

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

2016 DEC 23 A 9:49

Petitioner,

v.

AHCA No. 2016004982

License No. 4452

File No. 100002

Provider Type: Hospital

RENDITION NO.: AHCA- 16 - 0872-S-01C

BETHESDA HOSPITAL INC., d/b/a
BETHESDA HOSPITAL EAST

Respondent.

FINAL ORDER

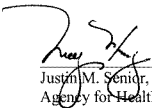
Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

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 \$1,000.00. 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 22 day of December, 2016.


Justin M. Senior, Interim 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 25th day of December, 2016.



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)
Lindsey Miller, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Administrator Bethesda Hospital, Inc. d/b/a Bethesda Hospital East 2815 S Seacrest Boulevard Boynton Beach, Florida 33434 (U.S. Mail)
	Vanessa A. Reynolds, P.A. 100 S.E. 3 rd Avenue Suite 2700 Fort Lauderdale, Florida 33394 (U.S. Mail)

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

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

Petitioner,

v.

**BETHESDA HOSPITAL, INC. d/b/a
BETHESDA HOSPITAL EAST,**

**AHCA No. 2016004982
License No. 4452
File No. 100002
Provider Type: Hospital**

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW, the Petitioner, State of Florida, Agency for Health Care Administration (hereinafter "the Agency"), by and through its undersigned counsel, and files this Administrative Complaint against the Respondent, Bethesda Hospital, Inc. d/b/a Bethesda Hospital East (hereinafter "the Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2015), and alleges as follows:

NATURE OF THE ACTION

This is an action against a hospital to impose administrative fines in the amount of one thousand dollars (\$1,000.00).

JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter pursuant to Sections 120.569 and 120.57, Florida Statutes (2015).
2. The Agency has jurisdiction over the Respondent pursuant to Sections 20.42 and 120.60, and Chapters 395, Part I, and 408, Part II, Florida Statutes (2015).
3. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code.

PARTIES

4. The Agency is the licensing and regulatory authority that oversees hospitals in Florida and enforces the applicable federal and state regulations, statutes and rules that govern such facilities. Chs. 395, Part I, 408, Part II, Fla. Stat. (2015), Chs. 59A-3 and 59A-10, Fla. Admin. Code. The Agency may deny, revoke, and suspend any license issued to a hospital, or impose an administrative fine, for a violation of the Health Care Licensing Procedures Act, the authorizing statutes or applicable rules. §§ 408.813, 408.815, 408.831, 395.003, 395.1041, 395.1065, Fla. Stat. (2015).

5. The Respondent was issued a license by the Agency (License Number 4452) to operate a 401-bed hospital located at 2815 S Seacrest Boulevard, Boynton Beach, Florida 33435, and was at all times material required to comply with the applicable federal and state regulations, statutes and rules.

6. On January 19-20, 2016 the Agency conducted an unannounced complaint survey (CCR#2015012636) of the Respondent's facility.

COUNT I (Tag H0120)

Respondent Facility's Nursing Staff Failed To Plan, Intervene, And Evaluate Nursing Care In Violation Of F.A.C. 59A-3.2085(5)(e)1-3

7. The Agency re-alleges and incorporates by reference paragraphs 1 through 6.

8. Rule 59A-3.2085, F.A.C., provides in pertinent part:

59A-3.2085 Department and Services.

(5) Nursing Service. Each hospital shall be organized and staffed to provide quality nursing care to each patient. Where a hospital's organizational structure does not have a nursing department or service, it shall document the organizational steps it has taken to assure that oversight of the quality of nursing care provided to each patient is accomplished.

...

(e) The nursing process of assessment, planning, intervention and evaluation shall be documented for each hospitalized patient from admission through discharge.

1. Each patient's nursing needs shall be assessed by a registered nurse at the time of admission or within the period established by each facility's policy.

2. Nursing goals shall be consistent with the therapy prescribed by the responsible medical practitioner.

3. Nursing intervention and patient response, and patient status on discharge from the hospital, must be noted on the medical record.

...

9. Based on interview and record reviews, the Respondent's facility failed to ensure that a patient's ability to self-catheterize was assessed and nursing services provided to ensure safe catheterization for one (1) of eleven (11) sampled patients (Patient # 11).

Patient#11

10. On 1/20/16 starting at 12:11 PM, an interview was conducted with Patient # 11 and his spouse at the bedside. They were asked about the quality of nursing care/services they had received. The patient directed his wife to speak for him, but nodded his head to confirm statements made by the spouse.

11. The spouse stated, "He used to be able to do intermittent catheterization at home, but since this stroke his bad hand makes it impossible, but the staff insisted that he continue doing his own catheterizations. He was self-mutilating himself because he had trouble holding the cath. I came in one morning and saw blood all over the commode. The doctor came in that morning and I begged him to let him have a catheter because the nurses wouldn't help him. The doctor saw the blood and he ordered the catheter that morning." Patient #11 nodded his head throughout the conversation confirming what she had stated.

12. Review of the clinical record of Patient #11 was conducted with the Nurse Educator and the Unit Manager.

13. Review of the electronic record revealed Patient #11 was admitted to the Respondent's facility on January 8, 2016 for Cerebral Vascular Accident (CVA) with right sided weakness. The physician orders on admission included straight catheterizing the Patient as needed.

14. A thorough search of the Patient's record did not reveal evidence that nursing staff assessed the Patient's ability to self-catheterize and/or that they performed this service for the Patient. There was no documentation in the nurse's notes of observations of the Patient's ability to self-catheterize.

15. Review of the Patient's output record reveals the following:

- i. on 1/8/16 500 ml voided urine,
- ii. on 1/9/16 no documentation of output,
- iii. on 1/10/16 no documentation of output,
- iv. on 1/11/16 bathroom privileges,
- v. on 1/12/16 Foley catheter.

16. The Nurse Educator and the Unit Manager both confirmed that the Facility staff failed to assess the Patient's ability to self-catheterize, and that the nurses should have performed the catheterizations as ordered.

17. The Respondent's actions or inactions constituted a violation of this part, authorizing statutes, or applicable rules.

18. 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 Chapter 395, Part I, or Chapter 408, Part II, or the applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. § 395.1065(2)(a), Fla. Stat. (2015).

19. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2015).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully requests the Court to impose an administrative fine against the Respondent in the amount of one thousand dollars (\$1,000.00).

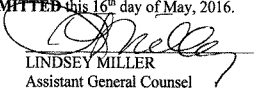
CLAIM FOR RELIEF

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully requests the Court to grant the following relief:

A. Enter findings of fact and conclusions of law in favor of the Agency as set forth in the complaint, specifically sustaining the sanctions sought to be imposed hereby.

B. Order any other relief deemed appropriate.

RESPECTFULLY SUBMITTED this 16th day of May, 2016.


LINDSEY MILLER
Assistant General Counsel
FL Bar No.: 121410
Agency for Health Care Administration
2727 Mahan Drive, Bldg. 3, MS #3
Tallahassee, Florida 32308
Tel: (850) 412-3941 Fax: (850) 922-9634
Lindsey.Miller@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 Administrative Complaint and Election of Rights Form were served to the named below by the method designated on this 16th day of May, 2016.



LINDSEY MILLER
Assistant General Counsel
FL Bar No.: 121410
Agency for Health Care Administration
2727 Mahan Drive, Bldg. 3, MS #3
Tallahassee, Florida 32308
Tel: (850) 412-3941 Fax: (850) 922-9634
Lindsey.Miller@ahca.myflorida.com

Copies furnished to:

Bethesda Hospital Inc., d/b/a Bethesda Hospital East 2815 S Seacrest Blvd Boynton Beach, FL 33435 (U.S. Certified Mail: 91 7199 9991 7033 6350 4023)	Registered Agent Kimberly Shapiro, Esq. 2815 S Seacrest Blvd Boynton Beach, FL 33435 (U.S. Certified Mail: 91 7199 7033 6350 4030)
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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: Bethesda Hospital Inc., d/b/a
Bethesda Hospital East

AHCA No. 2016004982

ELECTION OF RIGHTS

This Election of Rights form is attached to a proposed agency action by the Agency for Health Care Administration (AHCA). The title may be **Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint**.

Your Election of Rights may be returned by mail or by facsimile transmission, **but must be filed within 21 days** of the day you receive the attached Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.

If your Election of Rights with your selected option is not received by AHCA within 21 days of the day you received this proposed agency action by AHCA, you will have given up your right to contest the proposed action and a Final Order will be issued.

(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 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 facts and law contained in the **Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine, or Administrative Complaint** and I waive my right to object and to have a hearing. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) _____ I admit to the allegations of facts contained in the **Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine, or Administrative Complaint**, but I 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 administrative action is too severe or that the fine should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact contained in the Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I 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. Your name, address, and telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

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

License Type: _____ (ALF? Nursing Home? Medical Equipment? Other Type?)

Licensee Name: _____ License Number: _____

Contact Person: _____
Name 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 to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ Date: _____

Print Name: _____ Title: _____

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

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

Petitioner,

v.

**BETHESDA HOSPITAL INC., d/b/a
BETHESDA HOSPITAL EAST**

**AHCA No. 2016004982
License No. 4452
File No. 100002
Provider Type: Hospital**

Respondent.

SETTLEMENT AGREEMENT

The Petitioner, State of Florida, Agency for Health Care Administration (hereinafter "the Agency"), through its undersigned representatives, and the Respondent, Bethesda Hospital Inc., d/b/a Bethesda Hospital East (hereinafter "the Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually a "Party," and collectively as "Parties," hereby enter into this Settlement Agreement (hereinafter "Agreement") and agree as follows:

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

WHEREAS, the Agency has jurisdiction by virtue of being the licensing and regulatory authority over the Respondent pursuant to Section 20.42, and Chapters 408, Part II, and 395, Part I, Florida Statutes; and

WHEREAS, the Agency served the Respondent with Administrative Complaint on or about May 19, 2016, notifying the Respondent of its intent to impose an administrative fine in the amount of one thousand dollars (\$1,000.00); and

WHEREAS, the Parties have negotiated and agreed that the best interests of the Parties will be served by a settlement of this proceeding;

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

1. All recitals herein are true and correct and are expressly incorporated herein.
2. The Parties agree that the “whereas” clauses incorporated herein are binding findings of the Parties.
3. Upon full execution of this Agreement, the Respondent agrees to waive any and all proceedings and appeals to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, 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 agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, 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 agrees to pay one thousand dollars (\$1,000.00) to the Agency within thirty (30) days of the entry of the Final Order.
5. Venue for any action brought to challenge, interpret or enforce the terms of this Agreement or its Final Order shall lie solely in the Circuit Court of Leon County, Florida.
6. By executing this Agreement, the Respondent denies the allegations set forth in the Administrative Complaint, but recognizes that the Agency continues in good faith to assert the validity of the allegations raised in the Administrative Complaint. The Agency agrees that it will not impose any further penalty against the Respondent as a result of the survey identified in the

Administrative Complaint, however, this agreement shall not preclude the Agency from imposing a penalty against the Respondent for any deficiency/violation of statute or rule identified in any future survey of the Respondent. Furthermore, this agreement shall not preclude the Agency from using the deficiencies from the survey identified in the Administrative Complaint in any decision regarding licensure of the Respondent.

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

8. Each Party shall bear its own costs and attorney's fees.

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

10. The Respondent for itself and 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 the Respondent or related facilities.

11. This Agreement is binding upon all of the Parties herein and those identified in paragraph 10 of this Agreement.

12. In the event that the Respondent was a Medicaid provider at the subject time, this Agreement does not prevent the Agency from seeking any Medicaid overpayments that may be related to the issues raised in the Administrative Complaint and/or sanctions pursuant to Rule 59G-

9.070, Florida Administrative Code.


13. The Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against the Respondent in the Final Order, or any portion thereof, owed by the Respondent to the Agency from any present or future funds owed to the Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to the Respondent by the Agency for said amounts until paid.

14. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it. The Respondent's representative has the legal capacity to execute this Agreement. The Respondent understands that it has the right to consult with counsel and has knowingly and freely entered into this Agreement without exercising its right to consult with counsel. The Respondent understands counsel for the Agency represents solely the Agency and that Agency counsel has not provided any legal advice to or influenced the Respondent in its decision to enter into this Agreement.

15. This Agreement contains and incorporates the entire understandings and agreements of the Parties. This Agreement supersedes any prior oral or written agreements between the Parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

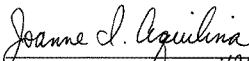
16. The Parties agree that a facsimile signature suffices for an original signature.

The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.



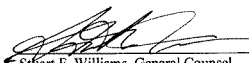
Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #2
Tallahassee, Florida 32308

DATED: 12/22/16



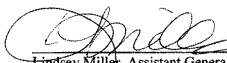
Roger L. Kirk, President & CEO VPP FINANCE/
Bethesda Hospital, Inc. d/b/a CFO
Bethesda Hospital East
2815 S Seacrest Boulevard
Boynton Beach, Florida 33434

DATED: 9/23/2016



Stuart F. Williams, General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS#3
Tallahassee, Florida 32308

DATED: 12/20/16



Lindsey Miller, Assistant General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS#3
Tallahassee, Florida 32308

DATED: 9/23/16

The remainder of this document is blank