

6-3-05

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
2005 AUG 22 A 8:30

AP

HARBOUR HEALTH CENTER,

Petitioner,

DOAH CASE NO. 04-4498 *JBC closed*  
AHCA NO. 2004007656

vs.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

FILED  
2005 AUG 23 P 2:04  
AD HEARINGS

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NO. 04-4635  
AHCA NO. 2004006444

vs.

HARBOUR HEALTH SYSTEMS, LLC  
d/b/a HARBOUR HEALTH CENTER,

Respondent.

**AMENDED 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 3, 2005, is attached to this Final Order and incorporated herein by reference except as otherwise noted.

**RULING ON EXCEPTIONS**

Harbour Health Center ("Harbour") filed exceptions to which the Agency did not file a response. The Agency did not file any exceptions.

Harbour excepted to the findings of fact in Paragraphs 8 and 9 of the Recommended Order and the conclusion of law in Paragraph 37 of the Recommended Order. Harbour argued the findings failed to clarify when the doctor's order was entered and stated the evidence showed the abrasion on Resident 8's ankle was already in existence when the doctor's order was received by the facility, and there was no evidence to indicate the abrasion on Resident 8's ankle suffered any further abrasion or the existing abrasion had worsened after the doctor's order was received by the facility. Harbour's concern about the findings of fact in Paragraphs 8 and 9 of the Recommended Order not clarifying when the doctor's order was entered is irrelevant. The findings of fact in Paragraphs 8 and 9 of the Recommended Order were based on competent substantial evidence as pointed out by Harbour's citations to the record (See Transcript Volume I, Pages 109, 110, and 125; Transcript Volume II, Page 195; and Harbour's Exhibit 3.), and thus cannot be overturned by the Agency. See § 120.57(1)(f), Fla. Stat.; 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, the ALJ's conclusion of law in Paragraph 37 of the Recommended Order was not based on when the injury occurred, as argued by Harbour, but rather on how the facility complied with the doctor's order after the injury occurred. As the ALJ noted in Paragraph 37 of the Recommended Order, "A preponderance of the evidence revealed that the facility had failed to adequately secure a protective device to protect Resident 8's non-casted ankle and lower leg." This conclusion was reached based on competent substantial evidence, and the Agency cannot substitute a conclusion of law that is as or more reasonable than that of the ALJ. Therefore, Harbour's exceptions to the findings of fact in

Paragraphs 8 and 9 of the Recommended Order and the conclusion of law in Paragraph 37 of the Recommended Order are denied.

The Agency, *sua sponte*, excepts to the conclusion of law in Paragraph 35 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 35 is granted and Paragraph 35 of the Recommended Order is stricken in its entirety.

#### **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:**

Harbour’s failure to secure the protective device to Resident 8’s lower leg was not a Class II deficiency, but a Class III deficiency. Harbour’s care and treatment of Residents 10 and

16 did not fall below the standard of care. Thus, the imposition of a fine and conditional licensure status for the period of June 17, 2004 to July 29, 2004 was unwarranted. The Agency shall not impose any administrative fine in this case and shall restore Harbour's licensure rating for this period to "standard".

DONE and ORDERED this 12 day of August, 2005, in Tallahassee, Florida.

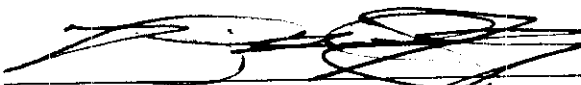
  
ALAN LEVINE, SECRETARY  
AGENCY FOR HEALTH CARE ADMINISTRATION

**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 12 day of August, 2005.

  
RICHARD J. SHOOP, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
Tallahassee, FL 32308  
(850) 922-5873

COPIES FURNISHED TO:

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**STATE OF FLORIDA**

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**HARBOUR HEALTH CENTER,**

**Petitioner,**

**-vs-**

**Case No. 04-4498**

**AGENCY FOR HEALTH CARE  
ADMINISTRATION,**

**Respondent.**

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**AGENCY FOR HEALTH CARE  
ADMINISTRATION,**

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**-vs-**

**Case No. 04-4635**

**HARBOUR HEALTH SYSTEMS, LLC,  
d/b/a HARBOUR HEALTH CENTER,**

**Respondent.**

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**MOTION TO CORRECT SCRIVENER'S ERROR**

The parties herein move the Agency Clerk to file an Amended Final Order correcting a scrivener error and state:

1. The Final Order in the above-referenced case was entered on July 15, 2005. The Final Order, adopting the language in the Recommended Order except as noted in the Final Order, states that the conditional licensure period of June 14, 2004 until June 29, 2004 was unwarranted.

2. The error that the parties seek to correct by this motion is that the conditional licensure status contested in this matter and the recommended finding and adopted finding should be for the period of June 14, 2004 to July 29, 2004.

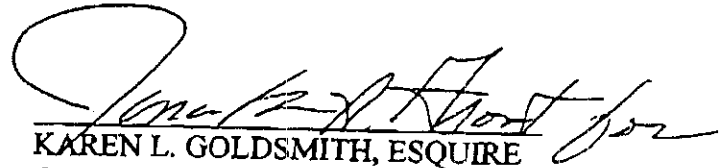
WHEREFORE, the parties move the Agency Clerk to enter an Order correcting the scrivener error as set out above.

DATED this 27<sup>th</sup> day of July, 2005.



ERIC BREDEMEYER, ESQUIRE  
Senior Attorney-Agency for  
Health Care Administration  
2295 Victoria Avenue - Room 346C  
Ft. Meyers, Florida 33901

Florida Bar No. 318442

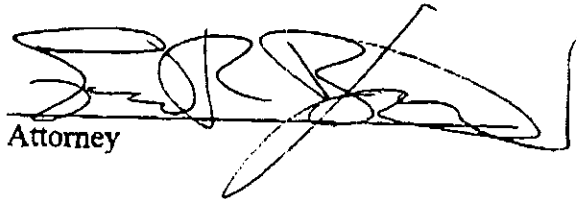


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407/740-0144

Attorneys for Respondent  
Florida Bar No. 274534

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Motion has been furnished by facsimile this 27<sup>th</sup> day of July, 2005, to Richard J. Shoop, Agency Clerk, Agency for Health Care Administration, 850/921-6847.

  
Attorney