

5-7-01

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

AP

FILED

SEP 13 01

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

AHCA
DEPARTMENT CLERK

Petitioner,

CASE NO.: 00-4035
00-4735

v.

AHCA NO.: 10-00-078-NH
RENDITION NO.: AHCA-01-239-FOF-OLC

WASHINGTON MANOR NURSING AND
REHABILITATION CENTER (BEVERLY
ENTERPRISES-FLORIDA, INC.),

JVL-CWS

01 SEP 13 PM 1:20
ADMINISTRATIVE
HEARINGS

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 May 7, 2001, entered herein is incorporated by reference.

PRELIMINARY STATEMENT

The Agency received a complaint regarding the safety of patients ("residents") at Washington Manor Nursing and Rehabilitation Center ("Washington Manor"), a nursing home. The event triggering the complaint was the discovery that fire ants had invaded the bed of a resident and inflicted multiple bites on her. Washington Manor was inspected and cited for a Class I deficiency; failure to provide a safe, sanitary and comfortable environment for its residents. Subsequently, Agency staff found the cited

deficiency to be corrected based on a follow-up inspection one month after the fire ant attack. Based on the citation, Washington Manor was notified of the Agency's intent to rate the facility as "conditional" and impose a fine of \$10,000 on the licensee, Beverly Enterprises - Florida. The ALJ found that Washington Manor had taken reasonable precautions to protect its residents against insects and rodents. The ALJ further found that the fire ant invasion and attack was freakish and unforeseeable. Thus, the ALJ concluded Washington Manor was not guilty of the cited violation of regulatory standards and recommends a standard rating for the time period at issue.

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 this Final Order. The rating of a nursing home as conditional is a regulatory measure, not a penal sanction and the appropriate standard of proof is the preponderance standard. See e.g. Beverly d/b/a Eastbrooke Health Care Center v. Agency for Health Care Administration, 20 F.A.L.R. 873, 874 (AHCA 3/16/98) and Daytona Manor v. Agency for Health Care Administration, 21 F.A.L.R. 119, 130 (AHCA 6/2/98).

The Agency is not held to a standard of perfection in pleading a violation of a regulatory standard. Notice and lack of prejudice to the

regulated party is the touchstone of due process. See *Bracey et. Al. v. Dept. of Children and Families*, 764 So.2d 905 (Fla. 5th DCA 2000); *Optiplan v. School Board of Broward Co.*, 710 So.2d 569 (Fla. 4th DCA 1998), and cf. *Hoffman v. State*, 397 So.2d 288, 290 (Fla. 1981)(A technical pleading defect not affecting the substantial rights of the parties is not reversible error).

Specific paragraphs of the Recommended Order or portions thereof in which the Agency does not concur are identified and deleted as follows: paragraph 39, the first two words of paragraph 40, the first and last sentences of paragraph 41, paragraph 46, paragraph 47, paragraph 51, paragraph 52, and the last sentence of paragraph 56.

Based upon the foregoing, Washington Manor is rated as standard for the time period at issue. Additionally, the licensee, Beverly Enterprises - Florida, Incorporated, is found not guilty of the Class I deficiency charged in administrative complaint number 10-00-078-NH.

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION



RHONDA M. MEDOWS, MD, 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:

John G. Van Laningham
Administrative Law Judge
DOAH, The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Alba Rodriguez
State of Florida, Agency for
Health Care Administration
8355 Northwest 53rd Street
Miami, Florida 33166

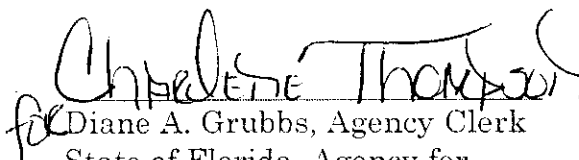
Nursing Home Section
2727 Mahan Drive
Fort Knox Building I
Tallahassee, Florida 32308

R. Davis Thomas, Jr.
Broad and Cassel
Post Office Drawer 11300
Tallahassee, Florida 32302

Elizabeth Dudek, Deputy
Secretary, Managed Care
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 Sept. 17, 2001.


for Diane A. Grubbs, Agency Clerk
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, MS 3
Tallahassee, Florida 32308
850/922-5865