

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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VISION ASSOCIATES, INC. d/b/a
BAY GARDENS RETIREMENT VILLAGE,

Petitioner,

DOAH No. 09-5443
AHCA No. 2009008636

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FINAL ORDER

Having reviewed the Notice of Intent to Deny dated July 31, 2009, attached hereto and incorporated herein (Comp. Ex. 1), and all other matters of record, the Agency for Health Care Administration (hereinafter "Agency") finds and concludes as follows:

FINDINGS OF FACT

1. The Agency issued one (1) Notice of Intent to Deny the renewal application of Petitioner, Vision Associates, Inc. d/b/a Bay Gardens Retirement Village (hereinafter "Petitioner" or "Facility"), an assisted living facility (License No. 7216).
2. The Notice of Intent to Deny the renewal application dated 07/31/09 notified the Facility that the Agency intended to deny the Facility's renewal application based upon, *inter alia*, a demonstrated pattern of deficient performance and failure to meet minimum license requirements pursuant to Sections 408.815(1)(d) and 429.14, Florida Statutes.
3. The Facility received a Notice of Intent to Deny its license renewal application. By filing its Election of Rights (hereafter "EOR") and electing Option 3, the Facility requested a formal hearing (Comp. Ex. 2).

4. The cause was properly referred to the Division of Administrative Hearings for proceedings according to law, See, Section 120.57(1), Florida Statutes (2009).

5. By Order dated February 26, 2010, the Division of Administrative Hearings determined that no material issue of fact remained in dispute and relinquished jurisdiction to the Agency for Health Care Administration, a copy of which is attached hereto and incorporated herein (Ex. 3).

6. The facts, as alleged and found, establish that the Facility: a). Has demonstrated a pattern of deficient performance, b). Has been cited for one (1) or more cited Class I deficiencies, three (3) or more cited Class II deficiencies, and/or five (5) or more cited class III deficiencies on a single survey which were not corrected within the times specified, c). Failed to meet the minimum license requirements of Chapter 429, Part I, or related rules, at the time of license renewal, and d). Has been found guilty of at least one (1) act constituting a ground upon which application for a license may be denied.

7. The Agency action was the denial of the Facility's license renewal application.

CONCLUSIONS OF LAW

1. The Petitioner is an assisted living facility over which the Agency has jurisdiction pursuant to the provisions of Chapters 20.42, 120.60, 408, Part II, and 429, Part I, Florida Statutes (2009), and Chapter 58A-5, Florida Administrative Code.

2. The Petitioner's license renewal application as an assisted living facility may be denied for: a). A demonstrated pattern of deficient performance as an assisted living facility, b). Having been cited for one (1) or more cited Class I deficiencies, three (3) or more cited Class II deficiencies, and/or five (5) or more cited class III deficiencies on a single survey that were not corrected within the times specified, c). Failure to meet the minimum license requirements of

Chapter 429, Part I, or related rules, at the time of license renewal, and d). Having been found guilty of at least one (1) act constituting a ground upon which application for a license may be denied. Sections 408.815(1)(d) and 429.14(1)(e)1, (i), (l), Florida Statutes (2009).

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED:

1. The Petitioner's license renewal application as an assisted living facility, License No. 7216, be and the same is hereby DENIED.

2. The denial of the Petitioner's license application is STAYED for 30 days from the filing date of this Final Order to allow for the safe and orderly discharge of the clients (i.e., residents) and the protection of their rights.¹ The Agency retains the right to extend, modify or vacate this temporary stay.² If the Petitioner lawfully continues to operate while a denial or revocation is pending in litigation, the Petitioner must continue to meet all other requirements of Chapter 408, Part II, the authorizing statutes, and the applicable rules and must file subsequent renewal applications for licensure and pay all licensure fees. § 408.815(2), Fla. Stat. (2009). This granting of this temporary stay does not affect the Petitioner's right to seek a modification of this stay from the Agency or right to seek appellate review and relief. The safeguards set forth below are imposed as a condition of the stay:

¹ See § 120.68(3), Fla. Stat. (2009) ("the Agency may also grant a stay upon appropriate terms"); Fla. R. App. P. 9.190(e)(2)(A) ("The lower tribunal or court may grant a stay upon appropriate terms."); 9.310(a) ("A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both."); Mariner Health Care of Nashville, Inc. v. Baker, 739 So.2d 608, 609 (Fla. 1st DCA 1999) ("By the terms of this rule, the lower tribunal has discretion to set the conditions under which the proceedings may be stayed pending appellate review. . . . It follows that an order establishing the conditions necessary to obtain a stay is subject to review by the abuse of discretion standard."); MSQ Properties v. Fla. Dept. of Health and Rehab. Servs., 626 So.2d 292, 293 (Fla. 1st DCA 1993) ("The lower tribunal is in a superior position to determine whether a bond or other conditions should be required before an order is stayed and, if so, the amount of the bond or the nature of the conditions. These determinations may require fact finding which is not a function of this court.").

² See Fla. R. App. P. 9.310 ("On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.").

(a) **Notice to Clients and Contacts.** The Petitioner shall promptly provide notice to its clients and their next of kin, legal representative, or agency acting on each client's behalf, that the Agency has entered this Final Order revoking the Petitioner's license. § 408.804, Fla. Stat. (2009).

(b) **Names of Clients and Contacts.** The Petitioner shall promptly inform the Agency of its current census, including the names and telephone numbers of the clients and their next of kin, legal representative, or agency acting on each client's behalf, so that the Agency may monitor their discharge. § 429.31, Fla. Stat. (2009).

(c) **Plan of Discharge.** Within two calendar days of the receipt of this Final Order, the Petitioner shall file a written plan of discharge with the Agency's local field office and the Agency's licensure unit. The plan of discharge shall set forth the Petitioner's capabilities and intentions to carry out the safe and orderly discharge of clients. The plan of discharge shall also comply with: (1) the regulations of the Petitioner's licensure, (2) the Petitioner's policies and procedures, and (3) the clients' medical orders, placing primary importance on the health, safety and welfare of the clients. If the Petitioner is unable or uncertain of the ability to carry out the safe and orderly discharge of the clients, the Petitioner shall state that belief in the plan of discharge and inform the Agency that it needs assistance. § 429.31, Fla. Stat. (2009).

(d) **Status Reports.** The Petitioner shall report to the Agency's local field office the status of the client discharge every two days. Among other information, the status report shall include the current census of the facility, the names of the remaining clients and the names and discharge location of the transferred clients. Once all of the clients are safely discharged, the Petitioner shall inform the Agency's local field office that the client discharge has been completed. Upon the discharge of the final client, this stay is immediately lifted without further notice. § 429.31, Fla. Stat. (2009).

(e) **Facility Cooperation During Monitoring Visits and Inspections.** The Agency and other state personnel have the right to monitor and inspect the Petitioner's facility during the stay to determine compliance with the statutes and rules. §§ 408.811(1), 429.31, 429.34, Fla. Stat. (2009). During these monitoring visits and inspections, the Petitioner shall cooperate with Agency and other lawfully authorized personnel. §§ 408.811(1), 429.34, Fla. Stat. (2009). The Agency shall have access to and the licensee shall provide, or if requested send, copies of all provider records required during an inspection or other review at no cost to the Agency, including records requested during an offsite review. § 408.811(3), Fla. Stat. (2009).

(f) **No Admissions.** The Petitioner's license application has been denied. This stay has been entered in order to allow for the safe and orderly discharge of clients. It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider. § 408.804(1), Fla. Stat. (2009). Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. § 408.812(2), Fla. Stat.

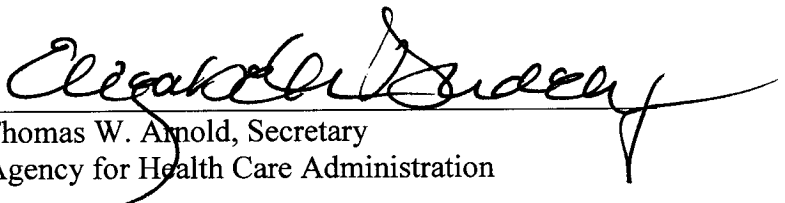
(2009). A provider or licensee, the license of which is denied or revoked, may be subject to immediate imposition of a moratorium or emergency suspension to run concurrently with licensure denial, revocation, or injunction. § 408.814(2), Fla. Stat. (2009). Thus, unless modified, the Petitioner shall not admit any new clients and shall not readmit any former clients.

3. In accordance with Florida and federal law, the Petitioner is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in authorizing statutes and applicable rules. The Petitioner is advised of Section 408.810, Florida Statutes (2009), set forth below.

4. In accordance with Florida law, the Petitioner is responsible for any refunds that may have to be made to the clients. The Petitioner is advised of Sections 429.24 and 429.31, Florida Statutes (2009), set forth below.

5. This matter is closed. The closure of this case does not alleviate the Petitioner from complying with the applicable statutes and rules governing its licensure. The closure of this case does not prohibit the Agency from extending, modifying or vacating the stay or from taking any other regulatory action as permitted by law.

DONE and ORDERED this 29 day of March, 2010 in Tallahassee, Leon County, Florida.


Thomas W. Arnold, Secretary
Agency for Health Care Administration

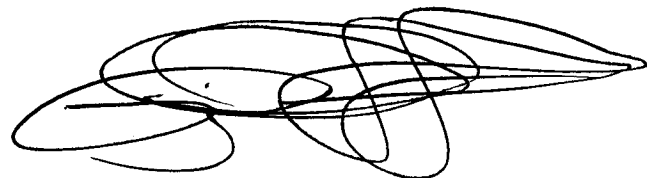
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY, ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW OF PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Stephen V. Iglesias, Esq. One Urban Centre 4830 West Kennedy Blvd., Suite 575 Tampa, FL 33609 Counsel for Petitioner (U.S. Mail)	Patricia Cauffman, Field Office Manager Kathy Varga, Supervisor Agency for Health Care Administration 525 Mirror Lake Drive North, Fourth Floor St. Petersburg, Florida 33701 (Interoffice Mail)
Jan Mills Facilities Intake Unit Agency for Health Care Admin. (Interoffice Mail)	Molly McKinstry, Bureau Chief Bureau of Long-Term Care Services Agency for Health Care Administration (Interoffice Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Interoffice Mail)	Bernard Hudson, Unit Manager Assisted Living Unit Agency for Health Care Administration (Interoffice Mail)
Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Interoffice Mail)	Polly Weaver, Bureau Chief Bureau of Field Operations Agency for Health Care Administration (Interoffice Mail)
Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399 (Electronic Mail)	Thomas F. Asbury, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Interoffice Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the above-named persons and entities by U.S. Mail, or the method designated on this the 27th day of March, 2010.



Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308-5403
(850) 412-3630