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2005 MAR 28 A 9:58

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS
2005 MAR 29 P 2:27

AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

DELTA HEALTH GROUP, d/b/a ROSEWOOD MANOR,

Respondent.

AP

DOAH CASE NO. 02-3405
AHCA NO. 2001053431
RENDITION NO.: AHCA-05-

HLH
CLOS

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 June 6, 2003, is attached to this Final Order, and incorporated herein by reference except as noted.

RULING ON EXCEPTIONS

This case concerns a nursing home (Rosewood Manor) that was the subject of an administrative complaint seeking to assess an administrative fine alleging that the facility had failed to keep the nursing home as free of accident hazards as possible as set out in Title 42 Code of Federal Regulations, Section 483.25(h)(1). The Respondent filed exceptions to portion of finding of fact 3 and finding of fact 8. Respondent also filed exceptions to conclusions of law 16 and 18.

Respondent's exception to finding of fact 3 is that the ALJ found that Resident 1 was a "wanderer", "which, in nursing home jargon, is a person who moves about randomly and who must constantly be watched." Respondent's argument in this regard is that this particular finding is not supported by competent, substantial evidence and is irrelevant to the ultimate issue of the case, which is whether the facility was as free of accident hazards as possible. However, Respondent undercuts its own argument in the next paragraph of its exceptions when it admits that it does not contest that Resident 1 was cognitively impaired and would wander in the facility. The actual argument in this exception is that nursing home patients are not required to constantly be watched. Respondent cites AHCA v. Beverly Health and Rehabilitation Services-Rio Pinar, adopted by Final Order dated June 29, 1998. The ultimate effect on this exception is that it does not impact or affect the outcome of this case. Whether Resident 1 wandered is not the issue. The issue is whether the fact that the biohazard storage room was unlocked and available to cognitively impaired, and other, residents shows that the facility was not as free of accident hazards as possible. Upon a review of the complete record, this exception is granted to the extent that the record does not establish that the nursing home was required constantly to watch Resident 1. See Section 120.57(1)(*l*), Fla. Stat.

Respondent's exception to finding of fact 8 is the simple fact that the bio-hazard storage room was unlocked and that Resident 1 gained access to it does not prove that an accident hazard was established. The argument simply does not take into account the specific facts of this case. This storage room was not a pantry filled with foodstuffs, or a cleaning materials closet. It contained human medical waste including blood. Resident 1 walked into the unlocked and unsecured storage room and opened a Sharps container

filled with used hypodermic needles and inflicted multiple wounds on himself. To argue, as Respondent does, that there is no finding that staff knew, or should have known, that human medical waste constitutes an accident hazard flies in the face of common sense and does not account for the training required for nursing home staff in the handling and disposal of medical waste. The mere existence of a Sharps container shows that used hypodermic needles are a hazard. Respondent's argument that there is no requirement that a nursing home "guard" bio-hazardous waste is not tenable given the very nature and inherent hazard of such waste. Under Respondent's theory, used hypodermic needles could simply be tossed into any wastebasket in a nursing home. Because of the extremely serious and clearly evident nature of the danger posed by human medical waste, leaving the storage room for such waste unlocked and accessible does, in fact, prove that this nursing home was not as free of accident hazards as possible. Respondent's exception to finding of fact 8 is rejected.

Respondent's exceptions to conclusions of law 16 and 18 are rejected because they depend on the exceptions to finding of fact 8. There was a clearly proven violation, which is a Class II violation. Therefore, the imposition of an administrative fine and an assessment of costs pursuant to Section 400.121(10), Florida Statutes, are warranted.

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 except as noted.

IT IS THEREFORE ADJUDGED THAT:

Respondent committed a Class II violation as an isolated deficiency.

Respondent shall pay a fine of $2,500.00. Respondent shall make full payment within 30 days of the filing of this Final Order. Respondent shall pay by check payable to Agency for Health Care Administration, and mailed to the Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building 2, Mail Stop 14, Tallahassee, Florida 32308.

Pursuant to Section 400.121(10), Florida Statutes, costs shall be assessed against the Respondent in an amount that reflects the actual costs of investigation and prosecution. The parties shall attempt to stipulate to the costs related to the investigation and prosecution of this case. In the event that the parties cannot so stipulate, this issue shall be remanded to the Division of Administrative Hearings.

DONE and ORDERED this 16 day of March, 2005, in Tallahassee, Florida.

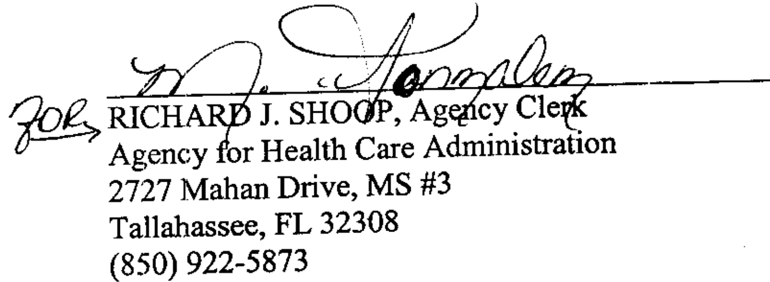
ALAN LEVINE, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 28 day of March, 2005.



RICHARD J. SHOOP, Agency Clerk
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COPIES FURNISHED TO:

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Administrative Law Judge
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