

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Petitioner,)	
)	
vs.)	Case No. 02-3405
)	
DELTA HEALTH GROUP, d/b/a)	
ROSEWOOD MANOR,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER OF DISMISSAL

This matter came before the Administrative Law Judge on a Motion to Dismiss filed by Respondent Delta Health Group, d/b/a Rosewood Manor's (Rosewood). Petitioner, Agency for Health Care Administration (AHCA), filed a response. The matter was argued at a telephone hearing on October 31, 2002.

On September 11, 2001, AHCA conducted a survey of Rosewood's skilled nursing facility. During the survey AHCA concluded that the facility failed to ensure that a resident's environment remained as free as possible of accident hazards. Specifically, the AHCA surveyors determined that the door to a bio-hazardous storage area had been propped open instead of being locked, and as a result, a resident entered the area, and injured himself with used hypodermic needles stored therein.

Subsequently, on December 6, 2001, AHCA filed a Notice of Intent to Assign Conditional Licensure Status, based on the September 11, 2001, survey. The Notice was dated November 29, 2001. The Notice had attached to it an Election of Rights for Notice of Intent. Prior to December 10, 2001, the Election of Rights for Notice of Intent was returned to AHCA indicating that the factual allegations contained in the Notice of Intent to Assign Conditional Licensure Status were not disputed.

On January 30, 2002, ACHA filed its Final Order. This Final Order incorporated the Notice of Intent dated November 29, 2001, and recited, that by not disputing the facts alleged, Rosewood admitted the allegations of fact.

Six months after the filing of its Final Order, in a complaint dated August 1, 2002, AHCA sought to impose a fine of \$2,500 and to assess costs against Rosewood. The pleadings alleged the same facts which supported the Final Order. No reason is offered in the pleadings why all charges were not brought at the same time nor was a satisfactory reason offered during the hearing.

Because of the doctrine of res judicata, AHCA is barred from filing new charges based on the same facts upon which a Final Order has issued. Specifically, splitting causes of actions is impermissible. As was stated in McKibben v. Zamora, 358 So. 2d 866 (Fla. 3d DCA 1978), "This rule is founded on the sound policy reason that the finality established by the rule promotes greater stability in the law, avoids vexatious and multiple lawsuits arising out of a single tort incident, and is consistent with the absolute necessity of bringing litigation to an end." More succinctly, it is not fair for an agency to act as though an action is final and then to later begin litigation anew on the same facts. Greenstein v. Greenbrook, 443 So. 2d 296 (Fla. 3d DCA 1983). State, Dept. of Transp. v. State, Career Serv., 366 So. 2d 473 (Fla. 1st DCA 1979), addressed a situation where an employee was disciplined twice for the same offense and called it "fundamentally unfair." It would be fundamentally unfair if AHCA were to proceed on this case.

Accordingly, after hearing argument of counsel, it is

RECOMMENDED: That the file of the Division of Administrative Hearings in the above-captioned matter is hereby closed.

DONE AND ENTERED this 7th day of November, 2002, in
Tallahassee, Leon County, Florida.

HARRY L. HOOPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of November, 2002.

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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.