

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NO. 15-1098

AHCA NO. 2014010291

v.

RENDITION NO.: AHCA-16-0076 -FOF-OLC

1351 GOLDEN, LLC d/b/a CROSS  
TERRACE REHABILITATION CENTER,

Respondent.

**FINAL ORDER**

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Robert S. Cohen, conducted a formal administrative hearing. At issue in this case is whether the Agency for Health Care Administration (“Agency”) should impose a fine and conditional license on Respondent for alleged statutory and rule violations. The Recommended Order dated December 4, 2015, is attached to this Final Order and incorporated herein by reference, except where noted infra.

**RULING ON EXCEPTIONS**

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

In determining how to rule upon Petitioner’s 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)(I), 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. . . .

§ 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 Petitioner’s exceptions:

In its exceptions, Petitioner takes exception to the conclusions of law in Paragraphs 48, 49 and 50 of the Recommended Order, as well as the ALJ’s Recommendation. Petitioner argues that the ALJ’s conclusions of law are erroneous and should thus be rejected. In essence, Petitioner is asking the Agency to increase the ALJ’s recommended penalty. The Agency is only permitted to increase a recommended penalty if it reviews the complete record of the case and states with particularity its reasons for increasing the recommended penalty by citing to the record. See Criminal Justice Standards and Training Commission v. Bradley, 596 So. 2d 661, 664 (Fla. 1992).

After reviewing the entire record of the case, the Agency finds there is a valid reason for it to increase the ALJ’s recommended penalty. As the ALJ noted, a Class II deficiency is defined by section 400.23(8)(b), Florida Statutes, as one that “has compromised the resident’s ability to maintain or reach his or her highest practicable physical, mental, and psychosocial

well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.” In Transcript, Volume II, Pages 213-216, Kathryn Hill described the appearance of Resident 80’s skin on July 23, 2014 as “a mixture of dark purple, red, lacerations, scratches that looked like they were trying to heal. Ms. Hill stated that “there were pustules, there w[ere] modules flat and raised” on his arm, and that his nails were “at least a quarter of an inch or more from the fingertip.” According to Ms. Hill, the Resident was “actively, feverish scratching his left arm.” The ALJ concluded in Paragraph 46 of the Recommended Order that “[t]here is clear and convincing evidence to support the fact that the Resident’s skin affliction had manifested itself at least a week prior to the survey.” Furthermore, the ALJ concluded in Paragraph 47 of the Recommended Order that, while the Resident was known to refuse treatment such as baths or having his nails trimmed, “the documentation does not support that additional efforts were made to strongly encourage and insist that the Resident agree to better hygienic measures.” Ms. Hill’s testimony and the ALJ’s conclusions of law in Paragraphs 46 and 47 of the Recommended Order clearly demonstrate that the deficiencies found and proven by the Agency were Class II deficiencies because they had indeed compromised Resident 80’s ability to maintain or reach his highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. The Resident was suffering from a known skin condition that Respondent should have addressed and alleviated prior to July 23, 2014. Thus, the Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraphs 48, 49 and 50 of the Recommended Order since it is the state agency in charge of the licensure and regulation of skilled nursing facilities in Florida, and that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, Petitioner’s exceptions are granted, Paragraph 49 of the Recommended Order is

rejected in its entirety, Paragraphs 48 and 50 of the Recommended Order are modified as follows:

48. Clear and convincing evidence exists in the record to support a finding of deficiencies at Respondent's skilled nursing facility. ~~The undersigned believes, however, that~~ The deficiencies will result in no more than minimal compromised the Resident's ability to maintain or reach his highest practicable physical, mental, or and psychosocial well-being. ~~discomfort to the Resident in this case and that~~ This is an isolated case involving one resident of the facility. Both the Resident Care Plan and the Comprehensive Plan of Care must include better documentation and have more regular entries for the Resident. This may have already been done sufficiently when the updated plans were provided to the AHCA surveyors during the July 2014 survey. If not, this is action that should be taken immediately since documentation, especially of the difficulties regarding the Resident's compliance with recommended care and treatment of the skin affliction, will better support Respondent's defense of its actions, if required, on subsequent surveys. It also appears that the Resident can be cajoled into submitting to bathing and nail cutting on a more frequent basis. This, of course, will require even more attention on the part of staff, but it might avoid prolonged flare-ups of the skin affliction in the future. The Resident's condition, at the time of the July 2014 survey, demonstrated that best efforts were not made to ensure the condition was under control. The active itching accompanied by skin tears and scabbing could have been alleviated, at least to some extent, with more persuasive tactics employed by Respondent's professional staff.

50. For the foregoing reasons, Respondent has violated the applicable statutes and rules by committing two Class III deficiencies.

and lastly the Agency declines to adopt the ALJ's Recommendation that the two deficiencies were Class III deficiencies and that a \$1,000 fine for each deficiency should be imposed on Respondent and Respondent maintain its status as a standard license holder.

### **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**

Based upon the foregoing, the Agency hereby imposes a \$5,000 fine on Respondent for violations of Counts I and II of the Administrative Complaint, and imposes a conditional license on Respondent commencing July 24, 2014 and ending August 24, 2014. The parties shall govern themselves accordingly.

Unless payment has already been made, payment in the amount of \$5,000 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 unless other payment arrangements have been made. 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. Central Systems Management Unit, 2727 Mahan Drive, Mail Stop 61, Tallahassee, Florida 32308.

**DONE and ORDERED** this 1 day of February, 2016, in Tallahassee, Florida.

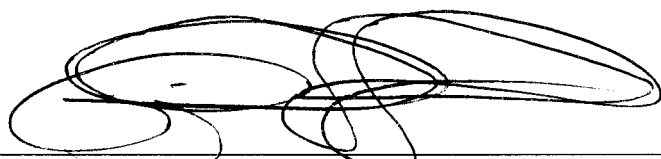
  
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ELIZABETH DUDEK, SECRETARY  
AGENCY FOR HEALTH CARE ADMINISTRATION

**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 the designated method to the persons named below on this 1<sup>st</sup> day of February, 2016.



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

**COPIES FURNISHED TO:**

Honorable Robert S. Cohen  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(via eFiling)

John E. Bradley, Esquire  
Assistant General Counsel  
(via e-mail)

Michael B. Kornhauser, Esquire  
Christopher M. David, Esquire  
Fuerst, Ittleman, David & Joseph, P.L.  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
Miami, Florida 33131  
(via U.S. mail)

Bernard Hudson, Unit Manager  
Long Term Care Unit  
(via email)  
Jan Mills  
Facilities Intake Unit  
(via e-mail)

Revenue Management Unit  
Finance & Accounting  
(via e-mail)