OAH 10-0900-30263

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of Unity Health Care, Class F Home License No. 352187 and Unity Home Care,Inc., Class A Professional Home Care License No. 353694	**ORDER GRANTING IN PART AND DENYING IN PART LICENSEE'S MOTION FOR POST-TRIAL ADMISSION OF EXHIBITS**

The above-captioned matter came before Administrative Law Judge Perry Wilson (ALJ) on April 2, 2015 on Unity's motion for the admission into evidence of exhibits not offered into evidence during the course of the hearings. The ALJ ordered the parties to submit additional statements of their positions on these exhibits.

Audrey Kaiser Manka, Assistant Attorney General, appeared on behalf of the Department of Health (Department). Lateesa T. Ward, Ward & Ward, appeared on behalf of the Licensee, Unity Health Care (Unity).

Unity filed its statement supporting the admission of the exhibits on April 16, 2015. The Department filed its statement opposing the admission of the exhibits on April 21, 2015.

Based on all of the submissions of the parties and proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge issues the following:

ORDER

IT IS HEREBY ORDERED:

Unity's request for the admission into evidence of exhibits not offered into evidence during the hearings is **GRANTED IN PART AND DENIED IN PART**. Exhibit 39, page 8 of exhibit 57, exhibit 69, exhibit 78, Pages 11300, 11301, 11303, 11615 to 11618 of exhibit 79, exhibit 143, page 03713 of exhibit 144, page 03205 of exhibit 159, and exhibit 169 are **RECEIVED IN EVIDENCE**. Exhibits 14, 70, 82, and 170 and the pages of exhibits 57,143, 144 and 159 not specifically referenced above are not received and the Department's objections to those exhibits are **SUSTAINED**.

Dated: April 24, 2015

s/Perry M. Wilson
PERRY M. WILSON
Administrative Law Judge

MEMORANDUM

Unity has moved for the admission into evidence of 13 exhibits that it did not offer into evidence during the course of the hearing. The Department objects to the admission of the exhibits generally because the proper hearing procedure is to offer exhibits when they are referred to during testimony, unless admission is agreed to in advance. In addition, the Department objects to each exhibit on various specific grounds. The ALJ has reviewed the exhibits, the parts of the record that refer to the proposed exhibits, if any, and the Department's objections.

1. General Procedural Objection

It is certainly true that the vastly better trial practice is to offer exhibits while a witness is testifying about them, both to give the opponent a proper place to object and to give the proponent the opportunity to address foundational and other issues with a witness who has knowledge of the exhibits. Here, both Unity and the Department are disadvantaged because Unity is now not able to fix problems with foundation and the Department is making its objections retrospectively, after the close of the evidence. On balance, because the lack of a formal offer is a disadvantage to both parties, the best approach is a specific examination of the content and the record pertaining to each exhibit to determine if the exhibit is properly admitted into evidence. Therefore, the Department's general procedural objection is overruled.

2. Exhibit 14

Exhibit 14 is the transcript of the deposition of Susan Winkelmann. The transcript was used to impeach Ms. Winkelmann and to refresh her recollection when she testified at the hearing. To that extent, portions of the deposition are in the record already. Ms. Winkelmann is not a party and Rule 32.01(a) of the Minnesota Rules of Civil Procedure limits the use of a deposition of a nonparty to impeachment, unless other factors are present, none of which Unity argues exist. Exhibit 14 is not admitted into evidence.

3. Exhibits 39, 69, 78, 143, and 169

A review of these exhibits and the testimony pertaining to them cited by the parties convinces the ALJ that, had these exhibits been offered when they were referenced, the ALJ would have held them admissible at the time, overruling the Department's objections. Exhibits 39, 69, 78, 143 and 169 are received into evidence.

4. Exhibit 57, page 8; Exhibit 79, pages 11300, 11301, 11303, 11615-11618; Exhibit 144, page 03713; Exhibit 159, page 03205

The ALJ's review of these exhibits and the testimony pertaining to them cited by the parties indicates that only portions of these exhibits should be admitted into evidence. These exhibits are compilations of notes and emails of various Department employees, some of whom were witnesses at the hearing. Exhibit 57 is a voluminous and undated policy manual, only one page of which was recognized by the witness to whom it was

shown. To the extent that witnesses supplied foundation for pages of these exhibits, those pages are admitted into evidence. The remaining pages of the exhibits are not admitted and the Department's objections to those unadmitted pages are sustained.

5. Exhibits 70 and 82

The ALJ's review of exhibits 70 and 82 and the testimony pertaining to them cited by the parties indicates that there is no foundation for these two exhibits. The Department's foundation objections to exhibits 70 and 82 are sustained.

6. Exhibit 170

Unity exhibit 170 is one of the pages of Unity Exhibit 192. Exhibit 192 was admitted into evidence at the hearing. Admission of exhibit 170 would be confusing and duplicative. Therefore, the Department's objections to exhibit 170 are sustained.

P. M. W.