

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PLEASANT PLACE, INC.,

Petitioner,

vs.

Case No. 13-1244

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On June 4, 2013, an administrative hearing in this case was held in Gainesville, Florida, before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mortlake Nembhard  
Pleasant Place, Inc.  
732 Northwest 4th Street  
Gainesville, Florida 32601

For Respondent: Lucy Goddard-Teel, Esquire  
Department of Children and Families  
Building J (IO3)  
1000 Northeast 16th Avenue  
Gainesville, Florida 32601

STATEMENT OF THE ISSUE

The issue in this case is whether the Department of Children and Families ("Department") properly denied the application of Pleasant Place, Inc. ("Pleasant Place") to renew

its residential child caring agency license for foster children, particularly maternity residents.

PRELIMINARY STATEMENT

By letter dated February 19, 2013, referenced herein as the "Agency Action Letter," Samuel Norris, an operations and management consultant in the Foster Care Licensing unit of the Department, informed Pleasant Place that its license as a child caring agency for foster children would not be renewed, pursuant to section 409.175(9)(a), Florida Statutes. The letter stated as follows, in relevant part:

On November 29, 2011, the Regional Licensing staff visited Pleasant Place, Inc. to conduct the annual relicensure review to determine if the agency was meeting licensure requirements as established in Florida Administrative Code, 65C-14. The on-site inspection revealed concerns with the program's background screening of staff, program management, proper record keeping and proper documentation in the children's files. The facility was issued a provisional license on December 21, 2011, to allow the facility time to correct the areas of concern.

The Department has had ongoing concerns regarding the facility's financial stability. A final judgment of foreclosure was issued against the facility on March 23, 2012, due to the agency being in default with its second mortgage on the facility property. It was ordered that the property be sold at public sale on September 12, 2012, if the agency failed to pay the bank a total of \$72,369.47. Pleasant Place filed for Chapter 11 Bankruptcy on September 12, 2012.

On November 19, 2012, the Department found that the agency was unable to demonstrate its financial stability by submission of the Board approved financial audit for the most recent fiscal year (ending June 30, 2012). The agency provided the financial audit for fiscal year ending June 30, 2010, on October 1, 2012.

Mortlake Nembhard and Chairman of the Board, Stuart Palmer, entered into a Corrective Action Plan with the Department on December 21, 2012, to address the areas of non-compliance found during the 2012 relicensing review, regarding failure to properly background screen and maintain documentation of a full-time volunteer, failure to maintain appropriate documentation in the children's files, failure to provide individualized service plans and documentation of those services for the children, failure to provide required menu consultation for the parenting/pregnant teens.

On February 15, 2013, the Regional Licensing Staff visited Pleasant Place to determine if the agency is meeting the licensure requirements of the Florida Administrative Code 65C-14 and the identified corrections per the agreed upon Corrective Action Plan. During this visit it was found that the facility failed to be in substantial compliance with administrative code and had failed to complete the Corrective Action Plan requirements.

Specifically the facility violated the following administrative code requirements:

65C-14.076, Organization<sup>1/</sup>

(2) Funding: The agency shall provide written documentation that it has sufficient funds to meet all requirements for licensure.

(4) Audit: The agency shall have financial records audited annually.

The audit submitted [sic] for fiscal year ending June 30, 2012, did not meet the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The audit did not contain an opinion regarding the agency's internal control over financial reporting and compliance with certain provisions of law, regulations, contracts, and grant agreements and other matters. The agency has failed to provide the approved financial audit for fiscal year ending June 30, 2012.

65C-14.080, Food Service

The facility shall assign a staff member to the overall management of the food service. If this person is not a professionally registered dietitian, consultation on menu planning shall be obtained at least quarterly from a professionally registered dietitian or the local health department. In maternity residences menus shall be appropriate to meet the nutritional needs of pregnant women.

The facility failed to provide documentation that the menus were reviewed quarterly. The menus were signed on 11/19/12, but stated approval back to January 2012. There was not evidence that the menus were signed by a registered dietitian.

65C-14.072, Medical Information

(1) The maternity residence shall compile or have available a medical history of the pregnant women. The records shall include the dates of immunizations, medications, examinations, and any treatments for specific illness or medical emergencies.

The agency failed to document complete medical history regarding doctor's visits, immunizations records, etc. in three of the four resident files, which were reviewed during the [sic] on-site visit on 2/15/13.

65C-14.077, Child's Case Record

(1) The facility shall maintain individual records for each child in care which include the following: (b) medical information obtained at admission; (f) Medical history, treatment and clinical records and progress reports, and any psychological and psychiatric reports, educational or vocational records and social history.

The agency failed to ensure that all resident files had past school records. Three of four resident files did not have the necessary past educational documentation such as past reports, evaluation scores, IEP documents, etc. By not obtaining the documentation from past educational providers, the facility failed to ensure that the educational needs of each resident were being met.

65C-14.025 Volunteers

(2) A facility which utilizes volunteers to work directly with children shall:

(a) Develop a description of duties and specific responsibilities;

(b) Develop a plan for the orientation and training in the philosophy of the facility, the needs of the children in care, and the needs of their families; and

(c) Provide for participation in carrying out the service plans for children and families they are working with.

(3) Volunteers who perform any services for children shall have the same qualifications

and training as a paid employee for the position and shall receive the same supervision and evaluation as a paid employee.

(4) Records shall be kept on the hours and activities of volunteers.

The facility failed to ensure that a volunteer who was performing the duties of a paid staff person did not have documentation [sic] in the file, reviewed on 2/15/13, of the required safety training (CPR, First Aid and water safety). This volunteer has been observed to be the sole supervisor of the residents. The lack of proper training placed the children at risk when left unsupervised with this individual.

65C-14.045, Program Services for Children In Care

Service Plan:

(1) The facility shall develop a written service plan or obtain a copy of the child's performance agreement within 30 days of placement for each child admitted into care. The service plan shall integrate the provisions of the performance agreement or the permanent placement plan.

(a) The development of the service plan shall involve:

(b) The child's parents, guardian and other appointed representatives and a representative of the referring agency if appropriate.

(c) Staff, volunteers, and others who work directly with children in care.

(2) The service plan shall include the following:

(a) An assessment of the child's and family's needs, strengths, weaknesses, and problems;

(b) An assessment of the child's educational, vocational, recreational and medical needs; a plan for meeting them; and daily living activities;

(c) Arrangements for individual or group counseling, as needed to resolve emotional conflicts or improve self esteem to help the child deal with personal problems, develop satisfying relationships and grow toward maturity;

(d) A projection in regard to the child's length of stay and the conditions under which the family will be reunited or another appropriate plan will be made;

(e) A plan for agency contact with the child's parent or guardian to work toward reunification and resolution of the problems which lead to placement.

The facility has failed to provide regular and beneficial counseling services in regard to preparation for parenthood and family life education for the residents. Services such as Healthy Start and the Alachua County Continuing Education Program for Parenting Teens have refused to continue a working relationship with the facility due to past issues and concerns the service providers have raised regarding the quality of care the facility has provided. The facility exclusively [sic] served children in the foster care system. Quality service intervention is vital to ensure the children are prepared to adequately parent.

It is the Department's expectation that all group care facilities provide quality care to all its residents on a continuous basis. Children in group care facilities should be

able to live in environments that are nurturing, stimulating and that promote personal growth.

Based on a thorough review of your file, the Department of Children and Families has determined that your Child Caring Agency, Pleasant Place Inc. has failed to comply with Florida Administrative Code 65C-14. The Department of Children and Families cannot ensure the safety and well-being of children in your agency's care. Therefore, your license as a child caring agency provider for foster children will not be renewed.

On or about March 14, 2013, Pleasant Place timely filed a Petition for Administrative Hearing ("Petition") containing a detailed defense against the allegations of the Agency Action Letter. The Department forwarded the Petition to the Division of Administrative Hearings ("DOAH") on April 10, 2013.

The hearing was scheduled for June 4, 2013, on which date it was convened and completed.

At the outset of the hearing, The Department agreed that Mr. Nembhard could be allowed to represent Pleasant Place in his capacity as executive director. The Department also stipulated that, the style of the case notwithstanding, it has the burden of demonstrating that Pleasant Place is not entitled to a renewal of its existing license.

The Department presented the testimony of Kendra Bradley, a family services specialist in its foster care licensing unit; Gail Jackson, a family care counselor at Partnership for Strong



Families; Mr. Norris, the operations and management consultant who wrote The Agency Action Letter; and Mr. Nembhard. The Department's Exhibits 1 through 12 were admitted into evidence. Pleasant Place presented the testimony of Mr. Nembhard; Ms. Bradley; Joleen Williams, a residential advisor at Pleasant Place; and Stuart Palmer, chairman of the board of Pleasant Place. Pleasant Place's Exhibits 1C, 1D, 3, 5, 8A and 8B were admitted into evidence. Pleasant Place Exhibit 5 consists of educational records of some of its residents. Pleasant Place was allowed to file a redacted copy of this exhibit after the hearing.

The one-volume transcript of the hearing was filed at DOAH on July 5, 2013. The Department timely filed its Proposed Recommended Order on July 15, 2013. Pleasant Place did not file a proposed recommended order.

#### FINDINGS OF FACT

1. The Department is the agency charged with the responsibility of licensing foster homes in the state of Florida. § 409.175, Fla. Stat.

2. Pleasant Place is a maternity home for children in foster care. It has been licensed by the Department as a residential child caring agency since 1998. Pleasant Place's most recent license, number 100027820, was a provisional license.

3. In December 2011, Pleasant Place received a provisional license after the Department's review disclosed deficiencies regarding drop-side cribs, fire inspections, health inspections, and failure to provide an annual audit. At the time of the 2012 review to determine relicensure, Pleasant Place had corrected the crib and inspection issues but had still failed to provide audit reports for the fiscal years ending June 30, 2010 and June 30, 2011. Therefore, Pleasant Place's license was still in provisional status at the time of the re-licensure review.

4. On September 11, 2012, Pleasant Place filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. This filing was made to circumvent a foreclosure judgment against Pleasant Place's real and personal property in favor of Hancock Bank, which was successor in interest to Peoples First Community Bank on a mortgage agreement with Pleasant Place. The foreclosure judgment indicated that Pleasant Place owed \$72,369.47 on the mortgage. The judgment, dated March 23, 2012, gave Pleasant Place until September 12, 2012, to pay this sum to Hancock Bank or face the sale of its property at public auction. This note was a second mortgage on Pleasant Place's real property.

5. By October 1, 2012, the Department had learned of the bankruptcy filing. On that date, family services specialist Kendra Bradley and program administrator Linda Compton met with

Mr. Nembhard, who explained that the foreclosure involved a second mortgage. Pleasant Place had stopped making payments on the loan and tried to renegotiate the terms of the mortgage with Hancock Bank, which had acquired the loan as receiver for the failed Peoples First Community Bank. Peoples First had rolled the loan over several times for Pleasant Place, but Hancock Bank showed no interest in doing so because the account was in default. Hancock Bank would not renegotiate unless Pleasant Place brought the payments current.

6. Mr. Nembhard testified that Pleasant Place had stopped making the roughly \$700 per month mortgage payments in the spring of 2011 and was unable to bring the account into current status. Pleasant Place believed that it had no choice but to file for bankruptcy protection in order to force a negotiation with the bank through the bankruptcy trustee.

7. Mr. Nembhard testified that Pleasant Place's financial difficulties began in March 2010, when it received a hold on placements due to sexual exploitation allegations against the facility that were investigated and ultimately determined to be unfounded. Pleasant Place was forbidden to take new residents from March until early July 2010. Mr. Nembhard testified that even after the formal hold was lifted, there were few clients at Pleasant Place for the remainder of 2010. Even though the 16

bed facility had only one resident between April and November 2010, Pleasant Place's overhead remained relatively fixed and the facility was forced to use its reserves to stay in compliance with regulations and keep the doors open. By January 2011, Pleasant Place was in such dire financial straits that it could no longer make the payments on the second mortgage.

8. At the October 1, 2012, meeting, Mr. Nembhard provided Ms. Bradley with Pleasant Place's audit report for the fiscal year ending June 30, 2010 ("2010 audit"). Ms. Bradley reminded Mr. Nembhard that Pleasant Place's license was still in provisional status for failure to provide its annual audits, and that Pleasant Place still had not submitted its audit report for the fiscal year ending June 30, 2011 ("2011 audit").

9. Ms. Bradley also reminded Mr. Nembhard that Pleasant Place would need to prepare its audit report for the fiscal year ending June 30, 2012 ("2012 audit") for submission in December 2012. Ms. Bradley testified that in her experience licensed agencies provide their audits within six months of the end of their fiscal years without much problem. She conceded there was no provision in rule or statute that mandates a six-month turnaround on audits. However, it is reasonable to expect that annual audits be performed roughly within the six-month timeframe, given that entities seeking licensure must provide

“satisfactory evidence of financial ability to provide care for the children in compliance with licensing requirements.”

§ 409.175(5)(a)8., Fla. Stat. A two-year-old audit report tells the Department little about the current financial situation of a facility.<sup>2/</sup>

10. On November 19, 2012, Ms. Bradley conducted a site visit to Pleasant Place in order to conduct the annual re-licensure review. Based on her in-depth review of Pleasant Place’s facility and documentation, Ms. Bradley prepared a report, dated December 19, 2012. In this review, Ms. Bradley made the following deficiency findings: Pleasant Place had initiated but not completed its 2011 audit and had not even initiated its 2012 audit; Pleasant Place had failed to document whether its board of directors had conducted the required annual meeting; Pleasant Place had failed to fully document its fire drills; Pleasant Place did not document that it had performed the required quarterly consultation with a registered dietician to ensure that the facility was meeting the dietary needs of pregnant women and children; medical, medication and educational logs for certain residents were incomplete; and certain employee and volunteer files did not contain documentation of background reviews.

11. Ms. Bradley's report concluded as follows, in relevant part:

It has been noted that the facility has experienced some financial difficulties this relicensing year. A final judgment of foreclosure was issued against the facility on March 23, 2012, due to the agency being in default with its second mortgage on the facility property. It was ordered that the property be sold at a public sale on September 12, 2012, if the agency failed to pay the bank a total of \$72,369.47. Pleasant Place filed for Chapter 11 Bankruptcy on September 12, 2012.

The agency was issued a provisional license at last year's relicensure due to the lack of a satisfactory health inspection, satisfactory fire inspection and the financial audits for 2010 and 2011 and also the presence of non-compliant cribs. The agency submitted documentation of the health inspection, fire inspection, and new cribs by March 2012. The agency provided the 2010 financial audit on October 1, 2012. The agency has not submitted the financial audit for 2011. It is noted that the agency's most recent fiscal year ended June 30, 2012, and there is no documentation that audit has been initiated. The executive director informed the Department on December 17, 2012, that there was an issue obtaining the 2011 audit as payment had to be approved by the bankruptcy court.

The facility's overall compliance rating of 88% and ongoing financial issues are of grave concern to the Department. Due to the currently [sic] population of five mothers and six infants/toddlers, the Department can only recommend at this time a sixty (60) day short term license, pursuant to FAC 65C-14, for a period effective December 20, 2012, to February 19, 2013, for a capacity of fourteen (14) total children. The facility

will be subject to a corrective action plan regarding the areas of non-compliance during the stated time period. The Department will also issue a placement hold during this time period, to allow for the facility to correct their issues and/or allow for alternative placement of the current residents elsewhere.

12. The referenced corrective action plan ("CAP") was issued on December 20, 2012. As to each deficiency noted in the relicensure review, the CAP stated a corrective action, named the party responsible for taking that action, and set forth a target date for completion of the corrective action.

13. As to the financial audit issue, the CAP required Mr. Nembhard to provide the Department with a copy of the completed 2011 audit, with a target date of February 19, 2013. The CAP also required Mr. Nembhard to "engage the services of a certified public accountant (CPA) to ensure" that the 2012 audit is completed. The target date for engaging the CPA was January 19, 2013. The CAP concluded by stating that Pleasant Place must provide "documentation of the initiation of the 2012 audit" no later than the stated deadline.

14. Pleasant Place submitted its completed 2011 audit on February 18, 2013. The 2011 audit showed total current assets of \$24,754, including \$2,181 in cash, \$20,713 in grants receivable, and \$1,860 in deposits. Pleasant Place's current assets were well short of six months' reserves to cover

expenses. Ms. Bradley explained that licensed agencies such as Pleasant Place are required to have six months' reserves because they generally receive their monies after the fact through reimbursement contracts with child placement agencies. There may be a 30-day lag time between the placement of the child at Pleasant Place and the commencement of payments for that child, meaning that Pleasant Place must have the wherewithal to provide quality services notwithstanding the delay in payment.

15. The 2011 audit showed total combined revenue of \$192,393 and total expenses of \$207,431, a revenue shortfall of \$15,038. In contrast, Pleasant Place's 2010 audit showed that its total combined revenue of \$280,892 more than covered its total expenses of \$279,088. The 2011 audit report noted "material weaknesses or significant deficiencies" in Pleasant Place's handling and recordation of cash payments, and in its recordation of both accounts payable and receivable.

16. On February 15, 2013, Pleasant Place submitted to Ms. Bradley an engagement letter from its CPA firm, Sexton & Scholl, dated January 31, 2013, to undertake the 2012 audit. Ms. Bradley read the document and informed Mr. Nembhard that it was too vague to be considered an engagement letter. Mr. Nembhard subsequently submitted an addendum to the engagement letter, which Ms. Bradley also found too vague. At the hearing, Ms. Bradley testified that in her experience, a



CPA's engagement letter specifically states the review period, the initiation date of the audit, the information required from the client, and the anticipated completion date and required payment.

17. Ms. Bradley cited to no statute or rule that provides specific requirements for a CPA's engagement letter in this context, nor did she establish her own credentials in the accounting profession that might lend more weight to her opinion. Therefore, the opinion she expressed as to the sufficiency of the engagement letter was merely that of a layperson, albeit one with some experience in reading similar documents.

18. The undersigned finds that Ms. Bradley's interpretation was too strict and failed to take into account the fact that Sexton & Scholl had a long-term relationship with Pleasant Place. The letter commits Sexton & School to "audit the statements of financial position of Pleasant Place, Inc. as of June 30, 2012, and the related statements of activities, functional expenses, and cash flows for the year then ended." The letter and addendum establish that the firm will complete the audit no later than 180 days after receipt of information and all required fees. The fee is stated at \$10,200 for the audit and \$800 for the information returns, to be billed monthly, with a deposit of \$5,000 to be submitted at the

commencement of the audit work. The letter and addendum appear sufficient to establish the basic terms of Sexton & Scholl's engagement in light of the firm's ongoing relationship with Pleasant Place.

19. Ms. Bradley conceded that this engagement letter looked "not very much different" than Sexton & Scholl's engagement letters to Pleasant Place in previous years. Because of the ongoing issue of late audits, Ms. Bradley believed that this letter should have provided "more specifics" than the earlier ones. However, the evidence provided at the hearing indicated that the problem with late audits was not the fault of the auditors but was due to Pleasant Place's failure to pay them on time, complicated after September 2012, by the need to get approval of the bankruptcy court for auditing expenses. There was thus no reason to require Sexton & Scholl to modify its standard engagement letter.

20. However, the engagement letter made it clear that Sexton and Scholl's performance of the audit was contingent on submission of the deposit and provision of the general ledgers and other information needed for the audit. As of the date of the hearing in this case, Pleasant Place had neither paid the deposit nor provided the necessary documentation, meaning that the 2012 audit had not been initiated and was still at least six months from completion. It thus appeared to the Department that

Pleasant Place would submit its 2012 audit at least one year after the date it should reasonably have done so, after having submitted its 2010 audit two years late and having been more than one year late submitting its 2011 audit. Based on all the facts, it was not unreasonable for the Department to conclude that Pleasant Place had failed to document the initiation of the 2012 audit.

21. Mr. Nembhard testified that Pleasant Place attempted to fully comply with the CAP. He believed that delivery of the 2011 audit report and submission of the engagement letter for the 2012 audit would be sufficient to obtain relicensure. However, the Department's concerns about the financial condition of Pleasant Place went beyond the chronic late filing of the annual audits and were not satisfied as the end of the 60-day short-term license period approached in mid-February 2013.

22. Ms. Bradley testified that Pleasant Place provided her with a copy of its financial report to the bankruptcy court, but that the report did not show sufficient revenue to satisfy the Department's concerns about Pleasant Place's financial capacity.

23. Samuel Norris, the Department operational management consultant who supervises Ms. Bradley, testified that the Department's decision not to renew Pleasant Place's license was primarily based on the facility's financial problems. The foreclosure and bankruptcy indicated that Pleasant Place was not

able to meet its financial obligations. Mr. Norris testified that the rule requirement that a licensed entity file an annual audit means an audit for the fiscal year just ended. Pleasant Place should have submitted its 2011 audit at the time of the 2011 licensing review in December 2011 and its 2012 audit at the time of the 2012 review. Mr. Norris testified that Pleasant Place's submission of a two-year-old audit did not comply with the requirement for an annual audit and that the document it submitted as an engagement letter for its 2012 audit was not sufficient.

24. Though the financial concerns were the main reason for the Department's decision, Pleasant Place also had a continuing problem with poor recordkeeping. Pleasant Place failed to regularly obtain the required documentation for all teen mothers' medical, educational and case records and individual service plans. This documentation is required to be obtained prior to admission.

25. Ms. Bradley testified that based on her observations during the 2012 and prior licensing reviews, Pleasant Place made an effort to obtain complete medical and educational records and to update service plans for all children only in response to the licensing review process. Too often, records were completed "after the fact" in response to a Department inquiry.

26. Gail Jackson is a family care counselor employed by the Partnership for Strong Families/Family Preservation Services, child welfare services providers operating in the Gainesville area. For several years, Ms. Jackson has provided courtesy supervision for children from other counties who are placed at Pleasant Place. Ms. Jackson testified that she has had to return to Pleasant Place multiple times to obtain documentation on the children under her supervision. Missing items included birth certificates, which are necessary to enroll a child in school. In one case, a girl staying in Pleasant Place missed nearly a month of school because the facility did not have her birth certificate. Ms. Jackson's overall observation was that Pleasant Place was historically reliable in providing services to its clients, but did a poor job in documenting its services. She believed the facility's performance in this respect had recently improved to a degree.

27. Jolene Williams has worked at Pleasant Place as residential advisor and program coordinator since 2003, and she manages the children's files at Pleasant Place. Ms. Williams testified that it is often difficult to obtain all the required documentation upon admission because of the urgent circumstances under which the children are coming to Pleasant Place. She testified that many of the girls come in because they have "blown placement" somewhere else and need a place to stay.

Sometimes the girls have gone through three or four placements in the space of a few months, and their documents are trailing behind them. The girls usually come in with their birth certificates and Social Security information, but it sometimes takes ten days or so for all of the required documentation to come in.

28. At the hearing, Pleasant Place argued that some of the documentation that Ms. Bradley determined to be missing was actually at the facility and would have been provided to Ms. Bradley if only she had asked for it. Ms. Bradley persuasively responded that when she performs a relicensure review at a facility, she expects the facility to provide her with all the relevant documentation. If her review of the files provided by the facility shows that something is missing, she reasonably assumes the documentation is not there.

29. Pleasant Place failed to provide to the Department required documentation that its menus were reviewed by a registered dietician on a quarterly basis in 2012. Pleasant Place's documentation of a contract with a dietician was provided after the review, and did not establish that a registered dietician had in fact been performing quarterly reviews of Pleasant Place's menus in 2012. Again, Pleasant Place was submitting required documentation after the fact, in response to pressure from the Department.

30. Pleasant Place failed to maintain required documentation for its full-time volunteer, Rodney Williams, the husband of Ms. Williams. At the time of the licensing review Pleasant Place did not have documentation of Mr. Williams' background screening, number of volunteer hours, volunteer activities performed or training, although he had been a full-time volunteer at least since October 1, 2012.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2013).<sup>3/</sup>

32. Section 409.175, Florida Statutes, provides as follows, in relevant part:

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

\* \* \*

(2) As used in this section, the term:

(a) "Agency" means a residential child-caring agency or a child-placing agency.

\* \* \*

(f) "License" means "license" as defined in s. 120.52(10). A license under this section

is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

\* \* \*

(i) "Personnel" means all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency who may be employed by or do volunteer work for a person, corporation, or agency that holds a license as a child-placing agency or a residential child-caring agency, but the term does not include those who do not work on the premises where child care is furnished and have no direct contact with a child or have no contact with a child outside of the presence of the child's parent or guardian. For purposes of screening, the term includes any member, over the age of 12 years, of the family of the owner or operator or any person other than a client, over the age of 12 years, residing with the owner or operator if the agency or family foster home is located in or adjacent to the home of the owner or operator or if the family member of, or person residing with, the owner or operator has any direct contact with the children. Members of the family of the owner or operator, or persons residing with the owner or operator, who are between the ages of 12 years and 18 years are not required to be fingerprinted, but must be screened for delinquency records. . . .



(j) "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under section 393.067 or s. 394.875 or chapter 397.

(k) "Screening" means the act of assessing the background of personnel and includes, but is not limited to, employment history checks as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

\* \* \*

(5) (a) The department shall adopt and amend licensing rules for family foster homes, residential child-caring agencies, and child-placing agencies. The department may also adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps. The requirements for licensure and operation of family foster homes, residential child-caring agencies, and child-placing agencies shall include:

1. The operation, conduct, and maintenance of these homes and agencies and the responsibility which they assume for children served and the evidence of need for that service.

2. The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served.

\* \* \*

5. The good moral character based upon screening, education, training, and experience requirements for personnel.

\* \* \*

8. Satisfactory evidence of financial ability to provide care for the children in compliance with licensing requirements.

9. The maintenance by the agency of records pertaining to admission, progress, health, and discharge of children served, including written case plans and reports to the department.

\* \* \*

(d) In promulgating licensing rules pursuant to this section, the department may make distinctions among types of care; numbers of children served; and the physical, mental, emotional, and educational needs of the children to be served by a home or agency.

\* \* \*

(6)(a) An application for a license shall be made on forms provided, and in the manner prescribed, by the department. The department shall make a determination as to the good moral character of the applicant based upon screening.

(b) Upon application, the department shall conduct a licensing study based on its licensing rules; shall inspect the home or the agency and the records, including

financial records, of the agency; and shall interview the applicant. The department may authorize a licensed child-placing agency to conduct the licensing study of a family foster home to be used exclusively by that agency and to verify to the department that the home meets the licensing requirements established by the department. Upon certification by a licensed child-placing agency that a family foster home meets the licensing requirements, the department shall issue the license.

(c) A licensed family foster home, child-placing agency, or residential child-caring agency which applies for renewal of its license shall submit to the department a list of personnel who have worked on a continuous basis at the applicant family foster home or agency since submitting fingerprints to the department, identifying those for whom a written assurance of compliance was provided by the department and identifying those personnel who have recently begun working at the family foster home or agency and are awaiting the results of the required fingerprint check, along with the date of the submission of those fingerprints for processing. The department shall by rule determine the frequency of requests to the Department of Law Enforcement to run state criminal records checks for such personnel except for those personnel awaiting the results of initial fingerprint checks for employment at the applicant family foster home or agency.

\* \* \*

(g) In the licensing process, the licensing staff of the department shall provide consultation on request.

(h) Upon determination that the applicant meets the state minimum licensing requirements, the department shall issue a license without charge to a specific person

or agency at a specific location. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any person at the home or agency has failed the required screening. The license is nontransferable. A copy of the license shall be displayed in a conspicuous place. Except as provided in paragraph (j), the license is valid for 1 year from the date of issuance, unless the license is suspended or revoked by the department or is voluntarily surrendered by the licensee. The license is the property of the department.

(i) A license issued for the operation of a family foster home or agency, unless sooner suspended, revoked, or voluntarily returned, will expire automatically 1 year from the date of issuance except as provided in paragraph (j). Ninety days prior to the expiration date, an application for renewal shall be submitted to the department by a licensee who wishes to have the license renewed. A license shall be renewed upon the filing of an application on forms furnished by the department if the applicant has first met the requirements established under this section and the rules promulgated hereunder.

\* \* \*

(7) (a) The department may issue a provisional license to an applicant who is unable to conform to the licensing requirements at the time of the study, but who is believed able to meet the licensing requirements within the time allowed by the provisional license. The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable written plan to overcome the deficiency by the expiration date of the provisional license.

(b) A provisional license may be issued when the applicant fails to meet licensing requirements in matters that are not of immediate danger to the children and the agency has submitted a corrective action plan which is approved by the department. A provisional license may be issued if the screening material has been timely submitted; however, a provisional license may not be issued unless the applicant is in compliance with the requirements in this section for screening of personnel.

(c) A provisional license shall not be issued for a period in excess of 1 year and shall not be subject to renewal; and it may be suspended if periodic inspection by the department indicates that insufficient progress has been made toward compliance with the requirements.

\* \* \*

(9) (a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.
2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.
3. Noncompliance with the requirements for good moral character as specified in paragraph (5) (a).
4. Failure to dismiss personnel found in noncompliance with requirements for good moral character.

5. Failure to comply with the requirements of sections 63.0422 and 790.335.

33. Florida Administrative Code Rule 65C-14.026, titled "Organization," provides as follows, in relevant part:

(1) Administration: The agency shall maintain a current organization chart showing the administrative structure including the lines of authority. This chart shall be available to the department.

(2) Funding: The agency shall provide written documentation that it has sufficient funds to meet all requirements for licensure. Facilities beginning operation shall provide evidence of sufficient funding for operation of the program for at least 6 months.

(3) Budget: The agency shall prepare a written budget annually.

(4) Audit: The agency shall have financial records audited annually....

34. Florida Administrative Code Rule 65C-14.025, titled "Volunteers," provides as follows, in relevant part:

(1) A facility which utilizes volunteers to work directly with children on an intermittent basis for more than 40 hours per month must be screened in the same manner as the employees of the facility. A volunteer who assists on an intermittent basis for less than 40 hours per month is exempt from screening provided that the volunteer is under direct and constant supervision by staff at the facility.

(2) A facility which utilizes volunteers to work directly with children shall:

(a) Develop a description of duties and specific responsibilities;

(b) Develop a plan for the orientation and training in the philosophy of the facility, the needs of the children in care, and the needs of their families; and

(c) Provide for participation in carrying out the service plans for children and families they are working with.

(3) Volunteers who perform any services for children shall have the same qualifications and training as a paid employee for the position and shall receive the same supervision and evaluation as a paid employee.

(4) Records shall be kept on the hours and activities of volunteers....

35. Florida Administrative Code Rule 65C-14.070, titled "Specific Rules for Maternity Residences," provides as follows, in relevant part:

(1) Administration: The agency shall maintain a current organizational chart showing the administrative structure including the lines of authority. This chart shall be available to the department.

(2) Funding: Facilities beginning operation shall provide evidence of sufficient funding for operation of the program for at least 6 months.

(3) Budget: The agency shall prepare a written budget annually.

(4) Fees: If fees for services are charged, the agency shall have a written policy which describes the conditions under which fees are charged or waived. This policy shall be available to any person upon request. . . .

36. Florida Administrative Code Rule 65C-14.077, titled "Case Record," provides as follows:

(1) The facility shall maintain individual records for each young woman which include the following:

(a) Information including the name, address, sex, race, religion, birthdate, birth place.

(b) Date of admission, source of referral, and medical information obtained at admission.

(c) Medical history, treatment, clinical records, any psychological and psychiatric reports, educational or vocational records and social history if available.

(d) An individual service plan, reviews and revisions reflecting the young women's adjustment to the facility.

(2) Case records shall be kept confidential.

(3) Staff entries in case records shall be dated and signed.

(4) The case record must be maintained for a minimum of 5 years after a young woman has left the facility.

37. Florida Administrative Code Rule 65C-14.080, titled "Food Service," provides as follows:

The maternity facility shall assign a staff member to the overall management of the food service. If this person is not a professional registered dietitian, consultation on menu planning shall be obtained at least quarterly from a professional registered dietitian or the local health department. In maternity



residences menus shall be appropriate to meet the nutritional needs of pregnant women. Residential programs participating in the Department of Education's Food and Nutrition Management Program will meet this requirement. Nutritious snacks which meet the requirements of the United States Department of Agriculture, Food and Nutrition Service shall be provided.

38. The Department is proposing to deny the renewal of Pleasant Place's residential child caring agency license for foster children. A foster home license is not a professional license and does not create a property right. § 409.175(2)(f), Fla. Stat. Accordingly, the Department must establish facts that support its position by a preponderance of the evidence rather than by the clear and convincing standard imposed in professional license cases. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); M.H. & A.H. v. Dep't of Child. & Fams., 977 So. 2d 755, 762 (Fla. 2d DCA 2008); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). Once the Department has met its burden, Pleasant Place, as the applicant for relicensure, bears the ultimate burden of establishing entitlement to the license sought. In this case, the Department met its burden. Pleasant Place did not.

39. The paramount concern in the Department's licensing decisions is the safety of foster children. The Department has the discretion to deny, suspend or revoke a license, provided

that discretion is not exercised in an arbitrary or capricious manner.

40. Pleasant Place had the statutory obligation to demonstrate to the Department during its licensing review that it had the financial ability to continue to provide care to children. § 409.175(5)(a)8., Fla. Stat.

41. Pleasant Place had been on a provisional license since December 2011, and was not entitled to continue to operate under a provisional license. § 409.175(7)(c), Fla. Stat.

42. The Department proved by a preponderance of the evidence that Pleasant Place had serious financial problems and had not provided the Department with information demonstrating that it had the current financial ability to continue to provide care for children.

43. Specifically, the Department was entitled in December 2012, to demand that Pleasant Place present it with a current audit for the fiscal year that ended on June 30, 2012. When the Department's re-licensing review indicated that Pleasant Place had not even retained an auditor to undertake the 2012 audit, the Department issued a CAP that gave Pleasant Place until February 19, 2013, to demonstrate that the audit had at least been initiated. Pleasant Place proved unable to accomplish even that measure.

44. At the hearing, Pleasant Place presented a sympathetic explanation for why it found itself in a poor financial position, but failed to present documentary evidence sufficient to demonstrate that it possesses the present financial ability to provide care for children.

45. The Department further proved by a preponderance of evidence that Pleasant Place violated Florida Administrative Code Chapter 65C-14, by its failure to consistently and timely maintain children's records, volunteer records, and record of review of menus by a certified dietician.

46. The Department has proved by a preponderance of the evidence that its decision to deny Pleasant Place's renewal application for a residential child caring agency license for foster children was properly within the bounds of the discretion granted by the cited statutes and rules. Pleasant Place failed to counter the Department's presentation with evidence sufficient to establish its entitlement to the license sought.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Children and Families enter a final order denying the application of Pleasant Place, Inc., to renew its residential child caring agency license for foster children.

DONE AND ENTERED this 24th day of September, 2013, in Tallahassee, Leon County, Florida.



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LAWRENCE P. STEVENSON  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of September, 2013.

ENDNOTES

<sup>1/</sup> The citation is incorrect. The rule quoted at this point of the Agency Action Letter is Florida Administrative Code Rule 65C-14.026.

<sup>2/</sup> At the hearing, Mr. Nembhard attempted to argue that the "annual audit" provision of Florida Administrative Code Rule 65C-14.026(4) does not necessarily mandate that the audit be for the current year. His theory appeared to be that so long as the facility submits an audit each year, it does not matter that the submitted audit is one or two years in arrears. Under his theory, Pleasant Place should not be required to submit its 2012 audit until the end of 2013. Mr. Nembhard's argument on this point is without merit, as it would defeat the purpose of the

rule, which is to give the Department an understanding of the current financial position of the licensed entity.

<sup>3/</sup> References to Florida Statutes are to the 2013 version, unless otherwise indicated.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

