STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

MARION COMMUNITY HOSPITAL, INC., d/b/a OCALA REGIONAL MEDICAL CENTER; CITRUS MEMORIAL HOSPITAL, INC., d/b/a CITRUS MEMORIAL HOSPITAL; and MARION COMMUNITY HOSPITAL, INC., d/b/a WEST MARION COMMUNITY HOSPITAL,

Petitioners,

vs.

MUNROE HMA HOSPITAL, LLC, d/b/a MUNROE REGIONAL MEDICAL CENTER and STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondents.
_____/

DOAH CASE NO. 17-0554CON
AHCA NO. 2016014829
RENDITION NO.: AHCA-18-0101 -FOF-OLC

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), R. Bruce McKibben, conducted a formal administrative hearing. At issue in this proceeding is whether the Agency for Health Care Administration ("AHCA" or "Agency") should approve the Certificate of Need ("CON") application filed by Munroe HMA Hospital, LLC d/b/a Munroe Regional Medical Center ("Munroe Regional") to establish a 66-bed general acute care hospital in Marion County, Florida, District 3, Subdistrict 3-4. The Recommended Order entered on November 15, 2017 is attached to this final order and incorporated herein by reference, except where noted infra.

RULINGS ON EXCEPTIONS

Respondent, Munroe Regional, filed exceptions to the Recommended Order, and Petitioners filed a response to Munroe Regional's exceptions.

In determining how to rule upon Munroe Regional's 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 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 Munroe Regional's exceptions:

In Exception [No.] 1, Munroe Regional takes exception to what it alleges is a conclusion of law in the Preliminary Statement on Page 4 of the Recommended Order, wherein the ALJ stated that "[o]n June 26, 2017, Munroe Regional filed a motion in limine, seeking to limit

certain evidence to be presented by Petitioners at final hearing. The motion was denied." Munroe Regional argues that this "conclusion of law" is erroneous because the ALJ, in effect, allowed Petitioners to make major substantive changes to the written statement of opposition. The portion of the Recommended Order cited to by Munroe Regional is neither a finding of fact nor a conclusion of law that a party can take exception to under section 120.57(1), Florida Statutes. It is merely a summary of the procedural history of the case. In addition, that portion of the Recommended Order concerns an evidentiary issue that is clearly outside of the Agency's substantive jurisdiction. See Barfield v. Department of Health, 805 So. 2d 1008 (Fla. 1st DCA 2002). Therefore, the Agency denies Exception [No.] 1.

In Exception No. 2, Munroe Regional takes exception to Paragraphs 65, 66, 68 and 69 of the Recommended Order, arguing: 1) the first sentence of Paragraph 65 is a finding of fact that is not based on competent, substantial evidence and thus should be stricken; and 2) the rest of Paragraph 65, as well as 66, 68 and 69 contains conclusions of law that are erroneous and contrary to prior agency precedent. The first sentence of Paragraph 65 of the Recommended Order is a finding of fact that is based on competent, substantial record evidence. See Transcript, Volume 15, Pages 2094-2096. Thus, the Agency cannot reject or modify it. 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"). Therefore, the Agency must deny Exception No. 2 as it relates to the first sentence of Paragraph 65. In regard to the rest of Paragraph 65, and Paragraph 66, these paragraphs are merely a summation of the ALJ's weighing of the evidence. The Agency cannot re-weigh the evidence to reach different conclusions of law. See Heifetz, 474 So. 2d at 1281. Therefore, the Agency

denies Exception No. 2 as it pertains to those paragraphs. In regard to Paragraphs 68 and 69 of the Recommended Order, these paragraphs contain conclusions of law concerning the need for a new hospital in Marion County. The Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraphs 68 and 69 of the Recommended Order since it is the state agency in charge of administering Florida's CON program, it cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Exception 2 in regard to the conclusions of law in Paragraphs 68 and 69 of the Recommended Order.

In Exception No. 3, Munroe Regional takes exception to Paragraph 7 of the Recommended Order, arguing: 1) it contains a double negative and is not capable of determination or application to the case; and 2) represents a conclusion of law that is erroneous. In regard to Munroe Regional's first argument, it is clear that Paragraph 7 of the Recommended Order contains a typographical error, for the competent, substantial record evidence did not show that population growth by itself necessitated building a new hospital in Marion County. See Transcript, Volume 13; Pages 1776-1778; ORMC Exhibit 29. However, Munroe Regional's argument that Paragraph 7 is a conclusion of law is erroneous. Paragraph 7 contains findings of fact based on competent, substantial record evidence, as detailed above. Thus, the Agency shall grant Exception No. 2 only to the extent that it shall modify Paragraph 7 of the Recommended Order as follows:

> 7. There was significant testimony at final hearing concerning recent population growth and expectations for the future. Although it is clear that Marion County is growing, the testimony was not persuasive as to whether that growth alone would ~~not~~ necessitate building another hospital in the county.

In Exception No. 4, Munroe Regional takes exception to Paragraph 22 of the Recommended Order, arguing it is a conclusion of law that is erroneous. Paragraph 22 of the Recommended Order contains findings of fact that are supported by competent, substantial record evidence. See Transcript, Volume 8, Pages 1117-1121. Thus, the Agency is not at liberty to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception No. 4.

In Exception No. 5, Munroe Regional takes exception to Paragraph 21 of the Recommended Order, arguing there is no competent, substantial evidence to support the ALJ's finding of fact that "it seems logical the addition of those beds will reduce occupancy levels at Ocala Regional." The finding of fact at issue in Paragraph 21 of the Recommended Order is based on competent, substantial record evidence. See Transcript, Volume 8, Pages 1109 and 1128-1138. 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 Exception No. 5.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

The Agency hereby adopts the conclusions of law set forth in the Recommended Order.

ORDER

Based upon the foregoing, Munroe Regional's CON application no. 10449 is hereby denied. The parties shall govern themselves accordingly.

DONE and **ORDERED** this 20th day of February, 2018, in Tallahassee, Florida.

JUSTIN M. SENIOR, 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 A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH THE FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by the method indicated to the persons named below on this 21st day of February, 2018.

RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308-5403
(850) 412-3630

COPIES FURNISHED TO:

Honorable R. Bruce McKibben
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(via electronic filing)

Stephen A. Ecenia, Esquire
J. Stephen Menton, Esquire
Craig D. Miller, Esquire
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(via electronic mail to Steve@rutledge-ecenia.com,
smenton@rutledge-ecenia.com and CMiller@rutledge-ecenia.com)

Richard J. Saliba, Esquire
Kevin M. Marker, Esquire
Lindsey L. Miller-Hailey, Esquire
Assistant General Counsels
(via electronic mail to Richard.Saliba@ahca.myflorida.com,
Kevin.Marker@ahca.myflorida.com and
Lindsey.Miller-Hailey@ahca.myflorida.com)

Geoffrey D. Smith, Esquire
Susan C. Smith, Esquire
Corinne T. Porcher, Esquire
Smith & Associates
3301 Thomasville Road, Suite 201
Tallahassee, Florida 32303
(via electronic mail to geoff@smithlawtlh.com,
susan@smithlawtlh.com and corinne@smithlawtlh.com)

Marisol Fitch
Certificate of Need Unit
(via electronic mail to Marisol.Fitch@ahca.myflorida.com)

Jan Mills
Facilities Intake Unit
(via electronic mail to Janice.Mills@ahca.myflorida.com)