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FILED

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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

AHCA
DEPARTMENT CLERK

ADULT FAMILY CARE HOME,
(Marvell Lawton),

AP

Petitioner,

CASE NO.: 96-4099

RENDITION NO.: AHCA-97- 0370-FOF-OLC

vs.

DSM - closed

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FILED
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ADMINISTRATIVE
HEARINGS

FINAL ORDER

This cause came on before me for the purpose of issuing a final agency order. The Administrative Law Judge 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, 1997, by Administrative Law Judge Daniel Manry is incorporated by reference.

RULING ON EXCEPTIONS

The Petitioner seeks a license to operate an "Adult Family Care Home" (AFCH). The Petitioner challenges the denial of her application. The basis for the denial was the submission of inaccurate information in the licensure application. The Petitioner altered documents of three government entities; the fire inspection report, the zoning approval, and an HRS form to indicate that these entities approved the licensure of the Petitioner's home for five residents. The government entities actually approved the Petitioner's home for only three residents. These documents are part of the application package. Finding that the Petitioner did not

intend to defraud the Agency for Health Care Administration, the ALJ recommends that the agency exercise its discretion and approve the application for licensure.

Counsel maintains that the ALJ has incorrectly labeled certain legal conclusions as findings of fact. In Battaglia Property vs. Land and Water Commission, 629 So2d 161, 168 (Fla. 5th DCA 1993) the Court pointed out that “. . . neither the agency nor the court is bound by the labels affixed to findings of fact and conclusions of law. If a conclusion is improperly labeled . . . the label is disregarded and the item is treated as though it were properly labeled.” The court’s conclusion describes the agency’s practice in considering any Recommended Order from the Division of Administrative Hearings.

Counsel for the agency excepts to the recommendation of the ALJ that the Petitioner’s application for licensure be approved. The legislature has declared that licensure under the Adult Family Care Home Act is a public trust and a privilege, and not an entitlement. Section 400.617(3), Florida Statutes. Section 400.619(11)(e), Florida Statutes, provides that the agency may deny an application for licensure when the applicant has submitted inaccurate information to the agency. A licensing agency should be able to rely on the authenticity of documents submitted in support of a licensure application. The Petitioner’s alteration of the supporting documentation is a serious violation of the statutory requirement that accurate information be submitted. See Goss vs. School Board, 601 So2d 1232 (Fla. 5th DCA 1992). I conclude that the application for licensure should be denied.

FINDINGS OF FACT

The agency hereby adopts and incorporates by reference the findings of fact set forth in the Recommended Order except where inconsistent with the ruling on the exceptions.

CONCLUSIONS OF LAW

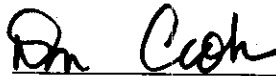
The agency hereby adopts and incorporates by reference the conclusions of law set forth in the Recommended Order except where inconsistent with the ruling on the exceptions.

Based upon the foregoing, it is

ADJUDGED, that the Petitioner's application for licensure be denied.

DONE and ORDERED this 15th day of April, 1997, in Tallahassee, Florida.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION



Douglas M. Cook, Director

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:

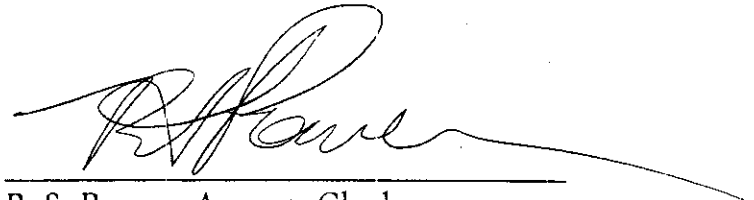
Michael Mathis, Esquire
Senior Attorney, Agency for
Health Care Administration
2727 Mahan Drive, Suite 3431
Fort Knox Building III
Tallahassee, FL 32308-5403

Daniel Manry
Administrative Law Judge
DOAH, The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Marvell Lawson, pro se
Post Office Box 4040
Deland, FL 32723

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 15th day of
April, 1997.



R. S. Power, Agency Clerk
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, Suite 3431
Fort Knox Building III
Tallahassee, FL 32308-5403
(904)922-3808