

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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AHCA
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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

2010 MAR -2 A 8: 26

Petitioner,

DOAH CASE NO. 09-3523

FRAES NOS. 2009002952

v.

RENDITION NO.: AHCA-10- 0250-FOF-OLC

WEST BROWARD REFERRAL AND
NURSES AGENCY, INC.,

Respondent.

_____ /

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Errol H. Powell, conducted a formal administrative hearing. At issue in this case is whether the Agency should impose a fine upon Respondent as set forth by the Notice of Intent to Impose Fine dated March 9, 2009. The Recommended Order dated January 19, 2010, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

The Petitioner filed exceptions to the Recommended Order.

In its exceptions, Petitioner takes exception to the ALJ's conclusion of law in Paragraphs 22 and 27 of the Recommended Order. In regards to Paragraph 22 of the Recommended Order, Petitioner disagreed with the ALJ's conclusion that Section 400.474(6)(f), Florida Statutes, "is ambiguous." The crux of the ALJ's conclusion rests with the parties' conflict over the term "submit" present in that section. Using the dictionary definitions cited by the ALJ, it is clear that "submit" requires an object be both sent and received. The Agency has no disagreement with the

definitions of submit cited to by the ALJ, but it fails to see any ambiguity in the statute. Thus, the Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraph 22 of the Recommended Order since it has been charged by the legislature with enforcing the provisions of Section 400.474(6)(f), Florida Statutes; and that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, Petitioner's exception to Paragraph 22 of the Recommended Order is granted and Paragraph 22 of the Recommended Order is modified to state:

22. AHCA and West Broward disagree as to the meaning of the term "submit" in Section 400.474(6)(f), Florida Statutes (2008). AHCA interprets "submit" to mean "sent and received"; whereas, West Broward interprets "submit" to mean only "sent." AHCA's interpretation of "submit" is supported by dictionary definitions of the term, and West Broward did not demonstrate that AHCA's interpretation was "clearly erroneous." See Pan American World Airways, Inc. v. Florida Public Service Com'n, 427 So.2d 716 (Fla. 1983).

In regards to Paragraph 27 of the Recommended Order, Petitioner argued that the ALJ's conclusions of law were contrary to other conclusions of law within the Recommended Order. Indeed, the ALJ, after citing dictionary definitions of the term "submit," concludes that "in order for a determination, consideration or judgment to be made of the something sent, the something must be received." In Paragraph 27 of the Recommended Order, the ALJ contradicts that conclusion by stating "that a departure from AHCA's interpretation of 'submit,' i.e., 'sent and received,' is warranted and that AHCA's interpretation is not a reasonable construction and is clearly erroneous." Obviously, the Agency's interpretation of "submit" is reasonable and not clearly erroneous since it agrees with the dictionary definitions of the term. Thus, the Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraph 27 of the Recommended Order since it has been charged by the legislature with enforcing the provisions of Section 400.474(6)(f), Florida Statutes; and that it could substitute conclusions of law as or more reasonable than those of the ALJ.

Therefore, the Agency grants Petitioner's exception to Paragraph 27 of the Recommended Order and rejects the paragraph in its entirety.¹

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. However, the Agency concludes that it will not impose a fine on Respondent even though Respondent did not submit a quarterly report to the Agency in a timely manner. Due to the circumstances surrounding this particular case, the Agency concludes that a fine is not warranted. However, Respondent is put on notice that it must take affirmative action to insure that future quarterly reports are both sent and received by the Agency in a timely manner in order to avoid any future fines for a violation of this nature.

ORDER

Based upon the foregoing, the March 9, 2009 Notice of Intent to Impose Fine issued by the Agency in this matter is hereby withdrawn and this case is closed.

DONE and ORDERED this 1 day of MARCH, 2010, in Tallahassee, Florida.



THOMAS W. ARNOLD, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

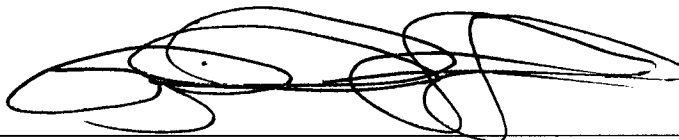
¹ Even though Petitioner did not explicitly take exception to Paragraph 28 of the Recommended Order, logic dictates that, since the Agency rejected Paragraph 27 of the Recommended Order in its entirety, Paragraphs 28 and 30 of the Recommended Order cannot stand on their own. Therefore, by granting Petitioner's exception to Paragraph 27 of the Recommended Order, the Agency, by implication, also rejects Paragraphs 28 and 30 of the Recommended Order in their entirety.

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 20th day of March, 2010.



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