

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

**AGENCY FOR PERSONS  
WITH DISABILITIES,**

**Petitioner,**

v.

**DOAH Case #: 19-2265FL**

**L&B SOLUTION CARE  
GROUP HOME #3  
OWNED AND OPERATED BY  
L&B SOLUTIONS CARE  
GROUP HOMES, INC.,**

**Respondent.**

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**FINAL ORDER**

This case is before the Agency for Persons with Disabilities (“Agency” or “Petitioner”) for entry of a Final Order concerning the Agency’s revocation of L&B Solution Care Group Home #3’s (“Respondent”) license to operate as a group home facility.

**FACTUAL BACKGROUND**

1. The Agency issued an Administrative Complaint against Respondent on March 1, 2019, seeking to revoke its license to operate as a group home facility. The Administrative Complaint is attached as Exhibit A. Respondent timely filed a Petition for Formal Administrative Hearing and the case was referred to the Division

of Administrative Hearing's ("DOAH"), where it was assigned to an Administrative Law Judge ("ALJ").

2. As a result of Respondent's failure to comply with Petitioner's discovery requests and the ALJ's Order Granting Motion to Compel Discovery Responses, the ALJ issued an Order Granting Petitioner's Motion to Deem Matters Admitted pursuant to Florida Rules of Civil Procedure Rule 1.370.

3. The ALJ issued an Order Closing File and Relinquishing Jurisdiction ("Order") on September 30, 2019. This Order states, "There is no sworn evidence in the record to support the defenses raised by Respondent. Likewise, the material facts supporting the Agency for Persons with Disabilities' Administrative Complaint and Motion to Relinquish Jurisdiction have been admitted and conclusively established. . . [therefore] no genuine issue as to any material fact(s) exists."

4. The case was subsequently referred for an informal hearing pursuant to sections 120.569 and 120.57(2), Florida Statutes, and a hearing was held on December 5, 2019. The Agency's Informal Hearing Officer issued a Recommended Order on March 2, 2020, recommending revocation of Respondent's license. The Recommended Order is attached as Exhibit B.

5. Neither party filed exceptions to the Recommended Order.

6. Based on the Order Granting Petitioner's Motion to Deem Matters Admitted, the Order Closing File and Relinquishing Jurisdiction, and the Recommended Order,

it has been established that the Agency for Health Care Administration (“AHCA”) issued Administrative Complaints against Leonie Nelson (“Ms. Nelson”), Respondent’s President, Secretary, and Treasurer, on January 25, 2012; January 27, 2012; and August 23, 2016. Final Orders were entered regarding each of these Administrative Complaints, each of which imposed an administrative fine against Ms. Nelson.

7. On the Agency facility license application form, Question 1 reads as follows: “Have you or a controlling entity affiliated with this application ever had a license denied, revoked, or suspended in any county in Florida, or any other state or jurisdiction OR been the subject of disciplinary action, or the party responsible for a licensed facility receiving an administrative fine?”

8. On the initial license application form submitted to the Agency, notarized on April 12, 2017, and on the renewal license application form submitted to the Agency, notarized on August 15, 2018, Ms. Nelson falsely answered "no" to Question 1 in the Affidavit portion of the application.

9. AHCA issued an Amended Notice of Intent to Deny for Renewal of an assisted living facility license to L&B Solution Care, Inc. on January 3, 2018. On July 6, 2018, AHCA issued a Final Order to L&B Solution Care, Inc., upholding the Amended Notice of Intent to Deny for Renewal and denying the licensure renewal application for an assisted living facility.

10. On the Agency facility license application form, Question 4 reads as follows: “Have you ever held a license to operate a residential facility that was revoked or denied by the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Agency for Health Care Administration?”

11. On the renewal license application form submitted to the Agency, notarized on August 15, 2018, Ms. Nelson falsely answered "no" to Question 4 in the Affidavit portion of the application.

12. On December 30, 2010, the Department of Children and Families (“DCF”) commenced an investigation into an allegation of neglect of a vulnerable adult resident of L&B Solution Care Inc. Assisted Living Facility, owned and operated by the L&B Solution Care, Inc. Ms. Nelson is listed as the President and Treasurer of L&B Solution Care Inc., a Florida Profit Corporation.

13. In the month of December 2010, L.R., a non-ambulatory vulnerable adult resident of L&B Solution Care Inc. Assisted Living Facility, developed multiple bedsores.

14. On February 24, 2011, DCF closed the investigation with verified findings of medical neglect against Ms. Nelson, owner and operator of L&B Solution Care Inc. Assisted Living Facility.

15. On the Agency facility license application form, Question 2 reads as follows: “Have you or ownership controlling entity affiliated with this application ever been

identified as responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult?”

16. On the initial license application form submitted to the Agency, notarized on April 12, 2017, and on the renewal license application form submitted to the Agency, notarized on August 15, 2018, Ms. Nelson falsely answered "no" to Question 2 in the Affidavit portion of the application.

### **CONCLUSIONS OF LAW**

17. The Agency has jurisdiction pursuant to sections 120.569 and 120.57(2), Florida Statutes. As explained in the DOAH Order Closing File and Relinquishing Jurisdiction, “. . . no genuine issue as to any material fact(s) exists.”

18. Section 393.0673, Florida Statutes, provides as follows:

(1) The agency may revoke or suspend a license or impose an administrative fine, not to exceed \$1,000 per violation per day, if:

(a) The licensee has:

1. Falsely represented or omitted a material fact in its license application submitted under s. 393.067;

2. Had prior action taken against it under the Medicaid or Medicare program; or

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the licensee; or

(b) The Department of Children and Families has verified that the licensee is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

19. In addition, Rule 65G-2.0041, *Florida Administrative Code*, provides as follows with respect to disciplinary actions against licensees:

(2) Factors considered when determining sanctions to be imposed for a violation. The Agency shall consider the following factors when determining the sanctions for a violation:

- (a) The gravity of the violation, including whether the incident involved the abuse, neglect, exploitation, abandonment, death, or serious physical or mental injury of a resident, whether death or serious physical or mental injury could have resulted from the violation, and whether the violation has resulted in permanent or irrevocable injuries, damage to property, or loss of property or client funds;
- (b) The actions already taken or being taken by the licensee to correct the violations, or the lack of remedial action;
- (c) The types, dates, and frequency of previous violations and whether the violation is a repeat violation;
- (d) The number of residents served by the facility and the number of residents affected or put at risk by the violation;
- (e) Whether the licensee willfully committed the violation, was aware of the violation, was willfully ignorant of the violation, or attempted to conceal the violation;
- (f) The licensee's cooperation with investigating authorities, including the Agency, the Department of Children and Families, or law enforcement;
- (g) The length of time the violation has existed within the home without being addressed; and,
- (h) The extent to which the licensee was aware of the violation.

...

(4) Sanctions. Fines shall be imposed, pursuant to a final order of the Agency, according to the following three-tiered classification system for the violation of facility standards as provided by law or administrative rule. Each day a violation occurs or continues to occur constitutes a separate violation and is subject to a separate and additional sanction. Violations shall be classified according to the following criteria:

(a) Class I statutory or rule violations are violations that cause or pose an immediate threat of death or serious harm to the health, safety or welfare of a resident and which require immediate correction.

1. Class I violations include all instances where the Department of Children and Families has verified that the licensee is responsible for abuse, neglect, or abandonment of a child or abuse, neglect or exploitation of a vulnerable adult. For purposes of this subparagraph, a licensee is responsible for the action or inaction of a covered person

resulting in abuse, neglect, exploitation or abandonment when the facts and circumstances show that the covered person's action, or failure to act, was at the direction of the licensee, or with the knowledge of the licensee, or under circumstances where a reasonable person in the licensee's position should have known that the covered person's action, or failure to act, would result in abuse, neglect, abandonment or exploitation of a resident.

2. Class I violations may be penalized by a moratorium on admissions, by the suspension, denial or revocation of the license, by the nonrenewal of licensure, or by a fine of up to \$1,000 dollars per day per violation. Administrative sanctions may be levied notwithstanding remedial actions taken by the licensee after a Class I violation has occurred.

3. All Class I violations must be abated or corrected immediately after any covered person acting on behalf of the licensee becomes aware of the violation other than the covered person who caused or committed the violation.

(b) Class II violations are violations that do not pose an immediate threat to the health, safety or welfare of a resident, but could reasonably be expected to cause harm if not corrected. Class II violations include statutory or rule violations related to the operation and maintenance of a facility or to the personal care of residents which the Agency determines directly threaten the physical or emotional health, safety, or security of facility residents, other than Class I violations.

1. Class II violations may be penalized by a fine of up to \$500 dollars per day per violation.

If four or more Class II violations occur within a one year time period, the Agency may seek the suspension or revocation of the facility's license, nonrenewal of licensure, or a moratorium on admissions to the facility.

2. A fine may be levied notwithstanding the correction of the violation during the survey if the violation is a repeat Class II violation.

20. As discussed *supra* paragraph 6, Respondent had prior action taken against it under the Medicaid program. AHCA imposed administrative fines against Ms. Nelson's assisted living facility on three occasions between January 25, 2012 and June 7, 2017. As discussed *supra* paragraph 9, AHCA also denied the facility's

licensure renewal application on July 6, 2018. Respondent is owned and operated by the same licensee, Ms. Nelson. Both the administrative fines and denial of licensure renewal constitute prior action taken against Respondent under the Medicaid program.

21. In addition to AHCA's administrative actions, Respondent also falsely represented or omitted material facts in its initial license application in 2017 and renewal application in 2018. As discussed *supra* paragraphs 7 through 8, Ms. Nelson represented that she had not been the subject of disciplinary action or the party responsible for a licensed facility receiving an administrative fine. Ms. Nelson also represented that she had not ever held a license to operate a residential facility that was revoked or denied by the Agency for Persons with Disabilities, DCF, or AHCA. *See supra* paragraphs 10-11.

22. DCF also verified that Respondent's licensee, Ms. Nelson, was responsible for the medical neglect of a vulnerable adult resident of L&B Solution Care Inc. Assisted Living Facility. *See supra* paragraphs 12-14. Ms. Nelson also falsely represented on the initial license application, which was notarized on April 12, 2017, that she had not been identified as responsible for the abuse, neglect, or exploitation of a vulnerable adult. *See supra* paragraphs 15-16.

23. The Agency may revoke a license or impose an administrative fine up to \$1,000 per violation per day for a violation of section 393.0673. Respondent has



been the party responsible for a licensed facility receiving administrative fines, has held a license to operate a residential facility that was denied renewal by AHCA, and has been identified by DCF as responsible for the abuse, neglect, or exploitation of a vulnerable adult. In addition, Respondent falsely represented or omitted those material facts in its license application submitted under section 393.067.

24. As Rule 65G-2.0041(4), *Florida Administrative Code*, explains, a DCF verified finding of neglect of a vulnerable adult constitutes a Class I violation. The other violations constitute Class II violations, which include statutory or rule violations related to the operation and maintenance of a facility or to the personal care of residents which the Agency determines directly threaten the physical or emotional health, safety, or security of facility residents (other than Class I violations).

25. Collectively, Respondent is responsible for violations of sections 393.0673(1)(a)1. and 2., as well as 393.0673(1)(b), which means Respondent is responsible for a Class I violation and nine Class II violations without consideration of the length of time the violations existed. *See Fla. Admin. Code R. 65G-2.0041(4)* (stating, “Each day a violation occurs or continues to occur constitutes a separate violation and is subject to a separate and additional sanction.”).

26. Rule 65G-2.0041(2), *Florida Administrative Code*, requires the Agency to consider several factors when determining sanctions for violations. The gravity of

the violations is severe. Respondent had a verified finding of neglect of a vulnerable adult where serious physical injury resulted (it is unknown if permanent injuries resulted), there were three separate instances where Respondent had prior action taken under the Medicaid program in the form of administrative fines, an additional instance of action taken under the Medicaid program in that AHCA denied the license renewal of an assisted living facility owned and operated by the same licensee, and five instances (two in 2017 and three in 2018) where Respondent falsely represented those material facts in its license application submitted under section 393.067.

27. It is unknown based on the record how many residents were served by the facility, but the violations put all the residents at risk where Respondent misrepresents material facts to the Agency.

28. No evidence was presented to address Respondent's cooperation with the investigating authorities.

29. While only one of the violations resulted in a serious physical injury of a resident, the other violations represent a threat to the health, safety, and welfare of the residents in Respondent's facility. Respondent's misrepresentation of material facts on the 2017 application and 2018 renewal application also raises concerns about its compliance with Agency rules and regulations.

30. Respondent failed to present any evidence that the licensee is taking or has taken action to correct the violations.

31. Respondent is responsible for repeat violations of section 393.0673(1)(a)1. The licensee misrepresented information in not only the 2017 license application but also the 2018 renewal application. Respondent's other violations were not repeat violations. As discussed *supra* paragraphs 20 through 22 and 25, Respondent is responsible for several violations, several of which are grounds to revoke a license or invoke an administrative in up to \$1,000 per day under section 393.0673.

32. With respect to whether the licensee willfully committed the violation, was aware of the violation, was willfully ignorant of the violation, or attempted to conceal the violation, it is possible that the licensee, Ms. Nelson, was only aware of some of the violations. For example, she must have been aware that her license renewal was denied because it would force her to discontinue operations as an assisted living facility. As the licensee, it was her duty to answer the questions on the license application and renewal applications honestly, so to the extent that she answered "No" to Question 4, this must have been done willfully. *See supra* paragraphs 9-11. However, it is possible that she was not aware of the verified finding of neglect if it never resulted in any agency action. Overall, though, it appears that Respondent was aware of most, if not all the violations by virtue of their outcome, such as being required to pay an administrative fine or cease operations.

33. Rule 65G-2.0041(4)(b)1., *Florida Administrative Code*, provides, “If four or more Class II violations occur within a one year time period, the Agency may seek the suspension or revocation of the facility’s license, nonrenewal of licensure, or a moratorium on admissions to the facility.” There were more four or more Class II violations within a one-year time period at Respondent’s facility. Respondent was responsible for four Class II violations in 2018, namely, AHCA denied the license renewal and the licensee falsely represented that she had not received administrative fines, had a license denied or revoked, and had not been identified as responsible for the abuse, neglect, or exploitation of a vulnerable adult. Taking all the violations together along with all the facts and factors in Rule 65G-2.0041(2) of the *Code*, the Respondent’s violations amount to a fundamental failure to comply with applicable requirements of chapter 393 and rules applicable to the licensee.

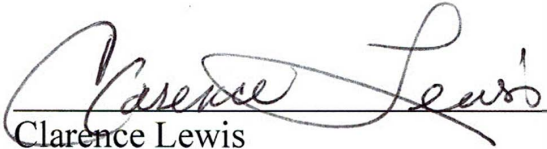
34. These facts were deemed admitted by the DOAH ALJ and, after an informal hearing, the Informal Hearing Officer concluded that revocation of Respondent’s license to operate as a group home facility is appropriate. Given the facts and reasons discussed above, the undersigned agrees.

### **CONCLUSION**

Based on the foregoing, it is hereby ORDERED AND ADJUDGED that Respondent’s license to operate as a group home facility (11-1252-GH) is hereby REVOKED.

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

May 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:

Trevor Suter, Esq.  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950  
[Trevor.Suter@apdcares.org](mailto:Trevor.Suter@apdcares.org)

G. Barrington Lewis, Esq.  
Law Office of George B. Lewis  
10061 53<sup>rd</sup> Way South, Suite 1004  
Boynton Beach, Florida 33437  
[George@georgelewislaw.com](mailto:George@georgelewislaw.com)

DOAH  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060  
*Filed via e-ALJ*

Evelyn Alvarez  
Regional Operations Manager  
APD Southern Region

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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.

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 May 29, 2020.

/s/ *Danielle Thompson*  
Danielle Thompson, Esq.  
Agency Clerk  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 335  
Tallahassee, FL 32399-0950  
Apd.agencyclerk@apdcares.org