

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

SPECIAL CARE, INC.,

Petitioner,

DOAH No. 13-1450

2014 MAR 31 A 11: 22

vs.

AHCA No. 2013002829

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FINAL ORDER

Having reviewed the Notice of Intent to Deem Application Incomplete and Withdrawn from Further Review dated March 13, 2013 (Ex. 1), and the Administrative Law Judge's Order Granting Respondent's Motion to Relinquish Jurisdiction and Dismiss Case As Moot (Ex. 2), the Agency for Health Care Administration finds concludes as follows:

1. The license of the Licensee/Transferor, License Number 5799, was revoked by Final Order dated March 8, 2013.
2. The change of ownership application filed by the Petitioner/Transferee is moot because the Licensee no longer has a license.
3. The Petitioner's change of ownership application is therefore withdrawn from further review in accordance with the Administrative Law Judge's order.

ORDERED in Tallahassee, Florida, on this 28 day of March, 2014.



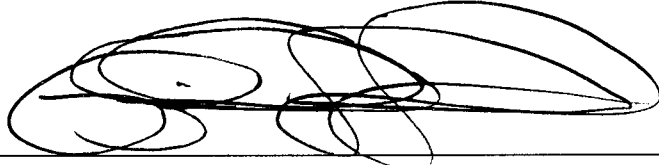
Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party that is adversely affected by this Final Order is entitled to seek 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the below-named persons/entities by the method designated on this 31st day of March, 2014.



Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308-5403
Telephone (850) 412-3630

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Shaddrick Haston, Unit Manager Licensure Unit Agency for Health Care Administration (Electronic Mail)
John E. Bradley, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Arlene Mayo-Davis, Field Office Manager Local Field Office Agency for Health Care Administration (Electronic Mail)
Honorable June C. McKinney Administrative Law Judge Division of Administrative Hearings (Electronic Filing)	Bernard P. Coniff, Esquire Counsel for Special Care, Inc. 760 Ponce De Leon, Suite. 101 Coral Gables, Florida 33134 (U.S. Mail)



FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

Better Health Care for all Floridians

RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

March 13, 2013

2013 MAR 15 P 2:29

CERTIFIED MAIL

Bernard P. Coniff, Esq.
Wilfred Braceras
Special Care, Inc.
760 Ponce De Leon, Ste. 101
Coral Gables, Florida 33134

RECEIVED
GENERAL COUNSEL

License Number: 5799

2013002829

Certified Article Number

7196 9008 9111 8923 4301

SENDERS RECORD

**NOTICE OF INTENT TO DEEM APPLICATION INCOMPLETE AND
WITHDRAWN FROM FURTHER REVIEW**

Dear Sir/s:

Your **change of ownership (CHOW) application** for a license is deemed incomplete and withdrawn from further consideration pursuant to Section 408.806(3)(b), Florida Statutes (F.S.), which states that "Requested information omitted from an application for licensure, license renewal, or change of ownership, other than an inspection, must be filed with the agency within 21 days after the agency's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited".

You were notified by correspondence dated 01/18/2013 to provide further information addressing identified apparent errors or omissions within twenty-one days from the receipt of the Agency's correspondence. Our records indicate you received this correspondence by certified mail on 01/24/2013. The requested information was reviewed by the Agency. However, your application is deemed incomplete and withdrawn from further consideration. The outstanding issues remaining for licensure are:

Proof of Financial Ability To Operate

Conclusion: The applicant has not met the following Statutory filing requirements for proof of financial ability to operate:

- The applicant failed to provide independent evidence that the funds necessary for startup costs, working capital, and contingency financing exist and will be available as needed as required under Section 408.810(8), Florida Statutes.

Analysis: Staff reviewed the documents submitted by the applicant to demonstrate proof of financial ability to operate. Due to errors and omissions in the filing, staff is unable to evaluate the applicant's financial ability to operate.

Proof of Funding: The applicant did not provide adequate proof of ability to fund start-up costs, working capital, and required contingency funding as required by Section 408.810(8), Florida Statutes.

The inter-office omissions letter dated January 18, 2013, raised the following issues:



CHOW Purchase Price

The applicant did not indicate the purchase price on Schedule 1. In addition, the applicant did not provide documentation of the purchase (purchase agreement, bill of sale, etc.) and did not provide proof of available funding to complete the purchase transaction. Please provide supporting documentation indicating the availability of funds to complete the purchase. Proof may include account statements of the purchaser prior to purchase. If the purchase has already been completed (an executed bill of sale exists) please provide documentation of the transfer of funds including canceled checks, and or electronic funds transfer receipts. If the applicant borrowed any of the funds for the purchase from an institution or individual, please disclose the amount borrowed, the identity of the lender, and documentation supporting the loan.

While the applicant did indicate a purchase price of \$30,000, it again did not provide proof of CHOW price, potentially significantly understating its funding requirement.

Working Capital, and Contingency Financing

*Working capital as defined on Schedule 1 as the largest cumulative cash need from year one or two, from Schedule 7, Projected Cash Flow Statement, Line 21 of the application. In its application, the agency listed its largest cumulative cash need as \$0. However, the correct figure, according to the applicants' Schedule 7, as filed, is **\$62,182**.*

*In addition to providing funding for start-up costs and working capital requirement, all applicants are required by law to provide for **contingency financing**. Contingency financing as defined in Section 400.471(2)(e), Florida Statutes, and applies to all agency licensure and requires an applicant's access to contingency financing in addition to funding anticipated cash flows.*

The purpose of contingency financing is to provide funding for unanticipated, extraordinary occurrences that the applicant cannot project. The contingency financing should cover at least one-month's average operating expense over the first year of operations. This funding should be in addition to the funding for working capital and start-up cost on Schedule 1.

*On Schedule 1, the applicant calculated its contingency funding requirement as \$0. However, based on the financial projections in the application, the total annual operating expense in year one is \$1,240,565; therefore, one month's average operating expense would be **\$103,380**.*

Note: the amounts above are based on the application as filed. The amounts may change due to the financial and application omissions in this notice.

*Together, the combined total working capital, and contingency funding requirement for the applicant is **\$165,562**, as filed.*

In its initial application, the applicant did not complete the working capital or contingency funding components of the minimum funding requirement calculation. The only amount listed were pre-opening costs of \$66,375.

In its response to omissions, the applicant included those omitted items and adjusted pre-opening costs, which appears to have incorrectly contained the purchase price instead of it being listed separately.

Because the applicant did not provide any documentation proving the purchase had been completed, and confirming the purchase price, the purchase price must be added to the minimum funding requirement.

As a result, the minimum funding requirement, as filed in its omission response, is \$213,965 (\$60,000 purchase price + \$50,780 working capital + \$103,185 contingency funding).

Insufficient Proof of Funding

The applicant did not indicate any source of funds on Schedule 1, and did not provide any supporting documentation as evidence that any required financing exist and are available for immediate use, as directed in the instructions to Schedule 1.

Failure to provide proof of ability to fund the minimum funding requirement will result in denial of the application.

Pursuant to Schedule 1 instructions, please provide independent, certifiable documentation of the existence and availability of these funds. Examples of documents that support funding include:

- *copies of current bank statements for accounts owned by the proposed agency,*
- *letters of commitment from a bank or other independent lending source,*
- *or a copy of a line of credit agreement indicating credit line and available credit and any restrictions,*
- *parent company audited financial statements (Note: unaudited financial statements will not be considered as proof of funding ability).*

*In addition, if submitting more than one document as support for funding, **attach a separate schedule** that clearly lists each item, including:*

- *Name of the financial institution*
- *Cutoff (balance) date*
- *Last four digits of the account/identification number*
- *Ending balance*
- *For a line of credit, along with the above, provide total credit line and available credit*

Note: any parent company or personal funds pledged to the applicant must meet the above criteria and the owner of the funds must provide a binding letter of financial commitment pledging the funds to the applicant.

Note: already paid pre-opening costs being claimed must be supported by paid invoices, receipts, etc. All receipts must be accompanied by a separate schedule prepared in an orderly fashion that recaps the nature of the expenditure, amount, and that ultimately ties to the amount claimed as pre-paid expense on Schedule 1. Receipts received alone, without an orderly analysis attached will not be considered as a source of funding.

As its source of funds the applicant provided bank statements proving \$143,760 (one statement indicating \$4,916, and the second indicating a balance of \$138,844). In addition, the applicant included a copy of a check in the amount of \$30,000. Staff is unsure of the nature and relevance of the check as no explanation was given for it. However, the funding shortfall is \$70,205 and even if the \$30,000 check were proof of some prepaid costs, the minimum funding requirement would still be under funded by \$40,205.

Since the proven funding is less than the required funding the applicant has not met the provisions of Section 408.810(8), Florida Statutes, and has not proven the financial ability to operate.

Residential Group Care Inspection Report (DOH Form 4029)

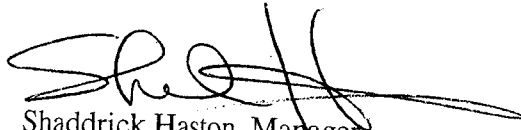
Please provide a copy of this report from your county health department. The report must be satisfactory and have a current date.

EXPLANATION OF RIGHTS

Pursuant to Section 120.569, F.S., you have the right to request an administrative hearing. In order to obtain a formal proceeding before the Division of Administrative Hearings under Section 120.57(1), F.S., your request for an administrative hearing must conform to the requirements in Section 28-106.201, Florida Administrative Code (F.A.C), and must state the material facts you dispute.

SEE ATTACHED ELECTION AND EXPLANATION OF RIGHTS FORMS.

Sincerely,



Shaddrick Haston, Manager
Assisted Living Unit

SH/Pottere

cc: Agency Clerk, Mail Stop 3
Legal Intake Unit, Mail Stop 3

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SPECIAL CARE, INC.,

Petitioner,

vs.

Case No. 13-1450

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

ORDER GRANTING RESPONDENT'S MOTION TO RELINQUISH JUR[ISDICT]ION
AND DISMISS CASE AS MOOT

Respondent's Motion to Relinquish Jur[isdic]tion and Dismiss Case as Moot ("Motion") came before the undersigned on June 10, 2013, in which the Agency for Health Care Administration ("Respondent" or "ACHA") asserted that there are no disputed material facts before the undersigned in this matter. ACHA contends that license number 5799, which Special Care, Inc.,^{1/} is seeking with its change of ownership application, has been revoked by final agency action. Respondent further contends that since license number 5799 ceases to exist, all collateral matters regarding the license are moot, including sufficiency of an application for Petitioner, which is the issue before the undersigned.

On June 17, 2013, Special Care, Inc. filed Petitioner's Objection to Respondent's Motion to Relinquish Jurisdiction and Dismiss Case as Moot ("Response"). In the Response, Petitioner did not dispute the material facts of Respondent's Motion stated in paragraphs two through six. Petitioner only alleged duress by Respondent as the reason for Petitioner's submission of a change of ownership application instead of an initial licensure application.

After careful consideration of the pleadings, and there being no disputed issues of material fact to be resolved by the Division of Administrative Hearings since Petitioner's change of ownership application is moot because license number 5799 does not exist, it is, therefore,

ORDERED that:

1. The Motion is granted.
2. The final hearing scheduled for July 10, 2013, is canceled.
3. Jurisdiction is relinquished to the Agency for Health Care Administration for entry of a final order. The file of the Division of Administrative Hearings is closed.

DONE AND ORDERED this 19th day of June, 2013, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of June, 2013.

ENDNOTE

^{1/} This matter was docketed in error and originally had Boynton Beach Assisted Living Facility as the Petitioner. Special Care, Inc., requested the formal hearing in this matter and is the Petitioner. The style of the case has been corrected to list Special Care, Inc., as the Petitioner in this matter.

COPIES FURNISHED:

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