

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

QUALITY HEALTH OF SARASOTA  
COUNTY, INC. d/b/a QUALITY HEALTH  
CARE CENTER,

Petitioner,

CASE NO.: 00-3356  
AHCA NO.: 8-00-113-NH  
RENDITION NO.: AHCA-01-155-FOF-OLC

v.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

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**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 9, 2001, entered herein is incorporated by reference.

**PRELIMINARY STATEMENT**

The Agency received a complaint and conducted an investigation regarding the care of a patient residing at Quality Health Care Center ("Quality Center"), a nursing home. The event triggering the complaint was the discovery that fire ants had invaded the bed of a dying patient and inflicted multiple bites on the upper torso of the patient. Because of the perturbing circumstances of the ant attack, the press widely reported the

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incident. Quality Center was inspected and cited for two Class I violations of regulatory standards. Based on the two citations Quality Center was notified of the Agency's intent to rate the facility as "conditional". Quality Center maintained there was no factual basis for either of the Class I violations, and requested a formal adjudicatory proceeding. At issue in this proceeding is not the fire ant attack *per se*, but Quality Center's response to it.

After a full evidentiary hearing including the presentation of expert opinion on the applicable standard of care, the ALJ found that Quality Center was not guilty of violating the regulatory standards and recommends a standard rating for the time period at issue.

### EXCEPTIONS

Counsel for the Agency filed exceptions to the ALJ's findings that Quality Center was **not** guilty of violating the regulatory standard requiring a nursing facility to provide the patients services meeting professional standards of quality. This citation was designated as tag F281. At hearing counsel for the Agency maintained that a very serious departure from professional standards occurred as follows: after the ant attack was discovered the condition of the patient was not assessed by a registered nurse ("RN"), nor were the nursing notes signed by a RN. The administrative law judge heard the testimony of those who witnessed the immediate response to the discovery of the ants and concluded that Quality Center's assistant director of nursing, a RN, both treated and assessed the patient. The

assistant director of nursing did not sign the nursing notes, but the ALJ found credible her testimony that she read the notes and added no observations of her own because she agreed with the notes as written. It is important to note here that the Agency cited tag F281 as a **Class I deficiency**, the most serious classification.

A Class I deficiency is one in which the facts and circumstances of the violation “. . . present an imminent danger to the residents or guests of the nursing home facility or a substantial probability that death or serious physical harm would result therefrom”. See §400.23(8)(a), Fla. Stat. (2000). At hearing counsel for the Agency maintained that the Quality's assistant director was no more than a passive and detached witness to the care and assessment of the patient after the ant attack, and that the care and assessment was actually provided by licensed practical nurses. Such a dereliction of duty would have justified the most serious classification. At this level of review the Agency has no authority to re-weigh the evidence, and if a finding is supported by competent, substantial evidence the Agency is obligated to accept the ALJ's findings of fact. *Heifetz v. Dept. of Business Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Thus, the Agency accepts the ALJ's findings that the assistant director of nursing properly cared for and assessed the patient. Under the circumstances, the failure of the assistant director of nursing to sign the nursing notes is at most a Class III violation, not a Class I violation. Therefore, 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 on the foregoing, Quality Health Center is rated as standard for the time period at issue.

DONE and ORDERED this 21 day of June, 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.*

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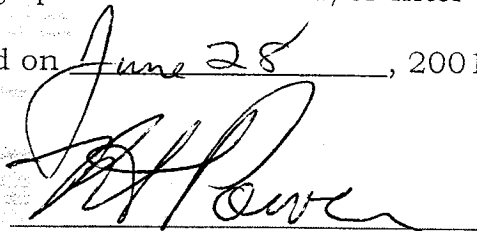
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*Liz Dudek*

**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 person dated on June 28, 2001.



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