

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2022 MAR -7 P 2: 20

FLORIDA HOSPICE, LLC,

Petitioner,

DOAH CASE NO.: 22-0243CON

AHCA CASE NO.: 2022000467

CON NO.: 10688

vs.

EMPATH HOSPICE, LLC, and
STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondents.

FINAL ORDER

THIS CAUSE is before the State of Florida, Agency for Health Care Administration (the “Agency”) concerning the preliminary approval of the Certificate of Need (“CON”) Application 10687 to Empath Hospice, LLC (“Empath”) and the preliminary denials of CON 10685 of Affinity Care of Central Florida, LLC (“Affinity”), CON 10688 of Florida Hospice (“Florida Hospice”) and CON 10692 of Seasons Hospice and Palliative Care of Central Florida, LLC (“Seasons”).

1. On August 31, 2021, the Agency announced a fixed need pool for one additional hospice program in Hospice Service Area 6B, Polk, Hardee and Highlands Counties, Florida, on the applications for the Hospital Facilities and Hospice batching cycle with an application due date of September 29, 2021. See 47 Fla. Admin. Reg. No. 152 p. 3629 (Aug. 6, 2021).

2. Multiple applicants filed competing CON applications in response to the fixed need pool, each seeking approval to establish a new hospice program in Hospice Service District 6B. The applicants included Affinity (CON 10685), Empath (CON 10687), Florida Hospice (CON 10688), Seasons (CON 10692), and others.

3. On December 17, 2021, the Agency approved Empath’s CON 10687 and denied the remaining co-batched applicants.

4. The Agency published notice of its preliminary decisions to approve CON 10687 and to deny the remaining co-batch applicants in the Florida Administrative Register. Volume 47, Number 244, December 20, 2021.

5. Thereafter, Affinity, Florida Hospice and Seasons timely filed petitions for formal hearing contesting the Agency's preliminary approval of CON 10687 and the preliminary denials of CON 10685, CON 10688 and CON 10692, respectively.

6. In response, Empath filed a Cross-Petition for Formal Administrative Proceedings in support the Agency's preliminary approval of its CON 10687 and the Agency's preliminary denials of CON 10685, CON 10688 and CON 10692.

7. The Agency referred the matters to the Division of Administrative Hearings ("DOAH"), where they were consolidated by the Administrative Law Judge.

8. On February 28, 2022, Florida Hospice filed a Notice of Voluntary Dismissal of its Petition.

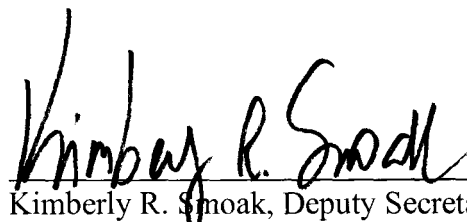
9. On March 1, 2022, the Administrative Law Judge entered an Order Severing Cases, Closing File and Relinquishing Jurisdiction to the Agency with respect to this one case.

It is therefore, **ORDERED**

1. The denial of CON 10688 filed by Florida Hospice, AHCA Case No. 2022000467, is upheld.

2. The cases in DOAH regarding the other petitions remain pending.

ORDERED in Tallahassee, Florida, on this 7th day of March, 2022



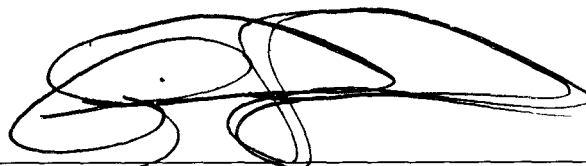
Kimberly R. Smoak, Deputy Secretary
Agency for Health Care Administration

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 of 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 by the method designated to the persons named below on this 7th day of March, 2022



Richard J. Shoop, Agency Clerk
Agency for Health Care Administration

Copies furnished:

Division of Administrative Hearings
(Electronic Filing)

Karl David Acuff, Esquire
Suite 2, 1615 Village Square Boulevard
Tallahassee, Florida 32309-2770
kd_acuff@floridacourts.com

Seann Frazier, Esquire
215 South Monroe Street, Suite 750
Tallahassee, Florida 32301
sfrazier@phrd.com
sful@phrd.com

William Hall, Esquire
106 East College Avenue, Suite 1200
Tallahassee, Florida 32301
whall@deanmead.com
kthompson@deanmead.com

Stephen Emmanuel, Esquire
Eugene Rivers, Esquire
227 South Calhoun Street
Post Office Box 391
Tallahassee, Florida 32301
semmanuel@ausley.com
drivers@ausley.com
jmcvaney@ausley.com
mtaylor@ausley.com

Geoffrey Smith, Esquire
709 South Harbor City Boulevard, Suite 540
Melbourne, Florida 32901
geoff@smithlawtlh.com
dianne@smithlawtlh.com

Richard J. Saliba, Esquire
Joseph S. Schimming, Esquire
Office of the General Counsel
Agency for Health Care Administration
(Electronic Mail)

Erin Bailey, Unit Manager
Certificate of Need Unit
Agency for Health Care Administration
(Electronic Mail)

Brian O. Smith, Acting Unit Manager
Long Term Care Services Unit
Agency for Health Care Administration
(Electronic Mail)

Facilities Intake Unit
Agency for Health Care Administration
(Electronic Mail)

Central Intake Unit
Agency for Health Care Administration
(Electronic Mail)