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FILED

**STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION**

JUL -5 01

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION  
DIVISION OF ADMINISTRATIVE HEARINGS  
CASE NO.: 00-2465  
00-3497

AHCA DEPARTMENT CLERK  
AHP

Petitioner,

AHCA NO.: 06-00-090-NH  
06-00-111-NH

v.

RENDITION NO.: AHCA-01-180-FOF-OLC

BEVERLY SAVANA CAY MANOR, INC.  
d/b/a BEVERLY HEALTHCARE-LAKELAND

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 March 22, 2001, entered herein is incorporated by reference.

**EXCEPTIONS**

Counsel for the Respondent, licensee, filed exceptions in numbered paragraphs one through twenty-two. At issue in this case is whether Beverly Healthcare - Lakeland should be rated as conditional effective on April 28, 2000 and whether Beverly should be fined for a violation of regulatory standards. The ALJ recommends the conditional rating and a \$700 fine. The basis for the rating recommendation is two citations arising out of an

inspection conducted April 26 through 28, 2000. Beverly was cited for a Class II deficiency and a Class III deficiency.

Beverly, with the concurrence of counsel for the Agency, maintains that the Class III deficiency cannot support a conditional rating effective April 28, 2000. See §400.23(7)(b), Fla. Stat. (2000), which provides that a citation for a Class III deficiency cannot be the basis for a conditional rating if the deficiency is timely corrected. The record herein does not establish whether the Class III deficiency cited April 28, 2000 was timely corrected; therefore the exception is granted.

Beverly's next exception addresses diametrically opposed findings concerning resident 12. In paragraph 7 the ALJ found a violation of the regulatory standard that a nursing facility provide the appropriate level of preventive care, supervision and devices, to prevent falls by its residents. In paragraph 58 the ALJ found that the level of preventive care provided to resident 12 was not below the regulatory standard. At this level of review the Agency has no authority to reweigh the evidence. See *Heifetz v. Dept. of Business Regulation*, 475 So.2d 1277, 1281 (Fla. 1<sup>st</sup> DCA 1985). Because of findings regarding other residents, neither finding is dispositive. In the interest of official economy, the exception is granted and two findings are stricken.

In paragraph 5 of its exceptions Beverly acknowledges that each resident must be assessed for the risk of falling (falls are the most common

accident in a nursing home), but excepts to the finding that resident 3's "falls assessment" was incomplete on the grounds that such an assessment is not required by the applicable regulatory standard. Three comments are appropriate; first, a nursing facility is required to do a comprehensive assessment on each resident including physical and mental status, need for special treatments and procedures, identifiable impairments, and activities potential. See 42 CFR 483.20(b) and Agency for Health Care Admin. v. Gulf Coast Rehabilitation Center, 22 F.A.L.R. 686, 691 - 692, (AHCA 1999). Second, Beverly routinely assesses each resident for risk of falling at other nursing homes it operates. See Beverly d/b/a Rio Pinar v. Agency for Health Care Admin., 20 F.A.L.R. 4358, 4363 (AHCA 1998), Vista Manor (Beverly) v. Agency for Health Care Admin., 21 F.A.L.R. 3164, 3168 (AHCA 1999) and see also Wellington Specialty Care v. Agency for Health Care Admin., 21 F.A.L.R. 4556, 4560 (AHCA 1999). Three, an incomplete assessment is relevant and probative on the issue of compliance with the applicable regulatory standard, preventive care (supervision and devices) to minimize falls. The exception is denied. Likewise, Beverly excepts to other findings regarding resident 3 *i.e.* observed falls and inadequate supervision, on the grounds that the significance of the challenged findings is not explained by the ALJ. Again, the findings are highly relevant and probative to compliance with the regulatory standard at issue. These exceptions are denied.

Beverly excepts to the ALJ's comments in paragraph 60 on the position taken by Beverly at the hearing. The challenged statement is an appropriate comment on the weight of the evidence. The exception is denied.

The parties concur in excepting to the finding in paragraph 3 that the Agency stipulated it does not rely on the citation of August 19, 1999 for inadequate staffing to support the imposition of a fine. This exception is granted.

Beverly maintains that as a matter of law compliance with minimum numerical staffing requirements is all that is required to avoid a citation for non-compliance with the regulatory standard requiring a nursing facility to maintain a level of staffing sufficient for each resident to achieve and maintain his/her highest practicable level of well-being. Beverly strongly excepts to the ALJ's conclusion that the Agency need only establish a relationship between the level of nursing service provided and a failure of residents to attain the highest practicable level of well being to prove inadequate staffing. In effect, Beverly argues for a conclusive presumption of compliance if numeric staffing standards are met. The Agency concurs with the ALJ and the exception is denied.

### **FINDINGS OF FACT**

The Agency hereby adopts the findings of fact set forth in the Recommended Order except where inconsistent with the rulings on the exceptions.

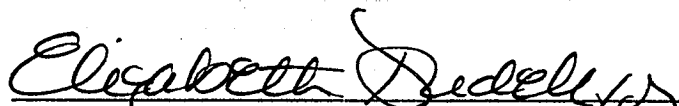
## CONCLUSIONS OF LAW

The Agency hereby adopts the conclusions of law set forth in the Recommended Order except where inconsistent with the rulings on the exceptions.

Based upon the foregoing, Beverly Healthcare - Lakeland is rated as conditional effective April 28, 2000. Additionally, a fine of \$700 is imposed. Payment in full is due within 30 days of the filing of this Final Order. Pay by check payable to Agency for Health Care Administration. Mail payment to Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building 2, Mail Stop 14, Tallahassee, Florida 32308.

DONE and ORDERED this 2 day of July, 2001, in Tallahassee, Florida.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION

  
LAURA BRANKER, ACTING 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.***

**COPIES FURNISHED TO:**

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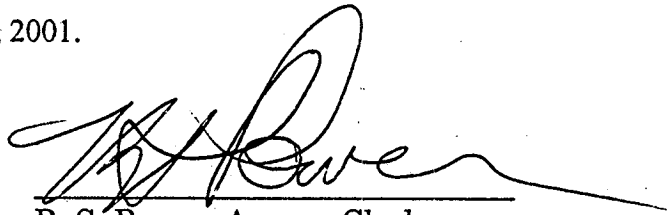
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Fort Knox Building I, MS 33

Elizabeth Dudek, Deputy  
Secretary, Agency for Health Care  
Administration

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via postage-paid U.S. Mail and/or Inter-office Mail to the above named persons dated on July 10, 2001.



R. S. Power, Agency Clerk  
State of Florida, Agency for  
Health Care Administration

power/15-May-01