

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LIFE CARE CENTER OF SARASOTA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-1991
	)	
AGENCY FOR HEALTH CARE	)	
ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

On August 1, 2001, a formal administrative hearing in this case was held in Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: R. Bruce McKibben, Jr. Esquire  
R. Bruce McKibben, P.A.  
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For Respondent: Richard Patterson, Esquire  
Michael Mathis, Esquire  
Agency for Health Care Administration  
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STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner's application for renewal of nursing home licensure should be approved.

## PRELIMINARY STATEMENT

By Notice of Intent dated April 6, 2001, the Agency for Health Care Administration (AHCA) informed Life Care Center of Sarasota (Petitioner) that its request for renewal of nursing home licensure would be denied. As grounds for the proposed denial, AHCA cited the Petitioner's failure to provide a "Leased Nursing Home Surety Bond" pursuant to Section 400.179(5)(d), Florida Statutes.

By Petition for Formal Administrative Hearing dated April 18, 2001, the Petitioner challenged the denial. AHCA forwarded the Petition to the Division of Administrative Hearings, which scheduled the proceeding.

At the hearing, the Petitioner presented the testimony of three witnesses and had Exhibits Numbered 1-18 admitted into evidence. AHCA presented the testimony of three witnesses and had Exhibits Numbered 1-6 admitted into evidence.

A Transcript of the hearing was filed on August 13, 2001. Both parties filed Proposed Recommended Orders that were considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

1. The Petitioner is a licensed nursing home facility located at 8104 North Tuttle Avenue, Sarasota, Florida.

2. AHCA is the state agency charged with responsibility for licensure and regulation of nursing home facilities in Florida.

3. By application dated January 30, 2001, the Petitioner applied for renewal of the license for Life Care Center of Sarasota. According to the application, Life Care Center of Sarasota is a leased facility.

4. Although the cover letter accompanying the application indicates that a surety bond was enclosed, the Petitioner did not include a surety bond.

5. Florida law requires that an applicant for licensure of a nursing home operating in a leased facility must meet a bonding requirement. The law provides that the requirement may be met through other arrangements acceptable to AHCA.

6. Currently, AHCA is requiring that operators of leased facilities must comply with the bond requirement.

7. In an attempt to comply with the bond requirement, the Petitioner submitted an "Unconditional Guarantee of Payment" executed by the owner of the Petitioner's parent company, Life Care Centers of America, Inc.

8. By Notice of Intent dated April 6, 2001, AHCA informed the Petitioner that the licensure application would be denied. As grounds for the denial, the notice states that the denial is based on the failure to provide a "Leased Nursing Home Surety

Bond for 30 months of coverage" pursuant to Section 400.179(5)(d) 3., Florida Statutes.

9. The evidence supports the cited grounds for denial of the application.

10. There is no evidence that the Petitioner is unable to obtain the surety bond.

11. The Petitioner asserts that AHCA accepts Unconditional Guarantees of Payment from operators of nursing home facilities that are owned by the guarantor, and that such guarantees should be accepted from operators of nursing home facilities that are leased by the guarantor. The evidence fails to support the assertion.

12. There is no credible evidence that AHCA has accepted Unconditional Guarantees of Payment from operators or nursing home facilities that are leased from a third party by the operator.

13. The Petitioner asserts that some leases are actually financing mechanisms and that such leaseholders should be permitted to supply Unconditional Guarantees of Payment in lieu of complying with the bond requirement. The evidence in this case fails to establish that an Unconditional Guarantee of Payment should be accepted in lieu of complying with the bond requirement.

## CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

15. The Petitioner has the burden of establishing entitlement to the licensure sought. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

16. Section 400.179, Florida Statutes, governs the sale and transfer of ownership of a nursing facility, and the liability of the owner for overpayments and underpayments by the Medicaid program. The intent of the Legislature in enacting the statute is "to protect the rights of nursing home residents and the security of public funds when a nursing home is sold or the ownership is transferred." Section 400.179(1), Florida Statutes.

17. Section 400.179(5), Florida Statutes, governs the determination of liability for Medicaid program overpayments and underpayments that are revealed during a change of ownership. Section 400.179(5)(d), Florida Statutes, addresses the issue of ownership transfer involving a facility leased by the transferor, and provides as follows:

Where the transfer involves a facility  
that has been leased by the transferor:

1. The transferee shall, as a condition to being issued a license by the agency, acquire, maintain, and provide proof to the agency of a bond with a term of 30 months, renewable annually, in an amount not less than the total of 3 months Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility.

2. The leasehold operator may meet the bond requirement through other arrangements acceptable to the department.

3. All existing nursing facility licensees, operating the facility as a leasehold, shall acquire, maintain, and provide proof to the agency of the 30-month bond required in subparagraph 1., above, on and after July 1, 1993, for each license renewal.

4. It shall be the responsibility of all nursing facility operators, operating the facility as a leasehold, to renew the 30-month bond and to provide proof of such renewal to the agency annually at the time of application for license renewal.

5. Any failure of the nursing facility operator to acquire, maintain, renew annually, or provide proof to the agency shall be grounds for the agency to deny, cancel, revoke, or suspend the facility license to operate such facility and to take any further action, including, but not limited to, enjoining the facility, asserting a moratorium, or applying for a receiver, deemed necessary to ensure compliance with this section and to safeguard and protect the health, safety, and welfare of the facility's residents.

18. In this case, the Petitioner has failed to meet the requirement set forth in Section 400.179(5)(d) 3., Florida Statutes.

19. The Petitioner asserts that the agency should accept an Unconditional Guarantee of Payment under the provisions of Section 400.179(5)(d) 2., Florida Statutes ("[t]he leasehold operator may meet the bond requirement through other arrangements acceptable to the department").

20. The cited subsection does not require AHCA to accept an Unconditional Guarantee of Payment in lieu of the required bond. There is no evidence that AHCA has permitted use of an Unconditional Guarantee of Payment in lieu of the required bond for leased facilities.

21. The Petitioner is attempting to extend the apparent use of Unconditional Guarantees of Payment from facilities owned by the operators to facilities leased by the operators. The Respondent asserts that owned facilities provide more security than leased facilities, because the owner has equity in the property and is less likely to abandon a nursing home than would the operator of a leased facility. The Petitioner responds by suggesting that in cases where an owned facility is subject to a mortgage for 100 percent of the property's cost, the owner has no equity and an Unconditional Guarantee of Payment provides little actual security to the residents of the facility or to the State. Assuming the Petitioner's position is correct, it suggests that AHCA should perhaps reconsider the use of Unconditional Guarantees of Payment for owned facilities. It

does not, given the intent of the statute at issue in this proceeding, lead to the conclusion that the less secure guarantee should be available to all nursing home operators regardless of ownership.

22. The Petitioner asserts that in this specific case, the Unconditional Guarantee of Payment provides the same level of security to the facility's residents and to the State of Florida as would a lease bond. There was no evidence produced at hearing to permit a factual determination in this case that the guarantor would be capable of complying with the guarantee should such action be required.

23. In order to obtain a bond from a surety company, the surety would review the financial status of the entity for which the bond is issued and require some form of collateral or security for the bond amount. In order for an Unconditional Guarantee of Payment to provide the same level of security to the state and a facility's residents as would a surety bond, an independent evaluation of the financial condition of the guarantor similar to that which would be performed by a surety should be performed. There was no evidence presented in this case to permit such an evaluation. Absent such supporting documentation, it is not possible to conclude based on the evidence presented at the hearing, that the guarantor is



financially capable of meeting the obligation should such be necessary.

24. Further, although the Petitioner asserts that due to litigation related to nursing home care the cost of lease bonds has become onerous, the cost of a lease bond is a reimbursable cost for purposes of the Medicaid program. In other words, the cost of the bond is eventually borne by the State of Florida. While permitting use of a different mechanism than a surety bond might result in reduced costs to the State, the statute clearly indicates that a surety bond is preferred and provides AHCA with discretion as to whether an alternate mechanism is acceptable. The evidence fails to establish that AHCA's decision in this case to reject substitution of the Unconditional Guarantee of Payment for the required surety bond is an unreasonable application of the agency's discretion.

25. The Petitioner asserts that a nursing home operator seeking licensure or re-licensure could obtain a lease bond for purposes of meeting the applicable requirement, and then cancel the bond after completing the licensure process. There is no evidence to suggest that the State's nursing home operators, including the Petitioner, would act in such bad faith, especially where, through reimbursement, the cost of the bond is ultimately assumed by the State.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Agency for Health Care Administration enter a Final Order denying the application for licensure of Life Care Center of Sarasota based on the Petitioner's failure to provide a lease bond as required by statute.

DONE AND ENTERED this 28th day of September, 2001, in Tallahassee, Leon County, Florida.

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WILLIAM F. QUATTLEBAUM  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of September, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.