

**STATE OF TENNESSEE
HEALTH FACILITIES COMMISSION
BEFORE THE BOARD FOR LICENSING HEALTH CARE FACILITIES**

In The Matter of:

**Asbury Cove
Assisted Care Living Facility
License No. 195,**

Respondent.

Ripley, Tennessee

Case No. 2023026371

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (“Board”), pursuant to the request of the Tennessee Health Facilities Commission (“Commission”), by and through the Office of Legal Services, and Asbury Cove (“Respondent”) that the Board adopt this Consent Order, the terms of which have been agreed upon by the parties, as signified by their signatures below.

I. JURISDICTION

1. The Board has the power to license and regulate hospitals, recuperation centers, nursing homes, homes for the aged, residential HIV supportive living facilities, assisted care living facilities, home care organizations, residential hospices, birthing centers, prescribe childcare centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential home. T.C.A. § 68-11-202(a)(1).

2. The Commission has the authority to conduct reviews of assisted care living facilities to determine compliance with fire and life safety code regulations promulgated by the Board. T.C.A. § 68-11-202(b)(1)(A).
3. An assisted care living facility ("ACLF") is a facility, building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services. T.C.A. § 68-11-201(4)(A) and Tenn. Comp. R. & Regs. 0720-26-.02(7).
4. "Primarily aged" means at least fifty-one percent (51%) of the population of the facility is at least sixty-two (62) years of age. Tenn. Comp. R. & Regs. 0720-26-.02(34).
5. The ACLF shall provide on-site to its residents' room and board and non-medical living assistance services appropriate to each resident's needs, such as assistance with bathing, dressing, grooming, preparation of meals and other activities of daily living. T.C.A. § 68-11-201(4)(B) and Tenn. Comp. R. & Regs. 0720-26-.02(2).
6. The Commission shall conduct on-site inspections and investigations as may be necessary to safeguard and ensure at all times, the public's health, safety, and welfare. T.C.A. § 68-11-210(c).
7. Upon a finding by the Board that an ACLF has violated any provision of Tenn. Code Ann. §§ 68-11-201, et seq., or the rules promulgated pursuant thereto, action may be taken, upon proper notice to the licensee, to impose a civil penalty, deny, suspend, or revoke its license. T.C.A. § 68-11-207.

II. STIPULATIONS OF FACT

8. At all times pertinent hereto, Respondent, Asbury Cove, 315 Asbury Avenue Ripley, Tennessee 38063, was licensed by the Board as an ACLF, having been granted license number 195 on July 3, 2000, which currently has an expiration date of June 12, 2024.

9. The State Surveyor found on or about August 10, 2023, in their review of an Elopement Incident Report dated April 17, 2023, that the Administrator was notified that morning by a PCA [Patient Care Attendant] that Resident #1 was missing from the facility. The resident's walker was found by the mailbox, and temperatures were in the lower 50's with a wind chill. The resident was found approximately a quarter of a mile away with injuries.
10. The surveyor reviewed the Emergency Care Record dated April 16, 2023, and found that Resident #1 fell and suffered a head and facial injuries. Resident #1 suffers from dementia and had walked away from a local assisted living. Resident #1 injured both knees, was very cool to touch upon examination, especially to her legs, and the resident was suffering from signs of hypothermia.
11. The surveyor reviewed the Plan of Care dated February 8, 2023, for Resident #1, which indicated a diagnosis of dementia the need for frequent checks on the person of the resident.
12. During an interview with the State surveyor on or about August 9, 2023, PCA #1, admitted that the night shift staff did not know Resident #1 had gotten out of the building.
13. During a telephone interview with the surveyor on or about August 10, 2023, PCA #2 admitted that she had unlocked the doors around 5:20 AM like she always does. She also admitted that she didn't know Resident #1 had gotten out of the facility. She further admitted that she heard the door alarm, but just assumed it was PCA #3 because she always comes in early.

III. GROUNDS FOR DISCIPLINE

The facts in Section II are sufficient to establish that grounds exist for the discipline of Respondent's ACLF license. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Board is authorized.

14. The facts in paragraphs nine (9) through ten (10) are sufficient to constitute one (1) violation of Tenn. Comp. R. and Reg. 0720-26-.07 (7)(a)(2) Services Provided, the relevant portion of which reads as follows:

(7) An ACLF shall provide personal services as follows:

(a) Each ACLF shall provide each resident with at least the following personal services:

2. Safety when in the ACLF

15. The facts in paragraphs eleven (11) through thirteen (13) are sufficient to constitute one (1) violation of Tenn. Comp. R. and Reg. 0720-26-.07 (7)(a)(3) Services Provided, the relevant portion of which reads as follows:

(7) An ACLF shall provide personal services as follows:

(a) Each ACLF shall provide each resident with at least the following personal services:

3. Daily awareness of the individual 's whereabouts

IV. REPRESENTATIONS OF RESPONDENT

16. Respondent understands and admits the allegations, charges, and stipulations in this Order.
17. Respondent understands the rights found in the Code, Rules, and the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 thru 4-5-404, including the right to a hearing, the right to appear personally and by legal counsel, the right to confront and to cross-examine witnesses who would testify against Respondent, the right to testify and to present evidence on Respondent's own behalf, as well as to the issuance

of subpoenas to compel the attendance of witnesses and the production of documents, as well as the right to appeal for judicial review. Respondent voluntarily waives these rights in order to avoid further administrative action.

18. Respondent agrees that presentation of this Order to the Board and the Board's consideration of it and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members become prejudiced requiring their disqualification from hearing this matter should this Order not be ratified. All matters, admissions, and statements disclosed during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.
19. Respondent agrees that facsimile/PDF copies of this Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.
20. Respondent also agrees that the Board may issue this Order without further process. If the Board rejects this Order for any reason, it will be of no force or effect for either party.
21. Respondent agrees that the facility has not received any threats or promises of any kind by the State or any agent or representative thereof, except such as is detailed herein.

V. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

22. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of ~~three-~~
thousand dollars (\$3000.00). This CMP is issued for the deficiency cited on August 10, 2023, for failure to maintain resident safety when in the ACLF.

23. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of three-thousand dollars (\$3,000.00). This CMP is issued for deficiency cited on August 10, 2023, for failure to maintain a daily awareness of the resident's whereabouts.
24. Payment shall be submitted to the following address **within thirty (30) calendar days** of the effective ratification date of this Order.

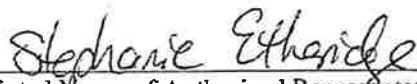
**Tennessee Health Facilities Commission
Attention: Disciplinary Coordinator
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243**

**PLEASE DO NOT REMIT PAYMENT UNTIL THE CONSENT
ORDER HAS BEEN RATIFIED AND APPROVED BY THE BOARD**

25. Each condition of discipline herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

APPROVED FOR ENTRY:


Asbury Cove
License No. 195
Signature of Authorized Representative
Respondent


Printed Name of Authorized Representative

Title of Authorized Representative

W/permission
Jeremy Gourley BPR 084237

Jeremy Gourley (BPR # 022812)
Senior Associate General Counsel
Health Facilities Commission
Office of Legal Services
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243
Office: (615) 741-2364
Fax: (615) 741-9884
Email: Jeremy.J.Gourley@tn.gov

Approval by the Board

Upon the agreement of the parties and the record as a whole, this **CONSENT ORDER** was approved as a **FINAL ORDER** by a majority of a quorum of the Tennessee Board for Licensing Health Care Facilities at a public meeting of the Board and signed this 8th day of March, 2024.

ACCORDINGLY, IT IS ORDERED that the agreement of the parties does hereby become the Final Order of the Board.

Boyd Madison III

Chairperson
Board for Licensing Health Care Facilities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, Asbury Cove, c/o Administrator, Stephanie Etheridge, 315 Asbury Avenue Ripley, Tennessee 38063, by delivering same in the United States regular mail and United States certified mail, number **7022 3330 0001 2193 9548**, return receipts requested, with sufficient postage thereon to reach its destination. A copy was sent via electronic mail to:

ripley@americareusa.net.

This 8th day of March, 2024

W/permission
Jeremy Gourley

Jeremy Gourley
Senior Associate General Counsel