

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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2021 NOV -8 P 12: 26

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

CONWAY LAKES HEALTH AND  
REHABILITATION CENTER,

Respondent.

DOAH CASE NO. 21-1832

CASE NO. F1219-0659-001

PROVIDER ID 35-74821

RENDITION NO.: AHCA- 21 - 1128 -FOF-MDA

**FINAL ORDER**

This case was referred to the Division of Administrative Hearings (“DOAH”) where the assigned Administrative Law Judge (“ALJ”), Linzie F. Bogan, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether Respondent timely submitted its monthly nursing home quality assessment fee for December 2019; and, if not whether the Agency for Health Care Administration (“Agency”) should impose a fine on Respondent for each day the payment was delinquent. The Recommended Order dated October 8, 2021, is attached to this Final Order, and incorporated herein by reference.

**RULING ON EXCEPTIONS**

Respondent filed exceptions to the Recommended Order. In determining how to rule upon Respondent’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 Respondent’s exceptions:

In Exception No. 1, Respondent takes exception to Paragraph 9 of the Recommended Order, arguing it is not supported by competent, substantial evidence. Respondent is incorrect. The findings of fact in the last sentence of Paragraph 9 of the Recommended Order are based on competent, substantial record evidence. See Transcript, Pages 34-35, 37, 42, 51, 52-53, and 57-58. Thus, the Agency cannot 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”). The ALJ found the testimony of Petitioner’s witnesses more credible than Respondent’s witness. Respondent is asking the Agency to re-weigh the testimony of its witness to reach a finding of fact that is more

favorable to Respondent, which the Agency cannot do. See Heifetz, 475 So. 2d at 1281 (“The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.”); Stinson v. Winn; 938 So. 2d 554 (Fla. 1st DCA 2006) (“Credibility of the witnesses is a matter that is within the province of the administrative law judge, as is the weight to be given the evidence.”). Therefore, the Agency denies Exception No. 1.

In Exception No. 2, Respondent takes exception to the last sentence of Paragraph 24 of the Recommended Order, arguing the conclusion of law therein is not based on competent, substantial evidence. Based on the Agency’s ruling on Respondent’s Exception No. 1 supra, which is hereby incorporated by reference, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 24 of the Recommended Order because it is the single state agency in charge of administering Florida Medicaid program, the ALJ’s conclusions of law are reasonable and should not be disturbed. Therefore, the Agency denies Exception No. 2.

### **FINDINGS OF FACT**

The Agency adopts the findings of fact set forth in the Recommended Order.

### **CONCLUSIONS OF LAW**


The Agency adopts the conclusions of law set forth in the Recommended Order.

### **IT IS THEREFORE ADJUDGED THAT:**

The Agency hereby imposes a fine of \$19,000 on Respondent for committing a first offense of section 409.9082, Florida Statutes. Respondent shall make full payment of the fine to the Agency for Health Care Administration within 30 days of the rendition date of this Final Order unless other payment arrangements have been agreed to by the parties. Respondent shall

pay by check payable to the Agency for Health Care Administration and mailed to the Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Mail Stop 14, Tallahassee, Florida 32308.

**DONE and ORDERED** this 8<sup>th</sup> day of November, 2021, in Tallahassee, Florida.


  
SIMONE MARSTILLER, 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 HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished to the persons named below by the method designated on this 8<sup>th</sup> day of November, 2021.



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RICHARD J. SHOOP, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
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(850) 412-3630

COPIES FURNISHED TO:

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