

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

AGENCY FOR HEALTHCARE
ADMINISTRATION,

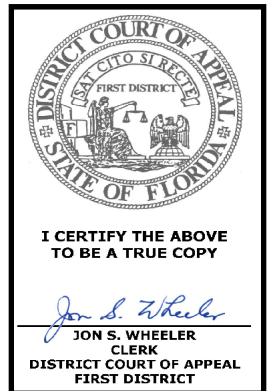
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D13-0224

v.

BAYFRONT MEDICAL
CENTER, INC., CAPE
MEMORIAL HOSPITAL, INC.
d/b/a CAPE CORAL HOSPITAL,
CGH HOSPITAL, LTD. d/b/a
CORAL GABLES HOSPITAL,
DELRAY MEDICAL CENTER,
INC. d/b/a DELRAY MEDICAL
CENTER, LEE MEMORIAL
HEALTH SYSTEM, d/b/a LEE
MEMORIAL HOSPITAL and
GULF COAST MEDICAL
CENTER, LIFEMARK
HOSPITALS OF FLORIDA,
INC. d/b/a PALMETTO
GENERAL HOSPITAL,
MORTON PLANT HOSPITAL
ASSOCIATION, INC. d/b/a
MORTON PLANT HOSPITAL
and MORTON PLANT NORTH
BAY HOSPITAL, PALM
BEACH GARDENS
COMMUNITY HOSPITAL, INC.
d/b/a PALM BEACH GARDENS
MEDICAL CENTER, SOUTH
BROWARD HOSPITAL
DISTRICT d/b/a MEMORIAL
HEALTH SYSTEM d/b/a
MEMORIAL REGIONAL



HOSPITAL, MEMORIAL
HOSPITAL WEST, MEMORIAL
HOSPITAL PEMBROKE, and
MEMORIAL HOSPITAL
MIRAMAR, SOUTH FLORIDA
BAPTIST HOSPITAL, INC. d/b/a
SOUTH FLORIDA BAPTIST
HOSPITAL, ST. ANTHONY'S
HOSPITAL, INC. d/b/a ST.
ANTHONY'S HOSPITAL, ST.
JOSEPH'S HOSPITAL, INC.
d/b/a ST. JOSEPH'S HOSPITAL,
ST. JOSEPH'S CHILDREN'S
HOSPITAL, ST. JOSEPH'S
HOSPITAL NORTH and ST.
JOSEPH'S WOMEN'S
HOSPITAL, TENET GOOD
SAMARITAN, INC. d/b/a GOOD
SAMARITAN MEDICAL
CENTER, TENET
HEALTHSYSTEM NORTH
SHORE, INC. d/b/a NORTH
SHORE MEDICAL CENTER
and NORTH SHORE MEDICAL
CENTER-FMC CAMPUS,
TENET HIALEAH
HEALTHSYSTEM, INC. d/b/a
HIALEAH HOSPITAL, TENET
ST. MARY'S, INC. d/b/a ST.
MARY'S MEDICAL CENTER,
TRUSTEES OF MEASE
HOSPITAL, INC. d/b/a MEASE
DUNEDIN HOSPITAL and
MEASE COUNTRYSIDE
HOSPITAL, WEST BOCA
MEDICAL CENTER, INC. d/b/a
WEST BOCA MEDICAL
CENTER,

Appellees.

Opinion filed July 16, 2014.

An appeal from the Division of Administrative Hearings.
John D. C. Newton, II, Judge.

Tracy Cooper George, Chief Appellate Counsel, Agency for Health Care Administration, Tallahassee, for Appellant.

Joanne B. Erde of Duane Morris LLP, Miami, for Appellees.

WOLF, J.

Appellant, the Agency for Health Care Administration (AHCA), filed an appeal of a final order of the Division of Administrative Hearings which found that AHCA was operating under an unpromulgated rule. After the issues were fully briefed and this court heard oral arguments, AHCA filed a notice of voluntary dismissal. In light of this notice, we dismiss. However, we write to specify that AHCA may not avoid its obligation to pay appellees' reasonable appellate attorney's fees by filing this belated notice of voluntarily dismissal.

Section 120.595(4)(a), Florida Statutes, requires that “[i]f the appellate court or administrative law judge determines that” an agency is operating under an unpromulgated rule, “a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney’s fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.”

Here, the administrative law judge (ALJ) found that AHCA was operating under an unpromulgated rule which was not required by the Federal Government. AHCA has sought to voluntarily dismiss this court's review of that finding. Thus, the ALJ's finding entitles appellees to reasonable attorney's fees during the entire duration of these proceedings. As such, we accept the voluntary dismissal, but we grant appellees' motion for appellate attorney's fees and remand for a determination of the amount if the parties are unable to reach an agreement.

DISMISSED. APPELLEES' MOTION FOR ATTORNEY'S FEES GRANTED.

PADOVANO and RAY, JJ., CONCUR.