STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEBRINA CAMERON, N.H.A.,

Petitioner,

vs. Case No. 21-1349F

DEPARTMENT OF HEALTH, BOARD OF NURSING HOME ADMINISTRATORS,

Respondent.
_____/

FINAL ORDER

Pursuant to notice, a final hearing was conducted in this case on June 15, 2021, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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For Respondent: Chad Wayne Dunn, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Respondent, Department of Health, Board of Nursing Home Administrators (the "Department"), was "substantially justified" under section 57.111(3)(e), Florida Statutes,[1] in initiating the underlying action against the nursing home administrator license of Petitioner, Sebrina Cameron, N.H.A. ("Petitioner" or "Ms. Cameron").

PRELIMINARY STATEMENT

On May 5, 2020, the Department filed a two-count Administrative Complaint against Petitioner in Department Case No. 2020-12066. Count I alleged that Petitioner violated section 468.1755(1)(h), Florida Statutes (2019), by engaging in negligence, incompetence, or misconduct in the practice of nursing home administration. Count II alleged that Petitioner violated section 468.1755(1)(k), by repeatedly acting in a manner inconsistent with the health, safety, and welfare of the patients of the facility in which she was the administrator.

On May 20, 2020, Petitioner sent the Department a completed Election of Rights form and a Request for an Administrative Hearing. On July 6, 2020, the Department forwarded the case to DOAH for assignment of an ALJ and the conduct of a formal hearing. The case was given DOAH Case No. 20-3025PL and assigned to the undersigned ALJ. By Order dated July 15, 2020, the undersigned consolidated this case with DOAH Case No. 20-3026PL, involving a related Administrative Complaint against Mark Daniels, N.H.A.

On December 3, 2020, the undersigned entered an Order relinquishing jurisdiction of both cases back to the Department to allow the parties to present a settlement agreement to the Board of Nursing Home

[1] Unless otherwise noted, references to the Florida Statutes are to the 2020 edition. The charging statute, section 468.1755, has not been amended since 2008.

Administrators ("Board") in DOAH Case No. 20-3026PL against Mr. Daniels. In a Final Order dated January 21, 2021, the Board suspended Mr. Daniels' license for a period of six months, with credit for time served.

On January 29, 2021, the Department sought to amend the Administrative Complaint filed against Ms. Cameron and scheduled a hearing before the Board's Probable Cause Panel (the "Panel") for approval. On March 24, 2021, the Panel reconsidered this matter and directed that the case against Ms. Cameron be dismissed.

On April 15, 2021, Petitioner filed her Motion for Attorneys' Fees (the "Motion") at DOAH, seeking an award of attorneys' fees and costs incurred in defending the Administrative Complaint in DOAH Case No. 20-3025PL. The fees case was given DOAH Case No. 21-1349F and assigned to the undersigned, who scheduled it for hearing on June 15, 2021. On June 2, 2021, the parties filed a Joint Motion to Bifurcate Hearing, requesting that the issue of entitlement to attorneys' fees be heard prior to, and separately from, the issue of the reasonableness of the fees. The motion was granted by Order dated June 2, 2021.

On June 9, 2021, the parties filed an Amended Joint Pre-hearing Stipulation, which has been used as one basis for the Findings of Fact below.

The final hearing was convened and completed on June 15, 2021. The hearing consisted of legal argument. Neither party called a witness. The Department's Exhibits 1 through 5 were admitted without objection.

The one-volume Transcript of the final hearing was filed with DOAH on July 12, 2021. Both parties timely filed Proposed Final Orders, which have been considered in the preparation of this Final Order.

FINDINGS OF FACT

Based on the record as a whole, the following Findings of Fact are made:

1. The Department, through the Board, is the entity authorized by statute to issue licenses to nursing home administrators and to impose discipline on those licenses when warranted. § 468.1685(4), Fla. Stat.

2. Ms. Cameron is a licensed nursing home administrator, having been issued license number NH 4950.

3. Case No. 20-3025PL was initiated by the Department, a "state agency" for purposes of section 57.111(3)(f).

4. Ms. Cameron qualifies as a "small business party" as defined in section 57.111(3)(d). Because the Administrative Complaint underlying Case No. 20-3025PL was ultimately dismissed by the Board, Ms. Cameron is a "prevailing small business party" under section 57.111(3)(c)1.

5. The sole issue presented in this bifurcated proceeding is whether the Department was substantially justified in bringing the Administrative Complaint against Petitioner's nursing home administrator license.

6. Section 57.111(3)(e) states that a proceeding is "substantially justified" if "it had a reasonable basis in law and fact at the time it was initiated by a state agency."

7. On May 4, 2020, the Department presented its investigation and recommendation in Department Case No. 2020-12066 to the Panel, which decides whether there is a sufficient legal and factual basis for the Department to move forward with formal charges in license discipline cases.

8. The Panel reviewed the following materials (hereinafter "Panel Materials"): a draft of the proposed Administrative Complaint; a copy of the Department's Order of Emergency Suspension of License; Petitioner's detailed response to the allegations; a 980-page Supplemental Investigative Report dated April 23, 2020; and a 196-page Final Investigative Report dated April 22, 2020. The Panel found probable cause and authorized the filing of the Administrative Complaint against Ms. Cameron.

9. The investigation and subsequent Administrative Complaint related to an outbreak of COVID-19 involving several residents at Cross Landings Health and Rehabilitation Center, a nursing home in Monticello. The outbreak commenced on or about April 5, 2020, when a resident at Cross Landings tested positive for COVID-19. By April 14, 2020, 11 additional residents had tested positive.

10. On April 9, 2020, a team of four registered nurses ("RN Team"), contracted by the Department's Division of Emergency Management, arrived at Cross Landings with the stated assignment of assessing the facility's infection control procedures and providing education and training on hygiene practices, infection control, isolation procedures, and the proper use of personal protective equipment ("PPE"). The RN Team was also tasked with identifying and recommending actions to be taken to control the spread of COVID-19 infections. The RN Team worked at Cross Landings until April 14, 2020.

11. The record indicates that the RN Team's dealings with the staff of Cross Landings was contentious, particularly with regard to the facility's owner, administrators, and senior nursing staff, who regarded the team's behavior as high-handed, intrusive, and not consistent with its supposed mission of helping Cross Landings cope with the COVID-19 outbreak. From the RN Team's point of view, Cross Landings' leadership was uncooperative when not outright obstructive.

12. At all times material to the Administrative Complaint, Cross Landings had two licensed nursing home administrators on site responding to the outbreak.

13. The administrator of record was Mark Daniels. However, Mr. Daniels submitted his resignation to Cross Landings on April 7, 2020. During the team's stay, Ms. Cameron was also at the facility in her role as regional administrator for the parent company of Cross Landings, to ensure continuity of care for the residents and to help on the administrative side.

14. Petitioner argues that the title "regional administrator" was an honorific bestowed upon her by the parent company in recognition of her years of service to the organization. The title carried no additional powers or duties. Petitioner states that Ms. Cameron had no supervisory authority over Mr. Daniels, who was at all relevant times the administrator of record at Cross Landings.

15. At the time of the investigation, the Department was unaware that the title "regional administrator" carried no actual authority. The Department understood the title to mean that Ms. Cameron was senior to Mr. Daniels and exercised some level of administrative authority at Cross Landings. It appeared to the RN Team that Ms. Cameron was a figure of authority at Cross Landings and that she was treated as such by the staff of the facility.

16. The RN Team created daily reports detailing its observations at Cross Landings for April 9 through 11, 13, and 14, 2020. During its subsequent investigation, the Department interviewed the members of the RN Team regarding their observations at Cross Landings. The daily reports and the interviews were part of the investigative file that was before the Panel when it deliberated probable cause in Ms. Cameron's case.

17. The RN Team reported widespread failure in Cross Landings' infection prevention and control measures, including the improper use of PPE by staff, inadequate hygiene procedures, the failure to properly isolate COVID-19 suspected or positive residents, the failure to timely notify staff members of COVID-19 positive residents, and the failure to properly screen individuals entering the facility, including Ms. Cameron.[2]

18. The RN Team also reported an overall failure to deliver adequate resident care, including residents who were soiled with feces or urine,

[2] The RN Team's reportage was disputed by Cross Landings and would have been subject to challenge by Ms. Cameron at any subsequent hearing. The RN Team's reportage is relayed in this Final Order not as fact but as information that was available to the Panel in its deliberations.

residents who did not have bed sheets, residents who were not receiving adequate wound care, and residents with undated and soiled surgical dressings. The RN Team reported being "shocked and horrified" by the conditions at Cross Landings.

19. The RN Team reported that Ms. Cameron instructed Cross Landings' staff to not listen to the RN Team's recommendations and that Ms. Cameron called the RN Team "nothing but trouble." Ms. Cameron and her fellow senior employees believed, not without reason, that the main purpose of the RN Team was not to help Cross Landings cope with the COVID-19 outbreak, but to compile a record for the purpose of disciplinary action against the facility and its administrators.

20. The RN Team reported that Ms. Cameron, Mr. Daniels, and Director of Nursing Mary Lewis actively obstructed the RN Team's efforts to improve conditions at the facility. The RN Team reported that the trio became increasingly hostile to the RN Team. The RN Team reported that Ms. Cameron, Mr. Daniels, and Ms. Lewis stated that they were following orders from the facility's owner, Karl Cross.

21. On or about April 14, 2020, the Department issued Quarantine/ Isolation Orders directing that 13 of Cross Landings' 42 residents be relocated to another facility due to Cross Landings' insufficient infection control practices and the resultant spread of COVID-19 within the facility.

22. On or about April 15, 2020, the Department issued additional Orders requiring the remaining Cross Landings' residents to undergo COVID-19 testing.

23. Petitioner's Motion does not dispute the factual allegations of the Administrative Complaint as to her actions at Cross Landings between April 9 and 14, 2020. Petitioner's case rests on the legal argument that the Department cannot take disciplinary action against Ms. Cameron's nursing home administrator license under the facts alleged because Ms. Cameron was

not the designated administrator of record at Cross Landings. The Motion states:

> Here, the Administrative Complaint against Ms. Cameron was not substantially justified because Mark Daniels—and NOT Sebrina Cameron—was the designated administrator of Cross Landings at all times referenced in the Amended Complaint. Ms. Cameron was at all relevant times, and continues to be, the administrator of a completely different facility, Crosswinds Health and Rehabilitation Center ("Crosswinds"). These facts were known to the [Department]. The identity of the actual administrator was readily available to [the Department] and was easily determined through a simple review of readily available state records.

24. Petitioner relies on a rule of the Agency for Health Care Administration ("AHCA") regulating the licensure, administration, and fiscal management of nursing homes. Florida Administrative Code Rule 59A-4.103(4) provides:

> (4) Administration.
>
> (a) The licensee of each nursing home must have full legal authority and responsibility for the operation of the facility.
>
> (b) *The licensee of each facility must designate one person, who is licensed by the Florida Department of Health, Board of Nursing Home Administrators under Chapter 468, Part II, F.S., as the Administrator who oversees the day to day administration and operation of the facility*.[3]
>
> (c) Each nursing home must be organized according to a written table of organization. (emphasis added).

[3] This portion of the rule implements section 400.141(1)(a), Florida Statutes, which provides that a licensed nursing home facility shall "[b]e under the administrative direction and charge of a licensed administrator." Section 400.021(1) defines "administrator" as "the licensed individual who has the general administrative charge of a facility."

25. The Motion notes that the Administrative Complaint acknowledges that Ms. Cameron was not the designated administrator of record at Cross Landings by repeatedly referring to her as the "regional administrator" of the facility. The Motion goes on to argue as follows:

> There are no rules, codes, statutes, or any other authoritative sources that recognize the existence of or define the responsibilities of a "regional administrator." Ms. Cameron was given the honorific title as recognition of her years of quality service, but the title did not come with any legislatively recognized responsibilities, official responsibilities, authority, or monetary incentives for any time she chose to spend helping out at Cross Landings during the once-in-a-lifetime global pandemic. To be clear, Ms. Cameron was not required by contract, duties, law, or regulation to step foot in Cross Landings and put herself at risk during a deadly pandemic. Despite this, the [Department] elected to proceed against her license through [sections] 468.1755(1)(h) and (k).

26. Count I of the Administrative Complaint alleged that Petitioner violated section 468.1755(1)(h), by engaging in fraud, deceit, negligence, incompetence, or misconduct in the practice of nursing home administration, which is defined as follows by section 468.1655(4):

> (4) "Practice of nursing home administration" means any service requiring nursing home administration education, training, or experience and the application of such to the planning, organizing, staffing, directing, and controlling of the total management of a nursing home. A person shall be construed to practice or to offer to practice nursing home administration who:
>
> (a) Practices any of the above services.
>
> (b) Holds himself or herself out as able to perform, or does perform, any form of nursing home administration by written or verbal claim, sign, advertisement, letterhead, or card; or in any other

> way represents himself or herself to be, or implies that he or she is, a nursing home administrator.

27. The Department argues that the statutory definition of the practice of nursing home administration does not limit its regulatory reach to the designated administrator of a nursing home, but reaches a person who holds herself out as able to perform or who does perform nursing home administration. The Department states that an AHCA rule regarding the overall operation of nursing home facilities does not govern the Department's regulation of an individual licensee. The Department contends that Ms. Cameron's undisputed actions at Cross Landings met the statutory definition of the practice of nursing home administration and that it was reasonable for the Panel to find probable cause based on those actions.

28. The Department points out that Ms. Cameron used her title of regional administrator to order supplies on behalf of Cross Landings, including PPE and sanitizing products. Ms. Cameron verbally directed Cross Landings' staff members. In one instance noted by the RN Team, a newly hired Cross Landings certified nursing assistant ("CNA") was given a painter's mask that was too large for her face. The RN Team instructed her to replace it with a smaller mask. The CNA told the RN Team that Ms. Cameron had given her the mask and that she had been given no training on COVID-19 procedures or PPE. Ms. Cameron subsequently refused to give the CNA a smaller mask and instead offered her a used N95 mask from the trunk of her car. When the CNA refused to put on the used mask, she was forced to resign from her position.

29. Ms. Cameron represented Cross Landings in dealing with the Department regarding the placement of a resident who was suspected to have COVID-19. Ms. Cameron met with the RN Team on behalf of Cross Landings. The Department notes that Ms. Cameron held herself out as able to perform nursing home administration and/or represented or implied that she was a nursing home administrator at Cross Landings. Ms. Cameron was physically

present at Cross Landings in her role as regional administrator. She employed the title "regional administrator" to some effect and used the administrator's office while at Cross Landings. She was privy to communications between Mr. Cross and AHCA regarding the RN Team and COVID-19 infection control procedures at Cross Landings.

30. Though she was not the administrator of record, Ms. Cameron held herself out and was treated as having actual administrative authority at Cross Landings during the COVID-19 outbreak and the RN Team's visit in April 2020. There was a reasonable basis in law and fact to find that Petitioner engaged in the practice of nursing home administration at Cross Landings as defined in section 468.1655(4)(a) and/or (b), due to her performance of nursing home administrator services and/or by her holding herself out to be a nursing home administrator.

31. Count II of the Administrative Complaint alleged that Petitioner violated section 468.1755(1)(k), by repeatedly acting in a manner inconsistent with the health, safety, or welfare of the patients of the facility in which she is the administrator.

32. Chapter 468, enacted to ensure that every nursing home administrator practicing in Florida meets the minimum requirements for safe practice, defines a nursing home administrator as, "a person who is licensed to engage in the practice of nursing home administration in this state under the authority of this part." § 468.1655(3), Fla. Stat. (2019).

33. As noted above, section 400.021 defines "administrator" as "the licensed individual who has the general administrative charge of a facility." The stated purpose of chapter 400, part II, is to provide for the development, establishment, and enforcement of basic standards for the health, care, and treatment of persons in nursing homes and the maintenance and operation of such institutions in a manner that will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities. § 400.011, Fla. Stat.

34. At all times relevant to this proceeding, Ms. Cameron was a licensed nursing home administrator pursuant to chapter 468 and used the title of regional administrator. The title "regional administrator" is not defined by statute but in context carries an ordinary meaning that the individual is the administrator supervising more than one nursing home in a geographic area.

35. Ms. Cameron stated that she was at Cross Landings to ensure continuity of care after Mr. Daniels tendered his resignation. It was not illogical for the Department to conclude that "continuity of care" meant that Ms. Cameron was sent to Cross Landings to perform the duties of administrator as Mr. Daniels prepared for his departure. Ensuring "continuity of care" would certainly require control over the various components of a nursing home to provide health care and activities of daily living, including the management of nursing and housekeeping staff, oversight of meal services, and the facilitation of social and recreational activities. Such oversight or control is tantamount to the general administrative charge of the facility. Ms. Cameron would not have been able to ensure continuity of care if she did not have *de facto* general administrative charge of Cross Landings.

36. Ms. Cameron's general administrative charge over the facility was evidenced by her actions at Cross Landings, including ordering supplies, distributing supplies to staff members, directing staff members, communicating on behalf of the facility, meeting with the RN Team in the place of Mr. Daniels, and using the administrator's office as her own.

37. Ms. Cameron's licensure as a nursing home administrator, her use of the title regional administrator, her stated purpose for being present at Cross Landings, and her actions at Cross Landings provide sufficient grounds for a reasonable person to believe that she had the general administrative charge of Cross Landings. Though she was not the administrator of record and did not have *sole* administrative charge of the facility, Ms. Cameron presented

herself as the person in charge and was treated as such by Cross Landings' staff.

38. Based on the foregoing, at the time this proceeding was initiated, the Department had a reasonable basis in law and fact to find that Petitioner was the administrator at Cross Landings as defined in sections 468.1655(3) and 400.021(1), and was subject to discipline for repeatedly acting in a manner inconsistent with the health, safety, or welfare of the patients of the facility.

39. During the probable cause hearing on May 4, 2020, the Panel discussed and considered whether Ms. Cameron was subject to discipline for her actions at Cross Landings. Members of the Panel raised questions about her status as the administrator of Cross Landings. The Department informed the Panel that Mr. Daniels was the administrator of record for Cross Landings. The Panel discussed what duties and obligations a licensed administrator other than the administrator of record would have in this specific scenario.

40. The Panel considered that Ms. Cameron was the regional administrator for the parent company, that she was acting in an administrative capacity on the ground at Cross Landings, and that she therefore had some degree of responsibility. The Panel concluded that Ms. Cameron was operating in the capacity of administrator by being the regional administrator on site. The chair of the Panel reasonably concluded that a regional administrator would be in a position to exercise control over Mr. Daniels and that Mr. Daniels was reporting to Ms. Cameron.

41. It is found that the information before the Panel was sufficient to support the Panel's decision. The Department was substantially justified in finding probable cause and deciding to pursue an Administrative Complaint against Ms. Cameron.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding pursuant to sections 120.569, 120.57(1), and 57.111(4), Florida Statutes.

43. Section 57.111, the Florida Equal Access to Justice Act, provides, in pertinent part, as follows:

> (4)(a) Unless otherwise provided by law, an award of attorney's fees and costs shall be made to a prevailing small business party in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust.

44. In proceedings to establish entitlement to an award of attorney's fees and costs pursuant to section 57.111, the initial burden of proof is on the party requesting the award to establish by a preponderance of the evidence that it prevailed in the underlying disciplinary action and that it was a small business party at the time the disciplinary action was initiated. Once the party requesting the award has met this burden, the burden of proof shifts to the agency to establish that it was substantially justified in initiating the disciplinary action. *See Helmy v. Dep't of Bus. & Prof'l Reg.*, 707 So. 2d 366, 368 (Fla. 1st DCA 1998); *Dep't of Prof'l Reg., Div. of Real Estate v. Toledo Realty, Inc.*, 549 So. 2d 715, 717 (Fla. 1st DCA 1989).

45. Ms. Cameron prevailed in the underlying proceeding. § 57.111(3)(c)1., Fla. Stat.

46. Ms. Cameron is a "small business party" as contemplated by section 57.111(3)(d).

47. The sole issue in this bifurcated proceeding is whether the Department's actions were "substantially justified." Section 57.111(3)(e) provides that a proceeding is "substantially justified" if it had a "reasonable basis in law and fact *at the time it was initiated by a state agency*." (emphasis

added). The "substantially justified" standard falls somewhere between the "no justiciable issue" standard of section 57.105, and an automatic award of fees to a prevailing party. *Helmy*, 707 So. 2d at 368. It does not require the agency to demonstrate that its actions were correct; rather, an agency need only present an argument for its actions that could satisfy a reasonable person. *Ag. for Health Care Admin. v. MVP Health, Inc.*, 74 So. 3d 1141, 1144 (Fla. 1st DCA 2011).

48. In *Department of Health v. Cralle*, 852 So. 2d 930, 932 (Fla. 1st DCA 2003), the court set forth the following temporal limitation on the required analysis, quoting from *Fish v. Department of Health*, 825 So. 2d 421, 423 (Fla. 4th DCA 2002):

> In resolving whether there was substantial justification or a reasonable basis in law and fact for filing an administrative complaint, "one need only examine the information before the probable cause panel at the time it found probable cause and directed the filing of an administrative complaint."

See also Ag. for Health Care Admin. v. Gonzalez, 657 So. 2d 56 (Fla. 1st DCA 1995)(proper inquiry is whether evidence before a probable cause panel was sufficient for institution of disciplinary action); *MVP Health*, 74 So. 3d at 1144 ("The reviewing body—whether DOAH or a court—may not consider any new evidence which arose at a fees hearing, but must focus exclusively upon the information available to the agency at the time that it acted.").

49. Thus, for the Department to demonstrate that it had substantial justification for its actions, the Panel must have had a "solid though not necessarily correct basis in fact and law for the position it took in the action," i.e., finding probable cause and directing the filing of the Administrative Complaint. *Fish*, 825 So. 2d at 423 (quoting *McDonald v. Schweiker*, 726 F.2d 311, 316 (7th Cir. 1983)).

50. The Panel had a reasonable basis in law and fact at the initiation of this proceeding to find probable cause and authorize the filing of the

Administrative Complaint based on the record and information available to the Panel at the time.

51. The record and information available to the Panel demonstrated that COVID-19 was spreading throughout Cross Landings and that the overall quality of care was being compromised. The RN Team's daily reports and interview statements alleged facts indicating that Ms. Cameron failed to implement adequate infection control procedures and actively obstructed the RN Team's efforts. The Panel Materials included sufficient information to substantially justify an Administrative Complaint alleging that Petitioner engaged in negligence, incompetence, or misconduct, in violation of section 468.1755(1)(h), and/or repeatedly acted in a manner inconsistent with the health, safety, or welfare of the patients of the facility in violation of section 468.1755(1)(k).

52. The record and information available to the Panel demonstrated that Ms. Cameron was a licensed nursing home administrator and was the regional administrator of Cross Landings. While at Cross Landings, she ordered supplies, distributed supplies to staff, directed staff, caused at least one staff member to resign her position, used the administrator's office, and met with the RN Team in the place of the outgoing administrator of record. The Panel Materials provided a sufficient basis to substantially justify that Petitioner was engaged in the practice of nursing home administration while at Cross Landings pursuant to section 468.1655(4), was the administrator of Cross Landings pursuant to sections 468.1655(3) and 400.021(1), and was therefore subject to discipline for her conduct at Cross Landings as charged in the Administrative Complaint.

53. Petitioner's position is that she could not be subject to discipline under section 468.1755(1)(h) or (k) because she had not been designated the administrator of record at Cross Landings. Petitioner cites to AHCA's rule 59A-4.103(4)(b), which provides: "The licensee of each facility must designate one person, who is licensed by the Florida Department of Health,

Board of Nursing Home Administrators under Chapter 468, Part II, F.S., as the Administrator who oversees the day to day administration and operation of the facility." If there can be only one administrator per facility, reasons Petitioner, then only one administrator can be subject to discipline for the events at Cross Landings and that would be the administrator of record, Mr. Daniels.

54. The Department counters that rule 59A-4.103(4)(b) is an AHCA rule that imposes a duty on the nursing home facility to designate an administrator of record and is unrelated to disciplinary actions regarding the conduct of individual nursing home administrators. The Department argues that AHCA does not regulate the practice of nursing home administration and its rules regulating facility licensure have no bearing on this proceeding.

55. The Department points out that AHCA's rules also require that nursing home facilities designate one registered nurse to be the director of nursing and one physician to be the medical director. Fla. Admin. Code R. 59A-4.108(1) and 59A-4.1075(1). AHCA does not regulate individuals licensed as registered nurses or physicians; the Department does. Accordingly, AHCA's requirement that a facility designate a director of nursing and medical director has no effect on disciplinary actions taken by the Department's Board of Nursing or Board of Medicine for violations prescribed under the respective licensee practice acts, including negligence or malpractice.

56. The Department also observes that the language of the statutes under which the Administrative Complaint charged Ms. Cameron is not limited to the administrator of record. Count I of the Administrative Complaint alleges that Ms. Cameron violated section 468.1755(1)(h), which applies to any person engaged "in the practice of nursing home administration." As noted in the Findings of Fact above, "practice of nursing home administration," as defined in section 468.1655(4), is not limited to an administrator of record but reaches persons holding themselves out as nursing home administrators.

57. Count II of the Administrative Complaint alleges that Ms. Cameron violated section 468.1755(1)(k), which limits the offense to "acting in a manner inconsistent with the health, safety, or welfare of the patients of *the facility in which he or she is the administrator*." (emphasis added). However, as the Department states, the emphasized language does not restrict "the administrator" to the individual whom the facility has designated as administrator of record with AHCA. In this case, Ms. Cameron's apparent authority was sufficient to bring her within the ambit of the statute.

58. The Department's position is sensible and consistent with the purposes of the regulatory scheme. This case presents an unusual situation in which more than one licensed individual was exercising the authority of a nursing home administrator at a single facility. It would be anomalous for one of those licensed individuals to enjoy immunity under the nursing home administration practice act because of an AHCA rule regulating the facility in question.

59. Petitioner was a licensed nursing home administrator, was present at Cross Landings to ensure continuity of care for the residents, and was performing services which would ordinarily be performed by an administrator. Petitioner was one of the two licensed administrators on site during the outbreak. Petitioner held a title that, by its ordinary meaning, would appear to any outside observer to confer a position of authority within her organization. She gave orders and her orders were obeyed. It was entirely reasonable for the Panel to consider the evidence in its entirety and conclude that Ms. Cameron had violated section 468.1755(1)(h) and (k).

60. In summary, Ms. Cameron was the prevailing small business party in the underlying proceeding. However, the Department established that its actions were substantially justified, in that it had a reasonable basis in law and fact at the time probable cause was found.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Motion for Attorneys' Fees filed by Sebrina Cameron, N.H.A., is denied.

DONE AND ORDERED this 12th day of August, 2021, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
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this 12th day of August, 2021.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.