

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RECEIVED, 05/29/2019 02:56:29 PM, Clerk, First District Court of Appeal

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

PETITIONER,

v.

MAGNOLIA RETIREMENT HOME, INC.,

RESPONDENT.

CASE No.: 18-816PH

AHCA Nos.: 2018008393

2018010207

2018010211

2018010213

2018010216

RENDITION No.: AHCA-19-0400-
FOI-OLC

MAGNOLIA RETIREMENT HOME, INC.,

PETITIONER,

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

RESPONDENT.

CASE No.: 18-822PH

AHCA No.: 2018013918

FILE No.: 11910102

LICENSE No.: 4947

FACILITY TYPE: ALF

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that Magnolia Retirement Home appeals to the First District Court of Appeal, the final order of State of Florida, Agency for Health Care Administration, rendered on April 29, 2019. A conformed copy of final order is attached. The nature of the order is a final administrative order imposing discipline against Magnolia and denying its licensure renewal application.

Magnolia filed a Motion for Rehearing or Reconsideration of Final Order in the lower tribunal on May 29, 2019. This motion remains pending and should not be deemed abandoned by virtue of this notice of appeal. Magnolia will move the First District Court of Appeal to relinquish jurisdiction for the limited purpose of ruling on the pending motion.

Respectfully submitted,

/s/ [Dwight O. Slater]

Dwight O. Slater
Florida Bar No. 30607
Cohn Slater, P.A.
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Counsel for Magnolia

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished via electronic mail to Chief Appellate Counsel for the Agency, Tracy Lee Cooper George, Esq., Agency for Health Care Administration, Office of the General Counsel, 2727 Mahan Dr., MS #3, Tallahassee, FL 32308, at tracy.george@ahca.myflorida.com, on this 29th day of May 2019.

STATE OF FLORIDA, DEPT. OF AHCA
I HEREBY CERTIFY that the above and foregoing is a true and correct copy of a Notice of Appeal received by the Department of AHCA on the 29th day

SIGNED: [Signature]

Agency Clerk

ats: 5/29/19

/s/ [Dwight O. Slater]

Dwight O. Slater
Counsel for Magnolia

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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

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MAGNOLIA RETIREMENT HOME, INC.,

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CASE NO. 18-816PH

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RENDITION NO.: AHCA-19-0400 -FOI-OLC

MAGNOLIA RETIREMENT HOME, INC.,

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v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.¹

CASE NO. 18-822PH

AHCA NO. 2018013918

FILE NO. 11910102

LICENSE NO. 4947

FACILITY TYPE: ASSISTED

LIVING FACILITY

FINAL ORDER

At the specific request of Magnolia Retirement Home, Inc. ("Magnolia"), the Agency Clerk referred these cases to a hearing officer (hereafter referred to as the Presiding Officer) for a proceeding to be conducted pursuant to Section 120.57(2), Florida Statutes. The Presiding Officer's Recommended Order, which was signed on March 13, 2019, and filed with the Agency Clerk's Office on the same date, is attached to this Final Order and incorporated herein by reference.

FINDINGS OF FACT

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

¹ The case style reflected above in the Final Order is the correct case style for this matter.

CONCLUSIONS OF LAW

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

IT IS THEREFORE ADJUDGED THAT:

1. In Case No. 18-816PH, a \$13,000 fine and \$1,500 survey fee are hereby imposed on Magnolia for the violations alleged in the Agency's August 29, 2018 Administrative Complaint. In Case No. 18-822PH, the Agency's September 25, 2018 Notice of Intent to Withdraw from Further Consideration or Alternatively Deny Magnolia Retirement Home, Inc.[s] Assisted Living Renewal Application is hereby upheld and Magnolia's licensure renewal application for an assisted living facility license is hereby denied.

2. In order to ensure the health, safety, and welfare of Magnolia's clients, the license expiration 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, Magnolia is prohibited from accepting any new admissions during this period and must immediately notify the clients that they will soon be discharged. Magnolia 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. Magnolia 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, Magnolia 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, Magnolia is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. Magnolia is advised of


Section 408.810, Florida Statutes.

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

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

6. Unless payment has already been made, payment in the amount of \$14,500 is now due from Magnolia as a result of the agency action. Such payment shall be made within thirty (30) days of the date of rendition 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 26 day of April, 2019.



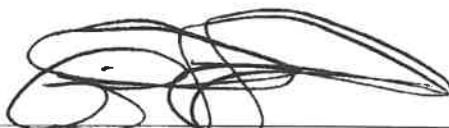
MARY C. MAYHEW, Secretary
AGENCY FOR HEALTH CARE ADMINISTRATION

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 27th day of April, 2019.



RICHARD J. SHOOP, Agency Clerk
AGENCY FOR HEALTH CARE ADMINISTRATION
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
Telephone: (850) 412-3689

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)	Pat Caufman, Manager Area 5/6 Field Office (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	Robert R. Ruelo, Esquire Law Firm of Robert R. Ruelo, P.A. 16409 Ashwood Drive Tampa, Florida 33624 (via electronic mail to rruelo@tampabay.rr.com)

Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	Andrew B. Thornquest, Esquire Assistant General Counsel (Electronic Mail)
Warren J. Bird, Esquire Presiding Officer Agency for Health Care Administration (Electronic 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.

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

**AGENCY FOR HEALTH CARE
ADMINISTRATION,**

Petitioner,

v.

MAGNOLIA RETIREMENT HOME, INC.,

Respondent.

Case No. 18-816PH

**AHCA No. 2018008393
2018010207
2018010211
2018010213
2018010216
2018013918**

RECOMMENDED ORDER

THESE SIX CONSOLIDATED CASES were initiated by the Agency for Health Care Administration (Agency), by service of an administrative complaint comprising eleven (11) counts seeking to impose administrative fines of thirteen thousand dollars (\$13,000) and survey fees of one thousand five hundred dollars (\$1,500), for two class II violations, two class III violations, and multiple criminal background screening violations; and a Notice of Intent to Deny (NOI) the Respondent's licensure renewal application on the basis of unresolved omissions from the application, and numerous class II and class III violations cited in the NOI, of record herein.

The Respondent requested an informal hearing pursuant to Section 120.57(2) Florida Statutes (2017), and, after the initially assigned hearing officer recused himself on November 27, 2018, the matters were reassigned to the undersigned for conduct of the informal hearing, and on or about December 1, 2018, an Order of Prehearing Instructions was issued. A Joint Response to the Initial Order was filed by the parties on January 3, 2019, as required by the Initial Order, and on January 31, 2019, an informal hearing was held in this matter pursuant to Section 120.57(2), Florida Statutes (2017). Mr. Andrew R. Thornquest, Assistant General Counsel, represented the Agency at the hearing. Mr. Roberto Ruelo, Esquire, represented the Respondent facility. The

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Agency introduced all documents of record in these proceedings, without objection, and they were received into evidence. Respondent introduced exhibits "A" through "Z", without objection, together with a table of contents marks as "Attachment A", and they were received into evidence. All exhibits are incorporated herein by reference.

FINDINGS OF FACT

1. Respondent requested an informal hearing pursuant to Section 120.57(2), Florida Statutes (2017). As a result, all material allegations of fact in the administrative complaint, and the Notice of Intent to Deny renewal licensure at issue in these cases, are taken as admitted.

CONCLUSIONS OF LAW

2. Respondent was issued a license to operate the assisted living facility at issue in these proceedings, and was therefore at all times required to comply with all applicable statutes and rules.

3. Since Respondent requested an informal hearing pursuant to Section 120.57(2), Florida Statutes (2017), Respondent admits that there is no dispute of material fact regarding the allegations contained in the administrative complaint and Notice of Intent at issue. The informal hearing provides Respondent an opportunity to introduce mitigating evidence and argument seeking modification of the sanctions imposed by the Agency, as set forth in the administrative complaint and Notice of Intent.

4. "Mitigating circumstances' are such as do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability". *See*, Heaton v. Wright, 10 How. Prac. (N. Y.) 82; Wandell v. Edwards. 25 Hun (N. Y.) 500; Hess v. New York Press Co., 20 App. Div. 73, 49 N. Y. Supp. 894. "Evidence is mitigating if, in fairness or in the totality of the defendant's life or

character, it may be considered as extenuating or reducing the degree of moral culpability
[.]” Wickham v. State, 593 So.2d 191, 194 (Fla. 1991).

5. Respondent’s owner, Manuel Domisiw, testified that the majority of deficiencies at issue, as cited in the administrative complaint and Notice of Intent, were caused by Hurricane Irma. Respondent introduced Exhibit “A”, a document produced by the Federal Emergency Management Agency, form DR-4337, that recites the declaration of a major disaster on September 10, 2017 as a result of the hurricane, and the general effects and damages resulting therefrom. Mr. Domisiw further testified that one third of Respondent’s facility’s roof was “lifted” and damaged by wind during the storm.

6. The gist of Mr. Domisiw’s testimony, in general, was that most or all deficiencies resulted from the damaged roof, compounded by a significant delay in repairing the roof, due to market conditions that resulted in an allegedly inflated initial repair estimate of \$96,127.00, and that the other damaged areas of the facility could not be repaired until the roof was repaired. He also testified that soon thereafter, he was eventually able to engage a different roofing contractor to repair the roof at a cost of \$13,760.00. The initial estimate was received on June 13, 2018, more than nine months after the hurricane damaged the roof, and the second estimate of \$13,760,00 was dated June 27, 2018. The roof repair was completed on or about September 27, 2018, more than one year after the roof was damaged.

7. Of significance, Mr. Domisiw also testified that the Respondent had no wind damage insurance on the facility. One might reasonably conclude that, had the wind damage been insured, the inflated costs associated with the tight market for repairs, would have been absorbed by the insurance carrier as an implied provision of the insurance contract requiring them to act, and possibly been moderated by a contract between the insurer and one or more

roofers to repair many properties, and without the delay that Respondent experienced waiting for a “reasonable” roofing contractor to become available. The lack of insurance coverage in a geographic area that historically experiences hurricane damage, suggests that the delay, and the continuing deficiencies resulting therefrom, were caused in part by Respondent’s economy, a risk that Respondent chose to take, for economic benefit. There is no testimony or record evidence to suggest otherwise.

8. Meanwhile, as the property remained unrepaired, the Agency was required to discharge its delegated responsibility to ensure that residents of such licensed facilities, including Respondent’s, received the level of care required by Florida law to be provided by licensees to residents, and that the required care was delivered in conditions that complied with legal requirements for such facilities. While the Agency may exercise some modicum of patience and reasonable forbearance under such circumstances as are presented by the occurrence of a hurricane causing major damage, it may not, however, abdicate its responsibility to protect the health, safety, and welfare of the residents entrusted to licensees, as its first and foremost obligation.

9. Testimony, and the occurrence of multiple surveys that were conducted by the Agency, suggest that the facility remained open continuously after it was damaged, and that residents continued to reside there. There was no testimony to indicate that residents, or their payor sources, did not continue to pay all rents when due, and the Agency continued to conduct periodic surveys, following up on earlier surveys that found deficiencies, and finding uncorrected deficiencies, many of which compromising the health, safety and welfare of the residents. *See, generally*, the allegations set forth in the administrative complaint and Notice of Intent.

10. By knowingly failing to purchase wind damage insurance, Respondent positioned itself to be susceptible to the prolonged delays in repairing the roof that ultimately resulted in the many, varied, and continuing deficiencies identified by the Agency during the several surveys. Yet Respondent ostensibly continued to collect full rents and enjoy the savings afforded by not paying substantial premiums for wind damage insurance. The scenario does not suggest that equity be brought to bear on behalf of Respondent.

11. In addition, many of the cited deficiencies cited are not logically connected in any manner to the hurricane damage, notably background screening violations, staffing violations, and dietary violations.

12. In light of the foregoing, Respondent has not demonstrated mitigation of the sanctions imposed by the administrative complaint and Notice of Intent.

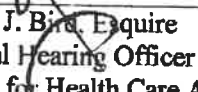
13. The allegations of the Agency's administrative complaint to impose the fines set forth therein, and Notice of Intent to deny renewal of the Respondent's license to operate an assisted living facility, are sustained by the admitted facts, and the sanctions imposed are appropriate.

RECOMMENDATION

IT IS RECOMMENDED that the Agency enter a Final Order imposing fines of thirteen thousand dollars (\$13,000) and survey fees of one thousand five hundred dollars (\$1,500), for the two class II violations, two class III violations, as well as multiple criminal background screening violations cited in the administrative complaint; and deny renewal of Respondent's license on the basis of the unresolved omissions from the application that were not corrected timely, and numerous class II and class III violations, from multiple surveys, cited in the Notice

of Intent to Deny,

DONE AND ORDERED at Tallahassee, Leon County, Florida this 13 day of March,
2019.


Warren J. Bird, Esquire
Informal Hearing Officer
Agency for Health Care Administration
2727 Mahan Drive MS-7
Tallahassee, Florida 32308

Copies furnished:

Andrew B. Thornquest, Esquire
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(Interoffice Mail)

Roberto R. Ruelo, Esquire
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