STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

PINE TREE MANOR, INC. d/b/a PINE TREE MANOR,

Respondent.
_____/

DOAH CASE NOS. 13-2011
13-2397
AHCA NOS. 2013002572
2013004620
FILE NO. 11942985
LICENSE NO. 8317
FACILITY TYPE: ASSISTED LIVING FACILITY
RENDITION NO.: AHCA-14-0094FOF-OLC

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Linzie F. Bogan, conducted a formal administrative hearing. At issue in this case is whether Respondent committed the violations alleged in the Administrative Complaint, and, if so, what penalty should be imposed. The Recommended Order dated December 5, 2013, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

Both the Petitioner and Respondent filed exceptions to the Recommended Order, and Respondent filed a response to the Petitioner's exceptions.

In determining how to rule upon both parties' 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)(*l*), 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 both parties' exceptions:

Petitioner's Exceptions

In its Exceptions to Recommended Order, Petitioner takes exception to the conclusions of law in Paragraph 72 of the Recommended Order, wherein the ALJ concluded that there were mitigating factors present in this matter that weighed against revocation of Respondent's license. Petitioner argues that Section 429.14(1)(e)1., Florida Statutes (2011), allows the Agency to revoke Respondent's license if there is one or more cited class I deficiencies. Petitioner points out that the ALJ found Respondent had committed one class I deficiency in this matter (See, e.g., Paragraphs 61 and 62 of the Recommended Order). Thus, according to Petitioner, revocation of Respondent's license is warranted. The Agency can only increase the ALJ's recommended penalty if it reviews the complete record and states with particularity its reasons for such an increase by citing to specific portions of the record as justification thereof. Petitioner's exceptions provide no such reasons or record citations other than a general reliance on Section

429.14(1)(e)1., Florida Statutes (2011). Therefore, the Agency cannot increase the ALJ's recommended penalty based solely on Petitioner's exception to Paragraph 72 of the Recommended Order.

However, after conducting a thorough review of the complete record of this matter, the Agency finds that there are specific facts that warrant an increase of the ALJ's recommended penalty of a 60 day suspension to revocation. These facts are:

- Respondent's administrator knew Aurelia Cristobal had a limited ability to communicate with others in English, yet allowed her to be the sole employee at the facility on the date Resident B.Y. died. (See Transcript, Volume II, Pages 316-318).
- Aurelia Cristobal's limited ability to communicate with others in English interfered with the paramedics' delivery of emergency services to resident B.Y. (See Transcript, Volume I, Pages 53-54, 60-61).
- Aurelia Cristobal did not follow Respondent's emergency protocols, which may have caused a delay in paramedics responding to Respondent's facility on the date resident B.Y. died. (See Transcript, Volume I, Pages 51-52; Transcript, Volume II, Pages 307-320; Petitioner's Exhibit E, Page 90).
- Aurelia Cristobal did not perform CPR on Resident B.Y., which may have contributed to the resident's death. (See Transcript, Volume I, Pages 45 and 83; Transcript, Volume II, Pages 186-189).

The Agency believes that Respondent's failures to follow its own protocols are a danger to the health, safety and welfare of its remaining residents. Respondent's license is "a public trust and a privilege and is not an entitlement." § 429.01(3), Fla. Stat. The complete record of this case demonstrates that the Agency can no longer trust Respondent to adequately care for its residents and safeguard them from harm. Thus, Respondent should no longer have the privilege of doing so. Therefore, the Agency hereby increases the ALJ's recommended penalty of a 60-day suspension to revocation, and by doing so implicitly rejects the ALJ's conclusions of law in the last two sentences of Paragraph 72 of the Recommended Order.

Respondent's Exceptions

In Exception No. 1, Respondent takes exception to the underlined title under Section A. of the Findings of Fact. However, that portion of the Recommended Order is not a finding of fact, a conclusion of law or a recommended penalty that the Agency may reject or modify pursuant to Section 120.57(1)(*l*), Florida Statutes (2013). Therefore, the Agency denies Exception No. 1.

In Exception No. 2, Respondent takes exception to the fifth sentence of Paragraph 2 of the Recommended Order, arguing that the findings of fact in that sentence are not based on competent, substantial evidence. Respondent is partially correct in that the findings of fact in the fifth sentence of Paragraph 2 of the Recommended Order are not entirely accurate. The record evidence of this matter reflects that Ms. Cristobal was not available when Laura Manville went to Respondent's facility four days after the incident (Transcript, Volume I, Page 145), but does not indicate where Ms. Cristobal was at that time. The record evidence of this matter does reflect that Ms. Cristobal was in Mexico at the time of the hearing (Transcript, Volume II, Page 222). Therefore, Exception No. 2 is granted to the extent that the Agency hereby modifies the findings of fact in Paragraph 2 of the Recommended Order as follows:

> 2. On February 12, 2013, the date of the incident that provides the basis for the instant action, Aurelia Cristobal was employed as a staff member at the facility operated by Pine Tree Manor. Spanish is Ms. Cristobal's native language, and her ability to speak English is very limited. Brent Sparks, the owner and administrator at Pine Tree Manor, acknowledged, when interviewed as part of the post-incident investigation, that Ms. Cristobal struggles at times with English, especially when under stress. Mr. Sparks was aware of Ms. Cristobal's limitations with English prior to February 12, 2013. Ms. Cristobal was not available when Agency investigators conducted a post-incident investigation ~~W~~within a few days of B.Y.'s death, ~~Ms. Cristobal left the United States~~ and is ~~believed to be~~ currently living in Mexico. Ms. Cristobal did not testify during the final hearing.

In Exception No. 3, Respondent takes exception to the findings of fact in the fourth sentence of Paragraph 9 of the Recommended Order, arguing that the findings of fact in that sentence are not based on competent, substantial evidence. Respondent is correct that the record evidence of this matter reflects that Mr. Sparks called the non-emergency number for the Pinellas County Sheriff's Office, and the operator at the Pinellas County Sheriff's Office connected Mr. Sparks to a 911 operator in Pinellas County. Therefore, the Agency grants Exception No. 3 and modifies the findings of fact in Paragraph 9 of the Recommended Order as follows:

> 9. When Mr. Sparks received the call from Ms. Cristobal, he was at his residence in Hillsborough County. Pine Tree Manor is located in Pinellas County. Because Mr. Sparks was in Hillsborough County when he received the call from Ms. Cristobal, he was not able to call 911 and be immediately connected to an emergency operator in Pinellas County. Understanding this limitation, Mr. Sparks called the non-emergency number for the Pinellas County Sheriff's office, who, in turn, ~~contacted~~ connected him to the 911 operator and he informed them of the emergency.

In Exception No. 4, Respondent takes exception to the findings of fact in the second sentence of Paragraph 10 of the Recommended Order, arguing that the ALJ's finding that "Mr. Sparks should have directed Ms. Cristobal to call 911" is not based on competent, substantial evidence. Contrary to Respondent's argument, the findings of fact in Paragraph 10 of the Recommended Order are based on competent, substantial evidence. See Transcript, Volume I, Pages 102-104 and 147; Petitioner's Exhibit E in DOAH Case No. 13-2011, Page 90. Thus, the Agency cannot reject or modify the findings of fact in Paragraph 10 of the Recommended Order. See § 120.57(1)(*l*), Fla. Stat.; Heifetz v. Dep't of Bus. Reg., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (holding that an agency "may not reject the hearing officer's finding [of fact] unless there is no competent, substantial evidence from which the finding could reasonably be inferred"). Therefore, the Agency denies Exception No. 4.

In Exception No. 5, Respondent takes exception to the last sentence of Paragraph 10 of the Recommended Order, arguing that the finding of fact in that sentence is not based on competent, substantial evidence. A review of the record evidence reveals that Respondent's argument is correct. Transcript, Volume II, Page 312 reflects that Respondent's administrator told Ms. Cristobal to start CPR on B.Y. Therefore, Exception No. 5 is granted and Paragraph 10 of the Recommended Order is modified as follows:

> 10. In the course of discussing the emergency situation with Ms. Cristobal, Mr. Sparks learned that she had not called 911. Knowing the emergency nature of the situation and the fact that he could not call Pinellas County 911 directly, Mr. Sparks should have directed Ms. Cristobal to call 911, since she was located in Pinellas County, but he did not. ~~Mr. Sparks should have also instructed Ms. Cristobal to start CPR on B.Y., but he did not.~~

In Exception No. 6, Respondent takes exception to the last sentence of Paragraph 11 of the Recommended Order, arguing that the finding of fact in that sentence is not based on competent, substantial evidence. Contrary to Respondent's assertion, the finding of fact in the last sentence of Paragraph 11 of the Recommended Order is based on competent, substantial evidence. See Petitioner's Exhibit B in DOAH Case No. 13-2011, Pages 74-78. Thus, the Agency cannot disturb the finding of fact. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, the Agency denies Exception No. 6.

In Exception No. 7, Respondent takes exception to the findings of fact in Paragraph 16 of the Recommended Order, arguing that they are not supported by clear and convincing evidence. Respondent's argument is not valid. Findings of fact need only be supported by competent, substantial evidence. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. The findings of fact in Paragraph 16 of the Recommended Order are supported by competent, substantial record evidence. See Transcript, Volume II, Pages 309-311; Transcript, Volume III, Pages 415-416; Petitioner's

Exhibit E in DOAH Case No. 13-2011 at Page 90. Therefore, the Agency denies Exception No. 7.

In Exception No. 8, Respondent takes exception to the findings of fact in Paragraph 17 of the Recommended Order, based on its arguments in Exception No. 7. The findings of fact in Paragraph 17 of the Recommended Order are reasonable inferences based on competent, substantial evidence. See Transcript, Volume I, Page 52; Transcript, Volume II, Pages 309-311; Transcript, Volume III, Pages 415-416; Petitioner's Exhibit E in DOAH Case No. 13-2011 at Page 90. Thus, the Agency is not permitted to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, the Agency denies Exception No. 8.

In Exception Nos. 9 and 10, Respondent takes exception to Paragraph 19 of the Recommended Order as not being supported by any clear and convincing evidence. Respondent again refers to an incorrect standard of review. The findings of fact in Paragraph 19 of the Recommended Order need only be supported by competent, substantial evidence, which indeed they are. See Transcript, Volume I, Pages 42-85. Therefore, the Agency denies Exception Nos. 9 and 10.

In Exception No. 11, Respondent takes exception to the last sentence of Paragraph 30 of the Recommended Order as not being supported by clear and convincing evidence. The finding of fact in the last sentence of Paragraph 30 of the Recommended Order is supported by competent, substantial evidence (See Transcript, Volume II, Page 274) as required by law. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Thus, the Agency cannot reject or modify it. Therefore, the Agency denies Exception No. 11.

In Exception No. 12, Respondent takes exception to the parenthetical phrase "precise time unknown" in the third sentence of Paragraph 36 of the Recommended Order, arguing that

the record reflects Mr. Sparks called Ms. Munoz between 7 and 8:30pm. Respondent's record citation offers competent, substantial evidence for the parenthetical phrase at issue because a time period between 7 and 8:30pm is not precise. Therefore, the Agency denies Exception No. 12.

In Exception No. 13, Respondent takes exception to the last sentence of Paragraph 36 of the Recommended Order, arguing that the findings of fact in that sentence are based solely on hearsay. Respondent's argument is partially correct. A review of the record reveals that there is no competent, substantial evidence that Mr. Sparks knew that "R.D. had never gone unaccounted for a period of greater than 12 hours." However, the rest of the last sentence of Paragraph 36 of the Recommended Order is based on competent, substantial evidence. See Transcript, Volume II, Pages 268-282. Therefore, the Agency grants Exception No. 13 to the extent that Paragraph 36 of the Recommended Order is modified as follows:

> 36. Pine Tree Manor employee Laura Munoz worked from 7:00 p.m. on December 4, 2012, to 7:00 a.m. on December 5, 2012. Ms. Munoz was not responsible for assisting R.D. with his medication, so it is unlikely that she would have known that R.D. missed receiving his medication prior to her arrival at work. Because Mr. Sparks left Pine Tree Manor on December 4, 2012, before Ms. Munoz arrived for work, he called Ms. Munoz after her shift started (precise time unknown) and requested that she call him upon R.D.'s return. There were no instructions given to Ms. Munoz by Mr. Sparks as to what she should do if R.D. did not return by some time certain. On December 4, 2012, Mr. Sparks knew that R.D. had never spent the night away from Pine Tree Manor without someone at the facility knowing R.D.'s whereabouts ~~and that R.D. had never gone unaccounted for a period greater than 12 hours~~.

In Exception No. 14, Respondent takes exception to Paragraph 45 of the Recommended Order based on its argument in Exception No. 13. Based upon the ruling in Exception No. 13

supra, the Agency grants Exception No. 14 to the extent that Paragraph 45 of the Recommended Order is modified as follows:

> 45. Given that ~~Mr. Sparks knew that R.D. had never gone unaccounted for more than 12 consecutive hours and that~~ R.D. had never stayed away from the facility overnight without his whereabouts being known, Mr. Sparks, when he spoke with Ms. Munoz during the evening hours of December 4, 2012, should have instructed Ms. Munoz to call him if R.D. had not returned by 11:00 p.m. Consequently, it was at 11:00 p.m., on December 4, 2012, when Pine Tree Manor reasonably lost general awareness of R.D.'s whereabouts.

In Exception No. 15, Respondent takes exception to the conclusions of law in Paragraph 49 of the Recommended Order, arguing that there was no factual basis for concluding that Respondent lost general awareness of R.D.'s whereabouts at 11:00pm on December 4, 2012. The ALJ's conclusions of law in Paragraph 49 of the Recommended Order are based on the findings of fact in Paragraph 36 of the Recommended Order, which, in turn, are based on competent, substantial evidence. See Transcript, Volume II, Pages 268-282. Therefore, the Agency denies Exception No. 15.

In Exception No. 16, Respondent takes exception to the conclusions of law in Paragraph 54 of the Recommended Order, arguing that the ALJ incorrectly concluded that Section 429.255(4), Florida Statutes, establishes the standard for assisted living facilities with respect to the delivery of CPR. The Agency finds that, while it does have substantive jurisdiction over the conclusions of law in Paragraph 54 of the Recommended Order, it cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Exception No. 16.

In Exception No. 17, Respondent takes exception to Paragraph 55 of the Recommended Order, based on its argument in Exception No. 16. Based upon the ruling on Exception No. 16 supra, the Agency denies Exception No. 17.

In Exception No. 18, Respondent takes exception to the conclusions of law in Paragraph 56 of the Recommended Order, arguing that they have no basis in law or fact. The conclusions of law in Paragraph 56 of the Recommended Order are based on the findings of fact in Paragraphs 10, 16 and 17 of the Recommended Order, which, in turn, are based on competent, substantial evidence. See Transcript, Volume I, Pages 102-104 and 147; Transcript, Volume II, Pages 309-311; Transcript, Volume III, Pages 415-416; Petitioner's Exhibit E in DOAH Case No. 13-2011, Page 90. Therefore, the Agency denies Exception No. 18.

In Exception No. 19, Respondent takes exception to the conclusions of law in Paragraph 57 of the Recommended Order, based on its reasoning in Exception No. 18. Based on the ruling on Exception No. 18 supra, the Agency denies Exception No. 19.

In Exception No. 20, Respondent takes exception to the conclusions of law in Paragraph 58 of the Recommended Order based upon its arguments in Exception Nos. 7 and 19. Based upon the rulings on Exception Nos. 7 and 19 supra, the Agency denies Exception No. 20.

In Exception No. 21, Respondent takes exception to the conclusions of law in Paragraph 59 of the Recommended Order based upon its argument in Exception No. 5. Based upon the ruling on Exception No. 5 supra, the Agency grants Exception No. 21 and hereby rejects the conclusions of law in Paragraph 59 of the Recommended Order.

In Exception No. 22, Respondent takes exception to the conclusions of law in Paragraph 60 of the Recommended Order based on its argument in Exception No. 9. Based upon the ruling on Exception No. 9 supra, the Agency denies Exception No. 22.

In Exception No. 23, Respondent takes exception to the conclusion of law in Paragraph 61 of the Recommended Order, arguing that there was no factual basis for such a conclusion of law. The conclusion of law in Paragraph 61 of the Recommended Order is based on the findings of fact in Paragraphs 16, 17 and 19 of the Recommended Order, which, in turn, are based on competent, substantial evidence. See the rulings on Respondent's Exception Nos, 7, 8, 9 and 10 supra. The Agency cannot re-weigh the evidence in order to arrive at a conclusion of law that differs from that of the ALJ. See Heifetz at 1281. Therefore, the Agency denies Exception No. 23.

In Exception No. 24, Respondent takes exception to Paragraph 62 of the Recommended Order as not supported by clear and convincing evidence. Based on the ruling on Exception No. 23 supra, the Agency denies Exception No. 24.

In Exception No. 25, Respondent takes exception to Paragraph 64 of the Recommended Order as not supported by clear and convincing evidence. Based on the ruling on Exception No. 23 supra, the Agency denies Exception No. 25.

In Exception No. 26, Respondent takes exception to Paragraph 65 of the Recommended Order because there was no testimony presented as to what amount of "institutional control" is expected of an assisted living facility. Based on the ruling on Exception No. 23 supra, the Agency denies Exception No. 26.

In Exception No. 27, Respondent takes exception to Paragraph 66 of the Recommended Order, arguing that the Agency has failed to identify what "general awareness" requires. Paragraph 66 of the Recommended Order deals with the ALJ's consideration of the facts in determining what penalty should be imposed for the violation referenced. Respondent has

offered no record citation that would warrant a mitigation of the proposed penalty recommended in Paragraph 67 of the Recommended Order. Therefore, the Agency denies Exception No. 27.

In Exception No. 28, Respondent takes exception to Paragraph 67 of the Recommended Order "because there should be no deficiency or fine since there was no clear and convincing evidence produced by the Agency to support the allegations in its complaint." This is clearly an attempt by Respondent to have the Agency re-weigh the evidence presented in this matter in order to make conclusions of law favorable to Respondent. The Agency is specifically prohibited by law from doing so. See Heifetz at 1281. Therefore, the Agency denies Exception No. 28.

In Exception No. 29, Respondent takes exception to Paragraphs 69 through 72 of the Recommended Order, arguing against the ALJ's recommended penalties. Respondent's exception is nothing more than another attempt to have the Agency re-weigh the evidence in order to reach conclusions of law that are more favorable to Respondent. As stated in the ruling on Exception No. 28 supra, the Agency cannot do so. Therefore, the Agency denies Exception No. 29.

In Exception No. 30, Respondent takes exception to the ALJ's recommendation of licensure suspension as a penalty. Since the Agency has already addressed that issue in its ruling on Petitioner's Exceptions supra, the Agency denies Exception No. 30 as moot.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order, except where noted supra.

CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order, except where noted supra.

ORDER

1. In regard to AHCA No. 2012002572, a $5,000 fine and $500 survey fee are hereby imposed on Respondent. In regard to AHCA No. 2013004620, an $8,000 fine is hereby imposed on Respondent, and Respondent's license is hereby REVOKED.

2. Unless payment has already been made, payment in the amount of $13,500 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, Florida 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.

DONE and ORDERED this 5 day of January 2014, in Tallahassee, Florida.

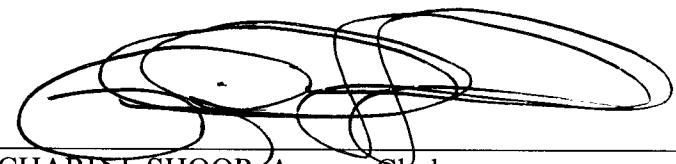
ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 electronic mail to the persons named below on this 5th day of February, 2014.



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

Copies furnished to:

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Shaddrick 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 Caufman, 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)	Suzanne Suarez Hurley, Esquire Assistant General Counsel Agency for Health Care Administration (Electronic Mail)
Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	Brent Sparks, Administrator Pine Tree Manor 131st Street North Largo, Florida 33774-5504 (U.S. Mail)
Honorable Linzie F. Bogan Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (Electronic Mail)	Theodore E. Mack, Esquire Powell and Mack 3700 Bellwood Drive Tallahassee, Florida 32303 (U.S. Mail)

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.