

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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2013 APR 16 A 9:41

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NO. 11-3721

AHCA NOS. 2011006466

v.

2011006798

GENE COWLES AND AMELIA COWLES
d/b/a HILLANDALE ASSISTED LIVING,

LICENSE NO. 10549

FILE NO. 11966321

FACILITY TYPE: ASSISTED

LIVING FACILITY

Respondent.

RENDITION NO.: AHCA-13-0357-FOF-OLC

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Lynne A. Quimby-Pennock, conducted a formal administrative hearing. At issue in this case is whether Respondent committed the violations alleged in the Amended Administrative Complaint; and, if so, what penalty should be imposed. The Recommended Order dated January 17, 2013, 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, and the Respondent filed a response to Petitioner's exceptions.

In determining how to rule upon Petitioner's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency for Health Care Administration ("Agency" or "AHCA") must follow Section 120.57(1)(I), Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state

with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

Fla. Stat. § 120.57(1)(l). Additionally, “[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on Petitioner’s exceptions:

In its exceptions, Petitioner takes exception to the ALJ’s recommended penalty, arguing that, in addition to the fine and survey fee imposed by the ALJ, Respondent’s assisted living facility license should also be revoked. The Petitioner asks the Agency to either increase the recommended penalty or remand the case back to the ALJ for further consideration of this issue. Respondent filed a response to Petitioner’s exceptions, arguing that the exceptions were not in compliance with § 120.57(1)(k), Fla. Stat., because they did not identify the portion of the recommended order to which Petitioner took exception by page number or paragraph and that there are no grounds for increasing the recommended penalty. The Agency rejects Respondent’s first argument because in the first numbered paragraph of Petitioner’s exceptions, Petitioner identifies the portion of the Recommended Order to which it was taking exception by both page number and paragraph in compliance with § 120.57(1)(k), Fla. Stat. The Agency rejects

Respondent's second argument because, as set forth below, the record supports an increase in the ALJ's recommended penalty to include revocation.

In order to increase an ALJ's recommended penalty, the Agency must review the complete record and state with particularity its reasons for the penalty increase by citing to the record in justifying its action. § 120.57(1)(I), Fla. Stat.; Criminal Justice Standards Training Comm'n. v. Bradley, 596 So. 2d 661, 663 (Fla. 1992). A review of the complete record of this case reveals that there is ample record evidence supporting the revocation of Respondent's assisted living facility license. This evidence includes:

- Respondent had previously been cited for failing to provide enough qualified staff to provide a safe living environment for its residents. See Paragraph 17 of the Recommended Order; Petitioner's Exhibit 8.
- During an August 2010 survey, the Agency found three instances in which a resident had been injured and the injury was not properly reported by Respondent. See Paragraph 18 of the Recommended Order; Transcript, Volume I, Pages 95-96 and 99-109; Petitioner's Exhibit 13, 14 and 15.
- Respondent allowed a resident with a known propensity towards violence to continue to reside at its facility after the resident had struck another resident. See Paragraphs 19 through 23 of the Recommended Order; Transcript, Volume II, Pages 170-182; Petitioner's Exhibits 18, 19 and 20.
- Respondent failed to properly report inappropriate behavior exhibited by one of its employees towards a resident. The employee later engaged in sexual conduct with the same resident. See Paragraphs 26 through 33 of the Recommended Order; Transcript, Volume IV, Pages 420-433.

This evidence demonstrates that solely imposing a fine and survey fee in this case would not provide adequate protection to the health, safety and welfare of Respondent's residents. Respondent cares for a very vulnerable segment of Florida's population: young persons with mental and physical problems. Respondent has demonstrated that it cannot adequately care for

such residents and safeguard them from harm. Thus, Respondent should no longer be allowed to have its license.

The ALJ concluded, and neither party has disputed, that Respondent failed to provide a safe and decent environment free from abuse and neglect and failed to treat its residents with consideration and respect and with due recognition of personal dignity and individuality in violation of § 429.28(1)(a) and (b), Fla. Stat. See Paragraph 50 of the Recommended Order. Also, Respondent was terminated as a Medicaid provider, which is grounds for revocation or denial of licensure under § 408.815(1)(e), Fla. Stat. See Paragraph 51 of the Recommended Order. As stated in the Amended Administrative Complaint, these violations give the Agency the authority to revoke Respondent's assisted living facility pursuant to § 429.14(1)(e)1., Fla. Stat., for having been cited for one or more Class I deficiencies; and pursuant to § 429.14(1)(k). Fla. Stat., for having committed an act constituting a ground upon which an application for licensure may be denied. See Paragraph 60 of the Amended Administrative Complaint. Therefore, the Agency grants Petitioner's exceptions to the ALJ's Recommended Penalty. In addition to the fine and survey fee imposed by the ALJ, the Agency hereby imposes the additional penalty of revocation of Respondent's assisted living facility license. Because the Agency finds that it has grounds to increase the ALJ's recommended penalty, it denies the Petitioner's motion for remand as moot.

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

1. The Agency's Amended Administrative Complaint is UPHELD and the above-named Respondent's license is REVOKED.

2. Additionally, a \$20,000 fine and \$1,000 survey fee are hereby imposed. Unless payment has already been made, payment in the amount of \$21,000 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 filing 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, Mail Stop #14, Tallahassee, FL 32308.

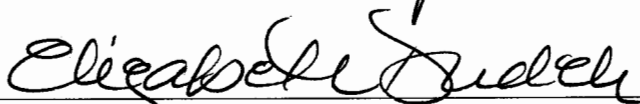
3. In order to ensure the health, safety, and welfare of the Respondent's clients, the revocation of the Respondent's license is stayed for 30 days from the filing date of this Final Order for the sole purpose of allowing the safe and orderly discharge of clients. § 408.815(6), Fla. Stat. The Respondent is prohibited from accepting any new admissions during this period and must immediately notify the clients that they will soon be discharged. The Respondent must comply with all other applicable federal and state laws. At the conclusion of the stay, or upon the discontinuance of operations, whichever is first, the Respondent shall promptly return the license certificate which is the subject of this agency action to the appropriate licensure unit in Tallahassee, Florida. Fla. Admin. Code R. 59A-35.040(5).

4. In accordance with Florida law, the Respondent is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. The Respondent is advised of Section 408.810, Florida Statutes.

5. In accordance with Florida law, the Respondent is responsible for any refunds that may have to be made to the clients.

6. The Respondent is given notice of Florida law regarding unlicensed activity. The Respondent is advised of Section 408.804 and Section 408.812, Florida Statutes. The Respondent should also consult the applicable authorizing statutes and administrative code provisions. The Respondent is notified that the cancellation of an Agency license may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

ORDERED in Tallahassee, Florida, on this 15 day of April, 2013.



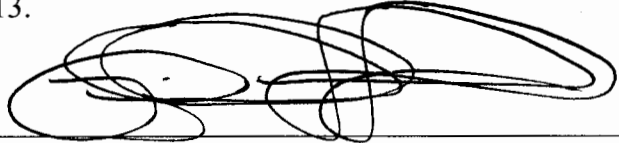
ELIZABETH DUDEK, Secretary
AGENCY FOR HEALTH CARE ADMINISTRATION

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 CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 16th day of April, 2013.



RICHARD J. SHOOP, Agency Clerk
 AGENCY FOR HEALTH CARE ADMINISTRATION
 2727 Mahan Drive, MS #3
 Tallahassee, Florida 32308
 Telephone: (850) 412-3630

Copies furnished to:

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Shaddrick A. Haston, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)
Finance & Accounting Revenue Management Unit Agency for Health Care Administration (Electronic Mail)	Pat Cauffman, Field Office Manager Area 5/6 Field Office Agency for Health Care Administration (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	James H. Harris, Esquire Assistant General Counsel Agency for Health Care Administration (Electronic Mail)
Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	Gene Cowles and Amelia Cowles Hilandale Assisted Living 6333 Langston Avenue New Port Richey, Florida 34652 (U.S. Mail)

<p>Honorable Lynne A. Quimby-Pennock Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (Electronic Filing)</p>	<p>Augustine Smythe Weekley, Esquire Weekley Schulte Valdes, LLC 1635 North Tampa Street, Suite 100 Tampa, Florida 33602 (U.S. Mail)</p>
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NOTICE OF FLORIDA LAW

408.804 License required; display.--

(1) 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.

(2) A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

408.812 Unlicensed activity. --

(1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.

(2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.

(4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.