

8-22-03

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RENDITION NO.: AHCA-04

AGENCY FOR HEALTH CARE
ADMINISTRATION,

AT

Petitioner,

vs.

ENGLEWOOD HEALTH CARE
ASSOCIATES, LLC, d/b/a ENGLEWOOD
HEALTHCARE AND REHABILITATION
CENTER,

Respondent.

FILED
AGENCY FOR
HEALTH CARE ADMINISTRATION
DEPUTY CLERK
CLERK
DATE *March 5 2003*

DOAH CASE NO. 03-0192 *WFQ-CWS*
AHCA NO. 2002045948
DOAH CASE NO. 03-0193
AHCA NO. 2002046867
Rendition No. *AHCA 03-0125-FDT-OKC*

FILED
04 MAR -5 PM 2:50
DIVISION OF
ADMINISTRATIVE
HEARINGS

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 August 22, 2003, is attached to this Final Order, and incorporated herein by reference.

RULING ON EXCEPTIONS

This case concerns a nursing home (Englewood Healthcare and Rehabilitation Center) that was the subject of two administrative complaints; one seeking to assign conditional licensure status and the other seeking to impose administrative fines and fees of \$26,000.00. The facts alleged in both complaints were that the nursing home had

failed to ensure the safety of residents who smoke. The Agency filed exceptions to finding of fact 13 and conclusion of law 45. Respondent filed a response to the exceptions.

The exception to finding of fact 13 is rejected because the Agency failed to show that there was no competent, substantial evidence to support the finding. See generally Section 120.57(1)(I), Fla. Stat. (providing in pertinent part that “(t)he agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record...that the findings of fact were not based upon competent substantial evidence); Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla, 1985)(holding that an agency “may not reject the hearing officer’s finding (of fact) unless there is no competent, substantial evidence from which the finding could reasonably be inferred.”).

The exception to conclusion of law 45 is rejected because it is based on accepted findings of fact and the Agency cannot come to a different conclusion that is as or more reasonable than that of the ALJ. See Section 102.57(1)(I), Fla. Stat.

FINDINGS OF FACT

The Agency adopts the findings set forth in the Recommended Order, which is attached hereto and incorporated by reference.

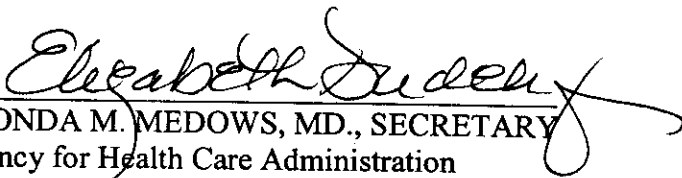
CONCLUSIONS OF LAW

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

IT IS THEREFORE ADJUDGED THAT:

The administrative complaints filed against the Respondent in this cause are dismissed.

DONE and ORDERED this 1 day of March, 2004, 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. Mail, or by the method indicated, to the persons named below on this 5 day of March, 2004.


for Lealand L. McCharen, Agency Clerk
Agency for Health Care Administration
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