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AHCA  
AGENCY CLERK

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION 2020 JUN -9 P 1:41

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA Nos. 2020002164

NORTH SHORE MEDICAL CENTER, INC,  
d/b/a, NORTH SHORE MEDICAL CENTER,

RENDITION NO.: AHCA- 20 - 425 -S-OLC

Respondent.

**FINAL ORDER**


Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2)

2. The Respondent shall pay the Agency \$2,000.00. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Central Intake Unit  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 61  
Tallahassee, Florida 32308

ORDERED at Tallahassee, Florida, on this 9th day of June, 2020.

  
\_\_\_\_\_  
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 one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as 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 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 7<sup>th</sup> day of June, 2020.



Richard J. Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
Telephone: (850) 412-3630

Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Elizabeth Hathaway DeMarco, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Michael Glazer, Esq. Attorney for Respondent 123 South Calhoun Street Tallahassee, Florida 32301 <a href="mailto:mglazer@ausley.com">mglazer@ausley.com</a> (Electronic Mail)

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

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA Nos. 2020002164

NORTH SHORE MEDICAL CENTER, INC,  
d/b/a, NORTH SHORE MEDICAL CENTER,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration ("the Agency"), by and through the undersigned counsel, and files this Administrative Complaint against the Respondent, North Shore Medical Center, Inc., d/b/a North Shore Medical Center ("the Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2019), and alleges:

NATURE OF THE ACTION

This is an action to impose an administrative fine of two thousand dollars (\$2,000) against the Respondent pursuant to sections 120.569, 120.57, 395.1055 and 395.1065, Fla. Stat. (2019).

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to Chapters 395, Part I, and 408, Part II, Fla. Stat. (2019).
2. Venue lies pursuant to Section 120.57 Florida Statutes, and Chapter 28-106.207 Florida Administrative Code.

PARTIES

3. The Agency is the regulatory authority with regard to hospital licensing and regulation pursuant to Chapters 395, Part I, and 408, Part II, Florida Statutes, and Chapter 59A-3, Florida Administrative Code, respectively.
4. Respondent is a hospital located at 1100 NW 59<sup>th</sup> Street, Miami, Florida 33150 and is licensed under Chapter 395, Part I, Florida Statutes and Chapter 59A-3, Florida Administrative Code, license number 4133.
5. Respondent was at all times material hereto a licensed facility under the licensing authority of the Agency, and was required to comply with all applicable rules, and statutes.

COUNT 1

6. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.
7. Florida law provides:
  - (8) "Emergency medical condition" means:
    - (a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:
      1. Serious jeopardy to patient health, including a pregnant woman or fetus.
      2. Serious impairment to bodily functions.
      3. Serious dysfunction of any bodily organ or part.
    - (b) With respect to a pregnant woman:
      1. That there is inadequate time to effect safe transfer to another hospital prior to delivery;
      2. That a transfer may pose a threat to the health and safety of the patient or fetus; or
      3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.
  - (9) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

8. Florida law provides:

(2) Transfer Procedures. Each hospital providing emergency services and care shall establish policies and procedures which incorporate the requirements of chapter 395, F.S., relating to emergency services. The policies and procedures shall incorporate:

(a) Decision protocols identifying the emergency services personnel within the hospital responsible for the arrangement of outgoing and incoming transfers;

(b) Decision protocols stating the conditions that must be met prior to the transfer of a patient to another hospital. These conditions are:

1. If a patient, or a person who is legally responsible for the patient and acting on the patient's behalf, after being informed of the hospital's obligation under chapter 395, F.S., and of the risk of transfer, requests that the transfer be effected; or

2. If a physician has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the individual's medical condition from effecting the transfer; or

3. If a physician is not physically present in the emergency services area at the time an individual is transferred, a qualified medical person may sign a certification that a physician with staff privileges at the transferring hospital, in consultation with such personnel, has determined that the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual's medical condition from effecting the transfer. The certification shall summarize the basis for such determination. The consulting physician must sign the certification within 72 hours of the transfer.

(c) A provision providing that all medically necessary transfers shall be made to the geographically closest hospital with the service capability, unless another prior arrangement is in place or the geographically closest hospital is at service capacity as stated in section 395.1041(3)(e), F.S.

(d) Protocols for maintaining records of patient transfers made or received for a period of five years. Patient transfer information shall be incorporated separately in transfer logs and into the patient's permanent medical record as stated in section 395.1041(4)(a)1., F.S.

(e) Documentation of all current transfer arrangements that have been made with other hospitals and physicians.

(f) A copy of section 395.1041, F.S., Access to Emergency Services and Care, and a copy of this rule.

(g) Provisions for informing hospital emergency services personnel and medical staff of the hospital's emergency service policies and procedures, having at a minimum, the requirement to provide emergency services and care pursuant to section 395.1041, F.S.  
...

(6) Service Delivery Requirements.

(a) Every hospital offering emergency services and care shall provide emergency care available 24 hours a day within the hospital to patients presenting to the hospital. At a minimum:

1. Emergency services personnel shall be available to ensure that emergency services and care are provided in accordance with section 395.002(10), F.S.
2. At least one physician shall be available within 30 minutes through a medical staff call roster; initial consultation through two-way voice communication is acceptable for physician presence.
3. Specialty consultation shall be available by request of the attending physician or by transfer to a designated hospital where definitive care can be provided.
  - (b) When a patient is transferred from one hospital to another, all pertinent medical information shall accompany the patient being transferred.
  - (c) Every hospital offering emergency services and care shall maintain a transfer manual, which shall include in addition to the requirements in subsection (2) of this rule:
    1. Decision protocols for when to transfer a patient;
    2. A list of receiving hospitals with special care capabilities, including the telephone number of a contact person;
    3. A list of all "on-call" critical care physicians available to the hospital, including their telephone numbers; and
    4. Protocols for receiving a call from a transferring hospital, including:
      - a. Requirements for specific information regarding the patient's problem;
      - b. Estimated time of patient arrival;
      - c. Specific medical requirements;
      - d. A request to transfer the patient's medical record with the patient; and
      - e. The name of the transporting service.
  - (d) Both transferring and receiving hospitals shall assign a specific person on each shift who shall have responsibility for being knowledgeable of the transfer manual and maintaining it.
  - (e) Each hospital offering emergency services and care shall maintain written policies and procedures specifying the scope and conduct of emergency services to be rendered to patients. Such policies and procedures must be approved by the organized medical staff, reviewed at least annually, revised as necessary, dated to indicate the time of last review, and enforced. Such policies shall include requirements for the following:
    1. Direction of the emergency department by a designated physician who is a member of the organized medical staff.
    2. A defined method of providing for a physician on call at all times.
    3. Supervision of the care provided by all nursing service personnel with the emergency department by a designated registered nurse who is qualified by relevant training and experience in emergency care.
    4. A written description of the duties and responsibilities of all other health personnel providing care within the emergency department.
    5. A planned formal training program on emergency access laws, and participation, by all health personnel working in the emergency department.
    6. A control register adequately identifying all persons seeking emergency care be established, and that a medical record be maintained on every patient seeking emergency care that is incorporated into the patient's permanent medical record and that a copy of the Patient Care Record, in accordance with rules 64J-1.001 and 64J-1.014, F.A.C., be included in the medical record, if the patient was delivered by ambulance. The control

register must be continuously maintained and shall include at least the following for every individual seeking care:

- a. Identification to include patient name, age and sex;
- b. Date, time and means of arrival;
- c. Nature of complaint;
- d. Disposition; and
- e. Time of departure.

(f) Every hospital offering emergency services and care shall have a method for assuring that a review of emergency patient care is performed and documented at least monthly, using the medical record and preestablished criteria.

(g) Every hospital offering emergency services and care shall insure the following:

1. That clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids are readily available at all times to the emergency department.
2. That an adequate supply of blood is available at all times, either in-hospital or from an outside source approved by the organized medical staff, and that blood typing and cross-matching capability and blood storage facilities are readily available to the emergency department.
3. That diagnostic radiology services within the service capability of the hospital are readily available at all times to the emergency department.
4. That the following are available for immediate use to the emergency department at all times:
  - a. Oxygen and means of administration;
  - b. Mechanical ventilatory assistance equipment, including airways, manual breathing bag, and ventilator;
  - c. Cardiac defibrillator with synchronization capability;
  - d. Respiratory and cardiac monitoring equipment;
  - e. Thoracenteses and closed thoracostomy sets;
  - f. Tracheostomy or cricothyrotomy set;
  - g. Tourniquets;
  - h. Vascular cutdown sets;
  - i. Laryngoscopes and endotracheal tubes;
  - j. Urinary catheters with closed volume urinary systems;
  - k. Pleural and pericardial drainage set;
  - l. Minor surgical instruments;
  - m. Splinting devices;
  - n. Emergency obstetrical pack;
  - o. Standard drugs as determined by the facility, common poison antidotes, syringes and needles, parenteral fluids and infusion sets, and surgical supplies;
  - p. Refrigerated storage for biologicals and other supplies requiring refrigeration, within the emergency department; and
  - q. Stable examination tables.
- (h) Hospital personnel and physicians shall report any apparent violations of emergency access requirements under section 395.1041, F.S., to the Agency. Reports shall be made within 30 days following the occurrence. Violations include failure to report when on-call or intentionally misrepresenting the patient's condition in cases of medically necessary

transfers or in determining the presence or absence of an emergency medical condition or rendering appropriate emergency services and care, or failure or refusal to sign a certificate of transfer as required by this section.  
Rule 59A-3.255 (2) and (6), Florida Administrative Code.

9. That on or about January 30, 2019, the Agency conducted an unannounced emergency access complaint investigation (CCR #2019000935) of the Respondent's facility.
10. That based upon record and policy review, observations and interviews, the Respondent failed to maintain a transfer manual that included the required documentation for a receiving call regarding two (2) sampled patients requiring emergency care from a requesting transferring hospital, the same being contrary to law.
11. That on or about January 30, 2019, Petitioner's representative reviewed patient number eleven's (11) medical records and transferring documents from the Emergency Department of the hospital requesting transfer for the patient to the Respondent's hospital and noted:
  - a. Patient number eleven (11) Emergency Department medical record from the transferring hospital showed the patient delivered a newborn at thirty-seven (37) weeks on December 2, 2018 while in route by Emergency Medical Services (EMS) transport to the transferring hospital. As per EMS, cord clamped, cut, placenta delivered within five (5) minutes w/out (without) complications and minimal vaginal bleeding or additional complications noted.
  - b. The Emergency Department physician notes from the transferring hospital documented the following information:
    - i. The patient came to the emergency room on December 2, 2018 at 18:18 p.m. and had delivered a baby in patient's vehicle prior to presenting to the emergency room. She went into labor before the delivery and was attempting to get to the hospital; however, patient delivered a child in the



- car when EMS (Emergency Medical Services) arrived and/ or to deliver the child, the umbilical cord was cut. The placenta was also delivered. The patient had no complications during the pregnancy.
- ii. Patient was at thirty-seven (37) weeks only taking prenatal vitamins.
  - iii. Patient was to deliver at Respondent hospital.
  - iv. On arrival to the emergency room the patient is hemolytically [hemodynamically] stable speaking full clear sentences. This patient and the baby to be transferred emergently to facility that has OB/ GYN (Obstetrics/ Gynecology) and pediatric services. The transferring hospital will continue to monitor the patient's status and repeat her vital signs.
- c. Patient eleven's (11) Emergency Department physician's notes Addendum 2: December 6, 2018 at 11:54 a.m. documented the following information:
- i. The patient was to deliver at Respondent's facility and upon arrival to the transferring hospital's Emergency Room, the patient requested to be transferred to the Respondent's facility. The transferring Emergency Room physician had the transfer center contact the Respondent and was put through to the Respondent's Nursing Supervisor (Staff member "D").
  - ii. The transferring hospital's Emergency Room physician informed the Respondent's Nursing Supervisor that the hospital had a patient requesting transfer to the Respondent's facility.
  - iii. Respondent's Nursing Supervisor asked if the patient had insurance. The transferring hospital's Emergency Room physician asked the patient if the patient had insurance and the patient said no.

- iv. The transferring hospital's Emergency Room physician informed the Respondent's Nursing Supervisor that the patient did not have insurance and the Respondent's Nursing Supervisor stated that the Respondent could not accept the patient for transfer. The transferring hospital's Emergency Room physician asked Respondent's Nursing Supervisor several times to provide a reason as to why the Respondent would not accept the transfer and the Respondent's Nursing Supervisor stated "There is no reason I can give you. We cannot accept this patient at this time," and repeatedly asked to transfer the patient to other nearby hospitals. However, the patient refused transfer to other hospitals and vehemently requested to go to the Respondent's hospital. The Respondent's Nursing Supervisor continued to insist that he would not accept the transfer regardless of the patient's wishes and hung up the phone.
- v. The transferring hospital's Emergency Room physician explained to the patient the situation and the patient agreed to be transferred to another hospital. The transferring hospital's Emergency Room physician spoke to the new receiving hospital's Emergency Room and Neonatal Intensive Care Unit (NICU) team, and they agreed to accept the transfer.
- d. Patient number eleven's (11) Emergency Medical Treatment and Active Labor Act (EMTALA) Memorandum of Transfer, dated December 12, 2018, documented the following information:
- i. Emergency Medical Condition identified: Vaginal Delivery.
  - ii. Reason For Transfer: Medically Indicated.

- iii. Risks And Benefit For Transfer: Obtain level of care/ service unavailable at this facility.
  - iv. Service: OB, Peds (Obstetrics, Pediatrics).
  - e. Patient number eleven's (11) Transfer Center Pre-Admit Face Sheet documented on December 2, 2018 at 16:40 p.m., the patient requested transfer to the Respondent's facility since the patient had delivered her last seven (7) children at that facility and on December 2, 2018 at 16:55 p.m., the patient's request was declined by the Respondent.
  - f. That on or about December 2, 2018 at 19:02 p.m., patient number eleven (11) was transferred to a receiving hospital.
12. That on or about January 30, 2019, Petitioner's representative reviewed patient number twelve (12) medical records from the emergency department of the hospital requesting transfer for the patient to the Respondent's hospital and noted:
- a. Patient number twelve (12) is a male infant brought to the emergency room after being vaginally delivered thirty (30) minutes prior to the arrival at the emergency room.
  - b. Patient number twelve's (12) mother was attempting to travel to the hospital but delivered the patient in a vehicle.
  - c. EMS arrived during the delivery of patient number twelve (12) cut the umbilical cord suctioned the patient's mouth and naris. Initial Apgar score were 6 and 9
  - d. Patient number twelve's (12) birth history as documented by the Emergency Room Physician, "full term, vaginal delivery, delivered en route by EMS. 37 weeks EGA (Estimated Gestational Age). Unknown delivery presentation.

AGPAR 6, 9. Stable on arrival.

- e. Patient number twelve's (12) medical record documented on December 2, 2018 at 16: 52 p.m. stated, "delivery spontaneous vaginal delivery, term, newborn. The record further showed that patient will be transported with mother to appropriate facility that has opiate pediatrics."
  - f. Patient number twelve's (12) Emergency Medical Treatment and Active Labor Act (EMTALA) Memorandum of Transfer, dated December 12, 2018, documented the following information:
    - i. Emergency Medical Condition identified: Well Baby.
    - ii. Reason For Transfer: Medically Indicated.
    - iii. Risks And Benefit For Transfer: Obtain level of care/ service unavailable at this facility.
    - iv. Service: Neonatal.
  - g. That on or about December 2, 2018 at 19:02 p.m., patient number twelve (12) was transferred to a receiving hospital.
13. That on or about January 30, 2019, Petitioner's representative reviewed the Transferring hospital's Transfer Center audio recording regarding patient numbers eleven (11) and twelve (12) and noted:
- a. During the call the staff identified by name from the Respondent's facility asked the Emergency Department Physician of the transferring hospital if the patient had any insurance.
  - b. Respondent's staff stated that the patient should go to [named] hospital because it is a government hospital. He was made aware that the patient requested the

Respondent's facility.

14. That on or about January 29, 2019, Petitioner's representative interviewed Respondent's staff member "D," Nursing Supervisor, and noted:

- a. When a patient wants to transfer to Respondent's hospital, supervisors facilitate transfers. Depending on situations, Emergency Department calls the Respondent to facilitate the transfer.
- b. Supervisors gather the information such as the patient's status to see the level of service that the patient will need. Then, supervisors give the information to the Emergency Department, so that the Emergency Department can call back the Emergency Department physician from the hospital who is requesting the transfer.
- c. Supervisor log will not document conversations with the Emergency Department Physician or with any requests for transfer from another facility.
- d. Staff member "D" stated:

"If I spoke to the Emergency Department Physician from another facility, supervisors don't log requests for admission. Emergency Department Physicians are the ones who decide whether to transfer or not. We get all the documents from the facility to get a brief idea why the patient is coming. For a patient who just had a baby, we ask if something is wrong with the mom or the baby so we can accommodate the level of service of care, for example if the infant needs to go to the Neonatal Intensive Care Unit (NICU) for level 2 or level 3

of care. Information about insurance is through the case management. The registration will ask for the insurance. They pre-register the patient. If a patient has no insurance they still have to go through admission, and the same information is asked. We do not dictate if a patient can or cannot be transferred in, just because a patient has no insurance. That is an EMTALA violation.”

- e. When Petitioner’s representative asked staff member “D” if staff received a call on December 2, 2018, requesting a transfer of a mother who had just given birth and denied the transfer, staff member “D” responded that staff did not recall and does not sound true that a patient was denied because of the patient’s insurance status; that is not accurate; the majority of the Respondent’s patients are uninsured.

15. That on or about January 30, 2019, Petitioner’s representative reviewed the Respondent’s Emergency Room Call schedule from December 1, 2018 through December 31, 2018 which documented that there was a Pediatrician on call on December 2, 2018 (Sunday) and an Obstetrics/ Gynecologist on call on December 2, 2018 (Sunday). A record review of the Respondent’s Neonatologist Schedule for December 2, 2018 documented there was a Neonatologist on call.

16. That on or about January 30, 2019, Petitioner’s representative reviewed the Respondent’s Corporate Policy for its facility, No. HW.RI. 1.7; Section: Patient Rights and Organizational Ethics; Subject EMTALA (Emergency Medical Treatment and Active Labor Act);V. Procedure: Section I. Obligation to Accept Transfers, subsection 2 and noted:

“The following personnel or categories of personnel are authorized to accept or reject transfers from another hospital on behalf of the Hospital: Administrator On Call, via Nursing Supervisor. Personnel who accept or reject another facility’s request for transfer must record the request, the response to the request, and the basis for any denial of such a request, in a patient transfer request log which should be maintained in the Emergency Department in order to document the appropriateness of any transfer that were refused by the Emergency Department.”

17. That on or about December 2, 2018, the Respondent did not enforce the policy set out in No. HW.RI. 1.7; Section: Patient Rights and Organizational Ethics; Subject EMTALA (Emergency Medical Treatment and Active Labor Act);V. Procedure: Section I. Obligation to Accept Transfers, subsection 2.

18. That the above reflects the Respondent’s failure to maintain a transfer manual that included the required documentation for a receiving call regarding two (2) sampled patients requiring emergency care from a requesting transferring hospital, the same being contrary to law.

19. That Florida law, the Agency may impose an administrative fine, not to exceed \$1,000 per violation, per day, for the violation of any provision of part I of chapter 395, part II of chapter 408, or applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. § 395.1065(2)(a), Fla. Stat. (2019).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of one thousand dollars (\$1,000.00) against Respondent, a hospital in the State of Florida, pursuant to § 395.1065 (2)(a) Fla. Stat. (2019).

#### COUNT II

20. The Agency re-alleges and incorporates paragraphs (1) through (5) and (11) through (15)

as if fully set forth herein.

21. Florida law provides:

(3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF FACILITY OR HEALTH CARE PERSONNEL.—

...  
(f) In no event shall the provision of emergency services and care, the acceptance of a medically necessary transfer, or the return of a patient pursuant to paragraph (e) be based upon, or affected by, the person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental handicap is medically significant to the provision of appropriate medical care to the patient.  
Section 395.1041(3)(f), Fla. Stat. (2019).

22. That on or about January 30, 2019, the Agency conducted an unannounced emergency access complaint investigation (CCR #2019000935) of the Respondent's facility.

23. That based upon record review, observations and interviews, the Respondent failed to accept the medically necessary transfers of two patients based on the patients' insurance status, the same being contrary to law.

24. That on or about January 30, 2019, Petitioner's representative asked the Respondent's staff member "D," Nursing Supervisor, if the staff member remembered any conversation with an Emergency Department physician from another Emergency Department requesting a transfer of a patient who just had a baby on December 2, 2019 (Sunday) and the staff member answered, "I know the process. I know that we would be in violation if we decline the patient without insurance."

25. That on or about January 30, 2019, Petitioner's representative interviewed Respondent's Emergency Department physician who stated he could not refuse or deny the request of admission by a mother who just delivered a baby outside of the hospital and stated that the Respondent has a neonatologist twenty-four (24) hours a day.



26. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's hospital license which documents the Respondent as providing emergency services in the areas of Obstetrics, Neonatal Intensive Care Units - level 2 and level 3 services.
27. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Administrative Supervisor Report on December 2, 2018 at 07:30 a.m. that documented the Respondent had a newborn census of four (4).
28. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Demand Nursing Station Census Report dated December 2, 2018 at 21:45 p.m. documented five (5) neonatal unit beds were occupied and twenty-seven (27) beds were available.
29. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Demand Nursing Station Census Report dated December 2, 2018 at 21:45 p.m. documented that three (3) nursery beds were occupied and thirty-six (36) beds were available.
30. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Demand Nursing Station Census Report dated December 2, 2018 21:45 p.m. documented that four (4) Obstetrics beds were occupied and thirty-one (31) beds were available.
31. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Nursery census for December 2, 2018, issue time 21:45: p.m. documented that three (3) beds were occupied, 36 beds were available, thirty-nine (39) total beds.
32. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Corporate Policy for its facility, No. HW.RI. 1.7; Section: Patient Rights and Organizational Ethics; Subject EMTALA (Emergency Medical Treatment and Active Labor Act); IV. Policy Section F and noted:

The Hospital will not base the provision of emergency services and care upon an

individual's race, ethnicity, religion, national origin, citizenship, culture, language, age, sex, pre-existing medical condition, physical or mental disability, insurance status, sexual orientation, gender identity or expression, economic status or ability to pay for medical services, except to the extent that a circumstance is relevant to the provision of appropriate medical care.

33. That on or about January 30, 2019, Petitioner's representative reviewed the Respondent's Corporate Policy for its facility, No. HW.RI. 1.7; Section: Patient Rights and Organizational Ethics; Subject EMTALA (Emergency Medical Treatment and Active Labor Act);V. Procedure: Section I. Obligation to Accept Transfers, subsection 1 & 2 and noted:

1. To the extent that the hospital has specialized capabilities (including capabilities available through the Hospital's on-call roster) or facilities, such as a burn unit, a shock- trauma unit or a neonatal intensive care unit, that are not available at the transferring facility, the Hospital must accept appropriate transfers of an individual needing such specialized capabilities or facilities if the Hospital has the capacity to treat the individual.

2. The following personnel or categories of personnel are authorized to accept or reject transfers from another hospital on behalf of the Hospital: Administrator On Call, via Nursing Supervisor. Personnel who accept or reject another facility's request for transfer must record the request, the response to the request, and the basis for any denial of such a request, in a patient transfer request log which should be maintained in the Emergency Department in order to document the appropriateness of any transfer that were refused by the Emergency Department.

34. That the above reflects the Respondent's failure to accept the medically necessary

transfers of two patients based on the patients' insurance status, the same being contrary to law.

35. Under Florida law, the Agency may impose an administrative fine, not to exceed \$1,000 per violation, per day, for the violation of any provision of part I of chapter 395, part II of chapter 408, or applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. § 395.1065(2)(a), Fla. Stat. (2019).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of one thousand dollars (\$1,000.00) against Respondent, a hospital in the State of Florida, pursuant to § 395.1065 (2)(a) Fla. Stat. (2019).

Respectfully submitted this 17<sup>th</sup> day of May, 2020.



Elizabeth Hathaway DeMarco, Esq.  
Fla. Bar. No. 413143  
Agency for Health Care Administration  
525 Mirror Lake Drive N., 330C  
St. Petersburg, FL 33701  
727.552.1980 (office)  
Elizabeth.demarco@ahca.myflorida.com

#### NOTICE

**The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.**

**The Respondent is further notified if the Election of Rights form is not received by the Agency for Health Care Administration within twenty-one (21) days of the receipt of this Administrative Complaint, a final order will be entered.**

**The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Certified Mail, Return Receipt No. 7019 1120 0000 9811 2927 on March 11, 2020, Jeffrey Welch, Chief Executive Officer, North Shore Medical Center, Inc., d/b/a North Shore Medical Center, 1100 NW 95<sup>th</sup> Street, Miami, Florida 33150 and U.S. Mail to CT Corporation System, Registered Agent, North Shore Medical Center, Inc., d/b/a North Shore Medical Center, 1200 South Pine Island Road, Plantation, Florida 33324.



Elizabeth Hathaway DeMarco, Esq.

Copy furnished to:  
Arlene Mayo-Davis  
Field Office Manager  
Agency for Health Care Administration

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: North Shore Medical Center, Inc., d/b/a  
North Shore Medical Center

ACHA Case Nos: 2020002164

**ELECTION OF RIGHTS**

**This Election of Rights form is attached to an Administrative Complaint. It may be returned by mail or facsimile transmission, but must be received by the Agency Clerk within 21 days, by 5:00 pm, Eastern Time, of the day you received the Administrative Complaint. If your Election of Rights form or request for hearing is not received by the Agency Clerk within 21 days of the day you received the Administrative Complaint, you will have waived your right to contest the proposed agency action and a Final Order will be issued imposing the sanction alleged in the Administrative Complaint.**

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.)

Please return your Election of Rights form to this address:

Agency for Health Care Administration  
Attention: Agency Clerk  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308  
Telephone: 850-412-3630 Facsimile: 850-921-0158

**PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS**

**OPTION ONE (1) \_\_\_\_\_ I admit to the allegations of fact and conclusions of law alleged in the Administrative Complaint and waive my right to object and to have a hearing. I understand that by giving up the right to object and have a hearing, a Final Order will be issued that adopts the allegations of fact and conclusions of law alleged in the Administrative Complaint and imposes the sanction alleged in the Administrative Complaint.**

**OPTION TWO (2) \_\_\_\_\_ I admit to the allegations of fact alleged in the Administrative Complaint, but wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed agency action is too severe or that the sanction should be reduced.**

**OPTION THREE (3) \_\_\_\_\_ I dispute the allegations of fact alleged in the Administrative Complaint and request a formal hearing (pursuant to Section 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.**

**PLEASE NOTE:** Choosing **OPTION THREE (3)**, by itself, is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed agency action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

Licensee Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_  
Number and Street City Zip Code

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail (optional) \_\_\_\_\_

I hereby certify that I am duly authorized to submit this Election of Rights form to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA Nos. 2020002164

NORTH SHORE MEDICAL CENTER, INC,  
d/b/a, NORTH SHORE MEDICAL CENTER,

Respondent.

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**SETTLEMENT AGREEMENT**

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Respondent, North Shore Medical Center, Inc., d/b/a North Shore Medical Center ("the Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

**WHEREAS**, the Respondent is a hospital licensed pursuant to under Chapters 395, Part I, and 408, Florida Statutes and Chapter 59A-3, Florida Administrative Code; and

**WHEREAS**, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent; and

**WHEREAS**, the Agency served the Respondent with an Administrative Complaint notifying Respondent of the Agency's intent to impose a fine of two thousand dollars (\$2,000.00); and

**WHEREAS**, the parties have agreed that a fair, efficient, and cost effective resolution of this dispute would avoid the expenditure of substantial sums to litigate the dispute; and

**WHEREAS**, the parties stipulate to the adequacy of considerations exchanged; and

SA NOI Dismiss

**EXHIBIT 2**

**WHEREAS**, the parties have negotiated in good faith and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

**NOW THEREFORE**, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals are true and correct and are expressly incorporated herein.
2. Both parties agree that the "whereas" clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Respondent agrees to waive any and all proceedings and appeals under Chapter 120, Florida Statutes to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), a formal proceeding under Subsection 120.57(1), appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court (DOAH) of competent jurisdiction; and further agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled as to this matter. Provided, however, that no agreement herein, shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement the Respondent shall pay the Agency two thousand dollars (\$2,000.00) within 30 days of the entry of the Final Order adopting this Agreement.
5. Venue for any action brought to interpret, challenge or enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie solely in the Circuit Court in Leon County, Florida.
6. By executing this Agreement, Respondent denies the allegations raised in the Administrative Complaint referenced herein, and the Agency asserts the validity of the



allegations raised in the Administrative Complaint referenced herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule identified in a future survey of Respondent, which constitutes a "repeat" or "uncorrected" deficiency from surveys identified in the administrative complaint.

7. The Agency may use the deficiencies from the surveys identified in the Administrative Complaint in any decision regarding licensure of Respondent, including, but not limited to, a demonstrated pattern of deficient practices. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the Administrative Complaint. This agreement does not prohibit the Agency from taking action regarding Respondent's Medicaid provider status, conditions, requirements, or contract.

8. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and close the above-styled case.

9. Each party shall bear its own costs and attorney's fees.

10. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the

Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related or resulting facilities/organizations. Nothing in this paragraph limits the parties from enforcement of this Agreement as provided in paragraph five (5) of this Agreement.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

13. In the event that Respondent was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this Agreement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

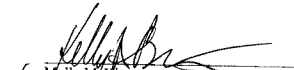
14. Respondent agrees that if any funds to be paid under this Agreement to the Agency are not paid within thirty (30) days of the entry of the Final Order, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it. Respondent has the capacity to execute this Agreement.


16. This Agreement contains and incorporates all understandings and agreements of the parties.

17. This Agreement supersedes any prior oral or written agreements between the parties.

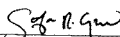
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.
19. All parties agree that a facsimile signature suffices for an original signature.
20. The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

  
for Molly McKinstry 5/20/2020  
Deputy Secretary  
Agency for Health Care Administration  
2727 Mahan Drive  
Tallahassee, Florida 32308


DATED: 6-9-20

  
Name: Mark Racicot  
Title: Chief Executive Officer  
North Shore Medical Center, Inc., d/b/a  
North Shore Medical Center  
1100 NW 95<sup>th</sup> Street  
Miami, Florida 33150


DATED: 5/20/2020

  
Stefan R. Grow, General Counsel  
Florida Bar No. 93585  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308

DATED: 6/2/20

  
Michael Glazer, Esq.  
Florida Bar No. 0286508  
Counsel for Respondent  
123 South Calhoun Street  
Tallahassee, Florida 32301

DATED: 5/20/2020

  
Elizabeth Hathaway DeMarco  
Senior Attorney  
Agency for Health Care Administration  
525 Mirror Lake Drive, Suite 330G  
St. Petersburg, Florida 33701  
Florida Bar No. 413143

DATED: 5/27/20