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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AGENCY FOR
HEALTH CARE ADMINISTRATION
DEPUTY CLERK

CAPITAL HEALTH CARE CENTER
(VANTAGE HEALTHCARE CORPORATION),

CLERK

DATE April 19, 2001

Petitioner,

CASE NO.: 00-1996 *CCA*
RENDITION NO.: AHCA-01-094-FOF-OLC

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

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 December 14, 2000, entered herein is incorporated by reference.

EXCEPTIONS

Counsel for the Petitioner filed exceptions. First, the Petitioner challenges the ALJ's finding that the violations of regulatory requirements cited by the Agency were not corrected until May 4, 2000, the day the Agency's inspectors verified the correction of the cited violations. The Petitioner maintains that the undisputed testimony of Capital Health Care Center's administrator proved the violations were corrected no later than April 17, 2000. The credibility and weight to be given to a witness's

testimony is determined by the ALJ. See Heifetz v. Dept. of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). The ALJ discounted the administrator's credibility. See paragraph 29 of the Recommended Order. The ALJ did not arbitrarily reject the administrator's testimony; thus, the exception is denied. See Fla. Bar v. Clement, 662 So.2d 690, 696 (Fla. 1995).

Finally, the Petitioner excepts to the admission of hearsay relevant to whether "Resident 21's" ankle was broken while being moved by Capital Health Care Center's staff from her wheelchair to her bed. Hearsay is admissible in an adjudicatory proceeding under the Administrative Procedure Act to corroborate competent evidence. See § 120.569(2)(g), Fla. Stat. (2000); Orasan v. Agency for Health Care Administration, 668 So.2d 1062, 1063 (Fla. 1st DCA 1996). Furthermore, the ALJ correctly ruled that the statements attributable to "Resident 21" taken from the nurses' notes are admissible pursuant to § 90.803(4), Fla. Stat. (2000), Statements for Purposes of Medical Diagnosis or Treatment. The ALJ's finding as to the occasion and time when "Resident 21's" ankle was broken is also supported by circumstantial evidence. See paragraphs 11, 12, and 19 through 21 of the Recommended Order. The exceptions are denied.

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.

Based upon the foregoing, Capital Health Care Center is rated as conditional from March 9, 2000 through May 4, 2000.

DONE and ORDERED this 17 day of April, 2001, in Tallahassee, Florida.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION



RUBEN J. KING-SHAW, JR., SECRETARY

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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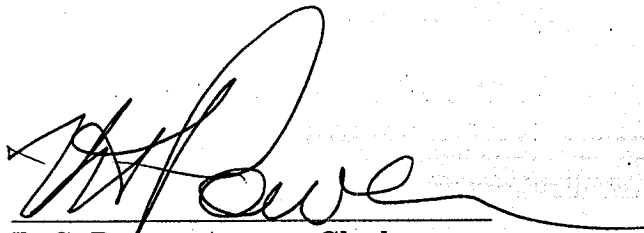
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
has been furnished via postage-paid U.S. Mail, Inter-office Mail, E-mail
and/or Facsimile Transmission to the above named persons dated on
April 20, 2001.



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