

5-16-02

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
FEB 21 2003

AT

BEVERLY HEALTH AND REHABILITATION  
CENTER-CORAL TRACE,

CSH - closed

Petitioner,

vs.

DOAH CASE NO. 01-1606  
AHCA CASE NO. 08-01002  
RENDITION NO.: AHCA-03-0115

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FILED  
ADMINISTRATIVE  
HEARINGS  
FQF-OLC

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

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**FINAL ORDER**

This cause was referred to the Division of Administrative Hearings and assigned to an Administrative Law Judge (ALJ) for a formal administrative hearing and the entry of a Recommended Order. The Recommended Order of May 16, 2002, is attached to this Final Order and incorporated herein by reference except as noted.

**RULING ON EXCEPTIONS**

This case concerns a nursing home (Beverly Health and Rehabilitation Center-Coral Trace) that was the subject of an annual survey on March 1, 2001 by the Agency for Health Care Administration. The Agency filed one exception to the Recommended Order to conclusion of law 71. Petitioner filed four exceptions to the Recommended Order. Exception One was to findings of fact 42-50. Exception Two was to findings of fact 51-52. Exception Three was to finding of fact 53. Exception Four was to finding of fact 54. Petitioner also filed a response to the Agency's exception.

While the Agency is largely bound by findings of fact except where they unsupported by any competent, substantial evidence, conclusions of law are a different matter. This is especially true where they concern statutes and rules over which an agency has substantive jurisdiction and/or special expertise.

In conclusion of law 71, the ALJ concluded that a single instance of neglect does not demonstrate a failure to develop and/or implement policies. In this regard, the ALJ refers to federal administrative decisions. While federal decisions in this area may be looked to for guidance, they involve federal regulations that are not directly at issue here and are not binding in the instant case. The Agency's interpretation of its statutes and rules, unless clearly erroneous, is to be upheld so long as it is reasonable and within the possible range of interpretations. The Agency's interpretation of law in this regard is as or more reasonable than that of the ALJ and, thus, the Agency's sole exception to the Recommended Order to conclusion of law 71 is granted. Petitioner's response to the Agency's exception is unpersuasive and the authority it cites not directly on point. However, findings of fact not subject to change by the Agency must be accepted as demonstrating that the single instance of neglect in question was not proven.

Petitioner's exceptions to the Recommended Order are all to findings of fact, which the Agency cannot reject unless, unsupported by competent, substantial evidence. See Section 120.57(1)(l), Florida Statutes. It is specifically the duty of the ALJ to review and weigh all of the evidence presented and make findings of fact from it. Petitioner's argument that no evidence to the contrary was presented does not address the proper standard of review and only invites the Agency to reweigh the evidence considered by the ALJ. This the Agency may not do. Consequently, Petitioner's exceptions are denied.

## FINDINGS OF FACT

The Agency adopts the Findings of Fact set forth in the Recommended Order.

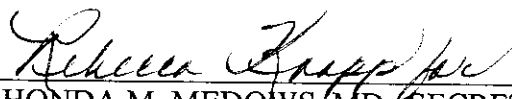
## CONCLUSIONS OF LAW

The Agency adopts the Conclusions of Law set forth in the Recommended Order except for Conclusion of Law 71 for the reasons set out above.

### IT IS THEREFORE ADJUDGED THAT:

The determination by the Agency that there were Tag F224 and F490 deficiencies found in the March 2001, survey is hereby reversed. The determination by the Agency that there was a Class II deficiency under Tag F314 is upheld. Consequently, the imposition of conditional licensure set out in the letter of April 7, 2002, is sustained, for the period of March 1, 2001, until October 31, 2001.

DONE and ORDERED this 18<sup>th</sup> day of February, 2003, in Tallahassee, Florida.

  
RHONDA M. MEDOWS, MD., SECRETARY  
Agency for Health Care Administration

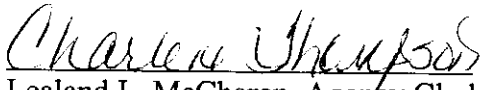
## NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE 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 THE RENDITION OF THE ORDER TO BE REVIEWED.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail, or by the method indicated, to the persons named below on this 20 day of February, 2003.

  
for Lealand L. McCharen, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
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