BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DOROTHY MINCEY-PATTERSON,	:	
	:	
Petitioner,	:	
	:	Docket No.:
v.	:	OSAH-DCH-HFR-1642575-121-Schroer
	:	
DEPARTMENT OF COMMUNITY HEALTH, HEALTHCARE FACILITY REGULATION DIVISION,	:	

Respondent.

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

On July 12, 2016, this Court issued an order granting Petitioner's Motion for Involuntary Dismissal in the above-captioned matter, finding that Respondent failed to present any admissible evidence during its case in chief to prove that Petitioner was operating an unlicensed personal care home in violation of O.C.G.A. §§ 31-7-12 and 31-7-3. Respondent submitted a Motion for Reconsideration on July 19, 2016.

Motions for reconsideration should be granted only in "certain limited situations, namely the discovery of new evidence, an intervening development or change in the controlling law, or the need to correct a clear error or prevent a manifest injustice." Pres. Endangered Areas of Cobb's History v. U.S. Army Corps. of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995). For a party to obtain reconsideration of a decision, "there must be a reason why the court should reconsider its prior decision, and [the movant] must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Coppage v. U.S. Postal Serv., 129 F. Supp. 2d 1378, 1379 (M.D. Ga. 2001) (quoting Sussman v. Salem, Saxon & Nielsen, 153 F.R.D. 689, 694 (M.D. Fla. 1994)). Moreover, "[p]arties . . . may not employ a motion for reconsideration as a vehicle to present new arguments or evidence that should have

been raised earlier, introduce novel legal theories, or repackage familiar arguments to test whether the Court will change its mind." Brogdon v. Nat'l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000) (citation omitted); see also Rodriguez v. Cruise Ships Catering & Serv. Int'l, N.V., 2004 U.S. Dist. LEXIS 20922, at *2 (S.D. Fla. Jan. 5, 2004) (explaining that "[i]n order to demonstrate clear error, the movant must do more than simply restate previous arguments").

In 2013, Georgia adopted a new evidence code, based largely on the federal rules of evidence. See Paul S. Milich, Georgia Rules of Evidence § 1:2, at 5 (2014-2015 ed.). The General Assembly, when adopting the new code, "intended for Georgia courts to look to the federal rules and how federal appellate courts have interpreted those rules for guidance." Parker v. State, 296 Ga. 586, 592 (2015); see also Ga. L. 2011, p. 99, § 1. The new Georgia rules regarding hearsay, particularly the exceptions regarding business records, public records, and the rule against hearsay within hearsay, are substantially similar to the federal rules. See O.C.G.A. §§ 24-8-803(6), (8) and 805 and Fed. R. Evid. §§ 803(6), (8) and 805.

At the hearing on this matter, the Court, in response to Petitioner's objections, excluded Exhibits R-2, R-3, and R-7, along with related testimony from Deputy Jason Cunningham, Jonathan McGehee, and Shannon Vincent, because they contained inadmissible hearsay. In its Motion for Reconsideration, Respondent raises new arguments as to why those exhibits should be admitted under exceptions to Georgia's hearsay statute. Respondent first argues that Exhibit R-2 and R-3, both of which are inspection reports conducted by Respondent's employees, are admissible under both the business records exception and the public records exception. However, Respondent failed to address the hearsay within the reports, upon which Respondent would be relying to prove its case.

In order for hearsay within hearsay to be admissible, each part of the combined statements must meet an exception to the hearsay rule. O.C.G.A. § 24-8-805; see also Tuggle v. Rose, 333 Ga. App. 431 (2015), cert. denied, 2015 Ga. LEXIS 813 (Ga. 2015) (where investigator's report was admissible under the business records exception, a summary within the report of a statement of a student was not subject to an exception and, accordingly, inadmissible). "Placing otherwise inadmissible hearsay statements by third-parties into a government report does not make the statements admissible under the hearsay exceptions in Fed. R. Evid. 803(6), (8)." United Techs. Corp. v. Mazer, 556 F.3d 1260, 1278 (11th Cir. 2009) (quoting Commodity Futures Trading Comm'n v. Wilshire Inv. Mgmt. Corp., 407 F. Supp. 2d 1304, 1315 n.2 (S.D. Fla. 2005), aff'd in part, vacated in part on other grounds, 531 F.3d 1339 (11th Cir. 2008)). "For [Fed. R. Evid. 803(6) and (8)] to apply, the report must contain 'factual findings' that are 'based upon the knowledge or observations of the preparer of the report,' **as opposed to a mere collection of statements from a witness**." United Techs. Corp., 556 F.3d at 1278 (quoting Miller v. Field, 35 F.3d 1088, 1091 (6th Cir. 1994) (emphasis added)).

Next, Respondent argued that Exhibit R-7, a sheriff's report, should also be admissible under the business record and public record exceptions. Again, Respondent fails to address an applicable hearsay exception for the hearsay within the report, upon which Respondent would be relying. "It is well established that entries in a police report which result from the officer's own observations and knowledge may be admitted but that statements made by third persons under no business duty to report may not." United Techs. Corp., 556 F.3d at 1278 (quoting United States v. Pazsint, 703 F.2d 420, 424 (9th Cir. 1983) (finding Fed. R. Evid. 803(6) inapplicable); see also Miller, 35 F.3d at 1091 (finding Fed. R. Evid. 803(8) inapplicable); Parsons v. Honeywell, Inc., 929 F.2d 901, 907 (2d Cir. 1991) (same)).

Accordingly, even under Respondent's newly-raised arguments, Respondent has failed to prove that the excluded exhibits met an exception to the hearsay rule and were admissible under Georgia's rules of evidence. In addition, although Respondent asserted in its Motion for Reconsideration that it had subpoenaed some witnesses who failed to appear at the hearing, Respondent did not file the subpoenas in advance with the Court as contemplated by OSAH Rule 616-1-2-19(2), did not provide proof of service of the subpoenas, through either the return receipt or a copy of the receipt provided by the commercial delivery company, and did not request a continuance of the hearing in order for Respondent to enforce its subpoenas.[1] Rather, Respondent chose to proceed with its case, during which it failed to produce any admissible evidence to prove the underlying allegations against Petitioner.

Based on the foregoing conclusions, Respondent's Motion for Reconsideration is hereby **DENIED**.

SO ORDERED, this 29th day of August, 2016.

KIMBERLY W. SCHROER
Administrative Law Judge

[1] Ga. Prof'l Stds. Comm'n v. Lee, 333 Ga. App. 60 (2015) (finding denial of due process when ALJ declined to continue hearing to allow for enforcement of subpoenas).