STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ACADEMY OF COSMETIC SURGERY, INC.,	)	
Petitioner,	)	
vs.	)	Case No. 03-3349
DEPARTMENT OF HEALTH, BOARD OF MEDICINE,	)	
Respondent.	)	

RECOMMENDED ORDER

A formal hearing was held in this case on November 17, and December 3-4, 2003, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Alfred W. Clark, Esquire
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For Respondent: Edward A. Tellechea, Esquire
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STATEMENT OF THE ISSUES

The issues are as follows: (a) whether Respondent acted upon Petitioner's application for renewal as an office surgery accrediting organization within the time frames established

under Section 120.60(1), Florida Statutes; and (b) whether Respondent properly denied Petitioner's application for renewal of its status as an approved physician office surgery accrediting organization.

PRELIMINARY STATEMENT

By letter dated December 12, 2002, Petitioner Florida Academy of Cosmetic Surgery, Inc. (Petitioner/FLACS) submitted to Respondent Department of Health, Board of Medicine (Respondent/the Board) an application for renewal of its status as an approved physician office accrediting organization, pursuant to Florida Administrative Code Rule 64B8-9.0092. After Respondent requested additional information, Petitioner submitted a complete application on January 17, 2003.

Respondent considered Petitioner's application on February 8, 2003, in Orlando, Florida; on June 7, 2003, in Miami, Florida; and on August 2, 2003, in Orlando, Florida. At the August 2, 2003, meeting, Respondent voted to deny the renewal application.

On August 28, 2003, Respondent issued a Notice of Intent to Deny for the following violations of Florida Administrative Code Rule 64B8-9.0092: (a) failing to provide copies of accreditation reports and corrective action plans within 30 days of completion of accrediting activities; (b) failing to immediately report conditions in physicians' offices that posed

a potential immediate threat to patients; (c) issuing letters of unconditional accreditation and sending Respondent copies of such letters when Petitioner found deficiencies during the inspection and had not received follow-up material showing full compliance; and (d) leaving items unchecked or checking items "yes" and "no" on the inspection check list, so that Respondent was unable to determine whether the facility complied with the inspection criteria.

During the hearing, Petitioner presented the testimony of three witnesses. Petitioner offered 30 exhibits, all of which were received into evidence.

Respondent presented the testimony of three witnesses. Respondent offered 27 exhibits, all of which were received into evidence.

At the conclusion of the hearing the parties were instructed to file proposed orders by February 2, 2004.

Volumes 1 and 2 of the hearing transcripts were filed on December 31, 2003. Volumes 3, 4, and 5 of the hearing transcripts were filed on January, 5, 2004.

On January 21, 2004, Petitioner filed a Joint Motion for Extension of Time to file proposed orders. An Order Granting Joint Motion for Extension of Time set March 5, 2004, as the new deadline for filing proposed orders.

On March 4, 2004, Petitioner filed a second Joint Motion for Extension of Time to file proposed orders. An Order Granting Joint Motion for Extension of Time set March 11, 2004, as the new deadline for filing proposed orders.

FINDINGS OF FACT

Background

1. In Florida, physicians who perform certain surgical procedures in their offices are required to register the office and have the office inspected by Respondent unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization approved by Respondent. § 458.309(3), Fla. Stat. (2003); Fla. Admin. Code R. 64B8-9.0091.

2. In order to avoid physician office inspection by Respondent, a physician must submit written documentation of a current office-accreditation survey by one of the nationally recognized or Board-approved accrediting organizations. Fla. Admin. Code R. 64B8-9.0091(2)(a) and 64B8-9.0091(3)(a). A physician is also required to submit a copy of a current accreditation survey within 30 days of accreditation of the office. Fla. Admin. Code R. 64B8-9.0091(3)(b).

3. Florida Administrative Code Rules 64B8-9.0092(1)(b) and 64B8-9.0092(7) list the approved national and Board-approved accrediting organizations. Petitioner is the only Board-approved accrediting organization.

4. Florida Administrative Code Rule 64B8-9.0092(1)(a) provides that "accredited" means that an office has achieved either "full" accreditation or "provisional" accreditation when the office is in "substantial compliance" with accrediting standards.

5. Petitioner provided Respondent with a complete application for renewal as an office surgery accrediting agency on January 17, 2003. Florida Administrative Code Rule 64B8-9.0092(5) specifies that such entities must apply for renewal every three years and shall submit their applications for renewal at least three months prior to the third anniversary of their initial approval. Petitioner conducted office surgery accreditation inspections for approximately three years prior to the final hearing in this matter.

6. Physicians who conduct office surgery are required to comply with Florida Administrative Code Rule 64B8-9.009 regarding the Standard of Care for Office Surgery. Florida Administrative Code Rule 64B8-9.0091(2)(a) specifically provides that all nationally recognized and Board-approved accrediting organizations shall be held to the same surgery and anesthesia standards for Florida office surgery sites as adopted by rule.

7. Petitioner's accreditation standards, as outlined in its original application for approval as an accrediting agency and its subsequent application for renewal, include the

requirement that physicians comply with the standard of care rules for office surgery as outlined in Florida Administrative Code Rule 64B8-9.009. In fact, Petitioner asserts that its standards meet or exceed the requirements of Chapters 455 and 458, Florida Statutes (2003), and rules promulgated there under.

8. Petitioner's accreditation standards should have remained the same throughout the three years preceding the submission of its renewal application. Petitioner did not file any changes or amendments to its accreditation standards prior to submitting its renewal application on January 17, 2003.

Submission of Corrective Action Plans

9. Throughout the first three years of its operation, Petitioner provided Respondent with copies of all the accreditation reports for the facilities it inspected and accredited as required by Florida Administrative Code Rule 64B8-9.0092(4)(e). That same rule also required Petitioner to furnish Respondent copies of any corrective action plans within 30 days of receipt from the inspected physician office.

10. Petitioner did not provide Respondent with any corrective action plans or any compliance information until after Petitioner filed its renewal application. Petitioner did not offer any corrective action plans as evidence during the hearing even though Petitioner found deficiencies (non-compliance with accreditation standards) in 24 of the 25 office

inspection files entered as evidence by the Respondent in this hearing. The only materials submitted by Petitioner that address the deficiency corrections are copies of photographs, invoices, packing slips, order forms, and correspondence from the inspected offices, which are supposed to constitute evidence of subsequent compliance accreditation standards.

11. Beth Sautner is Petitioner's Executive Secretary. Ms. Sautner's duties required her to submit the requisite accreditation materials to Respondent and to communicate with Respondent regarding such activities when needed. The greater weight of the evidence indicates that Respondent's staff never told Ms. Sautner to only send the facility inspection form and that submission of corrective action plans and compliance materials was unnecessary.

12. Ms. Sautner knew that a rule required the submission of corrective action plans. Nevertheless, Petitioner never filed any petition seeking a waiver of such rule.

Action on the Application

13. Respondent considered Petitioner's renewal application on three separate occasions. It was first considered on February 8, 2003, in Orlando, Florida, at Respondent's regularly scheduled meeting. At that meeting Petitioner waived the 90-day provision in Section 120.60(1), Florida Statutes (2002), until after Respondent's August 2003 meeting.

14. Respondent next considered Petitioner’s renewal application at a regularly scheduled meeting on June 7, 2003, in Miami, Florida. Finally, Respondent voted to deny the application at the August 2, 2003, meeting in Orlando, Florida.

15. Respondent filed the Notice of Intent to Deny Petitioner's application for renewal as an office surgery accrediting organization on August 28, 2003.

Accreditation Process

16. Upon the request and payment of an accreditation fee, Petitioner arranges for the inspection of an office by an inspector. Inspection is required when the physician conducts level II office surgery lasting more than five minutes or level III office surgery. The inspectors are physicians affiliated with Petitioner who personally visit the facility to conduct the inspection.

17. The inspectors use an inspection form when conducting the accreditation inspection. The form contains a pass or fail check-off space next to each statement reflecting an accreditation standard. The form contains comment sections following the standards and at the end provides for a pass or fail designation along with two additional sections. The inspectors use the final sections for outlining minor deficiencies to be corrected within 20 working days and for major deficiencies requiring a second inspection. The form has

signature lines for the inspector and the physician being inspected.

18. After completing the inspection, the inspector forwards the form to Ms. Sautner. Next, the inspector and Ms. Sautner review the form to determine what is needed in order to complete the process. The inspector tells Ms. Sautner what is needed and she attempts to collect the requisite compliance documentation from the inspected facility. The appropriate materials are then forwarded to Ms. Sautner who sends them to the inspector for a final accreditation determination. The final accreditation determination is always made by an inspector and never by Ms. Sautner.

19. Once the final accreditation determination is made, Ms. Sautner orders an accreditation certificate from Scribes, Inc. Scribes, Inc. sends the certificate directly to the newly accredited facility. At times, Ms. Saunter orders the certificate in advance but places it on hold until she is notified that an accreditation determination has been made. Ms. Sautner usually contacts Scribes, Inc. by e-mail to request release (delivery) of the certificate. Scribes, Inc. then sends Petitioner a facsimile copy of the physician’s accreditation certificate.

20. Petitioner accredits offices for three years. The accreditation period begins to run from the date of the original

office inspection. The certificate that Petitioner issues through Scribes, Inc. contains a month and year which reflect the final month of the facility accreditation. Therefore, if a facility's accreditation certificate has a May 2005 date, it reflects an accreditation from May 2002 through May 2005. This is true even when the physician did not document that his or her facility fully complied with Petitioner's accreditation standards until, in some cases, months after the initial inspection.

21. After Petitioner requests Scribes, Inc. to send a certificate to a newly accredited facility, Petitioner sends a copy of the facility inspection form, the accreditation certificate, and a cover letter to Respondent. This documentation notifies Respondent that Petitioner has inspected the physician's office and that the office is entitled to recognition as an accredited facility.

22. Throughout the hearing Petitioner's witnesses testified that physicians' offices were not accredited until they demonstrated that they had met all of the accreditation standards. The weight of the evidence indicates that Petitioner routinely accredited a facility retroactive to its inspection date.

23. A review of every accreditation certificate in evidence shows that each facility's period of accreditation

starts the month Petitioner performed the inspection and ends three years later. This is true even when the inspection form reveals that the physician’s office did not fully comply with Petitioner's accreditation standards at the time of inspection and the physician did not demonstrate compliance until months after the initial inspection.

24. Ms. Sautner's testimony adds support for the proposition that Petitioner gave physicians accreditation credit retroactively to the inspection date. She was responsible for notifying Scribes, Inc. to release accreditation certificates bearing specific months and years exactly three years after the date of the inspections, as opposed to three years after the date of compliance with standards.

25. Petitioner's inspectors considered the inspection date to be the accreditation date. They knew the subsequently issued accreditation certificates would reflect compliance with accreditation standards for a period of time before the physicians actually demonstrated compliance.

26. It is noteworthy that, upon completion of the inspections, Petitioner gave a "pass" or, in a couple of cases, a provisional pass, to every physician’s office that Petitioner inspected before it submitted its renewal application. This adds credence to the supposition that Petitioner considered the inspection date to be the date that a facility was entitled to

accreditation, even though the physicians did not demonstrate compliance until some time after the inspection.

27. It is clear that Petitioner was not routinely accrediting physicians' offices without requiring some evidence of demonstrated compliance with accreditation standards. Instead, Petitioner usually required the physicians to furnish some documentation showing compliance after an inspection revealed deficiencies but allowed the new period of accreditation to begin retroactively on the date of the inspection.

28. The most persuasive evidence indicates that the date Petitioner completed the accreditation process occurred sometime after the inspection: (a) on the date Ms. Sautner authorized Scribes, Inc., to release the physician's accreditation certificate; or (b) the date that Scribes, Inc., faxed Ms. Sautner a copy of the accreditation certificate sent to the physician. Therefore, the information provided to Petitioner was inaccurate to the extent it reflected that physicians' offices were in full compliance as of their inspections date.

29. Given the above, Respondent presented ample evidence which demonstrates that Petitioner's accreditation process was misleading. At the very least, Petitioner lacked sufficient quality assurance policies and procedures to ensure that physicians were not recognized as accredited before they were

entitled to such recognition. Regardless of whether any physicians were actually performing surgery in their offices between the inspection dates and the dates of compliance, Petitioner's accreditation procedure created a false impression of the adequacy of the facilities that Petitioner inspected. This mischaracterization of the status would lend support for the acceptability of procedures performed in that setting when the physician was not entitled to that recognition, with potential consequences to the health and well being of the patients.

Marwan Shaykh, M.D.

30. Petitioner inspected Dr. Shaykh's facility on May 30, 2002. The date that appears on his accreditation certificate is May 2005. Hence, his accreditation covers May 2002 through May 2005. During the inspection, Petitioner determined that Dr. Shaykh's office did not have the following required medications: adrenalin (expired), dextrose (expired), verapamil hydrochloride (expired), succinylcholine, and nitroglycerin. Petitioner also discovered that Dr. Shaykh's office did not have the following required monitoring and/or emergency equipment: ambu bag and emergency power able to produce adequate power to run required equipment for a minimum of two hours. (hereinafter "emergency power").

31. After the inspection, Dr. Shaykh provided Petitioner a copy of an invoice from the Apothecary at Memorial. The invoice indicated that Dr. Shaykh ordered adrenalin (ephedrine), dextrose, verapamil hydrochloride, succinylcholine, and nitroglycerin (nitroquick) on July 2, 2002. The invoice was dated August 15, 2002.

32. Dr. Shaykh also provided Petitioner a copy of an invoice from Physician Sales and Services, Inc. The invoice reflected that Dr. Shaykh ordered an ambu bag (resuscitator adult disp) on July 16, 2002. The invoice was dated July 16, 2002.

33. Finally, Dr. Shaykh provided Petitioner a copy of a letter which read in part:

> Please find enclosed the copies of the anesthesia record where the EBL is recorded, the physician job description and a copy of the surgery log.
>
> In addition, invoices indicate the replacement of Dextrose 50 percent, Isuprel 1:5000, Verapamil 5mg/2ml, succinylcholine 20mg/ml to the crash cart and Administration sets (Micro drips) and Adult Resuscitator bag (Ambu Bag) to the surgery room.

The letter appears to be a cover letter that accompanied the above-discussed invoices. The letter is undated and does not indicate when Petitioner received it. However, if it accompanied the medication invoice from the Apothecary,

Dr. Shaykh must have sent it to Petitioner on or after August 15, 2002.

34. Ms. Sautner ordered and placed a hold on Dr. Shaykh's accreditation certificate on June 6, 2002. She released the hold on July 16, 2002.

35. The certificate itself has a fax date of June 11, 2002. It appears that Scribes, Inc., faxed it to Petitioner on that date.

36. Based on the foregoing, it is not clear whether the fax date on Dr. Shaykh's certificate of June 11, 2002, or Ms. Sautner's stated release date of July 16, 2002, is the actual release date. Nevertheless, regardless of which date is the correct release date, it is apparent that Petitioner sent Dr. Shaykh an accreditation certificate before he documented compliance with Petitioner's accreditation standards because the Apothecary invoice was dated after both possible release dates.

Karen Chapman, M.D.

37. Petitioner inspected Dr. Chapman's facility on April 6, 2002. The date that appears on her accreditation certificate is April 2005. Hence, her accreditation covers April 2002 through April 2005. During the inspection, Petitioner determined that Dr. Chapman's office did not have multiple (14) medications, one of which was inderal. Petitioner also discovered that Dr. Chapman's office did not have a

required ambu bag among other missing monitoring and/or emergency equipment.

38. After the inspection, Dr. Chapman provided Petitioner copies of invoices from Southern Anesthesia + Surgical dated April 11, 2002, which reflected that Dr. Chapman ordered all the missing medications with the exception of inderal. Dr. Chapman also provided Petitioner a copy of undated correspondence which asserted that Karen Chapman ordered and received inderal 1mg/mL, on April 11, 2002.

39. Both the Southern Anesthesia + Surgical invoice copies and the undated correspondence regarding the inderal contain a fax strip across the top. The date on the fax strip indicates that Dr. Chapman sent the invoice copies and the inderal correspondence to Petitioner on February 12, 2003.

40. Ms. Sautner was unable to provide an order or release date for Dr. Chapman's accreditation certificate. However, the inspection file contained an accreditation certificate which had a fax date across the top of May 10, 2002.

41. The Southern Anesthesia + Surgical invoice copies and the undated correspondence regarding the inderal were obviously faxed to FLACS over seven months after the accreditation certificate was sent to Dr. Chapman. Petitioner attempts to explain this discrepancy away by claiming that it had all compliance documentation prior to issuing accreditation but in

some cases it could not find the documents when it conducted an audit in 2003. In those instances, Petitioner contacted the physicians and asked them to send the compliance materials again after the fact. Such an explanation is unacceptable because it does not explain why the compliance documentation was not in the file in the first place. Additionally, Petitioner has provided no documentation of compliance materials from Dr. Chapman disclosing whether she ever obtained a required ambu bag.

Lucien Armand, M.D.

42. Petitioner inspected Dr. Armand's facility on June 8, 2001. The date that appears on his accreditation certificate is June 2004. Hence, his accreditation covers June 2001 through June 2004. During the inspection, Petitioner determined that Dr. Armand's office did not have the following required medications: adrenalin (epinephrine) 1/10,000 dilution, calcium chloride, dextrose, dilantin (phenytoin), dopamine, and inderal (propranolol).

43. After the inspection, Dr. Armand provided Petitioner on some unknown date a copy of an invoice from Medical III Pharmacy. The invoice reflected that on April 23, 2001, Dr. Armand ordered dilantin, dopamine, and inderal. The invoice was dated April 30, 2001.

44. Dr. Armand also provided Petitioner, on some unknown date, unsigned correspondence indicating that he had "re-

supplied" his emergency cabinet with adrenalin, calcium chloride, dextrose, dilantin, dopamine, and inderal.

45. Ms. Sautner placed Dr. Armand's accreditation certificate on hold on June 22, 2001. The certificate had a fax date across the top of June 28, 2001.

46. The above-referenced invoice from Medical III Pharmacy is of course not probative as to whether Dr. Armand obtained the missing crash cart medications after the inspection because the invoice indicates that the drugs were ordered before the inspection. Furthermore, Dr. Armand's unsigned correspondence indicating that he had "resupplied" his emergency cabinet with adrenalin, calcium chloride, dextrose, dilantin, dopamine, and inderal is obviously problematic because it is unsigned and provides no objective proof of compliance.

Scott Warren, M.D.

47. Petitioner inspected Dr. Warren's facility on April 11, 2001. The date that appears on his accreditation certificate is May 2004. Thus, his accreditation covers May 2001 through May 2004. During the inspection, Petitioner determined that Dr. Warren's office did not have required intubation forceps.

48. After the inspection, Dr. Warren provided Petitioner a copy of an order receipt from an unknown pharmaceutical vendor. The order receipt reflected that, on an unknown date, Dr. Warren

ordered adult and child sized McGill Forceps (a type of intubation forceps). The invoice was not dated but a fax strip across the top reveals that Dr. Warren's office faxed a copy of the receipt to Petitioner on July 11, 2001.

49. Ms. Sautner placed a hold on Dr. Warren's accreditation certificate on June 22, 2001. The certificate had a fax date across the top of June 29, 2001.

50. The copy of the Magill Forceps receipt was faxed to Petitioner ten days after Petitioner released the accreditation certificate to Dr. Warren. Therefore, Petitioner could not have verified compliance prior to the awarding of accreditation. Furthermore, this discrepancy cannot be attributed to Petitioner's 2003 audit because the fax receipt date was approximately one and a half years prior to the audit.

Juan Flores, M.D.

51. Petitioner inspected Dr. Flores' facility on July 21, 2002. The date that appears on his accreditation certificate is July 2005. Accordingly, his accreditation covers July 2002 through July 2005. During the inspection, Petitioner determined that Dr. Flores' office did not have inderal (propranolol) or nasal airways.

52. Dr. Flores provided Petitioner correspondence dated July 30, 2002, from a Laura Leyva. The correspondence indicated

that Dr. Flores' facility had acquired the requisite nasal airways.

53. On November 14, 2003, Petitioner received a fax copy of an invoice numbered 9927 from Prime Medical Care, Inc. The invoice dated July 15, 2002, documents Dr. Flores' acquisition of inderal.

54. Dr. Flores' accreditation certificate had a fax date of September 6, 2002, across its top.

55. The Prime Medical Care, Inc., invoice copy was faxed to Petitioner on November 14, 2003, over a year after the accreditation certificate was sent to Dr. Flores. Petitioner again explains this discrepancy by raising the 2003 audit excuse. However, the explanation does not explain why the compliance documentation was not in the file in the first place.

Mina Selub, M.D.

56. Petitioner inspected Dr. Selub's facility on May 17, 2002. The date that appears on her accreditation certificate is May 2005. Therefore, her accreditation covers May 2002 through May 2005. During the inspection, Petitioner determined that Dr. Selub's office did not have heparin, nasal airways, and intubation forceps.

57. Dr. Selub sent Petitioner a copy of a customer packing slip on an unknown date. The customer packing slip revealed that Dr. Selub ordered heparin from McKesson Medical Surgical on

May 3, 2002. The packing slip had a handwritten note indicating that the heparin was received on June 1, 2002.

58. Dr. Selub also submitted a copy of a second customer packing slip to Petitioner on an unknown date. The second customer packing slip revealed that Dr. Selub ordered Magill Forceps from McKesson Medical Surgical on May 13, 2002. The packing slip had a handwritten note indicating that Dr. Selub did not receive the forceps, which were reordered from Henry Schein. Petitioner never received any other documentation indicating that Dr. Selub actually ordered or received intubation forceps. Additionally, Dr. Selub also failed to provide any documentation of compliance with the nasal airway requirement.

59. Ms. Sautner placed a hold on Dr. Selub’s accreditation certificate on June 6, 2002. She released the hold on July 12, 2002. The accreditation certificate has a July 15, 2002, fax date across the top.

60. The above-referenced invoice for heparin from McKesson Medical Surgical indicates that the medication was ordered before the inspection. However, the hand written notation on that same invoice indicates that Dr. Selub's office received the heparin on June 1, 2002. The lack of any documentation regarding the ordering and/or receipt of the intubation forceps is more problematic. Apparently Petitioner issued Dr. Selub's

office an accreditation certificate without obtaining further written verification of compliance with accreditation standards.

Abelardo Acosta, M.D.

61. Petitioner inspected Dr. Acosta's facility on November 17, 2001. The date that appears on his accreditation certificate is November 2004. Hence, his accreditation covers November 2001 through November 2004. During the inspection, Petitioner determined that Dr. Acosta's office did not have the following required medications: succinylcholine, magnesium sulfate, heparin, dopamine, inderal (propranolol), and dilantin (phenytoin). Petitioner also discovered that Dr. Acosta's office did not have the following required monitoring and/or emergency equipment: tonsillar suction and nasal airways.

62. After the inspection, Dr. Acosta provided Petitioner with the following documentation: (a) a copy of a packing slip from Southern Anesthesia + Surgical dated November 26, 2001, reflecting that Dr. Acosta ordered dopamine, succinylcholine, dilantin, magnesium sulfate, and heparin; (b) a copy of a statement from Southern Anesthesia + Surgical dated July 15, 2002, which reflected that Dr. Acosta had ordered inderal (propranolol); (c) a copy of an invoice from Armstrong Medical Industries, Inc., with an order date of January 2, 2002, which reflected that Dr. Acosta ordered a suction unit; and (d) a copy of a packing slip from Physician Sales & Service dated

December 3, 2001, reflecting that Dr. Acosta ordered numerous types of airways and a yankuar suction unit.

63. Ms. Sautner placed a hold on Dr. Acosta's accreditation certificate on December 5, 2001. She released the hold on December 12, 2001. The certificate has a December 12, 2001, fax date across the top.

64. The statement from Southern Anesthesia + Surgical dated July 15, 2002, which reflected that Dr. Acosta ordered inderal, constitutes undisputed evidence that Petitioner did not verify Dr. Acosta's full compliance with Petitioner's crash cart accreditation requirements prior to the awarding of actual accreditation on December 12, 2001.

Charles Graper, M.D. (Level II Accreditation)

65. Petitioner inspected Dr. Graper's facility for level II accreditation on March 25, 2001. The date that appears on his accreditation certificate is March 2004. Thus, his accreditation covers March 2001 through March 2004. During the inspection, Petitioner determined that Dr. Graper's office did not have dextrose 50 percent, a required medication.

66. Dr. Graper failed to provide Petitioner with any subsequent documentation to demonstrate compliance with accreditation standards regarding the need to have dextrose 50 percent as part of the office's crash cart.

67. Ms. Sautner released Dr. Graper's accreditation certificate on April 4, 2001. The certificate has a April 19, 2001 fax date across the top.

68. Petitioner failed to verify that Dr. Graper obtained dextrose 50 percent for his crash cart after his inspection for level II surgery and before the release of his accreditation certificate by Petitioner on April 4, 2001.

Leigh Phillips, III, M.D.

69. Petitioner inspected Dr. Phillips' facility for level II and III surgery on January 31, 2002. The date that appears on his accreditation certificate is January 2005. Hence, his accreditation covers January 2002 through January 2005. During the inspection, it was determined that Dr. Phillips' office did not have the following required medications: dextrose 50 percent and 36 ampules of dantrolene (missing 18).

70. After the inspection, Dr. Phillips provided Petitioner a copy of an order acknowledgment form from Southern Anesthesia + Surgical dated February 7, 2002. The order acknowledgment form reflected that Dr. Phillips ordered dextrose 50 percent.

71. Dr. Phillips' inspection file also contained a handwritten letter from Dr. Mel Propis dated January 31, 2003. The letter indicated that Dr. Propis had just returned from the office of Dr. Phillips and while there he had counted 36 ampules of dantrolene and the dextrose 50 percent in the crash cart.

72. Ms. Sautner did not know the date that she advised Scribes, Inc., to release Dr. Phillip’s accreditation certificate. However, her records indicate that the certificate was faxed to her on February 19, 2002.

73. Dr. Propis’ correspondence dated January 31, 2003, verifying Dr. Phillips' receipt of the requisite dantrolene was provided to Petitioner approximately 11 months after Petitioner received a copy of Dr. Phillips' accreditation certificate. Such constitutes further undisputed evidence that FLACS did not verify Dr. Phillips' full compliance with accreditation standards prior to awarding him accreditation.

Brandon Kallman, M.D. and Francisco Prado, M.D. (combined inspection)

74. Petitioner inspected Drs. Kallman and Prado’s facility on June 2, 2002. The date that appears on their accreditation certificates is June 2005. Hence, their accreditation covers June 2002 through June 2005. During the inspection, Petitioner determined that the physicians’ office did not have the following required medications: adrenalin (1:10,000 dilution), magnesium sulfate, heparin, dopamine, pronestyl (procainamide), and dilantin (phenytoin).

75. Drs. Kallman and Prado provided Petitioner with a copy of a packing slip from Southern Anesthesia + Surgical dated July 12, 2002. The packing slip reveals that Drs. Kallman and

Prado ordered the missing adrenalin (epinephrine), dopamine, pronestyl (procainamide), and dilantin (phenytoin). However, as evidenced by the fax strip across the top of the packing slip copy, the documentation was provided to Petitioner via fax transmission on July 22, 2002.

76. Drs. Kallman and Prado also provided Petitioner with a copy of a packing slip from Henry Schein. The packing slip is dated July 18, 2002. The packing slip has a date of July 23, 2002, on the fax strip across the top. The packing slip in the record is illegible. Therefore, one cannot determine whether the packing slip served as documentation for receipt of the missing magnesium sulfate and heparin.

77. Additionally, Drs. Kallman and Prado provided Petitioner with copies of an e-mail dated October 14, 2002, and multiple photos dated October 11, 2002. The photos depict the facility's crash cart, its drawers, and the presence of dantrium. The original inspection form dated June 2, 2002, did not reveal any missing dantrium.

78. Finally, Dr. Kallman provided one more document which purports to be some attempt at curing the deficiencies that were discovered during the inspection. The document in question is a short handwritten letter on Dr. Kallman's letterhead signed by Dr. Kallman and dated July 16, 2002. The body of the letter reads as follows:

> Herewith are the documents requested. I will fax tomorrow a copy of Ms. Mad. Katz RN ACLS certification. Let this letter also reflect that we have ordered from Henry Schein the appropriate missing drugs for the crash cart. They are currently on back order. I will send a copy of the shipping slip upon arrival.

79. Ms. Sautner released Drs. Kallman and Prado's accreditation certificate on July 17, 2002. The certificate contains a July 23, 2002, fax date across the top.

80. It may be that the illegible packing slip from Henry Schein verifies the receipt of magnesium sulfate and heparin by Drs. Kallman and Prado. Even so, the packing slip was dated July 18, 2002, one day after Ms. Sautner released the accreditation certificate on July 17, 2002. Additionally, the packing slip from Southern Anesthesia + Surgical was provided to Petitioner after the accreditation certificate release date. Needless to say, the e-mail and multiple photos are dated almost three months after the release of the accreditation certificate.

81. The inspection file for Drs. Kallman and Prado is particularly problematic because the handwritten correspondence from Dr. Kallman put Petitioner on notice that he and Dr. Prado did not yet have the requisite drugs needed to meet the accreditation standards. Nevertheless, the very next day, with no further verification, Petitioner released the accreditation certificate.

Dr. Luis Zarate, M.D.

82. Petitioner inspected Dr. Zarate's facility for level II and III office surgery on September 14, 2002. The date that appears on his accreditation certificate is September 2005. Hence, his accreditation covers September 2002 through September 2005. During the inspection, Petitioner determined that Dr. Zarate's office did not have the required 36 ampules of dantrolene.

83. Petitioner's inspection file for Dr. Zarate does not contain any documentation of ordering or receipt of dantrolene by Dr. Zarate or by anyone else on his behalf.

84. Ms. Sautner did not have a release date for Dr. Zarate's accreditation certificate. The certificate had an October 3, 2002, fax date.

85. When Petitioner inspected Dr. Zarate, he was working in the same facility as Drs. Kallman and Prado. It is possible that the dantrolene photo contained in Drs. Kallman and Prado's inspection file was meant to document Dr. Zarate's compliance with the dantrolene requirement. Even if that is the case, Drs. Kallman and Prado's dantrolene photos were dated October 11, 2002, which means that the photos were taken after Petitioner released Dr. Zarate's accreditation certificate.

Dr. Andrew Weiss and Dr. Anthony Rogers

86. Petitioner inspected Drs. Weiss and Rogers' facility on December 6, 2001. However, the date that appears on their accreditation certificates is November 2004. Hence, their accreditation covers December 2001 through November 2004. During the inspection, Petitioner determined that the physicians' office did not have two required medications: pronestyl (procainamide) and inderal (propranolol).

87. Drs. Weiss and Rogers provided Petitioner with a copy of an invoice from Henry Schein dated February 6, 2003. The invoice reveals that Drs. Weiss and Rogers ordered the missing pronestyl (procainamide) and inderal (propranolol).

88. The inspection file also contains a printed statement under the title "Andrew Weiss, M.D." which states that "[a]ll ACLS approved drugs were present at the time of accreditation. Inspector found no deficiencies." However, during the hearing, Ms. Sautner admitted that the statement was inaccurate and inserted into the file by error.

89. Ms. Sautner placed a hold on the certificates for Drs. Weiss and Rogers on December 5, 2001 and December 10, 2001. She did not know the release dates of the certificates. The fax date on the certificates was December 12, 2001.

90. The above-mentioned Henry Schein invoice dated February 6, 2003, is persuasive evidence that Drs. Weiss and

Rogers ordered and received the requisite pronestyl (procainamide) and inderal (propranolol) over one year after Petitioner received a copy of Drs. Weiss and Rogers' accreditation certificates. Such constitutes undisputed evidence that FLACS did not verify Drs. Weiss and Rogers' full compliance with FLACS's accreditation standards prior to awarding accreditation.

Richard Edison, M.D.

91. Petitioner inspected Dr. Edison's facility on April 22, 2001. The date that appears on his accreditation certificate is April 2004. Thus, his accreditation covers April 2001 through April 2004. During the inspection, Petitioner determined that Dr. Edison's office did not have the following required medications: adrenalin (1:10,000 dilution), succinylcholine, dilantin (phenytoin), and lanoxin (digoxin). Petitioner also discovered that Dr. Edison's office did not have the following required monitoring and/or emergency equipment: intubation forceps.

92. Dr. Edison's inspection file contains a handwritten letter dated May 7, 2001, from Pam Rolm, R.N. Ms. Rolm wrote the letter on the letterhead for Dr. Edison's facility, Cosmetic Surgery Center. The letter reads in part as follows:

> This letter is in response to request for information for certification. The following medications have been updated and

> the expired ones disposed of: 1) phenytoin, 2) Lanoxin, 3) succinycholine, and 4) Albuterol Inhaler.
>
> We have a McGill forceps in both anesthesia carts and an extra pair in the ORI medication cart.

93. Dr. Edison's inspection file also contains three invoices from Prime Medical Care, Inc. All three invoices have a fax strip across the top with a February 14, 2003, date and the sender name of Cosmetic Surgery Center. The first invoice dated December 11, 2000, indicates that Dr. Edison ordered ephedrine sulfate 50mg/ml. The second invoice dated October 30, 2001, indicates that Dr. Edison ordered lidocaine, heparin, verapamil, procainamide, and phenylephrine. The third invoice dated April 25, 2001, indicates that Dr. Edison ordered succinylcholine, albuterol inhaler, phenytoin, and digoxin.

94. Ms. Sautner testified that she ordered and placed a hold on the certificate for Dr. Edison on May 4, 2001. She released the hold on May 10, 2001. The certificate has a May 22, 2001, fax date across the top.

95. The above-referenced correspondence dated May 7, 2001, does not address whether Dr. Edison ordered/obtained the missing adrenalin (1:10,000 dilution). Additionally, the first invoice is dated four months prior to the inspection. The second invoice is dated months after Petitioner released the accreditation certificate. The third invoice is appropriately

dated but does not show that Dr. Edison ever ordered/obtained the missing adrenalin (1:10,000 dilution). Accordingly, Petitioner released Dr. Edison's accreditation certificate before he documented compliance with the requirements that he possess adrenalin (1:10,000 dilution) and intubation forceps.

Dr. Alton Ingram, M.D.

96. Petitioner inspected Dr. Ingram's facility on April 28, 2002. The date that appears on his accreditation certificate is April 2005. Therefore, his accreditation covers April 2002 through April 2005. During the inspection, Petitioner determined that Dr. Ingram's office did not have a required tonsillar suction unit with backup suction.

97. Dr. Ingram's inspection file contains a copy of a photograph of a tonsillar suction unit with a hand-written date of July 29, 2002.

98. Ms. Sautner placed the certificate for Dr. Ingram on hold on June 6, 2002. She released the hold on July 19, 2002. The date on the certificate is not legible.

99. The date on the photograph of the tonsillar suction unit is after Petitioner released the accreditation certificate. Petitioner accredited Dr. Ingram before he documented full compliance with accreditation standards.

Mont Cartwright, M.D. (Heathrow Facility)

100. Petitioner inspected Dr. Cartwright's Heathrow facility on March 3, 2001. The date that appears on his accreditation certificate is March 2004. Thus, his accreditation covers March 2001 through March 2004.

101. During the inspection, Petitioner determined that Dr. Cartwright's Heathrow office did not have the required dopamine, heparin, and inderal. In an undated letter, Dr. Cartwright's staff advised Petitioner that Dr. Cartwright's Heathrow facility had obtained the missing medications.

102. Ms. Sautner released the hold on Dr. Cartwright's accreditation certificate on April 4, 2001. The fax date on the certificate is April 19, 2001.

Mont Cartwright, M.D. (Orlando Facility)

103. Petitioner inspected Dr. Cartwright's Orlando facility on May 13, 2001. The date that appears on his accreditation certificate is May 2004. Hence, his accreditation covers May 2001 through May 2004. During the inspection, Petitioner determined that Dr. Cartwright's Orlando office did not have the required dilantin and heparin.

104. Dr. Cartwright's office staff sent Petitioner correspondence dated June 7, 2001. The letter claims that the "crash cart" in Dr. Cartwright's Orlando facility had been "brought up to standards in accordance with compliance. . . ."

105. Ms. Sautner testified that she released the hold on Dr. Cartwright’s accreditation certificate on June 22, 2001. The fax date on the certificate is June 28, 2001.

Inadequate Quality Control

106. Petitioner asserts that it has appropriate quality assurance programs and processes which Respondent reviewed without objection. Dr. R. Gregory Smith, one of Petitioner’s current co-directors for facility inspections, describes Petitioner's quality assurance program in the following manner:

> A. Right. We have regular board meetings. We go over the forms and changes and things like that. We talk to inspectors and say, you know, try to check all the boxes and that type of thing.
>
> Q. You basically go over your work again –
>
> A. Yes.
>
> Q. – make sure everything is accurate?
>
> A. Right. Plus, I think the actual meeting with the Board of Medicine to iron out any issues is also quality assurance.

107. Petitioner's renewal application included a two-page document titled, “Quality Improvement Plan.” The document can best be described as a description of the quality assurance exercises for physicians' offices. The document does not describe Petitioner's internal quality assurance program.

108. Other than the above-quoted description provided by Dr. Smith, Petitioner failed to present any evidence that

outlines Petitioner’s own quality assurance program. In fact, the manner in which Petitioner deals with its own errors indicates that Petitioner has inadequate quality assurance processes.

109. In situations where an inspector fails to check yes or no on an item when conducting an inspection, Petitioner takes the position that an inspector is not to make any changes after the fact. Rather, Petitioner claims that it assumes the worse, treats the blank as a no answer, and asks the physician undergoing inspection to provide a letter of attestation, a packing slip, or some other material that documents compliance with the accrediting standard.

110. Petitioner's inspection files reveal instances where Petitioner did not follow the above-referenced quality assurance policy. For example, the inspection form for Harold Reed, M.D., revealed no check under yes or no on page 3 under the crash cart medication succinylcholine. After the inspection, Dr. Reed did not provide Petitioner with any materials documenting compliance with the requirement to have succinylcholine on the facility's premises. It may be that the inspector made a clerical error during the inspection or he may have remembered seeing the medication in Dr. Reed's refrigerator after the inspection. In any event, Petitioner did not follow its alleged quality

assurance policy of requiring the physician to show compliance after the inspection.

111. Dr. Leonard Rubinstein’s inspection file presents another example of Petitioner's failure to follow its alleged quality assurance policies. The inspection form reveals no check under yes or no on page 3 under the crash cart medications lasix and magnesium sulfate and on page 4 under oximeter in the monitoring and emergency equipment section. After the inspection, Dr. Rubinstein did not provide Petitioner with any documentation showing the presence of the missing items. Petitioner did not attempt to determine whether the inspector had made a “clerical error” or whether Dr. Rubinstein procured the missing items. In other words, Petitioner did not follow its own policy regarding the treatment of situations where the inspector fails to check no or yes on an inspection item.

112. Dr. Michael Freeman’s inspection file presents another example of Petitioner’s failure to follow its alleged quality assurance policies. Dr. Freeman’s inspection form reveals no check under yes or no on page 3 under the crash cart medication mazicon. The inspection file contains no deficiency documentation, and thus, does not address the mazicon issue. Again, Petitioner did not follow its own policy regarding the treatment of situations where the inspector fails to check no or yes on an inspection item.

Conditions Posing a Potential Immediate Threat

113. Dr. Hector Vila, Jr., a licensed Florida physician and an Assistant Professor of Anesthesiology and Oncology at the University of South Florida, H. Lee Moffitt Cancer Center, testified during the final hearing on the issue of whether any of the facilities inspected by Petitioner posed a potential immediate threat to patients due to the deficiencies discovered during the inspection. Dr. Vila has administered anesthesia in office surgery settings in the past and currently serves as an office surgery inspector for the Respondent. Dr. Vila is an expert in office surgery and anesthesia. His testimony regarding Petitioner's failure to report conditions posing a potential immediate threat to patients is persuasive.

114. For example, the office of Marwan Shaykh, M.D, posed a potential immediate threat to patients because it did not have nitroglycerin and epinephrine (adrenalin) on the premises. Such medications are necessary to resuscitate a patient who may suffer a respiratory arrest due to either a surgical or anesthetic complication. It would be nearly impossible to resuscitate a patient without such items.

115. Dr. Shaykh failed to provide documentation of compliance with the nitroglycerin and adrenalin

requirement until August 15, 2002, or sometime thereafter. Dr. Shaykh demonstrated compliance approximately two months after Petitioner recognized Dr. Shaykh as being accredited.

116. It is true that Dr. Shaykh's office was located adjacent to a hospital. Therefore, it is possible that the same teams that respond to emergencies in the hospital could go to Dr. Shaykh's office if he needed them. It is also true that Dr. Shaykh performs in vitro fertilization procedures, which could be terminated in case of an emergency.

117. However, after Petitioner recognizes Dr. Shaykh as being accredited, he could practice any type of medicine and perform any procedure as long as he is properly trained to do so. Furthermore, the office surgery accreditation rules do not provide any type of exemption based on the location of the physician's office because to do so would undermine the reason for the rule. Office surgery facilities are not hospitals no matter how close to the hospital they may be located. If Dr. Shaykh felt that his close proximity to the hospital did not make compliance with the office surgery rules necessary, he should have filed a petition for waiver or variance from the relevant rules rather than ignore the need to have crucial resuscitative drugs in his crash cart.

118. The office of Karen Chapman, M.D., posed a potential immediate threat to patients because it lacked 16 of the 22

medications required in an office surgery facility's crash cart. The office also lacked an ambu bag, a piece of equipment used to resuscitate patients. Two of the 16 missing medications were the nitroglycerin and adrenalin, which are absolutely necessary to resuscitate a patient who may suffer a respiratory arrest due to either a surgical or anesthetic complication. The ambu bag is also used on patients under respiratory arrest and it is considered a crucial piece of equipment.

119. Dr. Chapman's office failed to provide documentation of compliance with the crash cart requirements until February 12, 2003. She did not demonstrate compliance until approximately nine months after she obtained her accreditation.

120. Dr. Chapman may have informed Petitioner that she did not intend to open her new practice until she obtained accreditation. However, Dr. Chapman obtained her accreditation and presumably opened her practice almost nine months before she provided Petitioner with documentation of her compliance with the crash cart medication requirements. She never provided any materials documenting whether she obtained the required ambu bag.

CONCLUSIONS OF LAW

121. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter presented

herein pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

122. Petitioner asserts that its application for renewal as an office surgery accrediting agency must be approved as a matter of law because Respondent failed to take action within the time frames established by Section 120.60(1), Florida Statutes. The statute in question reads in part as follows:

> Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period shall be tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license that is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.

123. Petitioner presented a complete application to Respondent on January 17, 2003, and waived the 90-day requirement of Section 120.60(1), Florida Statutes, until after Respondent’s August 2003 meeting. Such waiver was made on the record at Respondent's meeting on February 8, 2003. Respondent took action on Petitioner's application on August 2, 2003, when it voted to deny the application. The evidence presented by the

parties supports the conclusion that Respondent acted within the time frames set forth in Section 120.60(1), Florida Statutes (2003). See State Dept. of Transportation v. Calusa Trace Development, Corp., 571 So. 2d 543 (Fla. 2nd DCA 1990).

124. Respondent has the burden of proving by clear and convincing evidence that Petitioner is not entitled to renewal of its status as a board-approved accrediting organization. See Coke v. Department of Children and Family Services, 704 So. 2d 726 (Fla. 5th DCA 1998); Dubin v. Department of Business Regulation, 262 So. 2d 273 (Fla. 1st DCA 1972).

125. Respondent is the state agency charged with regulating the practice of allopathic medicine pursuant to Chapters 456 and 458, Florida Statutes. Respondent is responsible for approving organizations that accredit physicians' offices where level II procedures lasting more than five minutes and all level III surgical procedures are performed pursuant to Section 458.309(3), Florida Statutes (2003).

126. The Petitioner has applied for renewal as an office surgery accrediting agency pursuant to Florida Administrative Code Rule 64B8-9.0092(5), which reads as follows:

> (5) Renewal of Approval of Accrediting Organizations. Every accrediting organization approved by the Board pursuant to this rule is required to renew such approval every three years. Each written submission shall be filed with the Board at least three months prior to the third

anniversary of the accrediting organization's initial approval and each subsequent renewal of approval by the Board. Upon review of the submission by the Board, written notice shall be provided to the accrediting organization indicating the Board's acceptance of the certification and the next date by which a renewal submission must be filed or of the Board's decision that any identified changes are not acceptable and on that basis denial of renewal of approval as an accrediting organization.

127. Florida Administrative Code Rule 64B8-9.0092(4), sets forth the requirements/standards for approval in relevant part as follows:

> (4) Requirements. In order to be approved by the Board, an accrediting organization must comply with the following requirements:
>
> (a) The accrediting agency must have a mandatory quality assurance program approved by the Board of Medicine.
>
> (b) The accrediting agency must have anesthesia-related accreditation standards and quality assurance processes that are reviewed and approved by the Board of Medicine.
>
> (c) The accrediting agency must have ongoing anesthesia-related accreditation and quality assurance processes involving the active participation of anesthesiologists.
>
> (d) Accreditation periods shall not exceed three years.
>
> (e) The accrediting organization shall obtain authorization from the accredited entity to release accreditation reports and corrective action plans to the Board. The accrediting organization shall provide a

> copy of any accreditation report to the Board office within 30 days of completion of accrediting activities. The accrediting organization shall provide a copy of any corrective action plans to the Board office within 30 days of receipt from the physician office.
>
> (f) If the accrediting agency or organization finds indications at any time during accreditation activities that conditions in the physician office pose a potential immediate jeopardy to patients, the accrediting agency or organization will immediately report the situation to the Department.
>
> (g) An accrediting agency or organization shall send to the Board any change in its accreditation standards within 30 calendar days after making the change.
>
> (h) An accrediting agency or organization shall comply with confidentiality requirements regarding protection of patient records.

128. Respondent denied the Petitioner’s renewal application on four different grounds. Respondent based the first reason for denial on Petitioner's failure to comply with Florida Administrative Code Rule 64B8-9.0092(4)(e). Clear and convincing evidence indicates that Petitioner failed to provide Respondent with any corrective action plans for the inspected facilities within the required 30 calendar days.

129. Respondent's staff did not advise Petitioner that it did not have to comply with the requirements of Florida Administrative Code Rule 64B8-9.0092(4)(e) to file corrective

action plans. Petitioner did not request a variance or a waiver of the rule pursuant to Section 120.542, Florida Statutes (2003).

130. Respondent's second reason for denial is that Petitioner failed to comply with Florida Administrative Code Rule 64B8-9.0092(4)(g). In some instances, Petitioner inspected offices, found deficiencies, reviewed compliance documentation, and awarded accreditation retroactive to the inspection date. In other instances, Petitioner awarded accreditation retroactive to the inspection date before the physicians submitted compliance documentation addressing all the noted deficiencies. Petitioner recognized some facilities as being accredited even though the physicians never furnished required compliance materials.

131. It is clear that Petitioner ignored its written accreditation standards and failed to provide the Respondent with the accreditation standards under which it was actually operating. In other words, Petitioner was not abiding by its acknowledged accreditation standards, and thus, de facto changed its accreditation standards without notifying Respondent.

132. Respondent’s third reason for denial is based on Petitioner's failure to comply with Florida Administrative Code Rule 64B8-9.0092(4)(a). Petitioner's internal quality assurance

program is inadequate and applied inconsistently as evidenced by the following:

a. Petitioner routinely awarded accreditation to the inspection date even though the physicians' offices did not comply with accreditation standards at that time. In some instances, Petitioner awarded accreditation to physicians before they submitted materials documenting compliance with all the deficiencies discovered during the inspection.

b. Petitioner employed an inconsistent approach to the treatment of what the inspectors referred to as “clerical errors” on the inspection forms. These errors occurred when the inspector failed to mark off either a yes or a no on a specific item on the inspection form. The evidence shows that in multiple instances, Petitioner did not comply with its own policy of requiring compliance documentation, but rather treated the item as if it were checked off yes based solely upon the inspector’s claim that the item was in place.

133. Respondent’s final reason for denial is based on Petitioner's failure to comply with Florida Administrative Code Rule 64B8-9.0092(4)(f). In at least two instances, physicians operated their office surgery practices after Petitioner noted during the inspection process that they were missing essential resuscitative medications and equipment. The physicians failed to document that they obtained the missing items before

Petitioner awarded them accreditation. The lack of such materials posed a potential immediate threat to these physicians' patients. Petitioner failed to report the conditions in the offices that posed a potential immediate threat to patients.

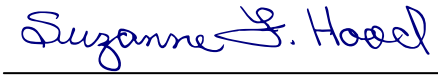
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Respondent enter a final order denying Petitioner's application for renewal as an office surgery accrediting agency.

DONE AND ENTERED this 15th day of April, 2004, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.