

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
)
vs.) Case No. 00-1066
)
H & C RETIREMENT CENTER, INC.,)
d/b/a RETIREMENT LIFE CENTER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference with the parties appearing from Fort Lauderdale, Florida, on July 26, 2000, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Alba M. Rodriguez, Esquire
Agency for Health Care Administration
8355 Northwest 53rd Street
Miami, Florida 33166

For Respondent: Som Ramrup, Esquire
Law Offices of Ramrup & Chang, P.A.
5605 Northwest 27th Court
Lauderhill, Florida 33313

STATEMENT OF THE ISSUES

Whether the Respondent, H & C Retirement Center, Inc., d/b/a Retirement Life Center, committed the violation as alleged and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On May 10, 1999, the Petitioner, Agency for Health Care Administration (Petitioner or AHCA), issued an Administrative Complaint that alleged the Respondent violated provisions of Chapter 400, Florida Statutes, and Chapter 58A-5, Florida Administrative Code, in that it failed to timely correct a deficiency cited during a review of September 4, 1998. The Respondent disputed the allegation and requested a formal administrative hearing. The matter was forwarded to the Division of Administrative Hearings for formal proceedings on March 9, 2000.

At the hearing, the Petitioner presented testimony from Hansram Ramrup, Annette Thomas, and John Gabel. Petitioner's Exhibits numbered 1 through 6 were admitted into evidence. The Respondent offered testimony from Hansram Ramrup and Marc Celetti. The Respondent's Exhibits numbered 1 through 5 were also received into evidence.

The Transcript of the proceeding and all the exhibits were filed with the Division of Administrative Hearings on September 5, 2000. The parties' proposed recommended orders were timely filed and have been considered in the preparation of this order.

FINDINGS OF FACT

1. The Petitioner is the state agency charged with the responsibility and authority to regulate facilities licensed pursuant to Chapter 400, Florida Statutes.

2. At all times material to the allegations of this case, the Respondent was a licensed assisted living facility (ALF) doing business in Broward County, Florida. As such the Respondent is charged with operating in accordance with Chapter 400, Florida Statutes, and Chapter 58A-5, Florida Administrative Code.

3. Broward County's Emergency Management Division (EMD) is entrusted with reviewing the Emergency Management Plans for all ALFs located in Broward County, Florida. The EMD filed a complaint against the Respondent on or about September 4, 1998.

4. This complaint alleged that the Respondent had failed to update its Emergency Management Plan, a requirement set forth in the rules governing ALFs. The complaint was assigned to Annette Thomas, a surveyor employed by the Petitioner, for investigation.

5. Ms. Thomas notified the Respondent of the alleged violation and directed the Respondent to correct the deficiency. Written notice of the deficiency was provided to the Respondent on or about September 22, 1998.

6. Thereafter, Ms. Thomas waited for verification from either the Respondent or the EMD that the deficiency had been corrected. Ms. Thomas did not visit the facility, did not review

the sufficiency of the physical plant, and did not allege any other deficiency with regard to the safety to residents.

7. As part of her investigation, Ms. Thomas waited thirty days for the Respondent to correct the deficiency. It was not corrected within that time frame.

8. On or about October 30, 1998, Ms. Thomas again drafted a notice to the Respondent to advise that the deficiency had not been corrected. This notice was provided to the Respondent on or about November 10, 1998.

9. The Respondent did not correct the deficiency prior to the issuance of a deficiency letter issued on December 22, 1998. This notice advised the Respondent that the Petitioner would seek an administrative penalty for the uncorrected deficiency.

10. Eventually, Ms. Thomas verified that the updated plan was approved and the facility was cleared of the deficiency in January of 1999.

11. As part of its responsibility, the EMD had notified the Respondent of the requirement to file an updated Emergency Management Plan on or about February 27, 1998. Thereafter, the Respondent did not timely file the required documentation.

12. After notice from the Petitioner, the Respondent contacted Mr. Gabel, the Planning Manager for the EMD, on or about December 7, 1998. Thereafter, Mr. Gabel received and reviewed the updated information submitted by the Respondent. Mr. Gabel requested additional information which he received on

December 31, 1998. The updated plan was approved by Mr. Gabel on January 4, 1999.

13. The Respondent maintained that actions were taken expeditiously to correct the cited deficiency but that it waited for the local Fire Department to perform a required inspection. This inspection was not completed until December 1998. Further, the Respondent argued that it serves an indigent population and that the imposition of a fine would not serve any purpose as the residents were not in danger of harm. Additionally, Respondent claimed such fine would be a financial hardship for it.

14. The Respondent has not offered a credible explanation for why the documentation was not submitted in a timely manner.

15. The Respondent failed to timely submit an updated EMD and the attendant documentation to the EMD. In this regard the testimony of Mr. Gabel has been deemed persuasive.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding.

17. The Petitioner bears the burden of proof in this case to establish the Respondent committed the violation as alleged.

18. Section 400.419, Florida Statutes, authorizes AHCA to impose administrative fines for the violation of the rules promulgated to regulate ALFs. Violations are identified by

classes according to the gravity and probable effect on facility residents.

19. Rule 58A-5.026(2), Florida Administrative Code, provides:

EMERGENCY PLAN APPROVAL. The plan shall be submitted for review and approval to the county emergency management agency.

(a) The county emergency management agency has 60 days in which to review and approve the plan or advise the facility of necessary revisions. Any revisions must be made and the plan resubmitted to the county office of emergency management within 30 days of receiving notification from the county agency that the plan must be revised.

(b) Newly-licensed facility and facilities whose ownership has been transferred, must submit an emergency management plan within 30 days after obtaining a license.

(c) The facility shall review its emergency management plan on an annual basis. Any substantive changes must be submitted to the county emergency agency for review and approval.

1. Changes in the name, address, telephone number, or position of staff listed in the plan are not considered substantive revisions for the purposes of this rule.

2. Changes in the identification of specific staff must be submitted to the county emergency management agency annually as a signed and dated addendum that is not subject to review and approval.

(d) The county emergency management agency shall be the final administrative authority for emergency management plans prepared by assisted living facilities.

(e) Any plan approved by the county emergency management agency shall be considered to have met all the criteria and conditions established in this rule.

20. In this case the Petitioner has established by clear and convincing evidence that an annual review of the EMD is

required. In this regard the Respondent failed to keep the substantive revisions of its plan current and the EMD correctly requested information to update the plan. More troubling, however, is the Respondent's failure to timely review the matter and timely respond to the requirements of the law. The EMD gave the Respondent notice of the due date of May 5, 1998, in February of 1998. The EMD waited until July 21, 1998, before notifying the Petitioner of the failure to timely submit the emergency management plan. Ms. Thomas notified the Respondent of the deficiency in September of 1998. It was not until late December that the Respondent complied with the requirements of the rule. One of the provisions required by the EMD was written authorizations from the Respondent's employees. Such statements were needed to assure that the Respondent could comply with evacuation plans in the event of a disaster. This requirement directly relates to the safety of the residents and the disaster preparedness of this facility. As such, the Petitioner correctly denoted this violation a class II deficiency.

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 imposing a fine in the amount of \$1000.00.

DONE AND ENTERED this 29th day of September, 2000, 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 29th day of September, 2000.

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.