

2-13-03

FILED

AUG - 03

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RENDITION NO.: AHCA-03 - 0441 - FOT FOLC

AP

FILED
AUG - 6 PM 1:10
ADMINISTRATIVE
HEARINGS
FEB - CWS

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

DOAH CASE NO. 02-1586
AHCA NO. 2001055051

vs.

THE HEALTHCARE CENTER OF
PORT CHARLOTTE, d/b/a CHARLOTTE
HARBOR HEALTHCARE,

Respondent.

_____ /

CHARLOTTE HARBOR HEALTHCARE,

Petitioner,

DOAH CASE NO. 02-1917
AHCA NO. 2001074311

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

These cases were referred to the Division of Administrative Hearings, assigned to an Administrative Law Judge (ALJ), and consolidated for a formal administrative hearing

and the entry of a Recommended Order. The Recommended Order of February 13, 2003, is attached to this Final Order, and incorporated herein by reference except as noted.

RULING ON EXCEPTIONS

This case concerns a nursing home (Charlotte Harbor Healthcare) that was the subject of a notice of intent to assign conditional licensure status, and an administrative complaint seeking to impose a \$5,000.00 fine, both alleging that the nursing home had discontinued field trips for the residents and had failed to prevent repeated falls by a resident. Charlotte Harbor filed exceptions to findings of fact 1, 2, 3, 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, and 23, and to conclusions of law 37, 38, 39, 40, 41, 42, 43, and 44. Upon review, the Agency grants the exception to finding of fact 1 in part and rejects all other exceptions for the following reasons.

Finding of fact 1 states that the address of the facility is in Fort Myers. This is incorrect. It appears, however, to be no more than a scrivener's error. This is particularly apparent in that the administrative complaint and the notice of intent to assign conditional licensure were sent to the correct address of record for the facility, and the facility timely requested administrative hearings in regard to both. Review of the record makes it abundantly clear that this cause relates to these charging documents. It is also noted that Counsel, in filing his Petition for Formal Administrative Hearing gives that correct address of record for the facility. The assertion in the exception that there is no proof in the record that the facility is licensed is based on the scrivener's error and not on the record. Thus, this exception is granted to the extent necessary to correct a scrivener's error, but is otherwise rejected.

The other exceptions to findings of fact are rejected because review of the record indicates that they are supported by competent, substantial evidence. See Section 120.57(1)(I), Fla. Stat. To the extent that the exceptions allege that findings of fact 6, 9, and 12 are hearsay, the Agency finds that, if they are hearsay, they are in support of and corroborate other non-hearsay evidence on these findings. See Section 120.57(1)(c), Fla. Stat.

However, the Agency finds that the ALJ made an incorrect statement in his Statement of the Issues when he stated that the Form 2567 is used to charge nursing homes with deficiencies. The charging documents in this case are the notice of intent to assign conditional licensure and the administrative complaint. This statement by the ALJ is not put forth as a finding of fact in the case. In any case, whether this statement is regarded as finding of fact or a conclusion of law, it fails. As a finding of fact, it fails because it is not supported by competent, substantial evidence. As a conclusion of law, it fails because it is legally incorrect. See Section 120.57(1)(I), Fla. Stat. and Section 120.57(5), Fla. Stat.

The exceptions to the conclusions of law are rejected because the Agency finds these conclusions to be well founded. The Agency is unable to come to different conclusions, under the facts of this case, which would be as or more reasonable than those reached by the ALJ. See Section 120.57(1)(I), Fla. Stat.

FINDINGS OF FACT

The Agency adopts the findings set forth in the Recommended Order, which is attached hereto and incorporated by reference except as noted.

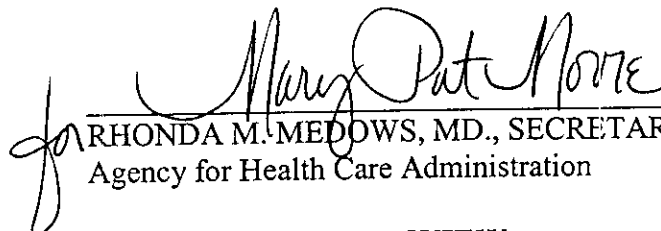
CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

The assignment of conditional licensure for the period of August 3, 2001 through September 30, 2001 is upheld, and The Healthcare Center of Port Charlotte, d/b/a Charlotte Harbor Healthcare shall pay an administrative fine of \$2,500.00 for each of the two Class II deficiencies for a total administrative fine of \$5,000.00. Such payment shall be made to the Agency for Health Care Administration within thirty (30) days of the rendition of this final order.

DONE and ORDERED this 25th day of July, 2003, in Tallahassee, Florida.

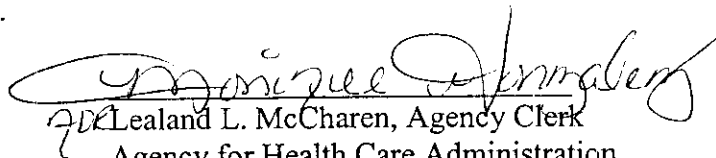

RHONDA M. MEDOWS, MD., SECRETARY
Agency for Health Care Administration

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 7 day of August, 2003.



Leiland L. McCharen, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

COPIES FURNISHED TO:

Fred L. Buckine
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Gerald L. Pickett, Esquire
Agency for Health Care Administration
525 Mirror Lake Drive, North
Sebring Building, Suite 310H
St. Petersburg, Florida 33701

R. Davis Thomas, Jr., Qualified Representative
Broad and Cassel
215 South Monroe Street, Suite 400
Post Office Box 11300
Tallahassee, Florida 32302-1300

Elizabeth Dudek
Deputy Secretary

Wendy Adams
Facilities Intake

Jean Lombardi
Finance and Accounting