

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAUDERHILL FAMILY CARE  
RETIREMENT RESIDENCE, INC.,  
d/b/a LAUDERHILL FAMILY CARE  
RETIREMENT,

Petitioner,

vs.

Case No. 14-0435

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy, Division of Administrative Hearings, by video teleconference at sites in Tallahassee and Miami, Florida, on April 9 and 10, 2014.

APPEARANCES

For Petitioner: Aram Caldarera Bloom, Esquire  
Shapiro, Blasi, Wasserman and Gora, P.A.  
7777 Glades Road, Suite 400  
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For Respondent: John E. Bradley, Esquire  
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STATEMENT OF THE ISSUE

Whether Petitioner's renewal application for an assisted living facility (ALF) license should be denied based upon Petitioner's failure of the biennial re-licensure survey conducted on June 10 and 11, 2013, and because Petitioner has a controlling interest in another ALF that has an unpaid fine of \$5,000.00 from 2012 after its license was revoked.

PRELIMINARY STATEMENT

On October 2, 2013, the Agency for Health Care Administration (AHCA) issued a Notice of Intent to Deny (Notice) a license renewal application filed by Petitioner. As stated in the Notice, the basis for the denial was Petitioner's failure of a biennial licensure survey conducted on June 10 and 11, 2013, in which Petitioner was cited for two Class II and eight Class III violations.<sup>1/</sup> Further, Petitioner had a controlling interest in another ALF, Serenity Gardens at Lauderhill, Inc. (Serenity Gardens), which has an unpaid fine in the amount of \$5,000.00 imposed by Final Order on March 30, 2012, for AHCA case number 2011008024. Serenity Gardens also had its license revoked on March 30, 2012, in that same Final Order.

Petitioner requested an administrative hearing. On January 27, 2014, AHCA forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the hearing.

On April 7, 2014, the parties filed a Pre-hearing Stipulation, including a statement of agreed facts that have been adopted and incorporated herein as necessary.

At the final hearing, which took place on April 9 and 10, 2014, Petitioner called the following witnesses: Susan Spaw, William Spaw, and Holli Raven. Petitioner's Exhibits 2 and 3 were admitted in evidence. AHCA called the following witnesses: Shaddrick Haston, Jim Alfred, Michael Forrester, and Nicolas Frias. Respondent's Exhibits 1 through 7 were admitted.

Neither party ordered a transcript of the final hearing. Both parties filed proposed recommended orders which were considered in the preparation of this Recommended Order. Unless otherwise noted, citations to the Florida Statutes and Florida Administrative Code refer to the 2013 versions.

#### FINDINGS OF FACT

1. AHCA is the state agency responsible for regulating home health agencies in Florida. In this capacity, AHCA determines whether to approve applications for renewal of licensure as an ALF, and it has administrative jurisdiction to enforce the laws governing such licensees, including the authority to take disciplinary measures against licensees who violate the applicable statutes and rules.

2. Petitioner is a corporation which operates a 62-bed ALF in the Cannon Point neighborhood of Lauderhill, Florida. The ALF

has both a standard ALF license and a specialty limited mental health (LMH) license. Petitioner has been owned and operated for approximately 13 years by Susan and William Spaw. Mrs. Spaw serves as president, administrator, and chief financial officer of Petitioner and owns a 51 percent interest in Petitioner. As such, she is "a controlling interest" of Petitioner as defined by section 408.803(7), Florida Statutes.

3. Mrs. Spaw also was a controlling interest of Serenity Gardens, an ALF which had its license revoked by AHCA by Final Order dated March 30, 2012 (Final Order). By the same Final Order, Serenity Gardens also had a \$5,000.00 fine imposed against it by AHCA that remained unpaid as of the date of the final hearing in this proceeding.

4. Florida ALF licenses must be renewed every two years. Petitioner filed an application for license renewal with AHCA which was received on March 20, 2013. When Petitioner's application was received by AHCA, it was referred to Jim Alfred (Alfred), senior management analyst in the ALF licensing unit. Alfred reviewed the application to determine whether any items were missing or anything needed to be added or corrected.

5. On April 12, 2013, AHCA issued an Omissions Letter (Omissions Letter) drafted by Alfred to Mrs. Spaw advising that Petitioner's renewal application was determined to be incomplete

and specifying the errors and omissions to be addressed within 21 days to deem the application complete.

6. Among other things, the Omissions Letter states that pursuant to section 408.831, if there are any outstanding fines, liens, or overpayments that have been assessed by final order of AHCA against the licensee or a common controlling interest, they must be paid prior to license/registration issuance. The Omissions Letter indicates that AHCA's records show that, in addition to having a controlling ownership interest in Petitioner, Mrs. Shaw also had a controlling ownership interest in Serenity Gardens which had an outstanding fine in Final Order status for the amount of \$5,000.00.

7. The Omissions Letter also notified Petitioner that section 429.14(3), Florida Statutes, gives AHCA the authority to deny the renewal application based upon the revocation of license number 10176, which was issued to Serenity Gardens.

8. As part of the ALF license renewal process, AHCA conducts a biennial "survey." The survey is a comprehensive inspection of an ALF facility and its records to determine compliance with applicable statutes and rules. The survey must be completed before the renewal is issued. During the survey, AHCA surveyors observe staff in their interactions with residents and the dispensing of medications. The surveyors also examine the physical plant and review resident records.

9. When Alfred reviewed Petitioner's application, Petitioner's license was "red flagged" in AHCA's computer system because of the revocation of the license for Serenity Gardens and the outstanding \$5,000.00 fine. Alfred brought this to the attention of his supervisor, Shaddrick Haston (Haston), AHCA's unit manager for ALFs. Although either the revocation of the license for Serenity Gardens, a facility in which Mrs. Shaw had a controlling interest, or the outstanding \$5,000.00 fine would be a sufficient basis for denial of the renewal application, Haston directed Alfred to wait until receipt of the biennial survey results for Petitioner's ALF before moving forward with a possible denial of the renewal application.

10. The biennial re-licensure survey was conducted at Petitioner's facility on June 10 and 11, 2013, by AHCA surveyors Michael Forrester (Forrester) and Nicolas Frias (Frias). At the time of the survey, both Forrester and Frias were experienced surveyors, each with over approximately 100 inspections, including renewal application biennial surveys.

11. Working together, Forrester and Frias determined there were ten deficiencies, commonly cited as "tags," in reference to applicable regulatory standards.

Tag A 010

12. Tag A 010 cited Petitioner with a violation of Florida Administrative Code Rule 58A-5.0181(4) regarding "Continued

Residency." This rule requires that the patient must have a face-to-face medical examination by a licensed health care provider at least every three years after the initial assessment, or after a significant change, whichever comes first. The results of the examination must be recorded on AHCA Form 1823 (Form 1823).

13. A resident observation log revealed that on May 7, 2013, a resident was taken by ambulance to the hospital because she was disoriented, stumbling, drooling, and had slurred speech. Petitioner's staff checked her blood sugar and found it very high. The resident also expressed that she wanted to commit suicide. Although the resident was not diagnosed with diabetes at that time, the resident was determined to have high blood sugar which needed to be monitored by home health services. Neither the change in mental status or physical status was documented on a Form 1823 although each qualifies as a "significant change."

Tag A 030

14. Tag A 030 cited Petitioner with a violation of rule 58A-5.0182(6) and section 429.28 regarding "Resident Care-Rights & Facility Procedures." This deficiency was based upon the observation that the ALF had a pet cat that had no documentation of vaccination since 2009. This was considered to be potentially

harmful to the residents. This violation was admitted by Petitioner.

Tag A 052

15. Tag A 052 cited Petitioner with violating rule 58A-5.0185(3) regarding "Medication-Assistance with Self-Administration." Forrester observed staff assisting residents in the self-administration of medications and saw that the required procedures for unlicensed staff were not followed properly with four residents. A staff member was observed assisting one resident with the application of a medication patch on the resident's abdomen. The staff member did not wear gloves, nor did she wash her hands after providing assistance.

16. Two residents received medication without the staff member first reading the label in the presence of the residents. Staff was also observed leaving a resident before the resident took her medication, in violation of the rule. These violations were admitted by Petitioner, but Petitioner attributed these deficiencies to the staff being nervous due to the presence of the surveyors.

Tag A 053

17. Tag A 053 cited Petitioner with violating rule 58A-5.0185(4) regarding "Medication-Administration." This deficiency was based upon a review of resident records that reflect an unlicensed staff member performed blood glucose testing on a



resident. Upon questioning, the surveyors learned that this was not the only time this occurred because Mrs. Spaw and the staff were unaware that a licensed medical professional is required by the rule to perform this type of procedure.

Tag A 054

18. Tag A 054 cited Petitioner with violating rule 58A-5.0185(5) regarding "Medication - Records." This deficiency was based on the finding that five out of 28 sampled residents' medication observation records (MORs) were not appropriately maintained.

19. Forrester observed a staff member assist resident 18 with two medications. However that resident's MOR revealed that resident 18 should have been provided with three medications. The staff member noted on the MOR that one of the medications, Risperidone, an antipsychotic medication, was not available. After the surveyor questioned why the resident was not receiving the medication, another staff member found the missing medication.

20. Forrester observed a staff member take a package of medications from a filing cabinet and a pill from one of the packages fell on the floor. None of the same pill type was missing from future doses for resident 13. A review of the MOR for resident 13 showed that one capsule by mouth daily was initialed as being given to the resident from June 1 through

June 11, 2013. Because one pill was lying on the floor, it is not possible for the resident to have received all of the prior doses.

21. The MOR for resident 16 showed that this resident was to be given one 800mg tablet of ibuprofen three times a day and had in fact received the ibuprofen as ordered from June 1 through June 10, 2013. However, when staff was questioned by the surveyor regarding why no ibuprofen was available for this resident on June 11, the surveyor was told that the physician had discontinued this order in September 2012. According to staff, the pharmacy erroneously printed the order for ibuprofen on the MOR in June. The deficiency was based upon the fact that staff indicated on the resident's MOR for the first ten days of June that they were assisting the resident with this medication when, in fact, no medication was available.

22. A review of the MORs for residents 21 and 22 indicated that unlicensed staff initialed for providing injections. According to staff, the injections were actually provided by licensed health care providers who came to the facility. At some point later, staff wrote "error." Only the individual who actually provides the injection is to initial the MOR.

Tag A 056

23. Tag A 056 cited Petitioner with violating rule 58A-5.0185(7) regarding "Medication-Labeling and Orders." This

deficiency was based, in part, on the finding that Petitioner failed to ensure that medication orders were followed as directed for 12 out of 28 sampled residents. These 12 residents received their 8:00 a.m. medications after 9:00 a.m. on June 11, 2013. According to the facility's pharmacy, the ideal window for providing medications to a resident would be no more than an hour before and an hour after the required medication dosage time as noted on the MORs. The resident is supposed to take the medications at the time intervals given. The timing issue becomes worse when a resident takes a medication more than once a day. The delay of assistance with self-administered medications for sampled residents by staff is not within the recommended pharmacy time intervals for providing medication assistance at dosage times. The facility's failure to provide physician-ordered medication at prescribed dosage times directly affects the well-being of the sampled residents.

24. On June 11, 2013, Mrs. Spaw acknowledged exceeding the recommended time frame for medication distribution and indicated that it might be due to people coming in late. However, the staff individual who was observed distributing medications late stated that she starts the morning medications at 8:00 a.m. Mrs. Spaw indicated during the survey that she thought the medication distribution was beginning at 7:00 a.m. but she is not at the facility at that time.<sup>2/</sup>

25. Tag A 056 was also based upon the observation of a resident who did not receive all doses of medication, despite records indicating that all doses had been dispensed when, in fact, one dose was found on the floor. This deficiency was noted under this tag because it represented a failure to follow the doctor's order of prescribing one dosage per day.

Tag A 093

26. Tag A 093 cited Petitioner with violating rule 58A-5.020(2) regarding "Food Service-Dietary Standards." This deficiency was based upon Petitioner's failure to follow its own prepared menus. This rule requires that menus are to be dated and planned at least one week in advance for both regular and therapeutic diets. Any substitutions are to be noted before or when the meal is served. A three-day supply of nonperishable food, based on the number of weekly meals the facility has contracted with residents to serve, shall be on hand at all times.

27. The surveyors found that the facility was not providing fruit juice despite fruit juice being on the menu, the menus were not showing a substitution, and the facility did not have a stock of fruit juice available. Petitioner provided no explanation or evidence to rebut this deficiency.

Tag A 152

28. Tag A 152 cited Petitioner with violating rule 58A-5.023(3) regarding "Physical Plant-Safe Living Environment/Other." In accordance with this rule, residents are supposed to be able to decorate their rooms with their own belongings as space permits. This rule also requires that residents are provided with a safe living environment.

29. This deficiency was based upon the observation that a resident's magazine pictures, which he had taped to the wall of his room, were torn down. This left the walls with missing paint, and they were unsightly. A drain cover for a shower was missing in another resident's bathroom leaving an open hole in the floor which could result in injury to the resident. Petitioner did not dispute this deficiency.

Tag A 167

30. Tag A 167 cited Petitioner with violating rule 58A-5.025(1) regarding "Resident Contracts." Petitioner is required by this rule to maintain resident contracts that have an accurate monthly rental rate. For two of the 28 residents sampled, the surveyors found that one contract had a rate left blank and another had an incorrect rate.

Tag AL 241

31. Tag AL 241 cited Petitioner with violating rule 58A-5.029(2) regarding "LMH-Records." This rule requires that a

facility with a LMH license maintain an up-to-date admission and discharge log identifying all mental health residents. Review of the facility's records showed that Petitioner had only one admission and discharge log which did not identify mental health residents.

32. This rule also requires that each mental health resident shall have a Community Living Support Plan (CLSP) prepared by the facility administrator and the individual's mental health care provider which identified the specific needs of the resident and a plan for how those needs will be met. The CLSP is to be updated annually. A review of resident 1's records showed that Petitioner only had a CLSP that had been last updated in February 2008. Although the resident had an Interim Mental Health Assessment dated February 18, 2013, it did not reference the CLSP or contain any of its mandatory components.

#### The Exit Interview

33. On June 11, 2013, at the completion of the inspection, Forrester and Frias met briefly for an exit interview with Mrs. Spaw, Assistant Administrator Holli Raven (Raven), and Resident Assistant Marcia Gray (Gray). The purpose of the meeting was to provide a summary of the surveyors' findings and to discuss the Petitioner's responses, if any, to the concerns.<sup>3/</sup> Forrester represented at the meeting that he and Frias believed the deficiencies were all Class III violations but that the

determination of classifications was subject to review by their supervisor.

Statement of Deficiencies

34. On June 20, 2013, Forrester hand-delivered to Petitioner a copy of Form 3020, the Statement of Deficiencies, which included a detailed summary of the applicable rules violated and facts supporting the finding of deficiencies. The cover letter indicated that two tags, A 054 and A 056, regarding medication records, labeling and orders, were considered Class II deficiencies. As such, AHCA directed Petitioner to comply with a designated corrective action plan within five days.

35. When delivering the Statement of Deficiencies, Forrester explained to Mrs. Spaw that the medication-related deficiencies were upgraded by his supervisor from Level III to Level II. Forrester's supervisor was not physically present at the survey but reviewed the results reported by Forrester and Frias and upgraded the classifications based upon her training and familiarity as a licensed practical nurse with medication issues.

36. The corrective action plan required Petitioner to provide a medication training course, approved by the Department of Elder Affairs, to staff. It also required Petitioner to ensure all unlicensed staff maintains a minimum of two hours of continuing education training on providing assistance with self-

administered medication. The plan also directed Petitioner to obtain the consultation of a pharmacist to ensure all staff providing assistance with self-administered medication is following the guidelines of section 429.256 and that such consultation must be no less than three months in length.

37. Petitioner immediately hired a pharmacy consultant and implemented training for staff. The consultant also reviewed the resident's medical records to make sure they were in compliance with applicable rules. However, Petitioner did not notify AHCA of its compliance efforts nor did AHCA conduct a re-inspection to determine whether the plan was being followed.

38. Mrs. Spaw was very surprised to receive the extensive statement of deficiencies. In particular, she was dismayed that the facility was cited with two Class II violations when the surveyors had indicated at the exit interview that the purported deficiencies were Class III violations. According to Mrs. Spaw, she is not aware of any other facility in her vicinity which has received Class II designations for the types of deficiencies for which her facility is cited.<sup>4/</sup> Mrs. Spaw and Forrester had no conversation regarding the findings when he hand-delivered the June 20, 2013, correspondence from AHCA.

39. Mrs. Spaw felt that the survey findings reflected a bias or animus against her facility. However, there was absolutely no evidence of this presented at the final hearing.



Both Forrester and Frias testified that they had no prior instruction with regard to how to conduct the survey other than when it was scheduled. They also testified that they conducted the survey at Petitioner's facility in the same fashion that they have conducted numerous other re-licensure surveys.

40. Petitioner did not contest the underlying facts which supported the deficiencies. However, Petitioner suggests that these are relatively minor errors which occurred because a staff member was very nervous due to the surveyors being present and following them while dispensing medications. Notably, the staff person who was involved in the majority of the MOR errors and medication delays did not testify.

41. Petitioner also argues that many of the deficiencies cited are based upon the same facts. For example, there are several deficiencies related to the incident of a pill being found on the floor. However, as explained by Forrester, factual observations may be listed repeatedly because they demonstrate different areas of non-compliance with laws or rules. The same incident may be referenced in support of different tag numbers because there are a variety of laws and rules involved.

#### Notice of Intent to Deny

42. After reviewing the results of Petitioner's re-licensure survey, Alfred met with Haston to discuss Petitioner's re-licensure application. Haston reviewed the results and saw

there were two Class II and eight Class III violations. Although Haston wanted Petitioner's facility to remain open because he believes Mrs. Spaw "takes care of patients no one else wants" and there is a need for LMH beds in Petitioner's area, Haston decided to deny re-licensure based upon the failed survey, the outstanding fine from Serenity Gardens, and the fact that the license of Serenity Gardens was revoked.

43. AHCA issued a Notice of Intent to Deny on October 2, 2013, and explained that the denial was based upon the failed biennial re-licensure survey, the outstanding fine imposed by Final Order on March 30, 2012, and that the applicant (Mrs. Spaw on behalf of Petitioner) had a controlling interest in Serenity Gardens, a facility which had its license revoked by Final Order.

#### CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. §§ 120.569 & 120.57, Fla. Stat.

45. As an applicant for a license, Petitioner bears the burden of proof in this proceeding to demonstrate by a preponderance of the evidence that it satisfied all the requirements for licensure and was entitled to receive the license. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); N.W. Dep't of Child. & Fam. Servs., 981 So. 2d 599 (Fla. 3rd DCA 2008).<sup>5/</sup>

46. Holding an ALF license is a privilege and not a right under Florida law. Section 429.01(3) states in pertinent part, "the principle that a license issued under this part is a public trust and a privilege and is not an entitlement should guide the finder of fact or trier of law at any administrative proceeding or in a court action initiated by the Agency for Health Care Administration to enforce this part."

47. Section 429.14(3) provides:

The agency may deny a license to any applicant or controlling interest as defined in part II of chapter 408 which has or had a 25-percent or greater financial or ownership interest in any other facility licensed under this part, or in any entity licensed by this state or another state to provide health or residential care, which facility or entity during the five years prior to the application for a license closed due to financial inability to operate; had a receiver appointed or a license denied, suspended, or revoked; was subject to a moratorium, or had an injunctive proceeding initiated against it.

48. As stipulated by the parties, Mrs. Spaw is a controlling interest of Petitioner and was a controlling interest with more than 25 percent ownership interest in Serenity Gardens—a facility which had its license revoked within the last five years. As such, AHCA has the discretion to deny the renewal application of Petitioner on this basis alone.

49. In relevant part, section 408.831(1) provides:

In addition to any other remedies provided by law, the agency may deny each application or suspend or revoke each license, registration, or certificate of entities regulated or licensed by it:

(a) If the applicant, licensee, or a licensee subject to this part which shares a common controlling interest with the applicant has failed to pay all outstanding fines, liens, or overpayments assessed by final order of agency or final order of the centers for Medicare and Medicaid services, not subject to further appeal, unless a repayment plan is approved by the agency.

50. As discussed herein, it was undisputed that Serenity Gardens had an outstanding fine of \$5,000.00 which is not subject to further appeal and which remained unpaid as of the date of the final hearing in this proceeding. Accordingly, AHCA has the discretion to deny the renewal application of Petitioner solely for this reason.

51. Understanding that Petitioner serves a vulnerable population, which will likely struggle with finding a new place to live if Petitioner is closed as a result of denial of its renewal application, AHCA chose not to immediately deny the renewal application based upon the closure of Serenity Gardens or the outstanding fine. Rather, Haston waited for the results of the biennial licensure survey to make a recommendation with regard to the renewal application.

52. One of the requirements for renewal licensure is a demonstration of compliance during a re-licensure survey.

53. Section 429.17(2) states in pertinent part:

A license shall be renewed in accordance with part II of chapter 408 and the provision of satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part and adopted rules, including proof that the facility has received a satisfactory fire safety inspection, conducted by the local authority having jurisdiction or the State Fire Marshal, within the preceding 12 months.

54. In accordance with section 408.806(7) (a), "an applicant must demonstrate compliance with the requirements in this part, authorizing statutes, and applicable rules during an inspection pursuant to s. 408.811, as required by authorizing statutes."

55. Here, Petitioner did not supply any evidence establishing that it had met this requirement. To the contrary, each of Petitioner's witnesses admitted that, at the time of the re-licensure survey, the facility was not in compliance with various statutes and rules. Furthermore, as discussed herein, the facility was properly cited for ten separate violations of Florida law.

56. The fact that several violations were reclassified from Class III violations to more serious Class II violations does not alleviate the fact that, regardless of the classification of these violations, these deficiencies demonstrate that Petitioner

was not in compliance with the applicable rules at the time of the biennial re-licensure survey. Nor does the fact that Petitioner immediately took steps to come into compliance after issuance of the survey report or the fact that AHCA did not conduct a re-inspection, diminish the fact that AHCA could have denied the re-licensure application solely on the basis of the closure of Serenity Gardens or the outstanding \$5,000.00 fine.

57. Petitioner failed to demonstrate, by a preponderance of the evidence, that it met the applicable re-licensure requirements and that it is entitled to a renewal of its license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order upholding the denial of Petitioner's licensure renewal application.

DONE AND ENTERED this 23rd day of May, 2014, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of May, 2014.

ENDNOTES

<sup>1/</sup> Class II violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than Class I violations. Class III violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines him directly or potentially threatened the physical or emotional health, safety, or security of clients, other than Class I or Class II violations.

§ 408.813(2) (b) and (c), Fla. Stat.

<sup>2/</sup> This explanation was contradicted at final hearing by Mrs. Spaw and Holli Raven who attributed the delay in timely providing medications to residents on the staff member being "nervous" due to the surveyor looking over her shoulder with a laptop in his hand. Both Forrester and Frias testified that they conducted this investigation in the same manner as they conduct all other surveys and sat in order to observe staff members dispensing medications, they necessarily have to stand close to the staff member and the resident. Mrs. Spaw and the staff member also suggested that the delay in providing medications was due to the implementation of a new medication dispensing system that the facility has since abandoned. Regardless of the reason for delay the fact that medications were dispensed outside the time frame prescribed by physicians was uncontroverted.

<sup>3/</sup> There was conflicting testimony at the hearing regarding whether at the exit interview all of the deficiencies were discussed or only a few. Regardless of the extent of the conversation, there was no dispute that the surveyors made it clear that their findings were made subject to supervisory review, and Petitioner received a copy of the formal results in the "Statement of Deficiencies," Respondent's Exhibit 1, by hand delivery on June 20, 2013.

<sup>4/</sup> At final hearing, AHCA stipulated that there have been occasions when the same tag number resulted in a Class III rather than a Class II violation. This information is of limited

relevance because no witness testified regarding the circumstances surrounding these violations at other facilities.

<sup>5/</sup> Petitioner's contention, that a "clear and convincing" standard of proof applies to the analysis of this case, is rejected. This is not a disciplinary proceeding to revoke the license of Petitioner. Rather, this proceeding is to determine whether Petitioner demonstrated by a preponderance of the evidence that it met the criteria applicable for re-licensure.

COPIES FURNISHED:

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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.