

3-2-04

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

AP

DOAH CASE NO. 03-2114
AHCA NO. 2003001971
AHCA NO. 2003002528

vs.

DOAH CASE NO. 03-3320
AHCA CASE NO. 2003003762
AHCA CASE NO. 2003004457

TAMPA HEALTHCARE ASSOCIATES,
LLC, d/b/a HABANA HEALTH CARE
CENTER,

RENDITION NO.: AHCA-05 -FOF-OLC

Respondent.

DSM
CLOS

FINAL ORDER

These cases were referred to the Division of Administrative Hearings, assigned to an Administrative Law Judge (ALJ) and consolidated for a formal administrative hearing and the entry of a Recommended Order. The Corrected Recommended Order of March 10, 2004, is attached to this Final Order and incorporated herein by reference except as noted.

RULING ON EXCEPTIONS

No exceptions were filed. However, upon review of the Corrected Recommended Order, the Agency finds that the ALJ made an error in conclusion of law 64. In conclusion of law 64, the ALJ states that the Agency failed to show that the alleged deficiencies caused harm to a resident. The ALJ then cites to Beverly Health Care v. Agency for Health Care Administration, 2004 WL 177018, 29 Fla. L. Weekly D316, (Fla. 5th DCA January 30, 2004). This citation by the ALJ would apparently make the standard whether or not actual harm was caused to a resident. This is an incorrect



reading of the above case. The above opinion was withdrawn and a new opinion was substituted by the court upon a motion for rehearing. Beverly Healthcare Kissimmee v. Agency for Health Care Administration, 870 So.2d 208 (Fla. 5th DCA), sets a standard of whether the facility is in “substantial compliance.” While harm or potential for harm may certainly be a determining factor in proving the standard, it is not in and of itself the standard. The Agency makes a substituted conclusion of law that the standard is whether or not the facility is in substantial compliance. The Agency finds that it has substantive jurisdiction over this conclusion of law and that its substituted conclusion of law is as or more reasonable than that of the ALJ. See Section 120.57(1)(l), Fla. Stat. However, making this substituted conclusion of law does not alter the ultimate outcome of this case.

FINDINGS OF FACT

The Agency adopts the Findings of Fact in the Corrected Recommended Order, which is incorporated herein by reference.

CONCLUSIONS OF LAW

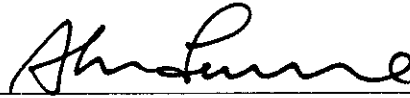
The Agency adopts the Conclusions of Law set forth in the Corrected Recommended Order except as noted.

IT IS THEREFORE ADJUDGED THAT:

The administrative complaints filed herein against Respondent are dismissed. Respondent’s licensure is restored to standard for the period at issue. The ALJ recommends that the Agency delete the disputed deficiencies from the survey reports for March 11 and May 12, 2003. The Agency does not have the authority to alter the survey reports. Only CMS has that authority. Respondent can request that CMS direct this change and, if CMS does so, the Agency can make these alterations in the survey reports.

DONE and ORDERED this 26th day of January, 2005⁵ ~~2007~~ in

Tallahassee, Florida.



ALAN LEVIN, SECRETARY
Agency for Health Care Administration

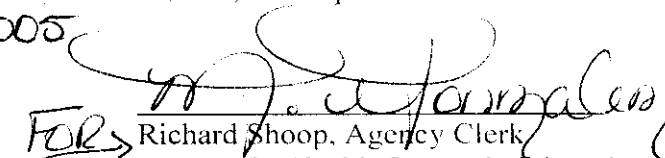
NOTICE OF RIGHT TO JUDICIAL REVIEW

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

1 day of February, 2005.

FOR 
Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

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