

2-18-03

FILED  
MAR 18 2003  
STATE OF FLORIDA

**STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION**

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

AP

JBC-CHS

Petitioner,

vs.

DOAH CASE NO. 02-3950

AHCA NO. 2002033431

DOAH CASE NO. 02-3951

AHCA NO. 2002033441

RENDITION NO.: AHCA-02-00027-00000

03009 21 PM 2:22  
FILED  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

ROCKLEDGE NH, LLC, d/b/a  
ROCKLEDGE HEALTH AND  
REHABILITATION CENTER,

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 18, 2003, is attached to this Final Order, and incorporated herein by reference except as noted.

**RULING ON EXCEPTIONS**

This case involves a nursing home (Rockledge Health and Rehabilitation Center) against which two administrative complaints were filed seeking to impose conditional licensure and an administrative fine of \$2,500.00. Both complaints were based on allegations that a certified nursing assistant improperly physically restrained a resident. The Agency determined this to be a Class II violation based on the failure of the nursing home staff to immediately report the incident of abuse as required by statute and because

this abuse constituted a violation of Section 400.022(1)(o), Fla. Stat. (2001) which justifies action under Section 400.102 and 400.121, Fla. Stat. (2001).

Respondent excepts to conclusion of law 28, which states that if Respondent had been charged with abuse of a resident through the acts of an employee, a violation might have existed. Respondent argues that the employee did not commit any willful or threatened act. Presumably, Respondent refers either to the employee who failed to report the improper restraint of a resident by a certified nursing assistant or the actions of the certified nursing assistant. In any event, the ALJ found that the restraint did occur. (Finding of fact 11). The fact that nursing home staff is provided by a staffing agency does not relieve the facility of compliance with the law, or of responsibility for staff members' actions. See NME Properties v. Florence Rudich, 28 Fla. L. Weekly D454 (Fla. 4<sup>th</sup> DCA February 12, 2003). Thus, the conclusion reached in the first sentence of this conclusion of law is correct and the Agency is unable to reach a different conclusion of law that is as or more reasonable as that of the ALJ. See Section 120.57(1)(I), Fla. Stat. Therefore, the exception by Respondent is rejected. However, Respondent was charged under Section 415.1034, Fla. Stat. that only penalizes individuals for failure to report abuse.

The Agency's exception to conclusions of law 21 and 26 relate to the ALJ's conclusion that, in order for the Agency to show a violation of Sections 400.022(1)(o), 400.022(3), or 400.102(1), Fla. Stat. in this case, the Agency would have to show that Section 415.1034, Fla. Stat. applies to the a facility itself. Under the terms of Section 415.1034, Fla. Stat., this is the case. Only various classes of individuals are charged with the responsibility of reporting violations, and only individuals are penalized by the

statute. Consequently, the Agency's exceptions to conclusions of law 21 and 26 are rejected because under the offense charged by the Agency in the Administrative Complaints, the facility cannot be penalized. The Agency finds that it cannot reach different conclusions of law that are as or more reasonable than those of the ALJ. See Section 120.57(1)(I), Fla. Stat.

The Agency makes two objections to conclusion of law 28. The first is that the surveyor's report (Form 2567) is not the charging document. This is correct. The surveyor does not charge the facility. The charges made and the sanctions sought are contained in the administrative complaints. The surveyor's report, therefore, is the result of a preliminary investigation prior to agency action. The agency action is the administrative complaints filed in this case. See Section 120.57(5), Fla. Stat. The Agency grants the first exception to conclusion of law 28, and makes a substituted conclusion of law that the charging documents in this case are the administrative complaints. The Agency finds that its conclusion is as or more reasonable than that of the ALJ. See Section 120.57(1)(I), Fla. Stat.

The second exception by the Agency to conclusion of law 28 is that though the certified nursing assistant who improperly restrained a resident was not an employee, the facility is not relieved of responsibility for the assistant's actions. The exception is based on NME Properties v. Florence Rudich, 28 Fla. L. Weekly D454a (Fla. 4<sup>th</sup> DCA February 12, 2003). This exception is granted in that the Agency makes a substituted conclusion of law that a facility is not relieved of responsibility for the actions of its staff even when the staff members are not employees. However, the Agency is unable to conclude that the actions of this assistant constitute a Class II violation for which the facility is

responsible under the violations of statute actually charged in the Administrative Complaints. The Agency finds that it cannot reach a different conclusion in this regard that is as or more reasonable than that of the ALJ. See Section 120.57(1)(I), Fla. Stat.

**FINDINGS OF FACT**

The Agency adopts the findings of fact set forth in the Recommended Order.

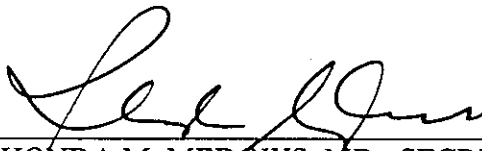
**CONCLUSIONS OF LAW**

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

**IT IS THEREFORE ADJUDGED THAT:**

The Administrative Complaints filed herein are dismissed, Respondent's licensure status is returned to standard for period during which it was conditional, and no administrative fine is levied.

**DONE and ORDERED** this 8 day of October, 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. or interoffice mail to the persons named below on this 17 day of October, 2003.

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

**COPIES FURNISHED TO:**

Jeff B. Clark  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

Elizabeth Dudek, Deputy Secretary  
Agency for Health Care Administration

Joanna Daniels, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
Tallahassee, FL 32308

Alex Finch, Esquire  
Goldsmith, Grout & Lewis, P.A.  
2180 North Park Avenue, Suite 100  
Post Office Box 2011  
Winter Park, FL 32790-2011

Wendy Adams  
Facilities Intake Unit