

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

HERITAGE HEALTH CARE AND
REHABILITATION CENTER - NAPLES
(BEVERLY ENTERPRISES-FLORIDA,
INC.),

Petitioner,

CASE NO.: 99-1892
AHCA NO.: 8-99-155-NH
RENDITION NO.: AHCA-00-030-
FOF-OLC

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FINAL ORDER

This cause was referred to the Division of Administrative Hearings for a formal administrative hearing. The assigned Administrative Law Judge ("ALJ") has submitted a Recommended Order to the Agency for Health Care Administration ("AGENCY"). The Recommended Order of November 12, 1999, entered herein is incorporated by reference.

RULING ON EXCEPTIONS

Counsel for the agency excepts to the ALJ's conclusions that the applicable standard of proof at the final hearing was "clear and convincing" evidence, and that downgrading the quality rating of a nursing home is penal in nature. Additionally, counsel maintains that the ALJ's reference to the agency's statutory authority to assess fines or recommend criminal charges is irrelevant in this rating proceeding. The exceptions are granted and the challenged conclusions are rejected. Health Care Center vs. Agency for Health Care Administration, 20 F.A.L.R. 873, 874 (Fla. Agency for Health Care Administration 1998). Daytona Manor vs. Agency for Health Care Administration, 21 F.A.L.R. 119, 120, 130 (Fla. Agency for Health Care Administration 1998). Additionally, counsel maintains that the ALJ's reference to the agency's statutory authority to assess fines or recommend criminal charges is irrelevant in this rating proceeding. The exceptions are granted. The use of the wrong standard of proof at the final hearing does not necessitate remand to the Division of Administrative Hearings because the ALJ found that Heritage

affirmatively disproved the existence of the alleged class II deficiency.

The Agency's counsel also excepts to the ALJ's conclusion that the established facts, the failure to timely change wound dressings, do not constitute neglect. Whether the failure to timely change wound dressings constitutes neglect is a conclusion of law. See Shapiro v. Unemployment Appeals Commission, So.2d (Fla. 4th DCA 1998), 24 Fla. L. Weekly D2715); Schrimsher v. School Board of Palm Beach County, 694 So.2d 856, 863 (Fla. 4th DCA 1997), rev. den. 703 So.2d 477 (Fla. 1997); Griffith v. Department of Business Regulation, 613 So.2d 930, 931 (Fla. 3rd DCA 1993); and Goss v. District School Board of St. John's County, 601 So.2d 1232, 1235 (Fla. 5th DCA 1992). The evidence was undisputed that the healing of the wounds was not retarded and there was no risk of infection to the two residents immediately affected. Agency inspectors considered the incidents of deficient care to be isolated. See paragraph 2 of the Recommended Order. Under these circumstances, the deficient care is not a class II deficiency. But, the two instances of failure to timely change wound dressings are neglect, and are appropriately classified as a class III deficiency.¹

Finally, counsel excepts to the ALJ's implication in paragraph 41 that a showing of deficient care cannot constitute a class II deficiency unless all the residents of a facility are impacted. Deficient care of a single resident, depending on the circumstances, may indeed ". . . present an immediate threat to the health, safety, or security . . ." of other residents of a facility, and thus, constitute a class II deficiency. Rule 59A-4. 128(3)(a), Florida Administrative Code (emphasis added). The exception is granted.²

FINDINGS OF FACT

The agency hereby adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The agency hereby adopts the conclusions of law set forth in the Recommended Order except where inconsistent with the rulings on the exceptions. Having timely corrected the class III deficiency, Heritage Health Care and Rehabilitation Center - Naples is rated as standard for the time period at issue.³

DONE and ORDERED this 21 day of Feb., 2000, in Tallahassee, Florida.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION

RUBEN J. KING-SHAW, JR., DIRECTOR

ENDNOTES

1/ See *Convalescent Services, Inc. vs. Agency for Health Care Administration*, 18 F.A.L.R. 884 (Fla. Agency for Health Care Administration 1996); aff'd without opinion, 683 So.2d 487 (Fla. 1st DCA 1996).

2/ The Agency finds that its substituted conclusions of law expressed in the rulings on the exceptions are more reasonable than the rejected or modified conclusions. Chapter 99-379, § 6, Laws of Florida; section 120.57(1)(1), Florida Statutes.

3/ Pursuant to Section 400.23(8)(c), Florida Statutes (1999) a nursing home is rated as conditional if it has a "class I", a "class II", or an uncorrected "class III" deficiency.

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 THE 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.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the above-named people by U. S. Mail this 23 day of Feb, 2000.

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