STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

BAYOU SHORES SNF, LLC d/b/a REHABILITATION CENTER OF ST. PETERSBURG,

Petitioner,

v.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent,

_____/

DOAH CASE NO. 15-0619
AHCA NO. 2015000096
FILE NO. 55205
LICENSE NO. 1364095
FACILITY TYPE: NURSING HOME
RENDITION NO.: AHCA-16-0647 -FOF-OLC

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

BAYOU SHORES SNF, LLC d/b/a REHABILITATION CENTER OF ST. PETERSBURG,

Respondent.

_____/

DOAH CASE NO. 15-5469
AHCA NOS. 2014002563
2014003829

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Lynne A. Quimby-Pennock, conducted a formal administrative hearing. The issues in these cases are whether the Agency for Health Care Administration ("AHCA" or "Agency") should discipline Bayou Shores SNF, LLC d/b/a Rehabilitation Center of St. Petersburg ("Bayou Shores") for the statutory and rule violations alleged in the June 10, 2014 Administrative Complaint, and whether the Agency should renew

Bayou Shore's nursing home license. The Recommended Order dated July 21, 2016, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

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

In determining how to rule upon the parties' exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency must follow section 120.57(1)(l), Florida Statutes, which provides:

> 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. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

§ 120.57(1)(l), Fla. Stat. 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 the parties' exceptions:

Bayou Shores' Exceptions

In its first exception, Respondent takes exception to the findings of fact in Paragraph 11 of the Recommended Order, arguing there is no competent, substantial evidence to support the ALJ's finding that "the goldenrod form is the only type of a DNR [Do Not Resuscitate] order". First, Bayou Shores misconstrues the ALJ's findings. The ALJ found that "[t]he DNR order is the only goldenrod form in a resident's medical record/chart." Second, the findings of fact in Paragraph 11 of the Recommended Order are based on competent, substantial record evidence. See Transcript of January 2016 hearing, Volume I, Pages 50-51, 85, 120-121; Transcript of January 2016 hearing, Volume II, Pages 264, 279, 377-378, 430-431; Transcript of February 2016 hearing, Volume 1A, Page 36. Thus, the Agency cannot reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz v. Department of Business Regulation, 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"). The Agency is also not permitted to re-weigh the evidence in order to make contrary findings of fact. See Heifetz; 475 So. 2d at 1281. Therefore, the Agency denies Bayou Shores' first exception.

In its second exception, Bayou Shores takes exception to Paragraph 33 of the Recommended Order, arguing the ALJ's finding that "[o]f those 24 residents, residents numbered 35, 54 and 109, did not have a completed or current "Do Not Resuscitate Order" in their medical records maintained by Bayou Shores" is not based on competent, substantial evidence. Respondent's argument is incorrect. The ALJ's finding of fact in Paragraph 33 of the

Recommended Order at issue is based on competent, substantial record evidence. See Transcript of February 2016 hearing, Volume 1A, Page 51; Transcript of January 2016 hearing, Volume II, Pages 268, 331, 332 and 337-351. Furthermore, Bayou Shores stipulated to the finding of fact, as the ALJ noted in Endnote 8 of the Recommended Order. See Petitioner's Pre-Hearing Stipulation and Request for Case Management/Status Call at Page 9; and Exhibit A of the Agency's Unilateral Response to Pre-Hearing Instructions. Therefore, the Agency denies Bayou Shores' second exception.

In its third exception, Bayou Shores takes exception to the findings of fact in Paragraph 34 of the Recommended Order "to the extent that it suggests that Dr. Saba completed new DNR orders." The law does not permit the Agency to reject findings of fact based on what they may or may not suggest. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. The findings of fact in Paragraph 34 of the Recommended Order are based on competent, substantial record evidence. See Transcript of January 2016 hearing, Volume I, Pages 55-56. Therefore, the Agency denies Bayou Shores' third exception.

In its fourth exception, Bayou Shores takes exception to the last sentence of Paragraph 38 of the Recommended Order, arguing the ALJ's finding that "Bayou Shores had a redundant system in place in an effort to ensure that a resident's last wishes were honored; however, the systems failed" is not based on competent, substantial evidence. The ALJ's finding of fact in the last sentence of Paragraph 38 of the Recommended Order is based on competent, substantial record evidence. See Transcript of January 2016 Hearing, Volume I, Pages 125-126; Transcript of January 2016 hearing, Volume II, Pages 287-288, 336, 389; Petitioner's Exhibit D. Thus, the Agency cannot reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Bayou Shores' fourth exception.

In its fifth exception, Bayou Shores takes exception to the ALJ's finding of fact in the last sentence of Paragraph 43 of the Recommended Order, arguing that the ALJ's finding that BJ did not cooperate is not supported by competent, substantial evidence and that the evidence showed BJ was cooperative. Bayou Shores is wrong. The finding of fact in the last sentence of Paragraph 43 of the Recommended Order is supported by competent, substantial record evidence. See Transcript of January 2016 hearing, Volume I, Pages 243-245. Thus, the Agency is prohibited from rejecting or modifying it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Bayou Shores' fifth exception.

In its sixth exception, Bayou Shores takes exception to the first sentence of Paragraph 43 of the Recommended Order, arguing it suggests additional action was necessary. As stated above, the Agency cannot reject or modify findings of fact based on what they may or may not suggest. The finding of fact in the first sentence of Paragraph 43 of the Recommended Order is based on competent, substantial record evidence. See Transcript of January 2016 hearing, Volume I, Pages 223-224; Petitioner's Exhibit VI at Page 12. Thus, the Agency is not at liberty to disturb it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Bayou Shores' sixth exception.

In its seventh exception, Bayou Shores takes exception to the ALJ's finding of fact in the last sentence of Paragraph 47 of the Recommended Order that "the fact that Mr. Thompson claims that he was made aware of the alleged sexual attempt, yet failed to institute any of Bayou Shores policies to investigate or assure resident safety is the violation", arguing that the ALJ's reasoning is without merit and not supported by competent, substantial evidence. The finding of fact in the last sentence of Paragraph 47 of the Recommended Order is based on competent, substantial record evidence. See Transcript of January 2016 hearing, Volume I, Pages 147-148,

210-212. Thus, the Agency cannot reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Bayou Shores' seventh exception.

In its eighth exception, Bayou Shores takes exception to the finding of fact in the last sentence of Paragraph 53 of the Recommended Order, arguing the Agency should reject it "to the extent it suggests JN was exit-seeking upon admission to Bayou Shores due to his behavior at another facility." As stated previously, the Agency has no authority under the law to reject or modify findings of fact based on what a party believes the findings may or may not suggest. Furthermore, Bayou Shores' stipulated to the finding of fact in the last sentence of Paragraph 53 of the Recommended Order. See Admission #20 on Page 5 of Exhibit A to the Agency's Unilateral Pre-hearing Stipulation and Page 10 of Petitioner's Pre-hearing Stipulation and Request for Case Management/Status Call. Therefore, the Agency must deny Bayou Shores' eighth exception.

In its ninth exception, Bayou Shores takes exception to the finding of fact in the last sentence of Paragraph 56 of the Recommended Order, arguing it is not supported by any competent, substantial evidence. Contrary to Bayou Shores' argument, the finding of fact in the last sentence of Paragraph 56 of the Recommended Order is supported by competent, substantial record evidence. See Transcript of January 2016 Hearing, Volume III, Pages 621, 674, 681-682, 692-693; Transcript of January 2016 hearing, Volume IV, Pages 786-788, 808-809, 815-819. Thus, the Agency cannot reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Bayou Shores' ninth exception.

In its tenth exception, Bayou Shores takes exception to the conclusion of law in the last sentence of Paragraph 72 of the Recommended Order, arguing the ALJ's conclusion that "[t]he failure to have the medical records current and correct is a Class I deficiency" is not supported

by the record evidence of this case. The ALJ's conclusion of law is clearly based on her weighing the competent, substantial record evidence presented in this case, and is supported by that record evidence. See Transcript of January 2016 hearing, Volume II, Pages 408-411, 422, 424-425. While the Agency has substantive jurisdiction over the conclusion of law in the last sentence of Paragraph 72 of the Recommended Order because it is charged with the licensure and regulation of nursing homes in the state of Florida, it cannot substitute a conclusion of law that is as or more reasonable than that of the ALJ. Therefore, the Agency must deny Bayou Shores' tenth exception.

In its eleventh exception, Bayou Shores takes exception to what it believes is a finding of fact in the last sentence of Paragraph 75 of the Recommended Order, arguing the finding is not based on competent, substantial evidence. The sentence in question states that "Bayou Shores failure to follow its own policies and procedures regarding the safety of its residents is a Class I deficiency." That sentence is actually a conclusion of law because the ALJ applied the law to facts of the case. In addition, the conclusion of law is well-supported by the competent, substantial record evidence of this case. See Transcript of January 2016 hearing, Volume II, Pages 454-456, 469-472. Thus, while the Agency has substantive jurisdiction over the conclusion of law in the last sentence of Paragraph 75 of the Recommended Order because it is charged with the licensure and regulation of nursing homes in the state of Florida, it cannot substitute a conclusion of law that is as or more reasonable than that of the ALJ. Therefore, the Agency must deny Bayou Shores' eleventh exception.

In its twelfth exception, Bayou Shores takes exception to the conclusion of law in the first sentence of Paragraph 81 of the Recommended Order based on the reasoning set forth in its tenth exception and because it believes the ALJ applied the wrong standard in reaching her conclusion

that the deficiency at issue was a Class I deficiency. Based on the reasoning set forth in the Agency's ruling on Bayou Shores' tenth exception supra, which is hereby incorporated by reference, the Agency denies Bayou Shores' twelfth exception.

In its thirteenth exception, Bayou Shores takes exception to the conclusion of law in the second sentence of Paragraph 81 of the Recommended Order, arguing there was no evidence presented to support the ALJ's conclusion of law. The conclusion of law in the second sentence of Paragraph 81 of the Recommended Order is based on the ALJ's weighing of competent, substantial record evidence. See the ruling on Bayou Shores' seventh exception supra, which is hereby incorporated by reference. The Agency cannot re-weigh such evidence in order to make contrary conclusions of law that are more favorable to Respondent. See Heifetz; 475 So. 2d at 1281. Therefore, the Agency must deny Bayou Shores' thirteenth exception.

In its fourteenth exception, Bayou Shores takes exception to the conclusion of law in the last sentence of Paragraph 81 of the Recommended Order, arguing the issue was never in dispute and by itself did not constitute a violation of law. Bayou Shores argues the Agency must reject the conclusion of law "to the extent [it] suggests there is some violation of a legal requirement any time a resident leaves a nursing home without staff knowledge." Contrary to Bayou Shores' argument, the ALJ's conclusion of law in Paragraph 81 makes no such suggestion. As demonstrated by the ALJ's findings of fact in Paragraph 56, the violation is that JN left Bayou Shores' facility without staff noticing and Bayou Shores failed to investigate how the event could have occurred. The ALJ's conclusion of law is based on the weighing of competent, substantial record evidence. See the ruling on Petitioner's ninth exception supra, which is hereby incorporated by reference. Therefore, the Agency denies Bayou Shores' fourteenth exception.

In its fifteenth exception, Bayou Shores takes exception to Paragraph 82 of the Recommended Order, based on all of its previous exceptions. Based on the rulings on Bayou Shores' first fourteen exceptions supra, which are hereby incorporated by reference, the Agency denies Respondent's fifteenth exception.

Agency's Exceptions

In its sole exception to the Recommended Order, The Agency takes exception to Paragraph 62 of the Recommended Order, arguing that the ALJ applied the wrong burden of proof in this paragraph and thus the proceedings on which the conclusions of law in this paragraph are based did not comply with the essential requirements of law. Section 120.57(1)(*l*), Florida Statutes, requires an agency to "first determine from a review of the entire record, and state with particularity in the [final] order ... that the proceedings on which the findings [of fact] were based did not comply with essential requirements of law." Even though the phrase "did not comply with the essential requirements of law" is contained in the sentence regarding the rejection or modification of findings of fact, the Agency asserts failure to comply with the essential requirements of law is also a valid reason for the Agency to reject or modify the ALJ's incorrect determination of the burden of proof in a licensure case, which is a procedural issue that affects the findings of fact and proceedings as a whole, and is closely tied to the Agency's discretion to determine the fitness of licensure applications, pursuant to the Florida Supreme Court's reasoning in Department of Children and Families v. Davis Family Day Care Home, 160 So. 3d 854, 856-57 (Fla. 2015) and Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

As a licensee, Bayou Shores ultimately bears the burden in proving that it meets all the requirements for re-licensure, and any conclusion of law to the contrary is clear legal error. Any

conclusion of law to the contrary also goes against the Florida Supreme Court's opinions in Davis and Osborne Stern. In Davis, which re-affirmed the Osborne Stern case, the Court stated that "[i]n Osborne Stern, this Court clarified that it is the nature of the agency's action and the underlying rights implicated by the action that govern the applicable evidentiary standard." Id at 857. Thus, the Court found that "the Second District correctly recognized that '[t]he holding of Osborne [Stern] was that the preponderance of the evidence burden of proof, not the clear and convincing burden, is applicable to license application proceedings.'" Id. The Florida Supreme Court's reasoning in Davis and Osborne Stern applies with equal persuasiveness to both initial and renewal licensure denials. Indeed, as the First District Court of Appeal observed in Terrell Oil Co. v. Department of Transportation, 541 So. 2d 713 (Fla. 1st DCA 1989), license renewal proceedings are not penal because they do not have the effect of suspending or revoking a license. Id. at 715. There is "a qualitative difference between the type of order ... that denies renewal of a license that has expired or is about to expire and one which suspends or revokes an active license." Id.

This same reasoning is also found in the case of Lauderhill Family Care Retirement Residence, Inc. d/b/a Lauderhill Family Care Retirement v. Agency for Health Care Administration, DOAH Case No. 14-0435 (AHCA 2014). In that case, the ALJ upheld the Agency's denial of an assisted living facility's licensure renewal application based on the fact that the facility failed to have a satisfactory biennial licensure survey, and the fact that the controlling interest of the facility was the controlling interest of a facility that had an unpaid fine and its license revoked. The facility argued that the Agency should have to prove the allegations that formed the basis of its denial by clear and convincing evidence, but the ALJ rejected this argument stating "[t]his 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." See Endnote 5 of the Recommended Order. The ALJ concluded that "[a]s 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." See Paragraph 45 of the Recommended Order.

It is unclear why the ALJ chose to utilize the reasoning of Wilson v. Pest Control Commission, 199 So. 2d 777 (Fla. 5th DCA 1967); Coke v. Department of Children and Family Services, 704 So. 2d 726 (Fla. 5th DCA 1998); and Dubin v. Department of Business Regulation; 262 So. 2d 273 (Fla. 1st DCA 1972). The Wilson court's conclusion that "the decision of the commission not to renew petitioner's license was tantamount to imposing upon the petitioner a penalty" (Wilson, 199 So. 2d at 781) is not in harmony with the Osborne Stern court's holding, or section 120.57(1)(j), Florida Statutes, which states that "[f]indings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings..." Likewise, the Coke case has no bearing on this matter because, in Coke, DCF "agree[d] that in this proceeding it had the burden of proving [Coke's] lack of entitlement to a renewal of her license and that the evidence needed to be clear and convincing." Here, the Agency did not call its January 15, 2015 Notice of Intent to Deny Renewal Application an "administrative complaint," nor did the Agency agree that it bore the burden of proving the violations alleged in the January 15, 2015 Notice of Intent to Deny Renewal Application by clear and convincing evidence. Finally, the Dubin case is distinguishable from the case at hand because it concerned an agency's denial of a renewal application without first providing the

applicant a hearing, and because it relied on the Wilson case, which, as stated above, is not in harmony with the Osborne Stern case or applicable law.

Had the ALJ followed Davis and Osborne Stern, the burden of proof would have remained with Bayou Shores to prove it met all requirements to have its license renewed by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat. Though the outcome recommended by the ALJ will not change as a result, the Agency feels compelled to correct the ALJ's error in this regard in order to avoid confusion in future cases. Thus, upon review of the entire record and the Davis and Osborne Stern cases, the Agency finds that the ALJ did not comply with the essential requirements of law when she used the incorrect burden of proof as stated in Paragraph 62 of the Recommended Order. The Agency further finds that it has substantive jurisdiction over the conclusions of law in this paragraph because it is the single state agency responsible for the licensure and regulation of nursing homes in Florida, and that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency grants its exception and modifies Paragraph 62 of the Recommended Order as follows:

> 62. AHCA's action in stating its intention to deny the renewal of Bayou Shores' license is not tantamount to revoking the license. ~~See Wilson v. Pest Control Comm'n, 199 So. 2d 777, 781 (Fla. 4th 1967).~~ Accordingly, ~~AHCA~~Bayou Shores bears the ultimate burden of persuasion ~~on this issue~~ by a preponderance of the evidence that its license should be renewed notwithstanding the reasons the Agency gave for denying Bayou Shores' licensure renewal application.~~clear and convincing evidence~~. See ~~also Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998); Dubin v. Dep't of Bus. Reg., 262 So. 2d 273, 274 (Fla. 1st DCA 1972);~~ Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., supra, at 933-34 (Fla. 1996).

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

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

ORDER

1. Bayou Shores' nursing home license is hereby revoked, and its licensure renewal application is hereby denied.

2. In accordance with Florida law, Bayou Shores is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. Bayou Shores is advised of Section 408.810, Florida Statutes.

3. In accordance with Florida law, Bayou Shores is responsible for any refunds that may have to be made to the clients.

4. Bayou Shores is given notice of Florida law regarding unlicensed activity. It is advised of Section 408.804 and Section 408.812, Florida Statutes. Bayou Shores should also consult the applicable authorizing statutes and administrative code provisions. Bayou Shores is notified that the revocation of its registration may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

DONE AND ORDERED in Tallahassee, Florida, on this 29 day of August, 2016.

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 CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 30th day of August, 2016.

RICHARD J. SHOOP, Agency Clerk
AGENCY FOR HEALTH CARE ADMINISTRATION
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
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Copies furnished to:

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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.