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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STATE OF FLORIDA AGENCY FOR  
HEALTH CARE ADMINISTRATION

Petitioner,

Informal Case No.: 19-600PH

v.

AHCA No.: 2018008362  
2018010144

ALF BETHESDA, LLC d/b/a BETHESDA  
ON TURKEY CREEK,

DOAH No.: 18-5723

Respondent.

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**FINAL ORDER**

Having reviewed the Administrative Complaint and the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The case was forwarded to the Division of Administrative Hearings for a Formal hearing pursuant to Section 120.57(1), Florida Statutes. However, the Administrative Law Judge subsequently relinquished jurisdiction to a Presiding Officer for an informal hearing to be conducted pursuant to Section 120.57(2), Florida Statutes.

2. The Presiding Officer entered a Recommended Order of Dismissal. (Ex. 2)

Based upon the foregoing, it is **ORDERED**:

3. The Agency adopts the findings of fact and conclusions of law set forth in the Recommended Order of Dismissal.

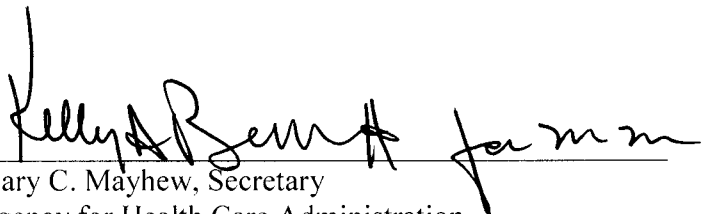
4. Respondent's request for hearing is dismissed.

5. The Agency's Administrative Complaint is UPHELD.

6. Respondent shall pay the Agency \$6,000.00 within thirty (30) days of the date of this order. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Central Intake Unit  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 61  
Tallahassee, Florida 32308.

**ORDERED** at Tallahassee, Florida, on this 23<sup>rd</sup> day of April, 2020.

  
Mary C. Mayhew, 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 one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with 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 of 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 **CERTIFY** that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 23<sup>rd</sup> day of April, 2020.



Richard J. Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Bldg. #3, Mail Stop #3  
Tallahassee, Florida 32308-5403  
Telephone: (850) 412-3630

Jan Mills, Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Jan Powers, Administrator	Andrew B. Thornquest, Senior Attorney

Bethesda on Turkey Creek 2800 Fordham Road NE Palm Bay, Florida 32905 (U.S. Mail)	Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
Warren J. Bird Informal Hearing Officer Agency for Health Care Administration (Electronic Mail)	Andrew D. Manko Administrative Law Judge Division of Administrative Hearings (Electronic Mail)

7.

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

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

ALF BC BETHESDA, LLC d/b/a  
BETHESDA ON TURKEY CREEK,

AHCA Nos.: 2018008362  
2018010144

Respondent.

**ADMINISTRATIVE COMPLAINT**

COMES NOW, Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”), by and through its undersigned counsel, and files this Administrative Complaint against Respondent, ALF BC Bethesda, LLC d/b/a Bethesda on Turkey Creek (“Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes (2017), and alleges:

**NATURE OF THE ACTION**

This is an action against Respondent’s assisted living facility to impose administrative fines and a survey fee totaling six thousand dollars (\$6,000.00) based upon one (1) Class II deficiency, one (1) uncorrected Class III deficiency, and a survey fee.

**PARTIES**

1. The Agency is the regulatory authority responsible for licensure of assisted living facilities and enforcement of all applicable federal regulations, state statutes and rules governing assisted living facilities pursuant to the Chapters 408, Part II, and 429, Part I, Florida Statutes, and Chapter 58A-5, Florida Administrative Code, respectively.

2. Respondent operates a one hundred nine (109) bed assisted living facility located at 2800 Fordham Road Northeast, Palm Bay, Florida 32905, and is licensed as an assisted living

facility, license number 4788.

3. Respondent was at all times material hereto a licensed facility under the licensing authority of the Agency, and was required to comply with all applicable rules and statutes.

**COUNT I**  
**Medication Labeling and Orders**

4. Under Florida law, in pertinent part:

(7) MEDICATION LABELING AND ORDERS.

\* \* \*

(f) The facility must make every reasonable effort to ensure that prescriptions for residents who receive assistance with self-administration of medication or medication administration are filled or refilled in a timely manner.

Rule 58A-5.0185(7)(f), F.A.C., (2018).

**Survey Findings**

5. On April 4, 2018, the Agency conducted a complaint survey of Respondent's facility.

6. Based upon the record review, observation, and interview, the Agency determined that Respondent failed to make every reasonable effort to ensure that resident medications were filled or re-filled in a timely manner.

7. On April 4, 2018, the Agency interviewed Resident #2 at 2:12 p.m. The Resident stated that he/she had gone without prescribed pain medications for several days within the past six months and that without the medication the resident had experienced an increased amount of pain.

8. The Agency then reviewed Resident #2's resident file. The review revealed that:

a. Resident #2's most recent health assessment ("1823") dated February 16, 2018, documented the resident had diagnoses including chronic back pain and required

assistance with the self-administration of medications.

- b. Resident #2's March and April 2018 medication observation records ("MORs") indicated the resident was to receive Lyrica 150 milligrams by mouth three (3) times daily at 8:00 a.m., 2:00 p.m., and 8:00 p.m. for neuropathy; and Morphine Sulfate Extended Release 30 milligrams by mouth every eight (8) hours at 6:00 a.m., 2:00 p.m., and 10:00 p.m. for lower back pain.
  - c. The resident's MORs were circled, indicating the medication was not provided, for the Lyrica doses at 8:00 a.m., 2:00 p.m., and 8:00 p.m. from March 29 through April 1, 2018; and at 8:00 a.m. and 2:00 p.m. on April 2, 2018 and April 3, 2018.
  - d. The resident's MORs were circled, indicating the medication was not provided, for the Morphine doses at 10:00 p.m. on April 1, 2018, and at 6:00 a.m. and 2:00 p.m. on April 2, 2018.
  - e. Resident #2's March 2018 MORs did not have any additional documentation to indicate why the resident's medications were not provided to the resident.
  - f. Resident #2's April 2018 medication observation records documented on the reverse that the resident's Lyrica and Morphine were unavailable.
9. The Agency did not find any documentation in Resident #2's file indicating that the Facility made every reasonable effort to assure that the resident's medication prescriptions were re-filled in a timely manner.
10. The Agency subsequently reviewed a record containing a facility re-fill request form dated March 20, 2018 faxed to the pharmacy for Resident #2's Morphine, while thirteen (13) tablets remained; and a facility re-fill request form dated March 29, 2018 faxed to the pharmacy for the Morphine, while six (6) tablets remained.

11. The Agency did not find documentation confirming the facsimiles were received by the pharmacy, or that any follow-up with the pharmacy was undertaken by facility personnel when the medication re-fills were not timely received, or when Resident #2 was going without the prescribed medications.

12. On April 4, 2018 at 4:10 p.m. the Agency interviewed Respondent's resident care director, who stated the following:

- a. She confirmed that Resident #2 had run out of prescribed Lyrica and Morphine.
- b. She was not aware of Resident #2's being unavailable until April 2, 2018.
- c. She contacted hospice when she learned Resident #2 was out of the pain medication, which assisted in obtaining the medication re-fills.

13. The actions and inactions of Respondent resulted in the Agency citing a Class II deficient practice.

#### **Requested Relief**

14. Under Florida law, as a penalty for any violation of this part, authorizing statutes, or applicable rules, the Agency may impose an administrative fine. § 408.813(1), Fla. Stat. (2017).

15. Under Florida law 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. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation. § 408.813(2)(b), Fla. Stat. (2017).

16. Under Florida law, each violation of Part I of Chapter 429 and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility

residents. The agency shall indicate the classification on the written notice of the violation as follows: ... (b) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation. § 429.19(2)(b), Fla. Stat. (2017).

**WHEREFORE**, Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of five thousand dollars (\$5,000.00) against Respondent.

**COUNT II**  
**Survey Fee**

17. The Agency re-alleges and incorporates by reference the allegations in Count I.

18. Under Florida law,

In addition to any administrative fines imposed, the Agency may assess a survey fee, equal to the lesser of one half of the Facility's biennial license and bed fee or \$500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under Section 400.428(3)(c), Florida Statutes, to verify the correction of the violations.

§ 429.19(7), Fla., Stat. (2017).

19. The Agency received a complaint regarding Respondent's Facility.

20. In response, the Agency surveyed Respondent's Facility on April 4, 2018.

21. During the inspection, the Agency cited Respondent with a violation or violations that were the subject of the complaint, as set forth above.

22. Therefore, the Agency is entitled to assess a survey fee against Respondent.

**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose a survey fee of five hundred dollars (\$500.00) against Respondent.



**COUNT III**  
**Resident Supervision**

23. Under Florida law:

An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) SUPERVISION. Facilities shall offer personal supervision, as appropriate for each resident, including the following:

(a) Monitor the quantity and quality of resident diets in accordance with Rule 58A-5.020, F.A.C.

(b) Daily observation by designated staff of the activities of the resident while on the premises, and awareness of the general health, safety, and physical and emotional well-being of the individual.

(c) General awareness of the resident's whereabouts. The resident may travel independently in the community.

(d) Contacting the resident's health care provider and other appropriate party such as the resident's family, guardian, health care surrogate, or case manager if the resident exhibits a significant change; contacting the resident's family, guardian, health care surrogate, or case manager if the resident is discharged or moves out.

(e) A written record, updated as needed, of any significant changes as defined in subsection 58A-5.0131(33), F.A.C., any illnesses which resulted in medical attention, major incidents, changes in the method of medication administration, or other changes which resulted in the provision of additional services.

Rule 58A-5.0182(1), F.A.C., (2018).

**Survey Findings**

**Survey of April 4, 2018**

24. On April 4, 2018, the Agency conducted a complaint survey of Respondent's Facility.

25. Based on record review and interview, the Agency determined that Respondent failed to be aware of an order from a health care provider for one (1) resident; and failed to notify

a health care provider and family member when a resident was sent to a hospital. (Residents #1 and #2).

26. On April 4, 2018 the Agency reviewed the medication records for Resident #1. The Agency found the following:

- a. A bubble package was labelled as containing Ibuprofen 400 milligram tablets.
- b. Twelve (12) tablets were filled on April 2, 2018, and twelve (12) tablets remained in the package.
- c. Resident #1's April 2018 MOR did not list the Ibuprofen as an ordered medication.
- d. Resident #1's record did not contain an order from a health care provider for the Ibuprofen, but it did contain a "Facility Note," dated April 2, 2018, which indicated the resident needed to take Ibuprofen 400 mg three (3) times a day with meals.
- e. Resident #1's most recent health assessment ("1823") dated March 16, 2018 indicated Resident #1 needed assistance with medication.

27. Respondent's resident care director was present during the review and confirmed that Resident #1's MOR did not list the Ibuprofen. She stated she would call the pharmacy to obtain the order.

28. Respondent's resident care director subsequently provided an order for Ibuprofen, dated April 2, 2018.

29. Respondent's resident care director stated that a Hospice nurse had sent the order to the pharmacy electronically, but the Facility did not know about the order.

30. Later on April 4, 2018, the Agency interviewed Respondent's resident care director about Resident #2. The resident care director stated the following:

- a. Resident #2 had been sent to the hospital on March 21, 2018 for shortness of breath

and chest pain.

b. Resident #2 returned to the Facility on March 29, 2018.

31. The Agency reviewed Resident #2's file on April 4, 2018, which did not contain documentation of Resident #2's hospital visit, that a health care provider was notified of the hospital visit, or that a family member was notified of the hospital visit.

32. The resident care director, in further interview, confirmed that there was no documentation of Resident #2's hospital visit in the resident's file.

33. The resident care director stated that the nurse who sent the resident to the hospital did not notify a health care provider or a family member about the hospital visit.

34. The actions and inaction of Respondent resulted in the citation of a Class III deficiency.

35. On April 20, 2018 the Agency issued a Statement of Deficiencies to Respondent, notifying it of the Class III citation. Applicable statutes require correction of deficient practice within thirty (30) days of the date of the Statement. § 408.811(4), Fla. Stat., (2017).

#### **Survey of May 24, 2018**

36. On May 24, 2018 the Agency conducted a revisit to the complaint survey of Respondent's Facility.

37. Based on observations, interview, and record review, the Agency determined that Respondent's Facility failed to provide care and services appropriate to the needs of one (1) resident; and failed to notify a family member or representative when a resident was sent to the hospital. (Residents #4 and #5).

38. On May 24, 2018, the Agency reviewed Resident #4's medical records. The review revealed the following:

- a. Resident #4's 1823 dated April 17, 2018 listed diagnoses of depression and hypothyroid.
- b. Resident #4 was listed as needing supervision with ambulation, bathing, and dressing.
- c. Resident #4 was also listed as needing assistance with self-administration of medications.
- d. The hospital medication sheet/summary dated April 17, 2018 listed levothyroxine 25 mcg (0.025 mg) once daily.
- e. Resident #4's May 2018 MOR listed levothyroxine 25 mcg (0.025 mg) once daily and had staff initials circled, indicating the medication was not given, on May 5, 6, 7, 8, 10, 11, 12, 13, 14, and 16
- f. The entries on back page of MOR indicated the medication was not given, not available.

39. Later on May 24, 2018, the Agency surveyor observed Resident #4's medication bubble pack dated April 3, 2018 labeled levothyroxine 25 mcg. Thirty (30) pills were dispensed, and twenty (20) were available.

40. On May 24, 2018 the Agency reviewed Resident #5's records. The record review revealed the following:

- a. A demographic sheet for Resident #5 listed an adult daughter as the contact person for the resident.
- b. Resident #5's 1823, dated May 18, 2018, listed attention deficit disorder ("ADD"), pneumothorax, schizophrenia, and chronic obstructive pulmonary disease ("COPD") as diagnoses.

- c. A "Facility Note" dated May 15, 2018 indicated the resident requested to go to the emergency room ("ER").
  - d. Resident #5's primary care physician was noted as contacted and gave permission for the resident to go to the ER.
  - e. The resident complained of not feeling well and was admitted with a collapsed lung.
  - f. Resident #5 returned to the facility on May 18, 2018.
  - g. The Agency did not find any evidence to confirm the Resident #5's representative (the adult daughter) was notified when the resident was transported to the ER.
41. On May 24, 2018, the Agency interviewed Respondent's resident care director about Resident #5. The resident care director confirmed the findings.
42. Respondent's actions constituted a Class III violation, which had not been corrected in the required timeframe.

#### **Requested Relief**

43. Under Florida law, in addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee for a violation of any provision of this part, part II of chapter 408, or applicable rules. § 429.14(1), Fla. Stat. (2017).

44. Under Florida law, violations of this part, authorizing statutes, or applicable rules shall be classified according to the nature of the violation and the gravity of its probable effect on clients. Violations shall be classified on the written notice as follows: 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 indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than class I or class II violations. The agency

shall impose an administrative fine as provided in this section for a cited class III violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, a fine may not be imposed. § 408.813(2)(c), Fla. Stat. (2017).

45. Under Florida law, the Agency shall impose an administrative fine for a cited class III violation in an amount not less than \$500 and not exceeding \$1,000 for each violation. § 429.19(2)(c), Fla. Stat. (2017).


46. The Agency properly cited Respondent with a Class III violation and it remained uncorrected.

**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of \$500.00 against the Respondent.

**CLAIM FOR RELIEF**

**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to enter a final order that:

1. Renders findings of fact and conclusions of law as set forth above.
2. Grants the relief set forth above.

  
Andrew B. Thornquest, Assistant General Counsel  
Florida Bar No. 0104832  
Agency for Health Care Administration  
525 Mirror Lake Drive N., Suite 330  
St. Petersburg, Florida 33701  
Telephone: 727-552-1942  
Facsimile: 727-552-1440  
andrew.thornquest@ahca.myflorida.com

## NOTICE OF RIGHTS

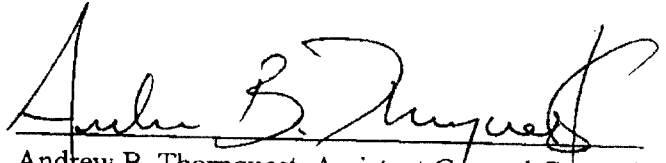
Pursuant to Section 120.569, F.S., any party has the right to request an administrative hearing by filing a request with the Agency Clerk. In order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), F.S., however, a party must file a request for an administrative hearing that complies with the requirements of Rule 28-106.2015, Florida Administrative Code. Specific options for administrative action are set out in the attached Election of Rights form.

The Election of Rights form or request for hearing must be filed with the Agency Clerk for the Agency for Health Care Administration within 21 days of the day the Administrative Complaint was received. If the Election of Rights form or request for hearing is not timely received by the Agency Clerk by 5:00 p.m. Eastern Time on the 21st day, the right to a hearing will be waived. A copy of the Election of Rights form or request for hearing must also be sent to the attorney who issued the Administrative Complaint at his or her address. The Election of Rights form shall be addressed to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630, Facsimile (850) 921-0158.

Any party who appears in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or other qualified representative. Mediation under Section 120.573, F.S., is available if the Agency agrees, and if available, the pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the Administrative Complaint and Election of Rights form were served to the below named persons/entities by the method designated on this 6th day of September, 2018.



Andrew B. Thornquest, Assistant General Counsel  
Florida Bar No. 0104832  
Agency for Health Care Administration  
525 Mirror Lake Drive N., Suite 330  
St. Petersburg, Florida 33701  
Telephone: 727-552-1942  
Facsimile: 727-552-1440  
andrew.thornquest@ahca.myflorida.com

<p>Matthew Johnson, Administrator Bethesda on Turkey Creek 2800 Fordham Road Northeast Palm Bay, Florida 32905 (Certified Mail- 7010 0780 0001 9836 1872)</p>	<p>Keisha Woods, Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)</p>
	<p>Theresa DeCanio, Field Office Manager Local Field Office- Region 7 Agency for Health Care Administration (Electronic Mail)</p>



STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: ALF BC Bethesda, LLC d/b/a Bethesda  
On Turkey Creek

AHCA Nos.: 2018008362  
2018010144

ELECTION OF RIGHTS

**This Election of Rights form is attached to an Administrative Complaint. The Election of Rights form may be returned by mail or by facsimile transmission, but must be filed with the Agency Clerk within 21 days by 5:00 p.m., Eastern Time, of the day that you received the Administrative Complaint. If your Election of Rights form with your selected option (or request for hearing) is not timely received by the Agency Clerk, the right to an administrative hearing to contest the proposed agency action will be waived and an adverse Final Order will be issued. In addition, please send a copy of this form to the attorney of record who issued the Administrative Complaint.**

(Please use this form unless you, your attorney or your qualified representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.) The address for the Agency Clerk is:

Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Building #3, Mail Stop #3  
Tallahassee, Florida 32308  
Telephone: 850-412-3630 Facsimile: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

**OPTION ONE (1) \_\_\_\_\_ I waive the right to a hearing to contest the allegations of fact and conclusions of law contained in the Administrative Complaint. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the fine, sanction or other agency action.**

**OPTION TWO (2) \_\_\_\_\_ I admit the allegations of fact contained in the Administrative Complaint, but I wish to be heard at an informal hearing (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine, sanction or other agency action should be reduced.**

**OPTION THREE (3) \_\_\_\_\_ I dispute the allegations of fact contained in the Administrative Complaint and request a formal hearing (pursuant to Section 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.**

**PLEASE NOTE: Choosing OPTION THREE (3), by itself, is NOT sufficient to obtain a formal hearing.** You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above within 21 days of your receipt of this proposed agency action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number, and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

Licensee Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Number and Street

City

Zip Code

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-Mail (Optional) \_\_\_\_\_

I hereby certify that I am duly authorized to submit this Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Petitioner,**

**vs.**

**Case No. 19-600PH  
AHCA NO. 2018008362  
2018010144**

**ALF BETHESDA, LLC dba BETHESDA  
ON TURKEY CREEK,**

**Respondent.**

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**RECOMMENDED ORDER OF DISMISSAL**

On December 9, 2019, a Notice of Telephone Hearing and Order of Prehearing Instructions was issued in this cause, requiring the parties to submit a joint or unilateral prehearing statement that included submission of specific information to be used to conduct the hearing, on or before January 22, 2020. The Order provided that a failure to abide by the terms thereof could result in a dismissal of the request for hearing. The Agency filed a unilateral response and Respondent filed no response.

On January 23, 2020, the undersigned issued an Order to Show Cause (OTSC) requiring the Respondent to show cause by close of business on January 30, 2020, why the sanction of dismissal for failure to file the required response, as set forth in the Order of Prehearing Instructions, should not be imposed. On or about January 28, 2020, Respondent served Agency counsel, and not the undersigned Informal Hearing Officer<sup>1</sup>, a document that is entitled Respondent's Response To Order To Show Cause And Unilateral Response To Initial Order (Respondent's Response) (emphasis supplied). Notwithstanding the title, Respondent's Response includes no response to the OTSC that explains the failure to file a response to the

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<sup>1</sup> This date is set forth on the Certificate of Service. Apparently, the Respondent's Response was filed with the undersigned by Agency counsel, on or after January 28, 2020, although there is no Notice of Filing apparent in the record.

Initial Order timely. It includes only the information set forth in the Agency's Unilateral Response, lists no witnesses or exhibits for hearing, and includes the single unsupported assertion, at paragraph "F", page 5, Respondent's Response, that "the proposed fines should be reduced". As a result of the foregoing, Respondent's failure to comply with the Initial Order timely is not explained, and the Respondent has not complied with the OTSC.

By requesting an Informal Hearing, the Respondent has admitted all material facts. It therefore has the burden to produce evidence to show that the Agency's action should be mitigated. The Respondent was properly noticed at its address of record of the proceedings herein, and the hearing date and time, as well as the requirement to file the prehearing statement. It is clear that the Respondent was provided every opportunity required by basic principles of due process to participate in the proceedings, including the opportunity to remedy the failure to file a prehearing statement timely, and has failed to do so.

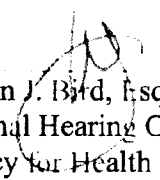
Based on the record, it is apparent that the Respondent has failed to participate in the proceedings as required, warranting dismissal of the Respondent's request for Informal Proceedings and remanding of this cause to the Agency for entry of a Final Order for the relief sought.

**IT IS THEREFORE ORDERED** that the hearing scheduled for March 10, 2020, is hereby cancelled, and this matter is relinquished to the Agency.

**IT IS RECOMMENDED** that Respondent's request for informal hearing be dismissed, and that a Final Order be entered upholding the allegations of and sanctions sought by the

Administrative Complaint.

**DONE AND ORDERED** at Tallahassee, Leon County, Florida, this 3 day of  
February, 2019.

  
Warren J. Bird, Esquire  
Informal Hearing Officer  
Agency for Health Care Administration  
2727 Mahan Drive, MS-7  
Tallahassee, Florida 32308

Copies furnished to:

Andrew B. Thornquest, Esquire  
Assistant General Counsel  
Agency for Health Care Administration  
525 Mirror Lake Drive North  
The Sebring Building, Suite 330  
Saint Petersburg, Florida 33701  
(Via Interoffice mail)

Jan Powers, Executive Director  
ALF Bethesda BC, LLC  
dba Bethesda on Turkey Creek  
2800 Fordham Road, NE  
Palm Bay, Florida 32905  
(Via electronic mail to [exd@bethesdaonturkeycreek.com](mailto:exd@bethesdaonturkeycreek.com))