

6-17-05

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

RULEME CENTER,

Respondent.

DIVISION OF
ADMINISTRATIVE
HEARINGS

DOAH CASE NOS. 04-4506
05-0388

AHCA FRAES NOS. 2004008161
2004007585

AHCA RENDITION NO.

PMR
Closed

AP

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 17, 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 conclusion of law in Paragraph 38 of the Recommended Order to the extent that the ALJ incorrectly concluded the imposition of a conditional license was penal in nature. The change in licensure status from "standard" to "conditional" is not the same as discipline against a license. See Spanish Gardens Nursing & Convalescent Center v. AHCA, 21 FALR 132 (AHCA 1998). Such a proceeding is regulatory in nature and thus subject to a lower burden of proof. See Heritage Health Care and Rehabilitation Center v. AHCA, 22 FALR 2171 (AHCA 2000) (granting agency counsel's exception and ruling that downgrading a nursing home's licensure rating is not penal in nature); and State of Florida, Agency for Health Care Administration v. Washington Manor Nursing and Rehabilitation Center (Beverly Enterprises Florida, Inc.), 24 FALR 507 (AHCA 2002) (concluding that rating a

nursing home as conditional is a regulatory measure, not a penal sanction). Moreover, prior administrative decisions have cited Section 120.57(1)(j), Florida Statutes, for the proposition that the preponderance of the evidence standard applies to license reduction cases. See, e.g., Capital Health Care Center v. AHCA, 23 FALR 2713 (AHCA 2001); and Life Care Center of Port Saint Lucie, 24 FALR 4518 (AHCA 2002). Therefore, the exception to Paragraph 38 is granted and Paragraph 38 of the Recommended Order is amended to read as follows:

38. Numerous recommended and final orders entered by AHCA have followed the standard of proof of a preponderance of the evidence when AHCA is seeking to impose a conditional licensure status on a nursing home facility. The Agency failed to prove the alleged violations by this standard of proof. Therefore, the conditional licensure status cannot be imposed.

The Agency, *sua sponte*, excepts to the conclusions of law in Paragraphs 48 and 49 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 Paragraphs 48 and 49 is granted and Paragraphs 48 and 49 of the Recommended Order are stricken in their entirety.

FINDINGS OF FACT

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

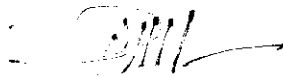
CONCLUSIONS OF LAW

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

IT IS THEREFORE ADJUDGED THAT:

The Administrative Complaint issued in this case is hereby dismissed and this case is now closed.

DONE and ORDERED in this 19th day of July, 2005, in Tallahassee, Florida.



For 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 25th day of July, 2005.



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