

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NO. 12-2306

AHCA NOS. 2011010145

2011010179

v.

RENDITION NO.: AHCA-13-0150 -FOF-OLC

DOS OF CRYSTAL RIVER ALF, LLC
d/b/a CRYSTAL GEM ALF,

Respondent.

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), James H. Peterson III, conducted a formal administrative hearing. At issue in this case is whether Respondent failed to have a completed Residential Health Assessment form for each resident, failed to provide appropriate supervision to prevent elopement, failed to properly notify a resident's health care provider of a significant change in a resident, and neglected a resident by failing to take adequate measures to protect the resident from eloping; and, if so, what penalty should be imposed. The Recommended Order dated December 28, 2012, 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)(j). 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 conclusions of law in Paragraph 52 of the Recommended Order, wherein the ALJ found that the violations alleged in Count I of the Administrative Complaint did occur, but were not Class III deficiencies as alleged by Petitioner. Petitioner argues that the ALJ’s conclusions of law in this paragraph are contrary to applicable law because they require the Agency to prove actual harm in order to impose a Class III deficiency on Respondent for the violations alleged in Count I of the Administrative Complaint. The conclusions of law in Paragraph 52 of the Recommended Order (as well as Paragraphs 53 and 54) follow from the ALJ’s findings of fact in Paragraphs 8-10 of the Recommended Order. The Agency believes that the ALJ incorrectly interpreted the definition of

a Class III deficiency. In Paragraph 8 of the Recommended Order, the ALJ found that “[t]he Agency, however, offered no evidence indicating ... that any of the deficiencies in the forms identified by the Agency harmed any resident.” (Emphasis added). In Paragraph 9, the ALJ goes on to find that, “[w]hile the Agency argued that missing information in the health assessments could cause potential problems for the subject residents, those arguments were merely speculative ... the Agency did not show that any of the residents were receiving improper care.” (Emphasis added). As Petitioner noted in its exceptions, the ALJ’s findings and conclusions are in contradiction with previous Agency final orders, as well as the plain language of § 408.813(2), Florida Statutes, which defines a Class III deficiency as one in which the violation “indirectly or potentially threaten[s] the physical or emotional health, safety, or security of clients.” (Emphasis added). However, Petitioner only took exception to Paragraph 52 of the Recommended Order, and rejecting or modifying that paragraph alone would create a conflict between it and Paragraphs 8-10 and 53-54 of the Recommended Order. Additionally, as pointed out by Respondent in its Response to Petitioner’s exceptions, the ALJ’s findings and conclusions on this issue involved the weighing of evidence. Indeed, in Paragraph 10 of the Recommended Order, the ALJ states “the evidence was insufficient to show that the deficiencies ‘indirectly or potentially threaten[ed] the physical or emotional health, safety, or security of facility residents.’” If the Agency were to reject or modify all the relevant findings and conclusions on this issue, it would give the appearance that it had re-weighed the evidence, an action that is strictly prohibited by law. See Heifetz v. Dep’t of Bus. Reg., 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Therefore, the Agency denies Petitioner’s exception 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. These conclusions of law are limited to the specific facts of this case and should not be used as general precedent.

ORDER

Based upon the foregoing, Count I of the Agency's May 29, 2012 Administrative Complaint is hereby reduced to a Class IV deficiency and a \$100 fine is hereby imposed on Respondent; and Counts II and III of the Agency's May 29, 2012 Administrative Complaint are hereby dismissed. The parties shall govern themselves accordingly.

Unless payment has already been made, payment in the amount of \$100 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.

DONE and ORDERED this 7 day of January, 2013, in Tallahassee, Florida.



ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

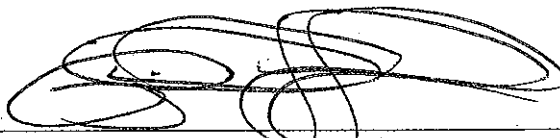
NOTICE OF RIGHT TO JUDICIAL REVIEW

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 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 8th day of February, 2013.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308
(850) 412-3630

COPIES FURNISHED TO:

Honorable James H. Peterson III
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

James H. Harris, Esquire
Assistant General Counsel

Theodore E. Mack, Esquire
Powell & Mack
3700 Bellwood Drive
Tallahassee, Florida 32303

Jan Mills
Facilities Intake Unit

Revenue Management Unit
Finance & Accounting