

6.24.05

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

2005 JUN 15 A 8:57

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

fmr
closed

Petitioner,

AP

DOAH CASE NO. 04-4151
AHCA FRAES NOS. 2004008158
2004007446

vs.

RENDITION NO.: AHCA-05-431-FOF-OLC

HAVEN OF OUR LADY OF PEACE,
INC.,

Respondent.

2005 JUN 17 P 1:58
FILED

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 June 24, 2005, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

The Agency, *sua sponte*, excepts to the conclusions of law in Paragraph 22 of the Recommended Order. There are only two burdens of proof used in trying a facilities case, such as this one. The standard of clear and convincing evidence is used when the Agency seeks to impose administrative fines; and the standard of preponderance of the evidence is used when the Agency seeks to alter the licensure status of a facility from "standard" to "conditional". See AHCA v. Heritage Health Care Center – Venice, 24 FALR 1849 (AHCA 2002); Tampa Health Care Center v. AHCA, 24 FALR 2552 (AHCA 2002); AHCA v. Beverly Healthcare Lake Mary, 24 FALR 2888 (AHCA 2002); Parthenon Healthcare of Blountstown v. AHCA, 25 FALR 2328 (AHCA 2003); Edgewater at Waterman Village v. AHCA, 25 FALR 3923 (AHCA 2003); and

AHCA v. Harbour Health Center, et al., 25 FALR 1937 (AHCA 2003). Therefore, to the extent that the ALJ in this case sought to impose a different or additional standard of proof, the exception to Paragraph 22 is granted and Paragraph 22 of the Recommended Order is stricken in its entirety.

The Agency, *sua sponte*, excepts to the conclusion of law in Paragraph 67 of the Recommended Order wherein the ALJ stated “[t]hose who know and care for the resident are better equipped to know what behavior to expect and what behavior the resident may exhibit.” In support of this conclusion, the ALJ cites to the cases of Agency for Health Care Administration v. North Florida Living Facilities d/b/a Willow Grove Living Facility, 24 FALR 1883 (AHCA 2002); and Marianna Convalescent Center v. Agency for Health Care Administration, 25 FALR 3355 (AHCA 2003). However, the ALJ misconstrued Agency precedent. Neither of those cases stand for a general proposition that those who know and care for a resident are always better equipped to know what behavior to expect from that resident and what behavior that resident may exhibit. Rather, the cases dealt with weighing the credibility of the witnesses that testified in *those* cases and finding that the facilities’ witnesses were more credible than the Agency’s witnesses in *those* cases. Therefore, the Agency’s exception to Paragraph 67 is granted and the fifth sentence of Paragraph 67 of the Recommended Order is stricken.

FINDINGS OF FACT

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


CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order, except where noted *supra*.

IT IS THEREFORE ADJUDGED THAT:

The Amended Administrative Complaint issued in this case is hereby dismissed, no fine shall be assessed, and the Respondent shall be granted a licensure rating of "standard" for the time period in question.

DONE and ORDERED in this 5th day of August, 2005, 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. or interoffice mail to the persons named below on this 16th day of August 2005.


RICHARD J. SHOOP, Agency Clerk
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