

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MEDERI OF DADE COUNTY, INC., and)
HOME HEALTH LINK, INC.,)
)
 Petitioners,)
)
vs.) Case Nos. 96-5179
) 96-5486
)
 AGENCY FOR HEALTH CARE)
 ADMINISTRATION,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 10, 1997, at Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Louise T. Jeroslow, Esquire
Zack, Sparber, Kosnitzky,
Spratt & Brooks, P.A.
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

For Respondent: Jean Claude Dugue, Esquire
Agency for Health Care Administration
8355 Northwest 53rd Street, First Floor
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Miami, Florida 33166

STATEMENT OF THE ISSUES

Whether the Medicare-certified, home health agency license held by Petitioner, Mederi of Dade County, Inc. (Mederi), terminated such that it may not, as a matter of law, be

transferred to Petitioner, Home Health Link, Inc. (HHL), pursuant to a request for change of ownership application.

PRELIMINARY STATEMENT

This matter began on August 28, 1996, when the Respondent, the Agency for Health Care Administration (Department or Agency), issued a letter to Petitioner which denied Mederi's request to reinstate its license #20689-95. Prior to its expiration, Mederi's license had authorized it to do business as a Medicare-certified, home health agency. Because Mederi failed to timely renew the license, the Department advised Petitioner that it could not be reinstated. Thereafter, Mederi filed a petition for formal administrative hearing challenging this decision. This case, DOAH Case No. 96-5179, was forwarded to the Division of Administrative Hearings for formal proceedings on November 4, 1996.

As to DOAH Case No. 96-5486, that matter began on October 16, 1996, when the Agency advised HHL that its application for licensure as a home health agency had been denied because it had failed to submit information necessary to complete the application process. The denial was based, in part, on the Department's consideration of the application as an initial application (as opposed to a request for change of ownership application). Since the home health agency's license whose license was to be transferred (Mederi) had expired, the Department had reviewed the application as an initial

application. In this regard, HHL was required to provide a copy of its certificate of need (CON) which it had failed to timely produce.

HHL then filed a petition for formal administrative hearing challenging the agency's denial, asserting its claim for licensure (and exemption from the CON requirement) through Mederi, and maintaining that it satisfied all applicable statutory and rule criteria for licensure as a Medicare-certified, home health agency. This case was forwarded to the Division of Administrative Hearings for formal proceedings on November 18, 1996.

At the hearing, the cases were consolidated for the presentation of evidence. The Petitioners presented testimony from David Nesslein, the corporate secretary/treasurer for Mederi; Lois Mill, the administrator for Mederi and proposed administrator of HHL; John Jansak, an attorney employed by HHL; and David Templeton, a health services and facility consultant who is a team leader in processing licensure files for renewal, initial licenses, and change of ownership applications for the Department. Petitioners' Exhibits 1 through 9 were received into evidence. The Agency presented testimony from Molly McKinstry, a former human services program specialist employed with the Department's long term care unit/health facility regulations section, and David Templeton. Its Exhibits 1 through 5 were also received.

The transcript of the proceeding was filed on May 1, 1997. Thereafter the parties requested, and leave was granted, for them to file their proposed recommended orders not later than June 2, 1997. Both parties timely filed proposed orders which have been considered in the preparation of this recommended order.

FINDINGS OF FACT

1. The Department is the state authority charged with the responsibility of regulating and licensing entities pursuant to Chapter 400, Florida Statutes. Such entities include home health care agencies.

2. Mederi was licensed, license #20689-95, as a home health care agency and was Medicare certified. Mederi did not have a CON but was nevertheless "grandfathered" under the law to operate.

3. Mederi has provided services in Dade and Monroe Counties since December of 1973. It offered a full range of skilled nursing services as well as physical therapy, speech therapy, home health aide services, occupational therapy, and medical social workers. In 1994, Mederi generated approximately five million dollars in revenue. As of the time of hearing, the company was not operating.

4. HHL sought to obtain the license held by Mederi and filed an application with the Agency to do so on or about May 10, 1996.

5. The license issued to Mederi in 1995 was valid through April 30, 1996. The renewal for this license was due sixty days prior to its expiration date.

6. In January or February 1996, the Department sent HHL a letter together with a change of ownership application in order for Petitioner to initiate the proposed license transaction with Mederi. At that time HHL did not have a formal written agreement with Mederi but had contacted the Department to ascertain whether Mederi's grandfathered status under the CON provisions could be transferred to HHL. Such letter advised Mr. Jansak that the application would be due sixty days prior to the effective date of the change of ownership.

6. In response to the letter, the Department received the application for change of ownership filed by HHL on May 10, 1996.

7. Typically, the Department sends a notice to a licensee ninety days prior to the expiration of a license with an application for renewal. In this case, the Department cannot establish that such notice was provided; however, there is no evidence that it was not issued. Historically, Mederi had timely filed applications for license renewal.

8. On or about July 9, 1996, Ms. McKinstry sent Mederi a letter notifying it that it had failed to renew its license.

9. Also on July 9, 1996, Ms. McKinstry sent HHL a letter notifying it that the change of ownership could not be accepted since Mederi's license had expired. Instead, the Department

suggested that the application be reviewed and considered as an initial application for licensure.

10. The renewal application for Mederi was due on or about February 28, 1996. For every day thereafter in which the application for renewal was not filed, Mederi could be subject to a fine of \$100.00 per day up to the amount of \$5,000.00. In this instance, Mederi did not file a renewal application within the time allotted (prior to its license expiration or May 1, 1996) and no fine was imposed. The Department does not fine holders of expired licenses.

11. HHL did not reply to Ms. McKinstry's letter of July 9, 1996. On September 20, 1996, she sent a letter advising HHL that the application would be considered an initial application and requested additional documentation.

12. The Agency then sent a letter to HHL on October 16, 1996, denying the initial application for licensure as the requested additional documentation had not been provided.

13. The Department expects licensed agencies to understand, and comply with, applicable provisions of Florida law.

14. Because Mederi failed to timely seek renewal of its license, the value of it as an asset has plummeted from approximately \$250,000 to nothing.

15. Under the agreement between Mederi and HHL, it was Mederi's responsibility to keep the license current.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

17. Section 400.464, Florida Statutes, provides, in part:

(1) Any home health agency must be licensed by the Agency for Health Care Administration to operate in this state. A license issued to a home health agency, unless sooner suspended or revoked, expires 1 year after its date of issuance. However, any home health agency that is operated by the Federal Government is exempt from this part.

* * *

(5)(a) It is unlawful for any person to offer or advertise home health services to the public unless he or she has a valid license under this part. It is unlawful for any holder of a license issued under this part to advertise or indicate to the public that it holds a home health agency license other than the one it has been issued.

(b) A person who violates paragraph (a) is subject to an injunctive proceeding under s. 400.515. A violation of paragraph (a) is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.

(c) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Each day of continuing violation constitutes a separate offense. (Emphasis added.)

18. Section 400.471, Florida Statutes, provides, in pertinent part:

Application for license; fee; provisional license; temporary permit.

(1) Application for an initial license or for renewal of an existing license must be made under oath to the Agency for Health Care Administration on forms furnished by it and must be accompanied by the appropriate license fee as provided in subsection (7). The agency must take final action on an initial licensure application within 60 days after receipt of all required documentation.

* * *

(5) Sixty days before the expiration date, an application for renewal must be submitted to the Agency for Health Care Administration under oath on forms furnished by it, and a license must be renewed if the applicant has met the requirements established under this part and applicable rules. The home health agency must file with the application satisfactory proof that it is in compliance with this part and applicable rules. The home health agency must submit satisfactory proof of its financial ability to comply with the requirements of this part.

(6) When transferring the ownership of a home health agency, the transferee must submit an application for a license at least 60 days before the effective date of the transfer. If the home health agency is being

leased, a copy of the lease agreement must be filed with the application.

* * *

(10) The department shall not issue a license designated as certified to a home health agency which fails to receive a certificate of need under the provisions of ss. 408.031-408.045. (Emphasis added.)

19. Rule 59A-8.0086, Florida Administrative Code, provides, in pertinent part:

Denial, Suspension, Revocation of License and Imposition of Fines.

(1) The AHCA shall deny an initial or renewal application for license, or impose a fine,
(a) if the applicant fails to submit all the information required for an application within time frames specified in Section 120.60, F.S.,

* * *

(e) if the applicant fails to comply with other provisions of the statute, Chapter 400, Part IV, F.S., or this rule.

(2) The AHCA shall suspend or revoke a license or impose a fine,

* * *

(c) if the home health agency fails to comply with the other provisions of this rule or Home Health Services Act (Chapter 400, Part IV, F.S.).

* * *

(4) Failure to file an application within the time frames specified in this rule shall result in an administrative fine in the amount of \$100 per day, each day constituting a separate violation. In no event shall such fines aggregate more than \$5,000. (Emphasis added.)

20. The facts in this matter are undisputed. The Petitioner, Mederi, did not timely file a request to renew its license. In fact, the license had expired before the application

to transfer it was filed by HHL. The Agency maintains that it does not have the authority to breathe life back into the license so that it can be transferred to the new applicant. Moreover, Petitioners have not cited any legal authority for their position. Instead, Petitioners argue that it would be unreasonable to allow a property right valued by them at \$250,000.00 to lapse based upon the errors of not timely filing their requests. In this regard Petitioners cite professional licenses which, by law, allow licensees in an inactive status to reactivate their licenses, however, the provisions of Chapter 400, Florida Statutes, do not contemplate an inactive status which may be reactivated.

21. Regrettably, the Petitioners lost a valuable asset through oversight. The Department does not have the authority to renew a license which has expired. The Division of Administrative Hearings does not have the authority to fashion an equitable remedy to the issue presented by this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order denying Petitioners the remedies sought.

DONE AND ENTERED this 30th day of June, 1997, in
Tallahassee, Leon County, Florida.

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of June, 1997.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.