381.75. [transferred to ss. 408.031-408.045 by s. 15. ch. 42.33]

Subsection 408.15, in pertinent part, provides:

In addition to the powers granted to the agency elsewhere in this chapter, the agency is authorized to:

(8) Adopt, amend, and repeal all rules necessary to carry out the provisions of this chapter.

Section 408.039(4)(a) outlines the process for reviewing CON applications.

33. In addition to subsections 408.034(3) and 408.039(4)(a), citations to the law implemented also include 408.035 and 408.036(1)(a), (b), (e), (h), which are the CON review criteria and a list of projects which are subject to CON review.

34. Section 120.52(8), F.S., defines "invalid exercise of delegated legislative authority" as:

. . . 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:

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);

* * *

(e) The rule is arbitrary or capricious.

35. Bethesda challenges the rule as arbitrary and capricious and has the burden of proof by a preponderance of evidence. *Agrico Chemical Co. v. Department of Environmental Protection*, 365 So.2d 759 (Fla. 1st DCA 1979).

Bethesda must demonstrate: (1) that the agency adopting the rule has exceeded its authority; (2) that the requirements of the rule are inappropriate to the end specified in the legislative act; and (3) that the requirements contained in the rule are not reasonably related to the purpose of the enabling legislation but are arbitrary and capricious. *State, Marine Fisheries Commission v. Organized Fishermen of Florida*, 503 So.2d 935 (Fla. 1st DCA 1987).

36. As defined in *Agrico*, a capricious action is one which is taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic or despotic.

37. All of the witnesses agree the need methodology formulas is the acute care rule are irrational and lead to results not supported by facts or logic. The only real issue is whether the 1987 amendment cures the defects in the formula, producing a rational result. Since 1987, the amendment has provided a rational result in two instances, when hospitals in a subdistrict do not all reach 75 percent occupancy, and when any one hospital exceeds 75 percent occupancy and seeks to demonstrate special or not normal circumstances. In a third situation, when all hospitals in a subdistrict equal or exceed 75 percent occupancy, the net need number is intended to, but does not give any reasonable guidance for the number of beds needed. In that instance, net need is grossly overestimated, which contravenes the purpose of a CON as evidencing community need, and the cost containment criteria and goals in the CON statutes. Because of the excess of acute care beds, AHCA has had very few applications, but there is case law to suggest that after applications are filed, AHCA could be precluded from repudiating its own need methodology. In *National HealthCorp v. DHRS*, DOAH Case NO. 88-1836, 11 FALR 4314 (F.O. 7/18/89), AHCA's predecessor held that a determination that only sixty-eight additional beds were needed was violative of its rule, explaining that

The published net need for eighty nursing home beds must be adhered to in this case based upon the department's policy that a fixed need pool cannot be changed once it is published in the Florida Administrative Code, after the grace period of Rule 10-5.008(1)(b), Florida Administrative Code, has elapsed.

11 FALR 4314 at 4316.

ORDER

The Petition For An Administrative Determination of the Invalidity of An Agency Rule is GRANTED.

Subsections (5), (6), (7)(a), (b), and (c) of Rule 59C-1.038, Florida Administrative Code, are invalid, as an invalid exercise of delegated legislative authority.

DONE AND ENTERED this 17th day of August, 1995, in Tallahassee, Leon County, Florida.

ELEANOR M. HUNTER
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 17th day of August, 1995.

APPENDIX TO FINAL ORDER, CASE NO. 95-2649RX

To comply with the requirements of Section 120.59(2), Fla. Stat. (1991), the following rulings are made on the parties' proposed findings of fact:

Petitioner Bethesda Memorial's Proposed Findings of Fact.

1. Accepted in Findings of Fact 9 and 11.
2. Accepted in Findings of Fact 11-16.
3. Accepted in or subordinate to Findings of Fact 11-16.
4. Accepted in Findings of Fact 19 and 22.
5. Accepted in Findings of Fact 25.
6. Accepted in Findings of Fact 10 and 11.
7. Accepted in Findings of Fact 19 and conclusions of law 37.
8. Accepted in Findings of Fact 12 and 19.
9. Accepted in Findings of Fact 12-8.
10. Accepted in Findings of Fact 13 and 25.
11. Accepted in Findings of Fact 13 and 25.
12. Accepted in Findings of Fact 14.
13. Accepted in Findings of Fact 15.
14. Accepted in Findings of Fact 9 and 10.
15. Accepted in Findings of Fact 19.
16. Accepted in Findings of Fact 22.
17. Accepted in Findings of Fact 19 and 24.
18. Accepted in Findings of Fact 10.
19. Accepted in Findings of Fact 13.
20. Accepted in Findings of Fact 8.

Intervenor NME's Proposed Findings of Fact.

1. Accepted in Findings of Fact 1.
2. Accepted in Findings of Fact 3, 7, 8, 13-17.
3. Accepted in Findings of Fact 9.
4. Subordinate to Findings of Fact 9.
5. Accepted in Findings of Fact 7 and 10.
6. Accepted in general in Findings of Fact 11.
7. Accepted in Findings of Fact 7, 10 and 12-16 and 19.
8. Accepted in Findings of Fact 8.
9. Accepted in Findings of Fact 8.

- 10-11. Accepted in Findings of Fact 17.
12. Accepted for published fixed need pool in Findings of Fact 18, rejected for net need in Findings of Fact 18.
- 13-14. Accepted in part and rejected in part in Findings of Fact 20.
15. Accepted in part and rejected in part in Findings of Fact 17, 18 and 20.
16. Accepted in part in Findings of Fact 20 and 21.
17. Accepted in part in Findings of Fact 25 and 26.
18. Accepted.
19. Rejected in Findings of Fact 23-26.
20. Accepted in Findings of Fact 7 and 8.

Respondent, AHCA's Proposed Findings of Fact.

1. Accepted in Findings of Fact 10.
2. Accepted in general in Findings of Fact 11.
3. Rejected in Findings of Fact 12 and 19.
- 4-5. Accepted in Findings of Fact 13-16 and 19.
- 6-8. Accepted in Findings of Fact 17 and 19.
9. Rejected in Findings of Fact 23.
10. Accepted in Findings of Fact 20 and 23.
11. Accepted in Findings of Fact 20.

COPIES FURNISHED:

Kenneth G. Hoffman, Esquire
W. David Watkins, Esquire
Oertel, Hoffman, Fernandez & Cole, P.A.
Post Office Box 6507
2700 Blair Stone Road
Tallahassee, Florida 32314-6507

John Gilroy, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Fort Knox Building 3, Suite 3431
Tallahassee, Florida 32308-5403

Michael J. Glazer, Esquire
Macfarlane, Ausley, Ferguson & McMullen
Post Office Box 391
227 South Calhoun Street
Tallahassee, Florida 32302

R. S. Power, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive
Fort Knox Building 3, Suite 3431
Tallahassee, Florida 32308-5403

Tom Wallace
Assistant Director
Agency for Health Care Administration
2727 Mahan Drive
Fort Knox Building 3, Suite 3431
Tallahassee, Florida 32308-5403

Liz Cloud, Chief
Bureau of Administrative Code
The Capitol, Room 1802
Tallahassee, Florida 32399-0250

Carroll Webb, Executive Director
Administrative Procedures Committee
Holland Building, Room 120
Tallahassee, Florida 32399-1300

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.