

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DHR 02228

Gloria Daniel Glorious Home Care Petitioner, v. NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before Michael C. Byrne, Administrative Law Judge, on August 2, 2022, remotely via WebEx. The hearing was set remotely at the request of Petitioner. However, Petitioner found herself unable for technological reasons to appear remotely. Pursuant to its authority in N.C.G.S. § 150B-33, the Tribunal delayed the hearing so that Petitioner could travel to the Office of Administrative Hearings and present her case in person.

PROTECTIVE ORDER

Any information related to clients, including their names, mentioned in this proceeding shall be considered confidential and is used for the sole purpose of findings in this proceeding alone and is not properly disclosed in any other setting or hearing.

APPEARANCES

For Petitioner: Gloria Daniel, *pro se*

For Respondent: Eric R. Hunt
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

ISSUE

Whether Respondent deprived Petitioner of property or otherwise substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by rule or law when it, by letter dated March 12, 2021, notified Petitioner that Respondent was imposing a Notice of Revocation against Petitioner.

APPLICABLE LAW

N.C.G.S. §§ 122C, Art. 1, 2, 3, & 3A
10A N.C.A.C. 27C, 27D, & 27G

EXHIBITS

Petitioner’s Exhibit No. 1 was admitted into the record. Respondent’s Exhibit Nos. 1, 2, 4, 5, 6, 7, 11, 14, and 17 were admitted into the record.

WITNESSES

For Petitioner: Gloria Daniel

For Respondent: Glenn Hoppin
India Vaughn
Wendy Boone

BASED UPON careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. The undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

Parties and Witnesses

1. The Mental Health Licensure and Certification Section of the Division of Health Service Regulation (“Respondent”) inspects, licenses, and regulates mental health facilities in North Carolina pursuant to Chapter 122C of the North Carolina General Statutes.

2. Specifically, Respondent is tasked with regulating, inspecting, and licensing mental health facilities in North Carolina in keeping with the State of North Carolina’s stated policy “to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens . . .” and “to provide mental health, developmental disabilities, and substance abuse services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life.” N.C.G.S. § 122C-2.

3. At all times relevant to this matter, Petitioner was licensed to operate a mental health facility located at 4418 Karlbrook Lane, Raleigh, North Carolina 27616, known as Glorious

Home Care (the “Facility”). The Facility is licensed as a .5600C facility, which is a type of facility that provides supervised living for adults with developmental disabilities. (Resp’t’s Ex. 2).

4. Gloria Daniel is the Administrator and Licensee of the Facility. Ms. Daniel has been the Administrator and Licensee of the Facility since it was initially licensed.

5. Wendy Boone is the Assistant Chief of the Mental Health Licensure and Certification Section of the Division of Health Service Regulation. Prior to serving as the Assistant Chief, Ms. Boone served as the Eastern Branch manager for Respondent. Ms. Boone had served as a Branch Manager since September of 2019. Prior to becoming Branch Manager, Ms. Boone served as the South Coastal Team Leader since 2006.

6. India Vaughn is a Facility Compliance Consultant I, also known as a “surveyor,” for the Mental Health Licensure and Certification Section of the Division of Health Service Regulation. Ms. Vaughn has been employed as a surveyor for Respondent since 2003. Prior to becoming a surveyor, Ms. Vaughn had experience working in mental health facilities, including experience working with clients with mental health and developmental disability diagnoses.

7. Glenn Hoppin is an Architectural Engineering Technician with the Construction Section of the Division of Health Service Regulation. Mr. Hoppin has been with the Construction Section for eleven years. Prior to joining the Construction Section, Mr. Hoppin worked in the construction industry.

Licensure Survey Process

8. The Facility is licensed as a .5600C supervised living facility. (Resp’t’s Ex. 2). The purpose of a .5600 facility is to provide “residential services to individuals in a home environment where the primary purposes of these services is the care, habilitation, or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or a substance abuse disorder, and who require supervision when in the residence.” 10A NCAC 27G .5601.

9. Specifically, a .5600C facility “serves adults whose primary diagnoses is developmental disability, but may also have other diagnoses.” 10A NCAC 27G .5601(c)(3).

10. The licensee of a facility is responsible for the overall operation of the facility. N.C.G.S. §§ 122C-23, 24.

11. Respondent conducts three types of surveys of licensed mental health facilities: annual, follow-up, and complaint. N.C.G.S. § 122C-25.

12. During a survey, surveyors document their investigation and compile various records, including, but not limited to, interviews, record reviews, and observations. These materials are stored in a non-disclosure file, which is maintained by Respondent as a record of the survey. (See Resp’t’s Ex. 17). The non-disclosure file includes all materials collected during a survey.

13. Following a survey, surveyors prepare a report detailing the findings of the survey. This report is called a Statement of Deficiencies, and is the formal public report of the agency's findings from the survey.

October 9, 2019 Best Home Care Services Survey and Closure

14. On October 9, 2019, Mr. Hoppin of the Construction Section of the Division of Health Service Regulation conducted a biennial and follow-up survey of the licensed mental health facility Best Home Care Services ("Best Home Care"). (Resp't's Ex. 6).

15. As a result of the October 9, 2019, survey of Best Home Care, the Construction Section deemed Best Home Care as unsuitable for habitation due to a severely damaged fire escape and an ongoing plumbing leak damaging the structure of the facility. (Resp't's Ex. 6 at 179).¹

16. On October 25, 2019, Ms. Chika Nwanedo, Licensee and Administrator of Best Home Care, provided the Construction Section with a Plan of Correction for the deficiencies identified during the October 9, 2019, survey. (Resp't's Ex. 7). The Plan of Correction did not indicate where clients of Best Home Care would be relocated. (*Id.*)

17. Mr. Hoppin testified that he was not aware of where Ms. Nwanedo relocated the clients of Best Home Care prior to the survey of Glorious Home Care in February of 2020.

February 28, 2020 Glorious Home Care Survey and Violations

18. In February of 2020, Ms. Vaughn was assigned to conduct an annual and follow-up survey of the Facility. Ms. Vaughn initiated the annual and follow-up survey on February 14, 2020. (Resp't's Ex. 17 at 48). During the survey, Ms. Vaughn interviewed staff and clients, reviewed Facility records, and made observations of the Facility.

19. During the survey, Ms. Vaughn took contemporaneous notes of her interviews and observations and documented her reviews of records in the non-disclosure file. (Resp't's Ex. 17). Ms. Vaughn exited the Facility on February 28, 2020. (Resp't's Ex. 1). The findings of the survey were recorded in a Statement of Deficiencies dated February 28, 2020. (Resp't's Ex. 1).

20. Based on the findings documented in the Statement of Deficiencies, Respondent cited Petitioner for a violation of V289 – 10A NCAC 27G .5601 – Supervised Living Scope. Respondent will cite by cross-reference separate rule violations into V289 – 10A NCAC 27G .5601 – Supervised Living Scope when those violations contribute to the Facility's failure to provide services within its scope. Respondent cross-referenced the following violations identified by violation tag, rule citation, and title as follows:

- a. V105 – 10A NCAC 27G .0201 – Governing Body Policies;
- b. V110 – 10A NCAC 27G .0204 – Competencies and Supervision of Paraprofessionals;

¹ Where applicable, pinpoint citations are to Bates numbers appearing on the marked exhibits.

- c. V138 – 10A NCAC 27G .0404 – Operations During Licensed Period; and
- d. V762 – 10A NCAC 27G .0304 – Facility Design and Equipment.

(Resp't's Ex. 1). Respondent cited V289 – 10A NCAC 27G .5601 – Supervised Living Scope as a Type B Violation for being “detrimental to the health safety and welfare” of the Facility’s clients. (Resp't's Ex. 1 at 44).

A. V105 – Governing Body Policies

21. Respondent cited Petitioner for a deficiency under V105 – 10A NCAC 27G .0201 – Governing Body Policies. (Resp't's Ex. 1 at 12–17). Based on record reviews, interviews, and observations, Respondent determined that the Facility and Ms. Daniel, as the Administrator and Licensee, failed to implement the Facility’s admission policy, delegation of management policy, and client assessment policy. (Resp't's Ex. 1 at 14).

22. 10A NCAC 27G .0201 requires that a facility’s “governing body policy” develop and implement written policies in a multitude of areas, including but not limited to, client admissions, delegation of management authority for the operation of the facility and services, and client assessment. *See* 10A NCAC 27G .0201(a)(1)– (7).

23. As the Administrator and Licensee of the Facility, Ms. Daniel was the “governing body” of the Facility and was responsible for implementing the governing body policies at the Facility.

24. Ms. Vaughn testified that, initially, Ms. Daniel told her that the clients in the Facility “belonged” to her. (Resp't's Ex. 1 at 14).

25. Ms. Vaughn testified that, later in the survey, Ms. Daniel admitted to her that the clients in the Facility “belonged” to her tenant, Ms. Nwanedo. (Resp't's Ex. 1 at 15).

26. During the survey, Ms. Daniel did not know the names of the clients who resided in the Facility. (Resp't's Ex. 1 at 14).

27. During the survey, Ms. Daniel initially stated that she did not conduct admission assessments of the clients or review materials in the clients’ records due to “HIPAA.” (Resp't's Ex. 1 at 14).

28. Later in the survey, Ms. Daniel stated that she did do admission assessments, “but not in detail,” and told Ms. Vaughn that the clients all had diagnoses of intellectual development disability. (Resp't's Ex. 1 at 15).

29. Ms. Vaughn testified that HIPAA and other privacy laws would not have prevented Ms. Daniel, as the licensee of the Facility, from conducting admission assessments of the clients in her Facility.

30. During the survey, Ms. Daniel admitted that the staff working in the Facility did not report to her. Rather, the staff “belonged to Ms. Nwanedo.” (Resp't's Ex. 1 at 16).

31. Ms. Vaughn testified that Ms. Daniel initially told her that there were two Qualified Professionals who worked for her in the Facility. (Resp't's Ex. 16–17).

32. However, Ms. Vaughn determined, through further investigation, that neither identified Qualified Professional currently worked at the Facility, and neither had worked at the Facility since December of 2019, prior to the admission of the current clients. (Resp't's Ex. 1 at 17, 22).

33. Because the violation of V105 – 10A NCAC 27G .0201 – Governing Body Policies contributed to the Facility's overall failure to provide residential services within its licensed scope, which was detrimental to the health, safety, and welfare of all six clients in the Facility, Respondent cross-referenced the violation into V289 – 10A NCAC 27G .5601 – Supervised Living Scope. (Resp't's Ex. 1 at 17, 37–38).

B. V110 – Competencies and Supervision of Paraprofessionals

34. Respondent cited Petitioner for a deficiency under V110 – 10A NCAC 27G .0204 – Competencies and Supervision of Paraprofessionals. (Resp't's Ex. 1 at 19–23). Based on record reviews, interviews, and observations, Respondent determined that Ms. Daniel, a paraprofessional, failed to demonstrate the knowledge, skills, and abilities required by the population served. (Resp't's Ex. 1 at 20).

35. 10A NCAC 27G .0204 requires that paraprofessionals in a licensed mental health facility “shall be supervised by an associate professional or by a qualified professional.” 10A NCAC 27G .0204(b).

36. Further, paraprofessionals “shall demonstrate knowledge, skills, and abilities required by the population served.” 10A NCAC 27G .0204(c).

37. During the survey, Ms. Daniel demonstrated a lack of knowledge of the clients she was serving. Ms. Daniel could not provide the clients' names, bedroom assignments, diagnoses, or other identifying information. (Resp't's Ex. 1 at 21).

38. Ms. Vaughn testified that the two Qualified Professionals identified by Ms. Daniel did not work at the Facility. (Resp't's Ex. 1 at 22).

39. Ms. Daniel could not remember the name of one of the Qualified Professionals and indicated she last worked at the Facility in October of 2019. (Resp't's Ex. 1 at 22).

40. Ms. Vaughn testified that she spoke with the second Qualified Professional, and she indicated that, although she had previously worked for Ms. Daniel, she had not recently worked at the Facility. (Resp't's Ex. 1 at 22).

41. During the survey, Ms. Daniel admitted that she was responsible for the day-to-day operations of the Facility and was responsible for implementing the Facility's policies and procedures. (Resp't's Ex. 1 at 22–23).

42. Ms. Vaughn determined that staff working in the Facility had not been trained by the Facility or Ms. Daniel. (Resp't's Ex. 1 at 23).

43. Ms. Vaughn further determined that no Health Care Personnel Registry or criminal background checks were performed for staff by the Facility or Ms. Daniel. (Resp't's Ex. 1 at 23).

44. Ms. Vaughn further determined that the Facility and Ms. Daniel were not reviewing medications and other client information, purportedly due to "HIPAA" concerns. (Resp't's Ex. 1 at 23).

45. Because the violation of V110 – 10A NCAC 27G .0204 – Competencies and Supervision of Paraprofessionals contributed to the Facility's overall failure to provide residential services within its licensed scope, which was detrimental to the health, safety, and welfare of all six clients in the Facility, Respondent cross-referenced the violation into V289 – 10A NCAC 27G .5601 – Supervised Living Scope. (Resp't's Ex. 1 at 23, 38).

C. V138 – Operations During Licensed Period

46. Respondent cited Petitioner for a deficiency under V138 – 10A NCAC 27G .0404 – Operations During Licensed Period. (Resp't's Ex. 1 at 34–35). Based on record reviews, interviews, and observations, Respondent determined that the Facility accepted more clients than it was licensed for, accepting six clients when it was licensed to serve, at most, three clients. (Resp't's Ex. 1 at 35).

47. 10A NCAC 27G .0404(e) states, "A facility shall accept no more clients than the number for which it is licensed."

48. During the survey, Ms. Vaughn determined that six clients were admitted to and resided at the Facility. (Resp't's Ex. 1 at 35).

49. At the time of the survey, the Facility was licensed to serve, at most, three clients. (Resp't's Ex. 1 at 35; Resp't's Ex. 2).

50. During the survey, Ms. Daniel admitted she was not aware that more than three clients resided at the Facility.

51. Because the violation of V138 – 10A NCAC 27G .0404 – Operations During Licensed Period contributed to the Facility's overall failure to provide residential services within its licensed scope, which was detrimental to the health, safety, and welfare of all six clients in the Facility, Respondent cross-referenced the violation into V289 – 10A NCAC 27G .5601 – Supervised Living Scope. (Resp't's Ex. 1 at 24, 38).

D. V762 – Facility Design and Equipment

52. Respondent cited Petitioner for a deficiency under V762 – 10A NCAC 27G .0304 – Facility Design and Equipment. (Resp't's Ex. 1 at 46–47). Based on record reviews, interviews, and observations, Respondent determined that a bedroom occupied by two clients failed to meet the minimum space requirement of 160 square feet. (Resp't's Ex. 1 at 46; Resp't's Ex. 14).

53. 10A NCAC 27G .0304 requires that a client bedroom “shall have at least . . . 160 square feet when two clients occupy the bedroom.” 10A NCAC 27G .0304(d)(1).

54. During the survey, Ms. Vaughn determined that two current clients were residing and sleeping in a room measuring 144 square feet. (Resp’t’s Ex. 1 at 47).

55. Because the violation of V762 – 10A NCAC 27G .0304 – Facility Design and Equipment contributed to the Facility’s overall failure to provide residential services within its licensed scope, which was detrimental to the health, safety, and welfare of the affected clients, Respondent cross-referenced the violation into V289 – 10A NCAC 27G .5601 – Supervised Living Scope. (Resp’t’s Ex. 1 at 24, 38).

E. V289 – Supervised Living Scope

56. Respondent assessed a Type B Violation of V289 – 10A NCAC 27G .5601 – Supervised Living Scope based on the Facility’s failure to provide habilitation residential services in a home environment for individuals with intellectual development disability diagnoses, resulting in practices detrimental to the health, safety, and welfare of the Facility’s clients. (Resp’t’s Ex. 1 at 36–44).

57. The Facility is licensed as a .5600C supervised living facility. (Resp’t’s Ex. 2).

58. As discussed *supra*, the purpose of a .5600 facility is to provide “residential services to individuals in a home environment where the primary purposes of these services is the care, habilitation, or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or a substance abuse disorder, and who require supervision when in the residence.” 10A NCAC 27G .5601. Specifically, a .5600C facility “serves adults whose primary diagnoses is developmental disability, but may also have other diagnoses.” 10A NCAC 27G .5601(c)(3).

59. As demonstrated during the February 28, 2020, survey, Petitioner failed to operate the Facility within its scope of services when it operated the Facility as a rental property. (Resp’t’s Ex. 1 at 44).

60. The February 28, 2020, survey determined that Ms. Daniel had leased her Facility to Ms. Nwanedo to operate as a tenant. (Resp’t’s Ex. 1 at 39; Resp’t’s Ex. 11).

61. As a result, Ms. Daniel, as the Administrator and Licensee of the Facility, did not have any knowledge of the clients’ identifying information, including their diagnoses and pertinent histories to meet their needs.

62. Despite the Facility being licensed to provide .5600C services to adults with intellectual development disability, none of the six clients at the Facility had an intellectual development disability diagnosis. (Resp’t’s Ex. 1 at 40).

63. During the survey, Ms. Daniel repeatedly misled and changed her answers about her responsibility for the clients in the Facility and oversight of Facility staff.

64. Ultimately, the survey determined that there was no evidence Ms. Daniel had delegated management authority to Ms. Nwanedo to operate the Facility, as no staff reported to Ms. Daniel.

65. As a result, the Facility operated above its licensed client census.

66. Additionally, Ms. Daniel's failure to implement policies and procedures, including admissions, assessments, and delegation of management authority, impacted the daily operations of the Facility.

67. Ms. Boone testified that Ms. Daniel was responsible for the licensed services provided at the Facility, even though Ms. Daniel was purportedly renting the Facility to Ms. Nwanedo.

68. Ms. Boone testified that, pursuant to N.C.G.S. § 122C-23(b), each license issued by Respondent is "only for the premises named in the application and shall not be transferrable or assignable except with prior written approval" from Respondent.

69. Ms. Boone testified that, pursuant to 10A NCAC 27G .0402, "Licenses shall be issued to the specific premise for types of services indicated on the application."

70. Ms. Boone testified that Best Home Care never obtained Respondent's prior written approval to transfer its premises to the Facility's premises.

71. Ms. Boone testified that, as a result, Ms. Daniel, as the Licensee and Administrator of the Facility, was ultimately responsible for ensuring that licensed services provided on the Facility's premises complied with the applicable statutes and regulations governing the Facility pursuant to its license.

72. Respondent cross-referenced the findings of V105 – Governing Body Policies deficiency into the V289 – Supervised Living Scope Type B Violation based on Ms. Daniel's and the Facility's failure to implement its admission, delegation of management authority, and client assessment policies. (Resp't's Ex. 1 at 37–38). Because the violation of V105 – 10A NCAC 27G .0201 – Governing Body Policies contributed to the overall detriment to the Facility clients' health, safety, and welfare, the deficiency was properly cross-referenced under the Type B Violation of V289 – 10A NCAC .5601 – Supervised Living Scope. (*Id.*)

73. Respondent cross-referenced the findings of V110 – Competencies and Supervision of Paraprofessionals into the V289 – Supervised Living Scope Type B Violation based on Ms. Daniel's failure to demonstrate the knowledge, skills, and abilities required by the population served at the Facility. (Resp't's Ex. 1 at 38). Because the violation of V110 – 10A NCAC 27G .0204 – Competencies and Supervision of Paraprofessionals contributed to the overall detriment to the Facility clients' health, safety, and welfare, the deficiency was properly cross-referenced under the Type B Violation of V289 – 10A NCAC .5601 – Supervised Living Scope. (*Id.*)

74. Respondent cross-referenced the findings of V138 – Operations During Licensed Period into the V289 – Supervised Living Scope Type B Violation based on the Facility admitting more than its licensed capacity of clients. (Resp't's Ex. 1 at 38). Because the violation of V138 –

10A NCAC 27G .0404 – Operations During Licensed Period contributed to the overall detriment to the Facility clients’ health, safety, and welfare, the deficiency was properly cross-referenced under the Type B Violation of V289 – 10A NCAC .5601 – Supervised Living Scope. (*Id.*)

75. Respondent cross-referenced the findings of V762 – Facility Design and Equipment into the V289 – Supervised Living Scope Type B Violation based on the Facility’s failure to assure adequate bedroom space for two of its clients. (Resp’t’s Ex. 1 at 38). Because the violation of V762 – 10A NCAC 27G .0304 – Facility Design and Equipment contributed to the overall detriment to the Facility clients’ health, safety, and welfare, the deficiency was properly cross-referenced under the Type B Violation of V289 – 10A NCAC .5601 – Supervised Living Scope. (*Id.*)

76. Ms. Daniel, as the Administrator and Licensee of the Facility, was responsible for ensuring the Facility complied with applicable licensure statutes and regulations, without detriment to the health, safety, and welfare of the Facility’s clients. At the time of the survey, Ms. Daniel operated the Facility as a rental property rather than as a supervised living Facility. (Resp’t’s Ex. 1 at 44). As a result, Ms. Daniel had no knowledge of the clients, including their diagnoses, there was no delegation of management authority, the Facility operated above its licensed census, there was no implementation of the Facility’s policies and procedures, and minimum bedroom space requirements were not met. (*Id.*) These deficient practices were detrimental to the health, safety, and welfare of all six Facility clients. (*Id.*) Respondent, therefore, appropriately cited Petitioner for a Type B Violation of V289 – 10A NCAC .5601 – Supervised Living Scope. (*Id.*)

Notice of Revocation

77. Respondent is authorized to revoke the license of a mental health facility when it finds there has been “substantial failure to comply with any provision of . . . applicable statutes or any applicable rule . . .” N.C.G.S. § 122C-24(a).

78. After the conclusion of the February 28, 2020, survey, the Statement of Deficiencies and the evidence supporting the Statement of Deficiencies were reviewed through Respondent’s quality assurance process. The Section Chief then reviewed the reports and made the decision to issue a Notice of Revocation based on the Facility’s substantial failure to comply with the laws and rules governing the operation of mental health facilities.

79. By letter dated March 12, 2021, Respondent notified Petitioner that it was issuing a Notice of Revocation of License for the Facility based upon the findings of the February 28, 2020, survey and the failures to comply with the provisions of Chapter 122C of the North Carolina General Statutes and the licensure rules governing licensed mental health facilities. (Resp’t’s Ex. 5).

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (“OAH”) has jurisdiction over the parties and the subject matter pursuant to Chapters 122C and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder. All parties received notice of hearing as required by N.C.G.S. §150B-23.

3. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C.750, 755, 440 S.E.2d 600, 604 (1946).

4. A court, or in this case an administrative Tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

5. Petitioner appeared in this matter pro se. It is readily apparent to the Tribunal that Petitioner had difficulty with procedural and legal issues, as would most pro se litigants. However, our courts have emphasized that the Rules of Civil Procedure “must be applied equally to all parties to a lawsuit, without regard to whether they are represented by counsel.” Goins v. Puleo, 350 N.C. 277, 281, 512 S.E.2d 748, 751 (1999). Further when a litigant “makes a voluntary and knowledgeable decision to represent himself he must be deemed to know the law which will govern the trial of his case and he must be expected to conduct himself in accordance with the rules established by the courts and legislature of this state.” Cohen v. McLawhorn, 208 N.C. App. 492, 500, 704 S.E.2d 519, 525 (2010).

6. Further, this contested case was filed in May 2021. Petitioner had ample time, by August 2022, to obtain legal counsel, and was previously granted a continuance for that purpose in addition to multiple continuances granted to both parties in this case. Petitioner requested another continuance in the middle of the hearing; the Tribunal considered and denied that motion due to multiple prior continuances, the age of the case, failure to comply with 26 N.C.A.C. 3.0118(a), and failure to show good cause under 26 N.C.A.C. 3.0118(a)(1).

7. N.C.G.S. § 122C-1 *et seq.* authorizes Respondent to license, inspect, and regulate mental health facilities in the State of North Carolina.

8. Petitioner has the burden of proving by a preponderance of the evidence that Respondent has deprived Petitioner of Petitioner’s property or substantially prejudiced Petitioner’s rights *and* exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. N.C.G.S. § 150B-23, N.C.G.S. 150B-25.1.

9. Pursuant to N.C.G.S. § 122C-23(b), a license for a mental health facility “is issued to the person only for the premises named in the application and shall not be transferable or assignable except with prior written approval of the Secretary.”

10. Pursuant to 10A NCAC 27G .0402(e), a license for a mental health facility “shall be issued to the specific premise for types of services indicated on the application.”

11. Respondent may revoke a license to operate a mental health facility where Respondent “finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes.”

N.C.G.S. § 122C-24(a). Respondent shall revoke a license to operate a mental health facility where “(1) there has been failure to comply with G.S. 122C; (2) there has been failure to comply with rules promulgated under G.S. 122C; and (3) such failure to comply endangers the health, safety or welfare of the individuals in the facility.” 10A NCAC 27G .0405(d).

12. Respondent is required to give written notice to the licensee of the revocation of its license. The licensee shall then have sixty (60) days to appeal the revocation by filing a Petition for Contested Case Hearing with OAH. If the notice of revocation is appealed within that timeframe, the revocation is automatically suspended until a decision on the revocation is made by OAH. 10A NCAC 27G .0405(d).

13. By letter dated March 12, 2021, Respondent notified Petitioner that was issuing a Notice of Revocation of License for the Facility. (Resp’t’s Ex. 5). That action was based on Respondent’s finding that Petitioner had failed to comply with the provisions of Chapter 122C of the North Carolina General Statutes and the licensure rules governing licensed mental health facilities. (*Id.*) Respondent’s decision was properly based upon the findings from Respondent’s February 28, 2020, survey.

14. On May 11, 2021, Petitioner filed a Petition for Contested Case Hearing appealing the Notice of Revocation. The appeal suspended the revocation of Petitioner’s license pursuant to 10A NCAC 27G .0405(d).

15. As concluded above, Respondent properly determined that Petitioner has substantially failed to comply with the provisions of Articles 2 and 3 of Chapter 122C of the North Carolina General Statutes.

16. Based on the violations and deficiencies identified during the February 28, 2020, survey, the undersigned concludes that Petitioner’s failure to comply with the licensure statutes and rules endangered the health, safety, and welfare of the clients in the Facility.

17. The undersigned further concludes that Petitioner has failed to meet its burden under N.C.G.S. § 150B-25.1 to show by a preponderance of the evidence that Respondent’s decision to revoke Petitioner’s license to operate the Facility pursuant to N.C.G.S. § 122C-24(a) was improper. Respondent did not deprive Petitioner of property; otherwise substantially prejudice Petitioner’s rights; exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act arbitrarily or capriciously; or fail to act as required by rule or law when it imposed the Notice of Revocation on March 12, 2021.

FINAL DECISION

Respondent’s March 12, 2021 decision to revoke Petitioner’s license to operate the Facility is **UPHELD**.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

SO ORDERED.

This the 31st day of August, 2022.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Gloria Daniel
Glorious Home Care
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Petitioner

Eric Richard Hunt
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Attorney For Respondent

This the 1st day of September, 2022.



Jerrod Godwin
Law Clerk
N.C. Office of Administrative Hearings
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