

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
)
vs.) Case No. 02-4418
)
WOODLAND FIELD, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on February 20, 2003, in Jacksonville, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioner: Michael O. Mathis, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Fort Knox Building Three, Suite 3431
Tallahassee, Florida 32308

For Respondent: Harriett Wallace, Administrator
Woodland Field, Inc.
8236 Moncrief-Dinsmore Road
Jacksonville, Florida 32219

STATEMENT OF THE ISSUE

The issue for consideration in this proceeding is whether Respondent's license as an adult living facility should be disciplined.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (AHCA or Petitioner) filed an Administrative Complaint against Respondent, Woodland Field, Inc. (Respondent), an assisted living facility, located at 8236 Moncrief-Dinsmore Road, Jacksonville, Florida. The Administrative Complaint alleged that Respondent violated Sections 400.423(3) and 400.452(5), Florida Statutes; and Rules 58A-5.0191(4)(a)4 and 58A-5.0191(4)(c), Florida Administrative Code, by failing to ensure that a staff member trained in first-aid and CPR was in the facility at all times when residents were present; failing to maintain a written work schedule that reflects the facility's 24-hour staffing pattern for a given time period; and failing to ensure that an unlicensed person providing assistance with self-administered medications received the required minimum of 24 hours of training prior to assisting with such medications.

Respondent filed a petition for a formal administrative hearing. The petition was forwarded to the Division of Administrative Hearings.

At the hearing, AHCA presented the testimony of three witnesses and offered 15 exhibits into evidence. Respondent

presented the testimony of one witness and offered one composite exhibit into evidence.

FINDINGS OF FACT

1. Respondent, Woodland Field, Inc., holds a license to operate an adult living facility (ALF) effective December 8, 2001, through December 7, 2003. Respondent is a small ALF. In addition to the administrator/owner, Respondent employs two staff persons to assist the residents of the ALF.

2. On June 7, 2002, AHCA conducted a survey of Respondent's facility. The facility's administrator was not present when the surveyors arrived. There was one person, Lisa Phoenix, on duty at the facility when the survey began. The person on duty was assisting with self-administered medication. She had some medication training but did not have the four hours of training required pursuant to Section 400.2456, Florida Statutes (2002). Several violations were found during the survey.

3. The violations relevant here were that the duty person at the time did not have documentation or training in first-aid and CPR (Tag A525); there was no posted staffing schedule for the facility available for review (Tag A528); and the person on duty at the time did not have medication training as required by Florida Statutes (Tag A1106). All four citations were classified as Class III deficiencies.

4. The violations were to be corrected immediately and, but for the posting of a schedule satisfactory to AHCA, the violations were corrected by Respondent.

5. On July 23, 2002, a follow-up visit and moratorium visit was conducted by AHCA. Again, there was one person, Ronella Jones, on duty at the facility. Ms. Jones had had first-aid and CPR training in the past but her documentation of such training had expired prior to the July 23, 2002, survey. While at the facility, the surveyor did review what he described as a sheet of paper, titled, "work schedule" dated March 1, 2002. However, the surveyor felt that not enough information was contained on the schedule to enable it to comply with Rule 58A-5.0191(4)(c), Florida Administrative Code. The surveyor cited three uncorrected deficiencies, related to Tags A525 (first-aid training), A528 (work schedule), and A1106 (medication training).

6. On July 24, 2002, AHCA received a copy of the expired first-aid card for Ms. Jones from Petitioner. The card was later updated and the technical deficiency timely corrected. AHCA also received a copy of Ms. Jones' medication training certificate. The certificate was dated July 8, 2002, prior to the survey and signed by Erma Thompson, R.N. The certificate was not in Respondent's files because it had not been received by the facility at the time of the July survey. Additionally,

AHCA received a copy of a generic work schedule for Petitioner's facility. Petitioner had also faxed a similar schedule to AHCA in June. The work schedule was dated March 1, 2002. It did not reflect a specific time period that the schedule would be effective. However, given the size of the facility, it is reasonable to conclude that the schedule was effective until changed. The schedule also did not list the names of individual staff. The schedule looked as follows:

WORK SCHEDULE

Weekly Schedule

| | | |
|---------------|-----------|-----------|
| Staff on Duty | 6:00 a.m. | 6:00 p.m. |
| Staff on Duty | 6:00 p.m. | 6:00 a.m. |

Weekends
(Staff will alternate)

| | | |
|---------------|-----------|-----------|
| Staff on Duty | 6:00 a.m. | 6:00 p.m. |
| Staff on Duty | 6:00 p.m. | 6:00 a.m. |

The generic schedule, while not listing specific individuals, does reflect the general staffing pattern of Respondent since it shows the time periods during which staff will be on duty at the facility and a reasonable person can determine the scheduling pattern for staff therefrom.

7. Copies of similar schedules were submitted into evidence with names of facility employees hand-written on these schedules. However, the relation of these schedules to one another or anything about them regarding their development was not shown by the evidence, except that since Respondent's

facility was very small, scheduling of specific employees was accomplished on a more or less ad hoc basis.

8. Because, Ms. Jones indicated to AHCA surveyors that she had not received any medication training, the surveyors questioned the authenticity of Ms. Jones' medication training card.

9. On August 12, 2002, Erma Thompson, R.N., mailed AHCA a letter referencing the medication training she gave to Respondent's staff. Although the communication is somewhat non-specific as to when Nurse Thompson performed such training or to when she trained Respondent's staff, the evidence showed that Nurse Thompson's communication was in reference to the on-going surveys of Petitioner's facility and the training of Ms. Jones and Ms. Phoenix.

10. On August 23, 2002, AHCA conducted a third follow-up visit and moratorium monitoring visit of Respondent's facility.

11. The surveyor found that Tags A528 (work schedule) and A1106 (medication training) were not corrected.

12. Both employees of Respondent had medication training certificates. As indicated earlier, the certificate for Ms. Jones was dated July 7, 2002, and signed by Erma Thompson, R.N. However, Petitioner had continued to question the validity of Ms. Jones' medication training. Therefore, Respondent sent AHCA a copy of the administrative guide used as

a curriculum for training its employees. The curriculum was dated September 1992. Unfortunately, the curriculum was out of date as of 1999 when the only official and required curriculum changed. The 1992 requirements for medication training differed somewhat from the state's current requirements for medication training.

13. The evidence did not demonstrate the extent of the differences between the two curriculums. However, they were different, and the older version used by Nurse Thompson was not the version recognized by Petitioner as the curriculum meeting its rule on medication training. Ms. Phoenix's medication training certificate was dated March 27, 2002, and was signed by an L.P.N. The course was given by Nurse Thompson, who was an R.N. The same nurse/L.P.N. who had signed the facility's administrator's certification had signed Ms. Phoenix's medication training card. The facility administrator met all of Respondent's certification requirements. The Rule does not specifically require that the medication training card be signed by the R.N. giving the course. Therefore, as long as an R.N. teaches the course the training is valid. However, as indicated earlier, the curriculum used by Nurse Thompson in her training was out of date for Ms. Phoenix, as well. Therefore, technically, even though Respondent had made a good faith effort

to comply with the Rule's medication training requirements, Tag A528 remained uncorrected.

14. During the August 23, 2002, survey, there was a schedule available for review at the facility. The schedule was the generic work schedule similar to the schedule noted above. It did not have the employees who would be on duty at a given time. However, it did reflect the staffing pattern of Respondent's facility. The evidence was clear that Respondent's administrator/owner was confused as to what information the surveyors wanted on the facility's work schedule since this generic schedule reflected staffing patterns; there were only two employees other than herself at the facility, and the administrator desired to maintain flexibility in utilizing those employees. Further, the surveyors' complaints about the schedule were at best de minimus, given the size of the facility involved.

15. On September 5, 2002, a fourth moratorium monitoring visit was conducted at Respondent's facility. Again, the facility was cited for Tag A528 (work schedule) and Tag A1106 (medication training).

16. On October 3, 2002, AHCA conducted a fifth follow-up visit and moratorium monitoring visit. The same citations were given. The surveyor was able to review a work schedule similar to the generic work schedule noted above. However, the document

was dated September 5, 2002. A paragraph was added listing the names of the administrator and her two employees and indicates they will be assigned on an ad hoc basis. The work schedule also indicates the staff signs in daily with specific hours and personnel listed on the daily time sheet. Again the facility was cited for Tag A528 (work schedule) and Tag A1106 (medication training). The schedule complied with the requirements of Rule 59A-0191(4)(c), Florida Administrative Code. However, neither employee's medication training had been updated under the current curriculum. Therefore, the deficiency related to the medication training of Respondent's employee's remained uncorrected.

CONCLUSIONS OF LAW

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

18. Tag A525 is based on Rule 58A-5.0191(4)(a), Florida Administrative Code. The Rule requires that at least one staff member who is trained in first-aid and CPR, shall be within the facility at all times when residents are in the facility. See also Rule 58A-5.0191(4), Florida Administrative Code. The deficiency was timely corrected.

19. Tag A528 is based on Rule 58A-5.0191(4)(c), Florida Administrative Code. The Rule states that the facility shall

maintain a written schedule which reflects the facility's 24-hour staffing pattern for a given time period. Importantly, for purposes of analyzing the language of Rule 58A-5.0191(4)(c), Florida Administrative Code, the Rule requires facilities larger than Petitioner's to maintain time sheets for all staff. Rule 58A-019(4)(c), Florida Administrative Code, only requires a generic schedule which functions as a model for how staff will be scheduled and maintained by the facility; the Rule does not require specific staff be listed such as would be listed on a time sheet. The Rule only requires that the pattern of staffing be reflected by the schedule. Therefore, the generic schedule of Respondent complied with the Rule. The deficiency was timely corrected after the first survey and remained corrected thereafter.

20. Tag A1106 relates to Section 400.452(5), Florida Statutes, and Rule 58A-5.0191(5), Florida Administrative Code. Section 400.452(5), Florida Statutes (2002), and the Rule requires unlicensed staff involved with the management of medications and assisting with the self-administration of medications under Section 400.4256, Florida Statutes, must complete a minimum of four hours of training pursuant to a curriculum developed by the department and provided by a registered nurse, licensed pharmacist or department staff. Rule 58A-5.0191(5), Florida Administrative Code, states:

(5) ASSISTANCE WITH SELF-ADMINISTERED
MEDICATION AND MEDICATION MANAGEMENT.

Unlicensed persons who will be providing assistance with self-administered medications as described in Rule 58A-5.0185, F.A.C., must receive a minimum of 4 hours of training prior to assuming this responsibility. Courses provided in fulfillment [sic] of this requirement must meet the following criteria:

(a) Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.

(b) The training must be provided by a registered nurse, licensed pharmacist, or department staff who shall issue a training certificate to a trainee who demonstrates an ability to:

1. Understand a prescription label;
2. Provide assistance with self-administration in accordance with Section 400.4256, F.S., and Rule 58A-5.0185, F.A.C., including:
 - a. Assist with oral dosage forms, topical dosage forms, and topical ophthalmic, otic and nasal dosage forms;
 - b. Measure liquid medications, break scored tablets, and crush tablets in accordance with prescription directions;

- c. Recognize the need to obtain clarification of an "as needed" prescription order;
- d. Recognize a medication order which requires judgement or discretion, and to advise the resident, resident's health care provider or facility employer of inability to assist in the administration of such orders;
- e. Complete a medication observation record;
- f. Retrieve and store medication; and
- g. Recognize the general signs of adverse reactions to medications and report such reactions.

The evidence did not demonstrate that the out-of-date curriculum complied with the Rule's criteria for medication training.

Therefore, the training received by Respondent's employees did not comply with the current medication training requirement of the Rule. The deficiency was not timely corrected and, therefore, is subject to an administrative fine.

21. Section 400.419(1)(c), Florida Statutes (2002), requires that Class III violations are those conditions or occurrences related to the operation maintenance of a facility or to the personal care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than Class I or Class II violations. A Class III violation is subject to an administrative fine or not less than \$500 and not exceeding \$1,000 for each violation. A citation for a Class III violation must specify the time within which the violation is

required to be corrected. If a Class III violation is corrected within the time specified, no fine may be imposed, unless it is a repeated offense. In this case, Respondent made good faith attempts to comply with the medication training requirement and did provide some training, which while out of date, had been approved previously by Petitioner. Given this effort, a fine of \$500.00 is reasonable.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED:

That the Agency for Health Care Administration enter a final order imposing a fine of \$500.00 for one uncorrected deficiency related to medication training.

DONE AND ENTERED this 29th day of May, 2003, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
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this 29th day of May, 2003.

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.