

3-2-04

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
AHCA  
AGENCY CLERK

2004 JUN -7 P 2:35

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Petitioner,

vs.

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

Respondent.

AT

DOAH CASE NO. 03-158  
AHCA NOS. 2003000850  
2003001212

RENDITION NO.: AHCA-04-52345-FOF-OKC

2004 JUN -8 P 1:52  
FILED  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

SDC-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 March 2, 2004 attached to this Final Order and incorporated herein by reference.

**RULING ON EXCEPTIONS**

This case concerns a nursing home (Destin Healthcare and Rehabilitation Center) that was the subject of an administrative complaint seeking to impose a fine and to assign conditional licensure.

The Agency filed exceptions to finding of fact 14 and 24 of the Recommended Order, and Respondent filed a Response to these exceptions. Upon review of the record, AHCA's exceptions are denied for the following reasons.

In its exceptions to the above-noted findings of fact, the Agency does not state or argue that there is no competent, substantial evidence to support these findings. The record shows that the ALJ had such evidence before her, and that the findings are the result of weighing that evidence. Therefore, the Agency is not free to alter these findings. See generally Section 120.57(1)(l), 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.1<sup>st</sup> DCA, 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.").

#### **FINDINGS OF FACT**

The Agency adopts the Findings of Fact in the Recommended Order.


#### **CONCLUSIONS OF LAW**

The Agency adopts the Conclusions of Law set forth in the Recommended Order.

#### **IT IS THEREFORE ADJUDGED THAT:**

The Administrative Complaint filed herein is dismissed and Respondent's licensure status is restored to standard for the relevant period.

DONE and ORDERED this 4<sup>th</sup> day of June, 2004, in Tallahassee, Florida.


  
ALAN LEVINE, 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 7 day of June, 2004.

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

**COPIES FURNISHED TO:**

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