

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Petitioner,)	
)	
vs.)	Case No. 97-4098
)	
HOME HEALTH CARE AGENCY, INC.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on May 28, 1998, at West Palm Beach, Florida, before Errol H. Powell, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jennifer A. Stewart, Esquire
Agency for Health Care Administration
1400 West Commercial Boulevard, Suite 110
Fort Lauderdale, Florida 33309

For Respondent: Steven M. Selz, Esquire
Selz & Muvdi Selz, P.A.
777 South Flagler Drive
8th Floor, West Tower
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent committed the offenses set forth in the Administrative Complaint and, if so, what action should be taken.

PRELIMINARY STATEMENT

By Administrative Complaint dated July 14, 1997, the Agency for Health Care Administration (AHCA) charged Home Health Care Agency, Inc., (Home Health Care) with violating Subsection 400.471(5), Florida Statutes, and Rule 59A-8.003(4), Florida Administrative Code. AHCA alleges in the Administrative Complaint that Home Health Care failed to timely file its application for renewal of its home health agency license. By petition dated August 4, 1997, Home Health Care disputed the allegations of fact and requested a formal hearing. On September 4, 1997, this matter was referred to the Division of Administrative Hearings.

The parties filed stipulated facts. At hearing, the parties agreed that AHCA's exhibits would be admitted into evidence; that AHCA would not call any witnesses but would rely upon its exhibits and the stipulated facts; and that Home Health Care would present mitigating evidence. AHCA entered five exhibits into evidence. Home Health Care presented the testimony of two witnesses and entered five exhibits into evidence.

FINDINGS OF FACT

1. At all times material hereto, Home Health Care Agency, Inc. (Home Health Care) was licensed as a home health agency by the Agency for Health Care Administration (AHCA), having been issued license number 20481-95 NC.

2. The license was valid for one year from the date of issuance, which was January 1, 1996. The license expired on

December 31, 1996, and the license bore such expiration date.

3. On September 9, 1996, AHCA conducted an on-site inspection of Home Health Care. No deficiencies were found.

4. On October 21, 1996, AHCA mailed a blank license renewal application to Home Health Care's administrator. Accompanying the blank application was a letter also dated October 21, 1996, and addressed to Home Health Care's administrator. The letter stated, among other things, that Home Health Care's license was expiring on December 31, 1996; that 60 days prior to the expiration date of the license, the application, all required documentation, and the license fee must be received by or postmarked to AHCA; and that a fine may be imposed for failure to timely submit the documents.

5. October 31, 1996, was the deadline for Home Health Care to timely submit the license renewal application to AHCA.

6. On December 3, 1996, Home Health Care's completed license renewal application was executed.

7. On December 3, 1996, via UPS Next Day Air, Home Health Care shipped its completed license renewal application to AHCA.

8. The next day, on December 4, 1996, AHCA received Home Health Care's completed license renewal application.

9. Home Health Care failed to timely submit its completed license renewal application to AHCA, but submitted the license renewal application 34 days late to AHCA.

10. On or about February 22, 1997, AHCA issued a renewal license to Home Health Care for the 1997 licensure period.

11. Prior to the expiration date of the licenses for home health agencies, as a courtesy, AHCA attempts to mail-out blank

license renewal applications to home health agencies. The timing of the mailings varies and is dependent upon when AHCA's computer system is able to generate the letters to the home health agencies, which accompany the blank license renewal applications. AHCA does not consider its act of courtesy to relieve the home health agency of the responsibility to submit the license renewal application within the required time frames.

12. A home health agency which wishes to renew its license can request a blank license renewal application from AHCA at any time. AHCA receives numerous requests for blank renewal applications, as well as other documents required to be submitted by a home health agency. AHCA can fax, and has faxed, a blank renewal application to a home health agency on the same day that the application is requested.

13. In the previous year, 1995, AHCA mailed a blank license renewal application for the 1996 licensure year to Home Health Care's administrator. Accompanying the blank license renewal application was a letter, dated June 22, 1995, to Home Health Care's administrator, which contained the same information and language as the letter of October 21, 1996, except for the expiration date of the license and the name of the author of the letter. Home Health Care's administrator prepared and submitted a completed license renewal application for the 1996 licensure year.

14. The blank license renewal applications for 1995 (the

1996 licensure year) and 1996 (the 1997 licensure year) did not change and were identical.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

16. Section 400.464, Florida Statutes (1995), provides in pertinent 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. . . .

17. Section 400.471, Florida Statutes (1995), provides in pertinent part:

(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 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.

18. Section 400.474, Florida Statutes (1995), provides in pertinent part:

(1) The Agency for Health Care Administration may . . . impose an administrative fine in the manner provided in chapter 120

(2) Any of the following actions by a home health agency or its employee is grounds for disciplinary action by the Agency for Health Administration:

(a) Violation of this part or of applicable

rules.

19. Section 120.57, Florida Statutes, provides in pertinent part:

(1) ADDITIONAL PROCEDURES APPLICABLE TO
HEARINGS INVOLVING DISPUTED ISSUES OF
MATERIAL FACT.-

* * *

(h) Findings of fact shall be based upon a
preponderance of the evidence, except in
penal or licensure disciplinary proceedings
or except as otherwise provided by statute
. . . .

20. In order for AHCA to levy a fine against Home Health Care, clear and convincing evidence (proof greater than a mere preponderance of the evidence) is required. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 935 (Fla. 1996) ("an administrative fine deprives the person fined of substantial rights in property;" "[a]dministrative fines . . . are generally punitive in nature;" "[b]ecause the imposition of administrative fines . . . are penal in nature and implicate significant property rights, the extension of the clear and convincing evidence standard to justify the imposition of such a fine is warranted"). See also Subsection 120.57(1)(h).

21. A licensee is presumed to have knowledge of the requirements and the prohibitions of the law which governs the licensee's license. Florida Board of Pharmacy v. Levin, 190 So. 2d 768, 770 (Fla. 1966).

22. Rule 59A-8.003(4), Florida Administrative Code,

provides in pertinent part:

(4) An application for renewal of license must be submitted to AHCA at least 60 days prior to the date of expiration of the license. It is the responsibility of the home health agency to submit an application within the specified time frames whether or not they receive separate notification from AHCA of the impending expiration of the license.

23. Also, Rule 59A-8.010, Florida Administrative Code, provides in pertinent part:

(1) The administrator of the [home health] agency¹ shall:

* * *

(b) Be knowledgeable of the statute and administrative rules of the AHCA and ensure compliance with them by the agency.

(c) Be responsible for informing the employees about the home health statute and administrative rules and shall have copies available for their reference.

4. Be responsible for the daily operation of the agency.

(d) Be responsible for the maintenance and submission of such reports and records as required by the AHCA.

24. AHCA demonstrated that Home Health Care violated Subsection 400.471(5), Florida Statutes (1995), and Rule 59A-8.003(4), Florida Administrative Code.

25. Home Health Care is responsible for ensuring that its license renewal application is timely submitted to AHCA. A licensee can request a license renewal application from AHCA at any time. Even though the renewal applications can only be obtained from AHCA, AHCA is under no requirement or obligation to

mail, fax, or otherwise provide a blank license renewal application to a licensee without a request from the licensee.

26. Home Health Care's argument that equitable estoppel is applicable in this instance is not persuasive. Home Health Care failed to demonstrate that the requirements of equitable estoppel against a state agency are satisfied. Monroe County v. Hemisphere Equity Realty, Inc., 634 So. 2d 745, 747 (Fla. 3d DCA 1994).²

27. Home Health Care's argument that it was not provided a reasonable period of time in which to complete and submit its renewal application is not persuasive.

28. Home Health Care's arguments regarding rule-making are inappropriate in this proceeding, which is a Section 120.57(1) proceeding, and are not addressed. Separate statutory provisions and proceedings govern the validity of rules and rule-making.

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

(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.

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:

1. Finding that Home Health Care Agency, Inc. violated Subsection 400.471(5), Florida Statutes (1995), and Rule 59A-8.003(4), Florida Administrative Code.

2. Imposing an administrative fine of \$3,400.

DONE AND ENTERED this 30th day of September, 1998, in
Tallahassee, Leon County, Florida.

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 1998.

ENDNOTES

^{1/} Agency refers to home health agency throughout the cited provisions of this Rule.

^{2/} Quoting with approval Calusa Golf, Inc. v. Dade County, 426 So. 2d 1165, 1167 (Fla. 3d DCA 1983), Monroe County held:

Equitable estoppel is to be applied against the state only in rare instances and under exceptional circumstances. To sustain a claim of estoppel against the state or one of its subdivisions, there must be (1) a representation as to some material fact by the party estopped to the party claiming estoppel; (2) reliance upon the representation by the party claiming estoppel; and (3) a change in such party's position caused by his reliance on the representation to his detriment. Furthermore, the act on which the aggrieved party relied must be one on which he had a right to rely.

Monroe County, at 747, held also that the act must be some positive act, citing Ogden v. State Department of Transportation, 601 So. 2d 1300, 1302 (Fla. 3d DCA 1992) (quoting Greenhut Construction Company v. Henry A. Knott, Inc., 247 So. 2d 517, 524 (Fla. 1st DCA 1971)).

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.