

**STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION**

FILED  
AHCA  
AGENCY CLERK

NHI SPB OPERATIONS, LLC,

Petitioner,

2019 JAN -7 P 1:53  
DOAH CASE NO. 18-1275CON  
AHCA NO. 2018002877  
RENDITION NO.: AHCA- 19 - 0039 -FOF-CON

vs.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

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**FINAL ORDER**

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (“ALJ”), Elizabeth W. McArthur, conducted a formal administrative hearing. At issue in this proceeding is whether the Agency for Health Care Administration (“Agency”) should grant or deny Petitioner’s second request for a 60-day extension to the validity period of Certificate of Need (“CON”) No. 10412. The Recommended Order entered on July 27, 2018 is attached to this final order and incorporated herein by reference.

**RULINGS ON EXCEPTIONS**

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

In determining how to rule upon Respondent’s exceptions and whether to adopt the ALJ’s Recommended Order in whole or in part, the Agency 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 First, Second, Third, Fourth, Fifth and Sixth Exception to the Recommended Order, Respondent takes exception to the following paragraphs of the Recommended Order: 3, 60, 70, 71, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96 and 97, as well as Endnote 2. In doing so, Respondent makes the following arguments: 1) Since Petitioner does not own or have an interest in any land, it cannot be found to have made a good faith effort to commence construction as defined by section 408.032, Florida Statutes, and rule 59C-1.018, Florida Administrative Code; 2) the ALJ erred in equating the term “permitted use” in the Florida Atlantic Research and Development Authority (“FARDA”) handbook with the term “permit” in section 408.040, Florida Statutes; 3) the ALJ erred in finding that exhibits the parties had stipulated to admitting into evidence constituted hearsay; 4) the ALJ erred in concluding

Petitioner met its burden of proof; and 5) the ALJ erred in considering evidence that did not exist at the time the Agency decided to deny Petitioner's extension request.

The Agency is unable to grant any of Respondent's exceptions as they pertain to Paragraphs 3 and 60 of the Recommended Order because these paragraphs contain findings of fact that are based on competent, substantial evidence. See Transcript, Volume II, Pages 221, 231; and Petitioner's Exhibit 12. 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 unable to grant Respondent's Fourth Exception, which pertains to Paragraphs 88, 89, 90 and Endnote 2 of the Recommended Order, because the conclusions of law in these paragraphs concern the evidentiary issue of whether exhibits, which the parties have stipulated can be entered into evidence, are hearsay because the conclusions of law are outside of the Agency's substantive jurisdiction. See Barfield v. Department of Health, 805 So. 2d 1008 (Fla. 1st DCA 2002). Thus, the Agency is unable to reject or modify them.

The Agency denies Respondent's First, Second and Fifth Exceptions<sup>1</sup> to Paragraphs 70 and 71 (which are conclusions of law erroneously labeled as ultimate findings of fact) and Paragraphs 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 91, 92, 93, 94, 95, 96 and 97 of the Recommended Order because, while it does have substantive jurisdiction over the conclusions of

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<sup>1</sup> In denying Petitioner's First, Second and Fifth Exceptions, Petitioner's Third Exception, which deals with the issue of whether ALJ erred in equating the term "permitted use" in the Florida Atlantic Research and Development Authority ("FARDA") handbook with the term "permit" in section 408.040, Florida Statutes; and Petitioner's Sixth Exception, which deals with the issue of whether the ALJ erred in considering evidence that did not exist at the time the Agency decided to deny Petitioner's extension request (and is also outside of the Agency's substantive jurisdiction) are rendered moot and need not be addressed.

law in these paragraphs, the Agency is unable to substitute conclusions of law that are as or more reasonable than those of the ALJ.

**FINDINGS OF FACT**

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


**CONCLUSIONS OF LAW**

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

**ORDER**

Based upon the foregoing, Petitioner's request for an extension of CON No. 10412 is hereby granted, and the validity period of CON No. 10412 is hereby extended for an additional sixty (60) days from the date of rendition of this Final Order. The parties shall govern themselves accordingly.

DONE and ORDERED this 7<sup>th</sup> day of January, 201~~8~~<sup>9</sup>, in Tallahassee, Florida.

  
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JUSTIN M. SENIOR, SECRETARY  
AGENCY FOR HEALTH CARE ADMINISTRATION

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

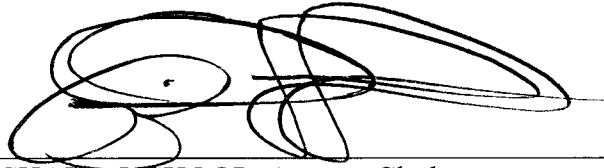
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH THE FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE 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 7<sup>th</sup> day of

January, 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 Elizabeth W. McArthur  
Administrative Law Judge  
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1230 Apalachee Parkway  
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(via electronic filing)

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