

2020 AUG -6 P 1:08

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

TYVAL ASSISTED LIVING FACILITY,
LLC,

Respondent.

TYVAL ASSISTED LIVING FACILITY,
LLC,

Petitioner,

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

DOAH CASE NOS. 19-5096 &
20-0014

AHCA NOS. 2019002790,
2019014536 & 2019014537

FILE NO.: 11967048

LICENSE NO.: 11128

PROVIDER TYPE : ASSISTED
LIVING FACILITY

DOAH CASE NO. 19-6305

AHCA NO. 2019014994

RENDITION NO.: AHCA-20-414 -FOI-OLC

AMENDED FINAL ORDER¹

These cases were referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Darren A. Schwartz, consolidated them and conducted a formal administrative hearing. At issue in this proceeding is 1) whether Tyval Assisted Living Facility, LLC's ("Tyval") committed the violations alleged in the Agency for Health Care Administration's ("Agency" or "AHCA") Administrative Complaint, and, if so, what penalty should be imposed; and 2) whether the Agency has sufficient grounds to deem Tyval's assisted living facility licensure renewal application as incomplete and withdraw it from

¹ The amended final order is being entered in this matter to correct an error in service that occurred with the original final order.

further consideration. The Recommended Order entered on April 30, 2020 is attached to this final order and incorporated herein by reference.

RULINGS ON EXCEPTIONS

Tyval filed exceptions to the Recommended Order, and the Agency filed a response to Tyval's exceptions.

In determining how to rule upon Tyval'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 Tyval's exceptions:

In Exception No. 1, Tyval takes exception to Paragraph 46 of the Recommended Order, arguing the ALJ improperly concluded Tyval's renewal application was incomplete. The ALJ's ultimate finding of fact in Paragraph 46 of the Recommended Order that Tyval's renewal application was incomplete is based on the findings of fact in Paragraphs 34-45 of the Recommended Order, which, in turn, are all supported by competent, substantial record evidence. See Transcript, Volume II, Pages 202, 205-213; Agency's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 42. Thus, the Agency is not at liberty to 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"). Therefore, the Agency denies Exception No. 1

In Exception No. 2, Tyval takes exception to Paragraph 57 of the Recommended Order, arguing the ALJ erroneously concluded the administrator lacked qualifications and training. However, the ALJ did not make such conclusion of law in Paragraph 57 of the Recommended Order. Instead, the ALJ concluded that "as the administrator of Tyval, Ms. Powell failed to provide adequate management of staff by not ensuring staff members were adequately trained to recognize and report incidents of abuse and neglect." This conclusion of law is based on the findings of fact in Paragraphs 15 and 25, which Tyval did not take exception to and which are supported by competent, substantial record evidence. See Transcript, Volume I, Pages 25, 41, 81-94; Agency's Exhibit 21. The Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 57 of the Recommended Order because it is the single state agency in charge of the licensure and regulation of assisted living facilities in Florida, the ALJ

conclusions of law are reasonable and should not be disturbed. Therefore, the Agency denies Exception No. 2.

In Exception No. 3, Tyval takes exception to Paragraph 70 of the Recommended Order, arguing the ALJ erred by not weighing certain statutory factors prior to recommending the Agency revoke Tyval's license. Tyval's argument is incorrect. The ALJ specifically references the statutory factors in Paragraph 68 of the Recommended Order, and then states in Paragraph 70 of the Recommended Order that she "[a]ppl[ied] the foregoing legal principles to the instant case." The Agency finds that, while it does have substantive jurisdiction over the conclusions of law in Paragraph 70 of the Recommended Order because it is the single state agency in charge of the licensure and regulation of assisted living facilities, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, the Agency denies Exception No. 3.

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

1. Tyval's assisted living facility license is hereby REVOKED, and Tyval's assisted living facility licensure renewal application is hereby WITHDRAWN.

2. In order to ensure the health, safety, and welfare of Tyval's clients, the license revocation date is extended for 30 days for the sole purpose of allowing the safe and orderly discharge of clients. § 408.815(6), Fla. Stat. As a condition of this extension, Tyval is prohibited from accepting any new admissions during this period and must immediately notify the clients that they will soon be discharged. Tyval is subject to monitoring by the Agency and possibly third parties. The Agency may terminate the 30-day extension or modify the conditions

at any time. Tyval must comply with all other applicable federal and state laws. At the conclusion of 30 days, or upon the discontinuance of operations, whichever is first in time, Tyval shall promptly return the license certificate which is the subject of this agency action to the appropriate licensure unit in Tallahassee, Florida. Fla. Admin. Code R. 59A-35.040(5).

3. In accordance with Florida law, Tyval is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. Tyval is advised of Section 408.810, Florida Statutes.

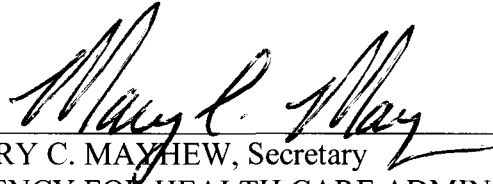
4. In accordance with Florida law, Tyval is responsible for any refunds that may have to be made to the clients.

5. Tyval is given notice of Florida law regarding unlicensed activity. It is advised of Section 408.804 and Section 408.812, Florida Statutes. Tyval should also consult the applicable authorizing statutes and administrative code provisions. Tyval is notified that the revocation of its registration may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

6. An \$11,000 fine and \$500 survey fee are hereby imposed on Tyval. Unless payment has already been made, such payment shall be made in full within 30 days of the filing of this Final Order unless other payment arrangements have been made. The payment shall be made by check payable to Agency for Health Care Administration and shall be mailed to the Agency for Health Care Administration, Attn. Central Intake Unit, 2727 Mahan Drive, Mail Stop 61, Tallahassee, Florida 32308.

DONE AND ORDERED in Tallahassee, Florida, on this 6 day of

August, 2020.



MARY C. MAXHEW, Secretary
AGENCY FOR HEALTH CARE ADMINISTRATION

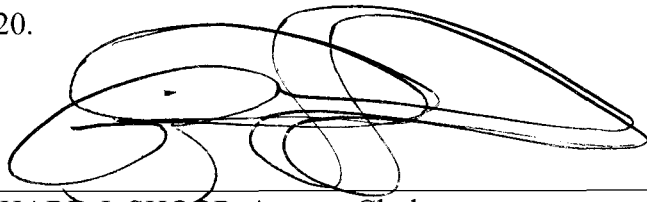
NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE 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 THE 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 6th day of

August, 2020.



RICHARD J. SHOOP, Agency Clerk
AGENCY FOR HEALTH CARE ADMINISTRATION
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
Telephone: (850) 412-3630

Copies furnished to:

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Keisha Woods, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)
Finance & Accounting Revenue Management Unit Agency for Health Care Administration (Electronic Mail)	Arlene Mayo-Davis, Field Office Manager Area 9/10 Field Office (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	Shaddrick A. Haston, Esquire Ullman Bursa Law 3812 Coconut Palm Drive, Suite 200 Tampa, Florida 33619 (via electronic mail to shaston@ublawoffices.com)
Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	Nicola Brown, Esquire Mary J. Howard, Esquire Assistant General Counsels (Electronic Mail)
Honorable Darren A. Schwartz Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (Electronic Filing)	Valier D. Powell, Administrator Tyval Assisted Living Facility, LLC 3526 Genevra Avenue Boynton Beach, Florida 33436-3103 (U.S. Mail)

NOTICE OF FLORIDA LAW

408.804 License required; display.--

(1) It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.

(2) A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is

issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

408.812 Unlicensed activity. --

(1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.

(2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.

(4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.