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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

W. FRANK WELLS NURSING HOME,
Petitioner,

AT

vs.

DOAH CASE NO. 02-4752
AHCA NO. 2002048141
DOAH CASE NO. 02-4827
AHCA NO. 2001056111
RENDITION NO.: AHCA-04-0163-TOF-OLC

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AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent,

PMR - 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 December 15, 2003, is attached to this Final Order and incorporated herein by reference except as noted.

RULING ON EXCEPTIONS

No exceptions were filed. However, the ALJ stated in conclusions of law 15 and 16 that an administrative law judge has the authority to countermand a statutory mandate to levy a late filing fine pursuant to Section 400.411, Fla. Stat. The ALJ states that the Agency tacitly acknowledges this because there is no decisional law on the subject. The plain language of the statute requires the fine, and, therefore, no decisional law is needed. These two conclusions of law are rejected and the Agency makes substituted conclusions

of law that the language of the statute mandates the late fines and that an administrative law judge does not have the authority to countermand a statutory mandate. The Agency finds that its substituted conclusions of law are as or more reasonable as those 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 Petitioner is excused from the payment of any fine in Case 02-4752 based on the Agency's voluntary dismissal of the case. Case 02-4827 is dismissed.

DONE and ORDERED this 1th day of APRIL, 2004, in Tallahassee, Florida.



MARY PAT MOORE, INTERIM 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 13 day of April, 2004.

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

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