

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION 2017 JUN -5 A 10: 53

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA No. 2017003707

BETHESDA HOSPITAL,

Respondent.

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**FINAL ORDER**

Having reviewed the Notice of Intent to Impose Fine and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

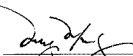
1. The Agency issued the Respondent the attached Notice of Intent and Election of Rights form. (Ex. 1) The Election of Rights form advised of the right to an administrative hearing pursuant to Sections 120.57(1) and 120.57(2), Florida Statutes. The Respondent received the Notice of Intent and Election of Rights form. (Ex. 2) The Respondent failed to timely file the Election of Rights form or other response with the Agency Clerk.
2. By failing to timely respond, the Respondent waived the right to a hearing and waived the right to contest the allegations within the Notice of Intent. Cann v. Department of Children and Family Services, 813 So.2d 237 (Fla. 2d DCA 2002). The findings of fact, conclusions of law and proposed sanction set forth within the Notice of Intent are adopted and incorporated by reference.

Based upon the foregoing, it is **ORDERED**:

3. The Respondent shall pay the Agency \$2,886.00. If full payment has already been made, the cancelled check is your receipt 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 payable to the "Agency for Health Care Administration" and containing the AHCA 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 4 day of June, 2017.



Justin M. Senior, 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 5<sup>th</sup> day of June, 2017.



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)
Roger Kirk, CEO Bethesda Hospital 2815 S. Seacrest Blvd. Boynton Beach, Florida 33435 (U.S. Mail)	



2017003707  
RICK SCOTT  
GOVERNOR

JUSTIN SENIOR  
SECRETARY

7008 0150 0003 1017 3819

April 5, 2017

Roger Kirk  
Chief Executive Officer  
Bethesda Hospital  
2815 S. Seacrest Blvd.  
Boynton Beach, Florida 33435

Hospital Number 10-0002

RECEIVED  
GENERAL COUNSEL

APR 04 2017

Agency for Health  
Care Administration

### NOTICE OF INTENT TO IMPOSE LATE FINE

Pursuant to Rule 59E-5.201(d), Florida Administrative Code, the hospital was required to provide a signed copy of its September 30, 2016 audited financial statements within 120 days of the hospital's fiscal year end. Therefore, a signed copy of the hospital's June 30, 2016, audited financial statements were due on January 28, 2017.

The Agency sent a "deemed not filed" letter by certified mail to the hospital's chief executive officer (Exhibit A) pertaining to the due date of January 28, 2017. The certified letter was received on February 9, 2017 (Exhibit B). Another certified letter dated March 1, 2017 (Exhibit C) and received by the hospital on March 6, 2017 (Exhibit D) was sent reminding the facility of their reporting requirements and explaining the potential consequences for failure to timely file. A final letter indicating that the hospital was subject to a fine for failure to timely report was mailed on March 14, 2017 (Exhibit E) and received by the hospital on March 21, 2017 (Exhibit F). The audited financial statements were received on March 30, 2017.

Pursuant to Section 408.08, Florida Statutes, and Rule 59E-2.025, Florida Administrative Code, a fine of \$2,886 is imposed on the above-named licensee based upon the licensee's failure to timely file its September 30, 2016 audited financial statements. This constitutes the licensee's first violation.

Pursuant to Section 408.061(1), Florida Statutes, the Agency shall require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the Agency's duties.

Pursuant to Section 408.08, Florida Statutes, any health care facility that refuses to file a report, fails to timely file a report, files a false report, or files an incomplete report and upon notification fails to timely file a complete report required under Section 408.061; that violates this section, Section 408.061, or Section 408.20, or rule adopted there under; or that fails to provide documents or records requested by the Agency under this chapter shall be punished by a fine not exceeding \$1,000 per day for each day in violation, to be imposed and collected by the agency. Pursuant to rules adopted by the Agency, the Agency may, upon a showing of good cause, grant



a one-time extension of any deadline for a health care facility to timely file a report as required by this section, Section 408.061, or Section 408.20.

Rule 59E-2.025, Florida Administrative Code, states as follows:

(1) In order to provide consistency and predictability in the imposition of administrative fines, the Agency will follow these guidelines in imposing fines for the following offenses. However, prior to determination of the appropriate fine, the Agency may consider evidence in aggravation or mitigation of the offense which may justify departure from these guidelines.

(a) Failure to file a report or document on or before the due date; failure to correct a report or document which has been filed but contained errors or deficiencies; failure to pay an assessment due pursuant to Section 408.072, 408.20, F.S.:

	Fine per bed <u>per day</u>	Minimum fine <u>per day</u>	Maximum fine <u>per day</u>
First Occurrence	\$.10	\$20	\$150
Second Occurrence	\$.20	\$40	\$300
Third Occurrence	\$.50	\$100	\$500

(b) Failure to file a report or document on or before the due date or failure to correct a report or document which has been filed but contained errors or deficiencies when such violation results in the information being unavailable for inclusion in the Agency's scheduled publication or scheduled public release of the information:

	Fine per bed <u>per day</u>	Minimum fine <u>per day</u>	Maximum fine <u>per day</u>
First Occurrence	\$3.50	\$750	\$1,000
Second Occurrence	N/A	\$750	\$1,000

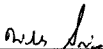
(c) Failure to file a report or document shall be punished by a fine of \$25,000.

(d) Knowingly filing a false report or document shall be punished by a fine of \$25,000.

(2) No fine may be assessed which exceeds \$1,000 per day for each day in violation.

The Agency has calculated the fine amount of \$2,886 based on the minimum per day fine guidance in Rule 59E-2.025, Florida Administrative Code, (60 days x .10 per day x 481 beds). The fine has been calculated based on a failure of the hospital to comply with Rule 59E-5.201(d), Florida Administrative Code for the 9/30/2016 filing only.

Agency for Health Care Administration



By: Mills Smith, Supervisor  
Finance Analysis Unit

cc: Legal Intake Unit, Mail Stop 3

**STATEMENT OF RIGHTS**

The licensee has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, and to be represented by counsel or other qualified representative. In order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes, a request for an administrative hearing must be timely filed and must conform to the requirements in Section 28-106.201, Florida Administrative Code. Please see the attached Election of Rights form.

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

**Re: AHCA v. Bethesda Hospital**

**ELECTION OF RIGHTS**

This Election of Rights form is attached to a Notice of Intent to Impose Late Fine of the Agency for Health Care Administration. This Election of Rights may be returned by mail or by facsimile transmission, **but must be filed with the Agency Clerk within 21 days** of the receipt of the attached Notice of Intent to Impose Late Fine. If the Election of Rights form, with a selected option, is not received by the Agency within 21 days of the receipt of the Notice of Intent to Impose Late Fine, the licensee will have waived the right to contest the factual allegations and the penalty sought in the Notice of Intent to Impose Late Fine 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 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 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. 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 certify that I am authorized to submit this Election of Rights form to the Agency for Health Care Administration on behalf of the above-named licensee.

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

Print Name: \_\_\_\_\_ Titl



RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
SECRETARY

Exhibit A

CERTIFIED MAIL

7008 0150 0003 1017 3161

February 2, 2017

Roger Kirk  
Chief Executive Officer  
Bethesda Hospital  
2815 S. Seacrest Blvd.  
Boynton Beach, Florida 33435

RE: 2016 Prior Year Report, FYE: September 30, 2016  
Hospital Number – 10-0002  
Deemed-Not-Filed  
Notice of Violation

Dear Mr. Kirk:

Pursuant to Rule 59E-2.024, 59E-5.103, 59E-5.204 and 59E-5.206, Florida Administrative Code, the above referenced report has been found incomplete and deemed not filed for the following reason(s):

**Prior Year Actual Report**

Pursuant to Rule 59E-5.201 and 59E-5.206, Florida Administrative Code, your hospital is required to submit to the Agency its actual report in electronic format. Please submit (1) COMPASS comma separated text file pursuant to the formatting requirements provided in Rules 59E-5.201 and 59E-5.206.

**Audited Financial Statements**

Pursuant to Rule 59E-5.201, Florida Administrative Code, your hospital is required to submit the hospital's audited financial statements. Please submit (1) signed copy of the audited financial statements. Draft copies are not accepted.

**Other**

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Mr. Kirk  
Page Two

Pursuant to Rule 59E-2.024(5), please submit the required information within 10 working days from the date you receive this letter. Any subsequent administrative fines will be imposed from the due date of the report.

Section 408.08 of the Florida Statutes provides that any hospital which refuses to file on a timely basis reports or other information required to be filed with the Agency, shall be punished by a fine not to exceed \$1,000 per day for each day in violation. Failure to provide these corrections will result in the matter being forwarded to our legal counsel for appropriate action.

Thank you very much for your cooperation. If you have any questions, please contact me at (850) 412-4353.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. H. Broussard', with a stylized flourish at the end.

Butch Broussard  
Health Services and Facilities Consultant

English

Customer Service

USPS Mobile

Exhibit B

Register / Sign In



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Tracking Number: 70080150000310173161

## Product &amp; Tracking Information

## Postal Product:

Features:  
Certified Mail™

## DATE &amp; TIME

February 9, 2017, 12:17  
pm

## STATUS OF ITEM

Delivered, Left with  
Individual

## LOCATION

BOYNTON  
BEACH, FL 33435

Your item was delivered to an individual at the address at 12:17 pm on February 9, 2017 in BOYNTON BEACH, FL 33435.

February 7, 2017, 5:17 pm

In Transit to Destination

February 6, 2017, 10:42 pm

Departed USPS Facility

WEST PALM  
BEACH, FL 33416

February 6, 2017, 4:49 pm

Arrived at USPS Facility

WEST PALM  
BEACH, FL 33416

February 5, 2017, 6:35 am

In Transit to Destination

February 3, 2017, 11:35 pm

Departed USPS Facility

TALLAHASSEE, FL 32301

February 3, 2017, 8:40 pm

Arrived at USPS Facility

TALLAHASSEE, FL 32301

## Available Actions

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## Track Another Package

Tracking (or receipt) number

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RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
SECRETARY

Exhibit C

CERTIFIED MAIL

7008 0150 0003 1017 3314

March 1, 2017

Roger Kirk  
Chief Executive Officer  
Bethesda Hospital  
2815 S. Seacrest Blvd.  
Boynton Beach, Florida 33435

RE: 2016 Prior Year Report – Deemed Not Filed  
Hospital Number 10-0002

Dear Mr. Kirk:

On February 2, 2017 we notified you that the audited financial statements was considered not filed pursuant to Rule 59E-2.024, 59E-5.103, 59E-5.204 and 59E-5.206, Florida Administrative Code. This notice was received and signed by your institution on February 9, 2016. The notice gave you 10 days to comply. This time frame expired February 23, 2017.

Section 408.08, Florida Statutes provides that any hospital which refuses to file on a timely basis reports or other information required to be filed with the Agency, shall be punished by a fine not to exceed \$1,000 per day for each day in violation. The purpose of this letter is to notify you that an administrative fine will be levied against Bethesda Hospital if it does not comply immediately. Such fine will be based from the original due date of the audited financial statements which was January 28, 2017 and will continue until the required report is received.

If you have any questions regarding the above, please call Mills Smith at (850) 412-4353.

Sincerely,

Mills Smith  
Regulatory Analyst Supervisor



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Exhibit D

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Tracking Number: 70080150000310173314

## Product &amp; Tracking Information

## Postal Product:

Features:  
Certified Mail™

## DATE &amp; TIME

## STATUS OF ITEM

## LOCATION

March 6, 2017 , 2:37 pm

Delivered, Left with  
IndividualBOYNTON  
BEACH, FL 33435

Your item was delivered to an individual at the address at 2:37 pm on March 6, 2017 in BOYNTON BEACH, FL 33435.

March 6, 2017 , 4:53 am

In Transit to Destination

March 4, 2017 , 9:53 pm

Departed USPS Facility

WEST PALM  
BEACH, FL 33416

March 4, 2017 , 8:52 pm

Arrived at USPS Facility

WEST PALM  
BEACH, FL 33416

March 4, 2017 , 6:50 am

In Transit to Destination

March 2, 2017 , 11:50 pm

Departed USPS Facility

TALLAHASSEE, FL 32301

March 2, 2017 , 8:36 pm

Arrived at USPS Facility

TALLAHASSEE, FL 32301

## Available Actions

[Text Updates](#)[Email Updates](#)

## Track Another Package

Tracking (or receipt) number

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RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
SECRETARY

CERTIFIED MAIL

7008 0150 0003 1017 3468

Exhibit E

March 14, 2017

Roger Kirk  
Chief Executive Officer  
Bethesda Hospital  
2815 S. Seacrest Blvd.  
Boynton Beach, Florida 33435

RE: 2016 Prior Year Report – Deemed Not Filed  
Hospital Number 10-0002

Dear Mr. Kirk:

On February 2, 2017 and again on March 1, 2017 we notified you that your above referenced audited financial statements were not timely filed pursuant to Rule 59E-5.201 Florida Administrative Code. The February 2, 2017 letter was received by you on February 9, 2017. The notice gave you ten business days to comply. This time frame expired on February 23, 2017. The second notice was received and signed by your institution on March 6, 2017 informing you that penalties would be levied if the audited financial statements were not received immediately.

Section 408.08, Florida Statutes provides that any hospital which refuses to file on a timely basis reports or other information required to be filed with the Agency, shall be punished by a fine not to exceed \$1,000 per day for each day in violation. The purpose of this letter is to notify you that an administrative fine will be levied against Bethesda Hospital. Such fine will be based from the original due date of the audited financial statements which was January 28, 2017. The fine will continue to accrue until the audited financial statements are received.

If you have any questions regarding the above, please call Mills Smith at (850) 412-4353.

Sincerely,

Mills Smith  
Regulatory Analyst Supervisor



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**Track Another Package** +

Remove X

**Tracking Number:** 70080150000310173468



**Delivered**

**Updated Delivery Day:** Tuesday, March 21, 2017 ⓘ

**Product & Tracking Information**

[See Available Actions](#)

**Postal Product:**

**Features:**  
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
March 21, 2017, 2:09 pm	<b>Delivered, Left with Individual</b>	<b>BOYNTON BEACH, FL 33435</b>
▲		
Your item was delivered to an individual at the address at 2:09 pm on March 21, 2017 in BOYNTON BEACH, FL 33435.		
March 21, 2017, 9:34 am	Out for Delivery	BOYNTON BEACH, FL 33435
March 21, 2017, 9:13 am	Sorting Complete	BOYNTON BEACH, FL 33435

[Track Another Package](#) +

[Remove](#)

Tracking Number: 70080150000310173819

 Delivered

## Product & Tracking Information

[See Available Actions](#)

Postal Product:

Features:  
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
April 11, 2017, 1:42 pm	Delivered, Left with Individual	BOYNTON BEACH, FL 33435
Your item was delivered to an individual at the address at 1:42 pm on April 11, 2017 in BOYNTON BEACH, FL 33435.		
April 10, 2017, 11:56 pm	Departed USPS Facility	WEST PALM BEACH, FL 33416
April 10, 2017, 4:06 pm	Arrived at USPS Facility	WEST PALM BEACH, FL 33416
April 8, 2017, 5:16 am	In Transit to Destination	

[See More](#)

## Available Actions

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[Text Updates](#)

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[See Less](#)

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FAQs (<http://faq.usps.com/?articleId=220900>)