

**STATE OF FLORIDA  
AGENCY FOR PERSONS WITH DISABILITIES**

**AGENCY FOR PERSONS  
WITH DISABILITIES,**

**Petitioner,**

**v.**

**DOAH Case #: 19-1812FL**

**MEADOWVIEW PROGRESSIVE  
CARE CORPORATION OWNED  
AND OPERATED BY  
MEADOWVIEW PROGRESSIVE  
CARE CORPORATION,**

**Respondent.**

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**FINAL ORDER**

This case is before the Agency for Persons with Disabilities (“Agency”) for entry of a Final Order concerning the Agency’s revocation of the Meadowview Progressive Care Corporation’s (“Respondent”) license to operate as a group home facility.

**FACTUAL BACKGROUND**

1. On August 16, 2019, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings (“DOAH”) conducted an administrative hearing with both parties and their witnesses attending via video teleconference. The ALJ issued a Recommended Order on November 26, 2019 that recommended the Agency “enter

a final order finding Respondent not guilty of all counts set forth in the Administrative Complaint.” A copy of the Recommended Order is attached to this Final Order as Exhibit A.

2. Section 120.570(1)(k), Florida Statute, provides, “The agency shall allow each party 15 days in which to submit written exceptions to the recommended order.” The Recommended Order also states, “All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.”

3. Petitioner filed a Motion for Extension of Time to File Exceptions to the Recommended Order on December 12, 2019, which is 16 days after the Recommended Order was issued. The Agency Clerk issued an Order to Show Cause on December 17, 2019 that ordered Petitioner to provide documentation substantiating his inability to timely submit exceptions. The Order to Show Cause stated that failure to respond to that order would result in a denial *in toto* of Petitioner’s exceptions to the Recommended Order.

4. Petitioner did not respond to the Order to Show Cause but filed the Agency’s Exceptions to the Recommended Order on December 20, 2019. Based on Petitioner’s failure to show cause for untimely filing, Petitioner’s exceptions are all denied except as discussed *infra* ¶¶ 6 through 11.

5. Respondent did not file exceptions to the Recommended Order or a response to Petitioner's exceptions.

### CONCLUSIONS OF LAW

6. Section 120.57(1)(l), F.S. provides as follows:

(l) 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.

(Emphasis added).

7. Chapter 28-106, Florida Administrative Code, adopted pursuant to § 120.54(5), F.S., authorizes the Agency to review petitions to determine if they contain all the information required by the uniform rules adopted in that rule chapter. Further, § 120.569(2)(c), F.S. provides, "A petition shall be dismissed if it is not in

substantial compliance with these requirements or it has been untimely filed.” *See also* Rule 28-106.2015, F.A.C. (describing the information that is required to be included in a petition concerning an agency’s administrative complaint). The Agency’s substantive jurisdiction thus includes reviewing petitions or requests for hearing.

8. The ALJ concluded in ¶ 42 of the Recommended Order that “the reference to ‘ownership controlling entity affiliated with this application’ in Section V, Item 2 of the Application Form,” which was incorporated by reference and adopted in Rule 65G-2.002(2), F.A.C., “is an invalid rule on which neither the administrative law judge nor Petitioner may base agency action under section 120.57(1)(e)1.” Paragraphs 41 through 42 of the Recommended Order provide the ALJ’s rationale for invalidating the rule. This is not a reasonable interpretation of § 120.57(1)(e)1., which reads as follows:

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party’s timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge may be pled as a defense using the procedures set forth in s. 120.56(1)(b).

- b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.
- c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.
- d. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

9. The ALJ read § 120.57(1)(e)1., F.A.C. in isolation without reference to its context, which relates to rule challenge proceedings brought under § 120.56, F.S. Respondent's petition for hearing did not allege the invalidity of any rule, let alone specify the one the ALJ determined to be invalid. Respondent also did not, at any time before, during, or even after the hearing, allege that any of the Agency's rules are invalid. Petitioner thus did not present evidence or argument on that issue.

10. The issue that was noticed for and discussed at the August 16, 2019 evidentiary hearing was Petitioner's Administrative Complaint seeking to revoke Respondent's license to operate as a group home. This is the issue for which Petitioner prepared –not a rule challenge brought under § 120.56, F.S. Respondent did not indicate anywhere in his petition for hearing that he intended to challenge one of the Agency's rules. The ALJ's *sua sponte* determination that the Agency's rule is invalid therefore constitutes a denial of due process. *See State, Dept. of Financial Services v. Mistretta*, 946 So.2d 79 (Fla. 1st DCA 2006) and *State, Dept. of Financial Services v. Fugett*, 946 So.2d 80 (Fla. 1st DCA 2006) (finding that an ALJ's *sua sponte* decision to raise and decide issues without giving the parties an opportunity to present evidence or argument departs from the essential requirements

of law by denying the parties due process). As such, the Agency rejects this conclusion of law. *See also Lee v. State Dept. of Transp.*, 596 So.2d 802, 803-804 (Fla. 1<sup>st</sup> DCA 1992) (finding that a party must initiate a rule challenge under § 120.56, F.S. or argue the rule's invalidity during the evidentiary hearing in order for the court to review its validity on appeal).

11. The Agency's interpretation of § 120.57(1)(e)1., F.A.C. is as or more reasonable than the ALJ's because it complies with the essential requirements of law, i.e. providing due process for the parties. This interpretation is consistent with Section 9 of the Florida Constitution and case law, unlike the ALJ's.

12. The rest of Petitioner's exceptions are denied as untimely. The Recommended Order is approved and adopted except for ¶¶ 40 through 42, which the Agency rejects for the reasons discussed *supra* ¶¶ 6 through 11.

### CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, Petitioner's request to revoke Respondent's license to operate as a group home facility is hereby DENIED.

DONE AND ORDERED in Tallahassee, Leon County, Florida, on

January 29, 2020.

  
Clarence Lewis

Deputy Director of Operations  
Agency for Persons with Disabilities

**NOTICE OF RIGHT TO APPEAL**

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.<sup>1</sup>

Copies furnished to:

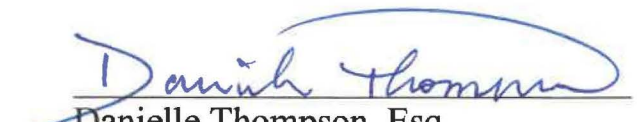
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*Filed via e-ALJ*

Evelyn Alvarez  
Regional Operations Manager  
APD Southern Region

I HEREBY CERTIFY that a copy of this Final Order was provided by regular US or electronic mail to the above individuals at the addresses listed on January 29, 2020.

  
Danielle Thompson, Esq.

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<sup>1</sup> The date of "rendition" of this Final Order is the date that the Agency Clerk certified it was sent to the named individuals.

Agency Clerk  
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