

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
)
vs.) Case No. 06-1908
)
GOLD KEY DEVELOPMENT, INC.,)
d/b/a CARRIAGE INN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on September 18, 2006, in Panama City, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael O. Mathis, Esquire
Agency for Health Care Administration
Fort Knox Building III, Suite 3431
2727 Mahan Drive
Tallahassee, Florida 32308

For Respondent: Jane A. Jones, Administrator
Gold Key Development, Inc.,
d/b/a Carriage Inn
3409 West 19th Street
Panama City, Florida 32405

STATEMENT OF THE ISSUES

The issues are whether Petitioner should impose administrative fines for four class II violations and a survey fee on Respondent, and if so, in what amount.

PRELIMINARY STATEMENT

On or about April 14, 2006, Petitioner Agency for Health Care Administration (Petitioner) issued an Administrative Complaint against Respondent Gold Key Development, Inc., d/b/a Carriage Inn (Respondent). Said complaint alleged that Respondent had four class II violations during a license survey in February 2006. Specifically, the complaint alleged that Respondent committed the following violations of Florida Administrative Code Rule 58A-5: (a) failing to ensure that a resident's record included a physician's order for medications; (b) failing to ensure that staff properly observes and documents assistance with medication; (c) failing to have licensed staff administer medication in accordance with physician orders; and (d) failing to ensure that call bell/lights in residents' rooms were in good working order.

Respondent filed a timely request for a formal hearing to contest Petitioner's allegations. Petitioner referred Respondent's request to the Division of Administrative Hearings on May 24, 2006.

A Notice of Hearing dated June 5, 2006, scheduled the hearing for July 12, 2006.

On June 30, 2006, Petitioner filed a Motion for Continuance and to Compel Discovery. After hearing oral argument in a telephone conference on July 7, 2006, the undersigned issued an Order granting the Motion to Compel and an Order Granting Continuance and Re-scheduling Hearing for August 14, 2006.

On August 10, 2006, Respondent filed a Motion for Continuance. After hearing oral argument in a telephone conference on August 14, 2006, the undersigned issued an Order Granting Continuance and Re-scheduling Hearing for September 18, 2006.

During the hearing Petitioner presented the testimony of three witnesses and offered a composite exhibit, which was accepted as evidence. Respondent presented the testimony of one witness and offered three exhibits, which were accepted as evidence.

The court reporter filed the Transcript on September 26, 2006. Petitioner filed a Proposed Recommended Order on October 6, 2006. As of the date that this Recommended Order was issued, Respondent had not filed proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner is the agency responsible for licensing and regulating assisted living facilities (ALFs) in Florida. Respondent is licensed to operate as an ALF in Panama City, Florida.

2. On February 14-15, 2006, Petitioner performed a licensing survey at Respondent's facility. During the survey, Respondent correctly determined that Resident No. 2 was receiving a medication known as Bactrim and a medication known as Lexapro. Resident No. 2's records did not contain physician's orders for the two medications.

3. Resident No. 2's most recent health assessment form indicated that she needed assistance with medication. Respondent's staff administered Resident No. 2's medications, even though the staff members were not licensed to do so.

4. Shortly after the survey, Resident No. 2's regular physician entered an order ceasing administration of Bactrim and Lexapro. The physician also changed Resident No. 2's health assessment form to show that she no longer needed assistance with medication.

5. At the time of the survey, Respondent did not have a fulltime licensed professional to administer medications. Instead, a licensed practical nurse prepared pill organizers once a week. Some residents had family members who prepared

pill organizers at home and left the organizers with Respondent for administration during the week.

6. Respondent's staff, who were not licensed to administer medicine, took the pill organizers to the residents on a daily basis. For seven residents, the pill organizers were not properly labeled with the name of the medicine, the time of administration, the amount and strength of dosage, and the method of administration.

7. Respondent's staff would document the medication administration or assistance with self-administration on the morning shift. For medicines that required twice-a-day dosage, Respondent's staff on the afternoon/evening shift would either give the residents a second dose or remind the residents to self-administer the medication. The second dose was not documented on the medication observation record (MOR).

8. Respondent's residents had call bells/lights in their bedrooms in case they needed help. The call bells/lights in five bedrooms were not working when Petitioner conducted the survey.

9. Respondent's administrator was aware of the problem with the call bells/lights; she knew the manufacturer's inventory had been destroyed in a fire in January 2006, making it difficult to find parts to repair the system.

10. It would have been very expensive to replace the entire call bell/light system. Therefore Respondent's administrator was satisfied to let the residents either use their personal cell phones or the emergency call stations in the halls or common areas to summon help.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 400.419, Florida Statutes.

12. Petitioner has the burden of proving by clear and convincing evidence that Respondent had four class II violations during a license survey. See Dept. of Banking and Finance, Div. of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 933 (Fla. 1996).

13. Petitioner met its burden of proving that Respondent violated the following rules: (a) Florida Administrative Code Rule 58A-5.024(3)(c), requiring a resident's record to include a physician's order for prescription medications, such as Bactrim or Lexapro, when facilities administer or assist with self-administration; (b) Florida Administrative Code Rule 58A-5.0185(3)(c), requiring a facility's staff to observe the self-administration of medication, to report concerns about residents' reactions to medications, and to document any such

concerns in the residents' MOR; (c) Florida Administrative Code Rule 58A-5.0185(4)(a), requiring facilities that provide medication administration to have properly licensed staff to dispense the medicine in accordance with physicians' orders or prescription labels; and (d) Florida Administrative Code Rule 58A-5.023(1)(b), requiring facilities to maintain all appliances and equipment, such as call bells in good working order.

14. Each of the above-referenced violations are class II violations as defined Section 400.419(2)(b), Florida Statutes (2006), which states as follows:

Class "II" violations are those conditions of occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I violations. The agency shall impose an administrative fine for a cited class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation. A fine shall be levied notwithstanding the correction of the violation.

15. In this case, Respondent is guilty of four class II violations. Thus, Petitioner is required to impose an administrative fine on Respondent in an amount not less than \$4,000.

16. Petitioner also may assess a survey fee against Respondent in the amount of \$500 pursuant to Section 400.419(10), Florida Statutes (2006), which states as follows:

(10) In addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial license and bed fee or \$500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under s. 400.428(3)(c) to verify the correction of the violations.

RECOMMENDATION

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

RECOMMENDED:

That Petitioner enter a final order, finding that Petitioner is guilty of four class II violations, imposing an administrative fine in the amount of \$4000, and assessing a survey fee in the amount of \$500.

DONE AND ENTERED this 17th day of October, 2006, in Tallahassee, Leon County, Florida.



SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2006.

COPIES FURNISHED:

Michael O. Mathis, Esquire
Agency for Health Care Administration
Fort Knox Building III, Suite 3431
2727 Mahan Drive
Tallahassee, Florida 32308

Jane A. Jones
Gold Key Development, Inc.
d/b/a Carriage Inn
3409 West 19th Street
Panama City, Florida 32405

Richard Shoop, Agency Clerk
Agency for Health Care Administration
Fort Knox Building
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32308

William Roberts, General Counsel
Agency for Health Care Administration
Fort Knox Building, Suite 3431
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

Christa Calamas, Secretary
Agency for Health Care Administration
Fort Knox Building
2727 Mahan Drive, Suite 3116
Tallahassee, Florida 32308

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.