

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

2016 JUL 29 P 3:38

Petitioner,

vs.

AHCA No. 2016008882

License No. 6906795

File No. 52963185

SYLOTTE PIERRE,

Provider Type : Adult Family Care Home

Respondent,
_____ /

**EMERGENCY SUSPENSION ORDER AND
IMMEDIATE MORATORIUM ON ADMISSIONS**

THIS CAUSE came on for consideration before the Secretary of the Agency for Health Care Administration, or her duly appointed designee, who after careful review of the matter at hand and being otherwise fully advised, finds and concludes as follows:

THE PARTIES

1. The Agency for Health Care Administration (hereinafter “the Agency”), is the licensure and regulatory authority that oversees adult family care homes in Florida and enforces the applicable state statutes and rules governing adult family care homes. Chs. 408, Part II, and 429, Part II, Fla. Stat. (2016), Ch. 58A-14, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including a limitation of license, a moratorium on admissions and an emergency suspension order, when circumstances dictate such action. §§ 120.60(6), 408.814, Fla. Stat. (2016).

2. The Respondent, Sylotte Pierre (hereinafter “the Respondent”), was issued a license by the Agency to operate a four (4) bed adult family care home (hereinafter “Facility”) located at 510 Lincoln Avenue, Lehigh Acres, Florida 33972, and was at all material times required to comply with the applicable statutes and rules governing such facilities.

3. As the holder of such a license, the Respondent is a licensee. "Licensee" means "an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2016). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2015). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2015). § 408.803(11), Fla. Stat. (2016). Adult family care homes are regulated by the Agency under Chapter 429, Part I, Florida Statutes (2016), and listed in Section 408.802, Florida Statutes (2015). § 408.802(19), Fla. Stat. (2016). Adult family care home patients are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2016).

4. The Respondent holds itself out to the public as an adult family care home that complies with the laws governing adult family care homes. These laws exist to protect the health, safety and welfare of the residents of adult family care homes. As individuals receiving services from an adult family care home, these residents are entitled to receive the benefits and protections under Chapters 120, 408, Part II, and 429, Part II, Florida Statutes (2016), and Chapter 58A-14, Florida Administrative Code.

5. As of the date of this Immediate Moratorium on Admissions and Suspension, the census at the Respondent's Facility is four (4) residents/clients.

THE AGENCY'S EMERGENCY ORDER AUTHORITY

6. The Agency may impose an immediate moratorium or emergency suspension as defined in section 120.60, Florida Statutes (2016), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2016). If the Agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a

license, the Agency may take such action by any procedure that is fair under the circumstances.

§ 120.60(6), Fla. Stat. (2016).

LEGAL DUTIES OF AN ADULT FAMILY CARE HOME

7. Florida law provides:

(1) MINIMUM STAFF REQUIREMENTS.

(a) The provider, all staff, each relief person, and all adult household members must submit a statement from a licensed health care provider that he or she is free from apparent signs and symptoms of communicable diseases, including tuberculosis. The statement must be based on an examination conducted within the six months prior to employment. Annually thereafter, the individual must submit documentation from a licensed health care provider that he or she is free from tuberculosis. An exception is that an individual with a positive tuberculosis test must submit a statement from a licensed health care provider that he or she does not constitute a risk of communicating tuberculosis.

(b) The provider, all staff, each relief person, and all adult household members must meet Level 1 background screening requirements established in Section 435.03, F.S., or have been exempted from disqualification as provided in Section 435.07, F.S. The provider must submit a completed AHCA Forms 3110-0002, or other evidence of compliance as provided in Section 429.67, F.S. and Rule 58A-14.003, F.A.C., for any staff, relief persons, or adult household members not screened at the time of initial license application pursuant to the screening schedule provided in Section 435.05, F.S.

(c) The provider, each relief person, and all staff must comply with the training requirements provided in subsection (4) of this rule.

(2) PROVIDER.

(a) An adult family-care home provider must:

1. Be at least 21 years of age.
2. Live in the home.
3. Be able to read, write and complete written materials involved in applying for an AFCH license and maintaining an AFCH.
4. Complete required training.

(b) An adult family-care home provider is responsible for:

1. The operation and maintenance of the AFCH in accordance with Chapter 400, Part VII, F.S., and this rule chapter.
2. Ensuring that residents are appropriate for placement and continued residency in the home as provided under Rule 58A-14.0061, F.A.C., and that care and services are provided for residents in accordance with Rule 58A-14.007, F.A.C.

(c) In the event of severe illness, incapacity, or death of the provider, the relief person or staff in charge shall notify each resident's representative or case manager, and the AHCA Area Office within 24 hours.

(3) RELIEF PERSONS.

(a) The adult family care home provider must designate one or more relief persons to assume responsibility for the care of residents if the provider is not available to perform that duty.

(b) The relief person must be:

1. At least 21 years of age; and
 2. Knowledgeable about and able to provide for all care needs of the residents.
- (c) The provider must notify the agency in writing within 30 days of a change in relief persons and ensure that the relief person is appropriately background screened and trained as described in this rule.

(4) TRAINING.

(a) All AFCH providers must attend a 12-hour basic adult family-care home training program which covers the minimum requirements of Section 429.75, F.S., prior to accepting any residents, or for providers who already have persons residing in the home that will be considered residents, prior to licensing.

(b) The AFCH provider shall annually obtain 3 hours of continuing education in topics related to the care and treatment of frail elders or disabled adults, or the management and administration of an adult family-care home.

(c) The AFCH provider, each relief person, and any person left in sole charge of residents, which may include staff, household members or volunteers, must hold a currently valid card documenting completion of courses in First Aid and CPR. A nurse shall be considered as having met the training requirement for First Aid.

(d) Prior to assuming responsibility for the care of residents or within 30 days of employment, the AFCH provider shall ensure that each relief person and all staff receive training in areas that are relevant to the person's job duties, including emergency and evacuation procedures, universal precautions, food safety, reporting abuse and neglect, and resident rights.

(e) Except as otherwise noted, certificates of any training required by this rule shall be documented in the facility's personnel files.

Fla. Admin. Code R. 58A-14.008.

8. Under Florida law:

(1) A resident of an adult family-care home may not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the State Constitution, or the Constitution of the United States solely by reason of status as a resident of the home. Each resident has the right to: (a) Live in a safe and decent living environment, free from abuse and neglect. (b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and privacy.

§ 429.85(1)(a)-(b), Fla. Stat. (2016).

9. Under Florida law, the agency shall require level 2 background screening for personnel as required in s. 408.809 (1)(c), including the adult family care home provider, the designated relief person, and all adult household members, pursuant to chapter 435 and s. 408.809. § 429.67(4), Fla. Stat. (2016).

10. Under Florida law, “Employee” means any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers. § 435.02(2), Fla. Stat. (2016).

11. Under Florida law:

(2) HEALTH ASSESSMENT.

(a) Prior to admission to an AFCH, an individual must have a face-to-face medical examination conducted by a licensed health care provider using AHCA Form 3110-1023, Resident Health Assessment for Adult Family-Care Homes (AFCH), January 2008, which is incorporated by reference. It is available by writing to the Agency for Health Care Administration, Long-Term Care Bureau, 2727 Mahan Drive, Mail Stop 30, Tallahassee, FL 32308-5403 or calling (850) 487-2515. It also may be obtained from the Agency’s website at http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/afc/Res_Health_Assmnt.pdf.

1. Items on the form that may have been omitted by the licensed health care provider during the examination do not necessarily require an additional face-to-face examination for completion.

2. The AFCH provider, or relief person, may obtain the omitted information either verbally or in writing from the licensed health care provider.

3. Omitted information received verbally must be documented in the resident’s record, including the name of the licensed health care provider giving the information, the name of the AFCH provider or relief person recording the information, and the date the information was obtained.

(b) Every year thereafter, or after a significant change as defined in subsection (4) of Rule 58A-14.007, F.A.C., whichever comes first, the resident must have a face-to-face medical examination conducted by a licensed health care provider using the form referenced in paragraph (a) of this subsection. After the effective date of this rule, providers shall have up to 12 months to comply with this requirement for residents currently living in the AFCH.

Fla. Admin. Code R. 58A-14.0061(2).

12. Under Florida law:

The adult family-care home provider shall ensure the provision of the following in accordance with Chapter 429, Part II, F.S., this rule chapter, and the residency agreement:

(1) PERSONAL SERVICES.

(a) Assistance with or supervision of the activities of daily living as required by the resident. For a diabetic resident or a resident who has documented circulatory problems, cutting toenails shall only be permitted with written approval of the health care provider.

(b) Assistance with or supervision of the self-administration of medication, or medication administration.

1. Residents who are capable of self-administering their medications shall be encouraged and allowed to do so.
2. For residents who require supervision or assistance with self-administration, the provider or staff shall, as needed:
 - a. Remind residents when to take medications;
 - b. Prepare and make available such items as water, juice, cups, spoons, or other items necessary for administering the medication;
 - c. Obtain the medication and provide it to the resident;
 - d. Observe the resident take the medication and verify that the resident is taking the dosage as prescribed; and
 - e. Provide any other assistance at the express direction of the resident or the resident's representative, except for administering the medication as defined in Section 465.003, F.S.

Fla. Admin. Code R. 58A-14.007(1).

FACTS JUSTIFYING EMERGENCY ACTION

13. On or about July 27, 2016, the Agency commenced a survey of the Respondent's Facility.
14. Based upon this investigation, the Agency makes the following findings:
 - a. The provider, Ms. Pierre, was not present at the Facility and had been absent from the Facility for approximately one (1) week.
 - b. Ms. Pierre, in a telephonic interview with Agency personnel, refused to disclose her location, how long she had been absent from the Facility, and her anticipated date of return. Ms. Pierre also declined to disclose the location of resident records, including resident health assessments and medication records, to Agency personnel or allow that these documents be reviewed by Agency personnel. Ms. Pierre also declined to disclose the location of personnel records for her and her staff. Ms. Pierre indicated any records would be provided upon her return.
 - c. The sole caretaker in the Facility upon the arrival of Agency personnel on July 27, 2016, at approximately 9:30 A.M., was a volunteer for the Respondent. This individual had no training or qualifications required for caregivers in adult family care homes

including, but not limited to, current certification in cardiopulmonary resuscitation, criminal history background screening, or training in resident rights, or evacuation procedures. *See*, Fla. Admin. Code R. 58A-14.008.

d. Upon entry into the Facility on July 27, 2016, by Agency personnel, there were five (5) residents in the Facility. The Facility's licensed capacity is four (4) residents.

e. Due to Ms. Pierre's refusal to disclose the resident Health Assessment documents, the scope of the physical or emotional needs of the residents is unknown. Similarly, due to this same reticence to cooperate with Agency personnel, the medication requirements for the residents were unknown to both the Agency and those persons who were providing direct care to the Facility residents.

f. One of the residents was receiving supplemental end-of-life care from a local Hospice provider and required oxygen. That resident, through the actions of the Hospice provider, was relocated to an appropriate health care facility on July 27, 2016.

g. In addition to the five (5) residents, the Respondent's seventeen (17) year old nephew and Ms. Pierre's eleven (11) year old daughter also resided in the home.

h. The Respondent's designated relief person, *see*, Fla. Admin. Code R. 58A-14.008(3), was not on site. Efforts to contact this individual by Agency personnel were unsuccessful. An individual with a name similar to the designated relief person was referenced by the volunteer as one who had been in the Facility earlier that day, but the individual refused to come to the Facility when Agency staff was present.

i. At approximately 6:00 PM on July 27, 2016, an individual identifying herself as an as-needed staff member arrived. Agency personnel were able to confirm this individual had undergone criminal background screening through Agency records. No personnel records were available to discern whether the other training and qualifications,

including certification in cardiopulmonary resuscitation, of this individual had been met and documented.

j. On July 28, 2016, the same volunteer who was at the Facility on the 27th again undertook the role as caregiver for the Facility's residents. This individual was relieved in the afternoon by a third individual who identified as an as-needed caretaker. Again, there was no indication that this third individual possessed the training or qualifications, including criminal history background screening, to provide care and service for the resident population.

k. Of those persons identified as providing care and services to residents of the Facility during the Agency's review, none could produce records regarding the residents, including resident medications or health care information contained on the resident health assessment form required by law.

NECESSITY FOR EMERGENCY ACTION

15. The Agency is charged with the responsibility of enforcing the laws enacted to protect the health, safety and welfare of residents and clients in Florida's adult family care homes. Ch. 429, Part II, Fla. Stat. (2016), Ch. 408, Part II, Fla. Stat. (2016); Ch. 58A-14, Fla. Admin. Code. In those instances, where the health, safety or welfare of an adult family care home resident is at risk, the Agency will take prompt and appropriate action.

16. The residents of adult family care homes enjoy a statutorily enacted Bill of Rights which mandates that adult family care homes provide a safe and decent living environment, free from abuse and neglect. An adult family care home must protect these resident rights, including the provision of a safe and decent living environment. § 429.85(1), Fla. Stat. (2016). The residents that reside in adult family care homes oftentimes suffer from disease or disability. They typically consist of the frail, elderly or vulnerable. By law, the Respondent has been

licensed and entrusted to provide care and services to this class of people, and as such, must comply with the statutes and rules that have been enacted for the special needs of these residents.

17. In this instance, the Respondent has failed to ensure that these minimum requirements of law are being met. The Respondent has chosen to violate the minimum requirements of law in several significant regards, including the failure to provide appropriately trained and qualified staff to supervise its residents, exceeding its licensed capacity, and the failure to obtain and maintain relevant required health records including health assessments and medication records or, in the alternative, the refusal to provide these records to Agency personnel. *See*, § 408.811, Fla. Stat. (2016).

18. As a result, the residents' right to be free from abuse or neglect in an adult family care home has been violated. The Respondent has not ensured that she provided caretakers with the requisite training and qualifications necessary to ensure resident care and service needs are met. This failure is significant both for day-to-day care and in emergent situations.

19. Caretakers did not have access to the medication list which an adult family home care provider must maintain. *See*, Fla. Admin. Code R. 58A-14.0085(1)(a)6. As such, they would be unaware of the medications each resident had been prescribed. They would be unaware of the level of medication assistance that each resident's physician had directed. This lack of information presents an immediate risk that errors or omissions in medication compliance for these residents could occur. In addition, should any resident suffer an emergent condition, there is no showing that the caretakers have the knowledge or qualifications to provide emergency care, including cardiopulmonary resuscitation, whether any resident had executed orders declining such care, or access to the resident health records which could be critical to the care and services provided by emergency medical personnel. Among those records are the health assessments which a provider must obtain and maintain. *See*, Fla. Admin. Code R. 58A-

14.0085(1)(a)1. These omissions present an immediate risk that a resident's health care needs would not be adequately addressed in an emergent condition.

20. Residents of an adult family care home are entitled to expect that care and services will be provided to them at all times under the regulatory scheme. A resident of an adult family care home is not a mere boarder, but an individual who has contracted for care and assistance, including qualified and trained staff who can perform such services at all times.

21. Particularly at risk are residents who lack the cognitive or physical capabilities to respond to deficiencies in care and services.

22. The Florida Legislature has determined, in enacting statutory amendments to multiple provisions of law, that Florida's citizens must be protected from being served in Florida's regulated facilities by persons who possess certain identified criminal histories. Appropriate and comprehensive criminal background screening of personnel employed by regulated providers constitutes action which is directed to the prevention of abuse and neglect of Florida's citizenry.

23. These statutory provisions simply do not allow a provider to employ persons who have not successfully completed required criminal history background screening. *See*, § 435.06(2)(a), Florida Statutes (2016). It is clear that the legislature intended that no person should be permitted access to clients or client property prior to having successfully undergone criminal history background screening. No exceptions are provided in the strict legislative framework.

24. Of the three (3) individuals identified to be providing care and services to residents of the Facility, two (2) had not undergone criminal history background screening. The Respondent knew or should have known this fact and arranged for qualified personnel to provide services in her absence. This failure places residents at needless and preventable risk to their

persons or property.

25. The failure to ensure criminal background screening as required by law constitutes an independent ground for license suspension. § 429.69(1), Fla. Stat. (2016) (“In addition to the requirements of part II of chapter 408, the agency may deny, suspend, and revoke a license for any of the following reasons: Failure to comply with the background screening standards of this part, s. 408.809(1), or chapter 435.”).

26. Last, the Respondent has allowed her Facility to exceed the licensed capacity of the premises.

27. These events demonstrate the Respondent’s failure to understand and implement its legal obligation to provide staffing that are trained, and qualified to provide care and supervision to meet the needs of residents entrusted to the Respondent’s care.

28. The Respondent’s refusal to cooperate with the Agency by producing records further reflects an inability or unwillingness to comply with the minimum requirements of licensure. The statutory and regulatory scheme mandates that records be obtained and maintained for both residents and staff. Further, these records must be provided to Agency personnel upon demand. *See*, Fla. Admin. Code R. 58A-14.010(2)(b). (The inspection shall consist of full access to and examination of the home’s physical premises ... and facility and resident records.).

29. The Respondent’s deficient conduct is widespread and permeates the Facility thus placing in jeopardy the health, safety and welfare of all of the current residents and potential future residents. The Respondent has known or should have known about the existence of these deficient practices in its staffing patterns. Qualified and trained staff must be available to meet resident needs. The Respondent has known or should have known that it must obtain and maintain records, including medical records of residents, to ensure that appropriate day-to-day

and emergent care is provided. The Respondent knew or should have known that it must ensure that all staff with access to residents or their property have successfully undergone criminal history background screening. The Respondent has not demonstrated the capability or willingness to do so.

30. Individually and collectively, these facts reflect that the residents of this Facility are not currently residing in a safe and decent living environment free from abuse and neglect. § 429.85(1), Fla. Stat. (2016). No resident of an adult family care home should be placed or maintained in such an environment. The Legislature created the Adult Family-Care Home Act. §§ 429.60, et seq., Fla. Stat. (2016). “The Legislature encourages the provision of care for disabled adults and frail elders in family-type living arrangements in private homes.” § 429.63(1), Fla. Stat. (2016). “The Legislature further finds and declares that licensure under this part is a public trust and a privilege, and not an entitlement. This principle must guide the finder of fact or trier of law at any administrative proceeding or circuit court action initiated by the department to enforce this part.” § 429.63(4), Fla. Stat. (2016).

31. The Respondent’s deficient practices exist presently, have existed in the past, and more likely than not will continue to exist if the Agency does not act promptly. If the Agency does not act, it is likely that the Respondent’s conduct will continue.

32. An Emergency Suspension of the Respondent’s license to operate this Facility is necessary in order to protect the residents from (1) the unsafe conditions and deficient practices that currently exist in the facility, (2) being placed at risk of living in an environment ill-equipped to provide for resident health, safety and welfare because of staffing and supervision failures, and (3) being placed in an adult family care home where the statutory and regulatory mechanisms enacted for resident protection have not been implemented.

CONCLUSIONS OF LAW

33. Based upon the above stated provisions of law and findings of fact, the Agency concludes that: (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate suspension of licensure of Respondent's Facility, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate suspension of licensure.

34. The Agency expressly finds that exigent circumstances exist in this instance that warrant emergency action. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. The assessment of administrative fines or other administrative remedies would not protect the residents or potential residents of the Respondent facility from the immediate ongoing dangers existing in the Facility.

35. This Emergency Suspension Order is the least restrictive means that the Agency could take against the Respondent to ensure the protection of the health, safety and welfare of residents. The remedy of emergency license suspension is tailored to address the specific harm in this instance. A moratorium on admissions by itself would not alleviate the serious concerns presented with this Facility.

36. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that a suspension of the Respondent's license is necessary in order to protect the residents from (1) the unsafe conditions and deficient practices that currently exist, (2) being placed at risk of living in an environment ill-equipped to provide for resident health, safety and welfare because of staffing and supervision failures, and (3) being placed in an adult family care home where the regulatory mechanisms enacted for residents protection have not been

implemented.

37. The Respondent's deficient practices exist presently and will more likely than not continue to exist if the Agency does not act promptly. If the Agency does not act, it is likely that the Respondent's conduct will continue. Such deficient practices and conditions justify the imposition of an Emergency License Suspension. Less restrictive actions, such as just an immediate moratorium on admissions or the assessment of administrative fines, will not ensure that the current residents or future residents receive the appropriate care, services, and environment dictated by Florida law.

38. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. This remedy is narrowly tailored to address the specific harm in this instance.

IT IS THEREFORE ORDERED THAT:

39. The Respondent's license to operate this adult family care home is **SUSPENDED** effective August 1, 2016 at 5:00 p.m. As of the effective date and time of the suspension, the Respondent shall not operate this adult family care home.

40. In addition, an **IMMEDIATE MORATORIUM ON ADMISSIONS** is imposed upon entry of this Emergency Order. The Respondent shall not admit or re-admit for services any individual unless given permission by the Agency in writing.

41. Upon receipt of this order, the Respondent shall post this Emergency Order on its premises in a place that is conspicuous and visible to the public.

42. The Agency shall promptly file an administrative action against the Respondent based upon the facts set out in this Emergency Order and provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2016), at the time that such action is

taken.

ORDERED in Tallahassee, Florida, this 29 day of July, 2016.



Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

This emergency order is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b) and (c). See Fla. R. App. P. 9.190(b)(2). In order to be timely, the petition for review must be filed within thirty (30) days of the rendition of this non-final emergency order.



FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

Better Health Care for all Floridians


RICK SCOTT
GOVERNOR

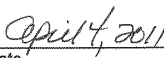
ELIZABETH DUDEK
SECRETARY

DELEGATION OF AUTHORITY
To Execute
Emergency Suspension Orders

I specifically delegate the authority to execute Emergency Suspension Orders to Molly McKinstry, Deputy Secretary, Health Quality Assurance, or her delegate.

This delegation of authority shall be valid from date of October 1, 2010, until revoked by the Secretary.


Elizabeth Dudek, Secretary


Date





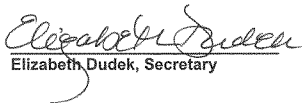
RICK SCOTT
GOVERNOR

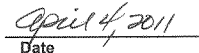
ELIZABETH DUDEK
SECRETARY

**DELEGATION OF AUTHORITY
To Execute
Immediate Orders of Moratorium**

I specifically delegate the authority to execute Immediate Orders of Moratorium to Molly McKinstry, Deputy Secretary, Health Quality Assurance, or her delegate.

This delegation of authority shall be valid from date of October 1, 2010, until revoked by the Secretary.


Elizabeth Dudek, Secretary


Date

