

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
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2010 JUN 22 A 8:55

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NOS. 09-5360

09-5363

v.

09-5364

09-5365

GULF COAST MEDICAL CENTER LEE
MEMORIAL HEALTH SYSTEM,

AHCA CASE NOS. 2009007220 -

2009007223

Respondent.

RENDITION NO.: AHCA-10-0703 -FOF-OLC

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), R. Bruce McKibben, conducted a formal administrative hearing. At issue in this case is whether Respondent committed the violations alleged in the Administrative Complaints and, if so, what penalty should be imposed. The Recommended Order dated April 30, 2010, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

The Respondent filed exceptions to the Recommended Order, and the Petitioner filed a response to Respondent's exceptions.

In its exceptions, Respondent takes exception to the ALJ's conclusions of law in Paragraphs 54, 56 and 58 of the Recommended Order. Respondent argues that, contrary to the ALJ's conclusions of law, the Agency does not have the authority to impose fines against the Respondent under Section 395.1065(2)(a), Florida Statutes, and the Agency rules adopted pursuant to that section for the violations that were proven at hearing. The Respondent argues that the Agency's reliance on §395.1065, Fla. Stat., is misplaced because it ignores the existence

of §395.1055, Fla. Stat., which the Respondent argues specifically addresses the enforcement of quality of care standards in hospitals. Respondent also argues that the Agency cannot impose a fine against Respondent under Rule 59A-3.253, Florida Administrative Code, because it had not failed to file or implement an acceptable plan of correction.

As put forth by the Petitioner in its response to Respondent's exceptions, §395.1065, Fla. Stat., stands on its own as a grant of authority by the legislature to the Agency to sanction hospitals for violations. There is no need to read it in concert with §395.1055, Fla. Stat., as Respondent argues because that section does not cover the same subject matter. Section 395.0155, Florida Statutes, gives the Agency the power to adopt rules to enforce the areas enumerated in that section whereas §395.1065, Fla. Stat., gives the Agency the power to "impose an administrative fine, not to exceed \$1,000 per violation, per day, for the violation of any provision of this part, part II of chapter 408, or applicable rules." See §395.1065(2)(a), Fla. Stat. Thus, the plain language of §395.1065, Fla. Stat., authorizes the Agency to impose fines on the Respondent for the violations proven at hearing.

Additionally, Respondent's argument that the Agency cannot impose a fine against the Respondent because it did not violate Rule 59A-3.253, Florida Administrative Code, is meritless. Rule 59A-3.253(11), Florida Administrative Code, mandates that "[t]he agency shall impose sanctions, in accordance with Section 395.1065, F.S., on those hospitals which fail to submit an acceptable plan of correction or implement actions to correct deficiencies identified by the agency or an appropriate accrediting organization which are specified in an approved plan of correction or identified as a result of a complaint investigation." Thus, the rule leaves the Agency no discretion on whether to impose sanctions in those circumstances. However, it in no way precludes the Agency from imposing sanctions if a plan of correction has been submitted or

implemented. To interpret it in the way Respondent suggests would lead to absurd results, such as blanket prohibition on the Agency that prevents it from ever sanctioning a hospital for even the most egregious violations because the hospital has submitted or implemented a plan of correction.

The Agency finds that, while it does have substantive jurisdiction over the conclusions of law in Paragraph 54, 56 and 58 of the Recommended Order because they involve interpretations of statutes and rules which the legislature has specifically charged the Agency with implementing in order to regulate hospitals in the state of Florida, it cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. The Agency believes that §395.1065, Fla. Stat., gives it the specific authority to impose fines against the Respondent for the violations proven at hearing, and that its interpretation of this section is within the range of possible and reasonable interpretations, and thus is not “clearly erroneous.” See § 120.68(7)(d), Fla. Stat. (2009); Dep’t of Educ. v. Cooper, 858 So.2d 394, 396 (Fla. 1st DCA 2003). Therefore, the Agency denies Respondent’s exceptions to the Recommended Order.

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.

ORDER

Based upon the foregoing, a \$500 fine is hereby imposed against the Respondent for the violation enumerated in AHCA Case No. 2009007221; and a \$500 fine is hereby imposed against the Respondent for the violation enumerated in Count VI of the Administrative Complaint in AHCA Case No. 2009007222. The parties shall govern themselves accordingly.

Unless payment has already been made, payment in the amount of \$1,000 is now due from the Respondent as a result of the agency action. Such payment shall be made in full within 30 days of the date of rendition of this Final Order. The payment shall be made by check payable to Agency for Health Care Administration, and shall be mailed to the Agency for Health Care Administration, Attn. Revenue Management Unit, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building 2, Mail Stop 14, Tallahassee, FL 32308.

DONE and ORDERED this 21ST day of June, 2010, in Tallahassee, Florida.



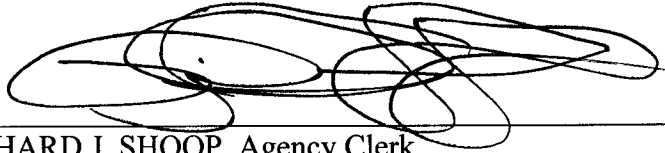
THOMAS W. ARNOLD, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 22nd day of June, 2010.



RICHARD J. SHOOP, Agency Clerk
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2727 Mahan Drive, MS #3
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COPIES FURNISHED TO:

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