

5-17-04

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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AHCA  
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2004 JUL 21 11:58

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

AT

Petitioner,

DOAH CASE NO. 03-3319  
AHCA NOS. 2003004448  
2003003946  
RENDITION NO.: AHCA-04

vs.

RICHMOND HEALTH CARE, INC., d/b/a  
SUNRISE HEALTH AND REHABILITATION  
CENTER,

EHP-CWS

Respondent.

\_\_\_\_\_ /

**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 May 17, 2004, is attached to this Final Order, and incorporated herein by reference.

**RULING ON EXCEPTIONS**

This case concerns a nursing home (Sunrise Health and Rehabilitation Center) that was the subject an administrative complaint alleging that the nursing home had committed an uncorrected Class III violation, and seeking to impose an administrative fine and assign conditional licensure. Respondent filed exceptions to various findings of fact and conclusions of law, but the Agency is only able to determine from the exceptions that Respondent excepts to findings of fact 30 and 31 and to conclusion of law 41, 42, 43,

44, 46, and 47. Respondent refers to a paragraph 49, but there is no paragraph 49 in the Recommended Order. All exceptions must clearly identify the disputed portion of the Recommended Order by page number or paragraph pursuant to Section 120.57(1)(k), Fla. Stat., or the Agency may disregard them.

Petitioner did not file exceptions, but did file a response to Respondent's exceptions.

Respondent's exception to findings of fact 30 and 31 are denied because Respondent did not argue or submit that there was no competent, substantial evidence to support them. This is the sole standard for determining whether an agency may alter a finding of fact. 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. 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."). Further, Petitioner states in its response to Respondent's exceptions that the period of conditional licensure is from May 22, 2003 through July 15, 2003 inclusive, which is the view Respondent seeks.

Respondent's exceptions to conclusions of law 41, 42, 43, 44, 46, and 47 are denied. In its exceptions, Respondent re-presents the evidence and arguments made at hearing. This evidence and other competent, substantial evidence was already before the ALJ at the final hearing and has been reviewed and weighed by him. This evidence may not be reweighed by the Agency. In any event, these conclusions of law are based on

unchallenged findings of fact, and the Agency finds that it cannot come to different conclusions of law that are as, or more, reasonable than those of the ALJ. See Section 120.57(1)(f), Fla. Stat.

**FINDINGS OF FACT**

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

**CONCLUSIONS OF LAW**

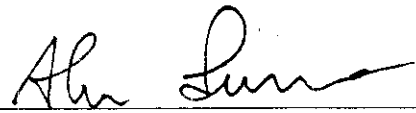
The Agency adopts the conclusions of law set forth in the Recommended Order.

**IT IS THEREFORE ADJUDGED THAT:**

The Agency's assignment of conditional licensure to Respondent for the period of May 22, 2003 through July 15, 2003 inclusive is upheld.

Respondent shall pay a fine of \$1,000.00 plus any applicable interest. Respondent shall make full payment within 30 days of the filing of this Final Order. Respondent shall pay by check payable to Agency for Health Care Administration, and mailed to the Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building 2, Mail Stop 14, Tallahassee, Florida 32308.

**DONE and ORDERED** this 15 day of July, 2004, in Tallahassee, Florida.

  
\_\_\_\_\_  
ALAN LEVINE, SECRETARY  
Agency for Health Care Administration

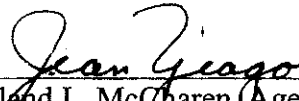
**NOTICE OF RIGHT TO JUDICIAL REVIEW**

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 19<sup>th</sup> day of July, 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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