

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

2011 MAY 11 A 10:41

**STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,**

Petitioner,

v.

**ABSOLUTE HOME CARE, INC. d/b/a
ABSOLUTE HOME CARE, INC.,**

Respondent.

AHCA No.: 2010005636

DOAH No.: 10-9378

RENDITION NO.: AHCA-11- ~~0484~~ -S-OLC

FINAL ORDER

Having reviewed the administrative complaint dated August 30, 2010, attached hereto and incorporated herein (Exhibit 1), and all other matters of record, the Agency for Health Care Administration ("Agency") has entered into a Settlement Agreement (Exhibit 2) with the other party to these proceedings, and being otherwise well-advised in the premises, finds and concludes as follows:

ORDERED:

1. The attached Settlement Agreement is approved and adopted as part of this Final Order, and the parties are directed to comply with the terms of the Settlement Agreement.

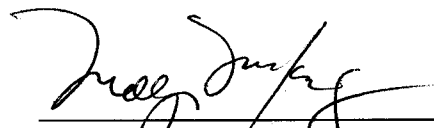
2. Respondent shall pay an administrative fine in the amount of \$3,750.00. The administrative fine is due and payable within thirty (30) days of the date of rendition of this Order.

ORDERED:

1. An administrative fine in the amount of \$3,750.00 is imposed.
2. The administrative fine shall be, and has been, PAID.
3. The above-styled case shall be, and is hereby, closed.

DONE and **ORDERED** this 11 day of May, 2011,

in Tallahassee, Leon County, Florida.



Elizabeth Dudek, 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:

<p>Scott D. Knapp, Esq. Attorney for Respondent Broad and Cassel One Financial Plaza Suite 2700 Ft. Lauderdale, Florida 33394 (U. S. Mail)</p>	<p>Alba M. Rodriguez, Esq. Assistant General Counsel Agency for Health Care Administration 8333 N. W. 53rd Street -Suite 300 Miami, Florida 33166 (Interoffice Mail)</p>
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Finance & Accounting Agency for Health Care Administration 2727 Mahan Drive, MS #14 Tallahassee, Florida 32308 (Interoffice Mail)	Stuart M. Lerner Administrative law Judge Division of Administrative Hearing 1230 Apalachee Parkway Tallahassee, Florida 32399 (U.S. Mail)
Jan Mills Agency for Health Care Administration 2727 Mahan Drive, Bldg #3, MS #3 Tallahassee, Florida 32308 (Interoffice Mail)	Anne Menard Unit Manager Home Care Unit Program Agency for Health Care Administration 2727 Mahan Drive Tallahassee, Florida 32308 (Interoffice Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the above-named person(s) and entities by U.S. Mail, or the method designated, on this the 11th day of May, 2010.



Richard J. Shoop
 Agency Clerk
 Agency for Health Care Administration
 2727 Mahan Drive, Building #3
 Tallahassee, Florida 32308
 (850) 412-3630

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH
CARE ADMINISTRATION,

Petitioner,

AHCA No.: 2010005636
Return Receipt Requested:
7002 2410 0001 4236 2954

v.

ABSOLUTE HOME CARE, INC. d/b/a
ABSOLUTE HOME CARE, INC.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the State of Florida, Agency for Health Care Administration ("AHCA"), by and through the undersigned counsel, and files this administrative complaint against Absolute Home Care, Inc. d/b/a Absolute Home Care, Inc. (hereinafter "Absolute Home Care, Inc."), pursuant to Chapter 400, Part III, and Section 120.60, Florida Statutes (2009), and herein alleges:

NATURE OF THE ACTION

1. This is an action to impose an administrative fine of \$5,000.00 pursuant to Section 400.484, Florida Statutes (2009), for the protection of public health, safety and welfare.

EXHIBIT

tabbles

_____ | _____

JURISDICTION AND VENUE

2. AHCA has jurisdiction pursuant to Chapter 400, Part III, Florida Statutes (2009).

3. Venue lies pursuant to Rule 28.106.207, Florida Administrative Code.

PARTIES

4. AHCA is the regulatory authority responsible for licensure and enforcement of all applicable statutes and rules governing home health agencies, pursuant to Chapter 400, Part III, Florida Statutes (2009), and Chapter 59A-8 Florida Administrative Code.

5. Absolute Home Care, Inc. operates a home health agency located at 8000 N. University Drive, Tamarac, Florida 33321. Absolute Home Care, Inc. is licensed as a home health agency under license number 21335096. Absolute Home Care, Inc. was at all times material hereto a licensed facility under the licensing authority of AHCA and was required to comply with all applicable rules and statutes.

COUNT I

**ABSOLUTE HOME CARE, INC. FAILED TO HAVE A CONTRACT IN PLACE WITH
THE MEDICAL DIRECTOR THAT MEETS REQUIREMENTS.**

**SECTION 400.474(6)(i)(1)(2)(3), FLORIDA STATUTES
RULE 59A-8.0086(1)(D) FLORIDA ADMINISTRATIVE CODE**

(MEDICAL DIRECTOR STANDARDS)

6. AHCA re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

7. Absolute Home Care, Inc. was cited with one (1) deficiency as a result of a complaint investigation survey that was conducted on May 17, 2010.

8. A complaint investigation survey was conducted on May 17, 2010. Based on interview and review of the Home Health Agency's (HHA) own Medical Director Job Description, the HHA failed to have a contract in effect with the HHA's own Medical Director that meets requirements and failed to ensure invoices for services that the HHA's own Medical Director rendered described the work performed, the dates on which that work was performed, and the duration of that work were obtained from the Medical Director prior to the HHA giving remuneration to the HHA's own appointed Medical Director. The findings include the following.

9. On 05/17/10 at 10:50 AM, a request to review the HHA's Medical Director's contract was made to the Director of Nursing

(DON). Review of the documentation provided by the DON revealed a two page document titled, "Job Description Medical Director." An another request was made of the DON for the Medical Director's contract and not the Job Description and she stated, during an interview at 10:50 AM on 05/17/10, that this is the only contract they have with the Medical Director.

10. Review of the second page of the Job Description revealed a handwritten date of 03/15/08 and an illegible signature above the line, "Physician's Signature" with no physician's name printed. Additionally, there is no evidence of a signature of the representative of the HHA documented.

11. Further review of the Job Description revealed no evidence of documentation of remuneration to the Medical Director. During the interview, conducted on 05/17/10 at 10:50 AM, the DON stated they pay the Medical Director \$750.00 per month to review charts, attend annual meetings, and assist with any clinical issues that may arise at the HHA. On 05/17/10 at 11:05 AM, an interview was conducted with the HHA's Administrator who provided invoices for services by the Medical Director for the months of February, March, and April 2010 revealing a payment of \$1500.00 per month from the HHA to the Medical Director.

12. The Administrator stated, during the interview on 05/17/10 at 11:05 AM, in the presence of the DON, that they pay

the Medical Director \$750.00 every 2 weeks for the total of \$1500.00 per month. The Administrator additionally stated, during the interview on 05/17/10 at 11:05 AM, that the signed Job Description is the only contract they have with the Medical Director.

13. Review of the invoices provided by the Administrator, on 05/17/10 at 11:05 AM, for the months of February, March, and April 2010 revealed no evidence of documentation from the Medical Director of the work performed, dates or duration of the work performed. Review of the HHA's Active Client Census Report reveals the Medical Director listed as the primary physician for seven of the HHA's active patients dating back to 12/01/08 through 04/03/10. Review of the HHA's Client Discharge Report reveals the Medical Director listed as the primary physician for four discharged patients dating back to 01/03/10 through 04/19/10.

14. Based on the foregoing facts, Absolute Home Care, Inc. violated Section 400.474(6)(i)(1)(2)(3), Florida Statutes, which warrants an assessed fine of \$5,000.00.

CLAIM FOR RELIEF

WHEREFORE, the Agency requests the Court to order the following relief:

1. Enter a judgment in favor of the Agency for Health Care Administration against Absolute Home Care, Inc. on Count I.

2. Assess against Absolute Home Care, Inc. an administrative fine of \$5,000.00 on Count I for the violation cited above.

3. Assess costs related to the investigation and prosecution of this matter, if applicable.


4. Grant such other relief as the court deems is just and proper on Count I.

Respondent is notified that it has a right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. Specific options for administrative action are set out in the attached Election of Rights. All requests for hearing shall be made to the Agency for Health Care Administration and delivered to the **Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, MS #3, Tallahassee, Florida 32308.**

RESPONDENT IS FURTHER NOTIFIED THAT THE FAILURE TO RECEIVE A REQUEST FOR A HEARING WITHIN TWENTY-ONE (21) DAYS OF RECEIPT OF

THIS COMPLAINT WILL RESULT IN AN ADMISSION OF THE FACTS ALLEGED
IN THE COMPLAINT AND THE ENTRY OF A FINAL ORDER BY THE AGENCY.

IF YOU WANT TO HIRE AN ATTORNEY, YOU HAVE THE RIGHT TO BE
REPRESENTED BY AN ATTORNEY IN THIS MATTER



Alba M. Rodriguez, Esq.
Fla. Bar No.: 0880175
Assistant General Counsel
Agency for Health Care
Administration
8350 N.W. 52 Terrace - #103
Miami, Florida 33166

Copies furnished to:

Arlene Mayo-Davis
Field Office Manager
Agency for Health Care Administration
5150 Linton Blvd. - Suite 500
Delray Beach, Florida 33484
(U.S. Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
foregoing has been furnished by U.S. Certified Mail, Return
Receipt Requested to Bernard R. Shaw, Administrator, Absolute
Home Care, Inc., 8000 N. University Drive, Tamarac, Florida
33321 on this 30th day of August, 2010.


Alba M. Rodriguez, Esq.

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

**RE: Absolute Home Care, Inc. d/b/a
Absolute Home Care, Inc.**

AHCA No.: 2010005636

ELECTION OF RIGHTS

This Election of Rights form is attached to a proposed action by the Agency for Health Care Administration (AHCA). The title may be **Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.**

Your Election of Rights must be returned by mail or by fax within 21 days of the day you receive the attached Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.

If your Election of Rights with your selected option is not received by AHCA within twenty-one (21) days from the date you received this notice of proposed action by AHCA, you will have given up your right to contest the Agency's proposed action and a final order will be issued.

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes (2006) and Rule 28, Florida Administrative Code.)

PLEASE RETURN YOUR ELECTION OF RIGHTS TO THIS ADDRESS:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308.
Phone: 850-412-3630 Fax: 850-921-0158.

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) _____ I admit to the allegations of facts and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint and I waive my right to object and to have a hearing. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) _____ I admit to the allegations of facts contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, but I wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing (pursuant to Subsection 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing **OPTION THREE (3), by itself, is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before**

the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. Your name, address, and telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

License type: _____ (ALF? nursing home? medical equipment? Other type?)

Licensee Name: _____ License number: _____

Contact person: _____
Name Title
Address: _____
Street and number City Zip Code

Telephone No. _____ Fax No. _____ Email(optional) _____

I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ **Date:** _____

Print Name: _____ Title: _____

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA No.: 2010005636

DOAH No.: 10-9378

ABSOLUTE HOME CARE, INC.
d/b/a ABSOLUTE HOME CARE,
INC.,

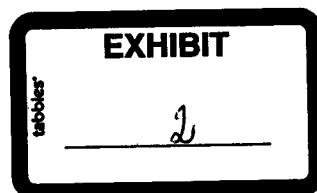
Respondent.

_____ /

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Respondent, Absolute Home Care, Inc. d/b/a Absolute Home Care, Inc. (hereinafter "Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

WHEREAS, Respondent is a home health agency licensed pursuant to Chapters 400, Part III, and 408 Part II, Florida Statutes, Section 20.42, Florida Statutes, and Chapter 59A-8, Florida Administrative Code; and



WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent, pursuant to Chapter 400, Part III, Florida Statutes; and

WHEREAS, the Agency served Respondent with an administrative complaint on or about September 2, 2010, notifying the Respondent of its intent to impose administrative fines in the amount of \$5,000.00; and

WHEREAS, Respondent requested a formal administrative proceeding by selecting Option Three (3) on the Election of Rights form; and

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals herein are true and correct and are expressly incorporated herein.

2. Both parties agree that the "whereas" clauses incorporated herein are binding findings of the parties.

3. Upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding

under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.

4. Upon full execution of this Agreement, Respondent agrees to pay \$3,750.00 in administrative fines to the Agency within thirty (30) days of the entry of the Final Order.

5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.

6. By executing this Agreement, Respondent neither admits nor denies, and the Agency asserts the validity of the allegations raised in the administrative complaint referenced herein.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local

agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the administrative complaint.

8. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case.

9. Each party shall bear its own costs and attorney's fees.

10. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related facilities.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

13. In the event that Respondent was a Medicaid provider at

the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

14. Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it.

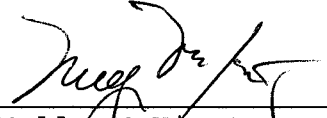
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

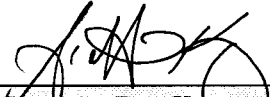
17. This Agreement supersedes any prior oral or written agreements between the parties.

18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

19. All parties agree that a facsimile signature suffices for an original signature.

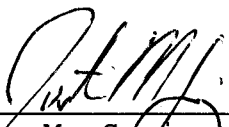
The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

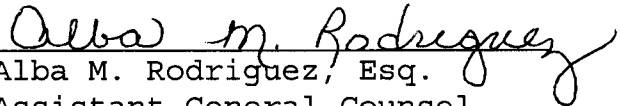

Molly McKinstry
Acting Deputy Secretary
Division of Health Quality Assurance.
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308


Scott D. Knapp, Esq.
Attorney for Respondent
Broad and Cassel
One Financial Plaza
Suite 2700
Ft. Lauderdale, Florida 33394

Dated: 5/11/11

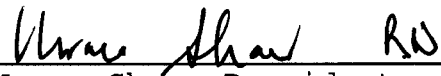
Dated: 3/3/11


Justin M. Senior, Esq.
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308


Alba M. Rodriguez, Esq.
Assistant General Counsel
Agency for Health Care Administration
8333 N. W. 53rd Street
Suite 300
Miami, Florida 33166

Dated: 5/4/11

Dated: 3-11-2011


Norma Shaw, President
Absolute Home Care, Inc.
1845 Eagle Trace Boulevard
Coral Springs, FL 33071
Respondent

Dated: 2. 18 11