

**BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES**

IN THE MATTER OF:

**FOXBRIDGE ASSISTED LIVING & MEMORY CARE)
2180 MANGUM ROAD)
MEMPHIS, TN 38134)
License No. 00000015)**

Case #: 201903059.

CONSENT ORDER

This matter was presented to the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 2nd day of October 2019, for adoption and ratification based on the agreement of the Tennessee Department of Health, by and through the Office of General Counsel, and **Foxbridge Assisted Living & Memory Care** (hereinafter "Respondent"), by and through counsel, the terms of which have been previously agreed upon by the parties and their counsel, as signified by signatures below.

Respondent, by signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review of this matter.

Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should the Consent Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

JURISDICTION

The Board has the power to license and regulate assisted-care living facilities. Tenn. Code Ann. § 68-11-202(a). Further, Tenn. Code Ann. § 68-11-202(b)(1)(A) gives the Department of

Health ("Department") the authority to conduct reviews of assisted-care living facilities to determine compliance with regulations promulgated by the Board.

Tenn. Code Ann. § 68-11-210(a)(1) provides that the Department 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.

The Board is authorized to establish a system for assessing civil monetary penalties for assisted-care living facilities that are in violation of state laws and regulations, resulting in the potential for harm to the health, safety and welfare of residents. Tenn. Code Ann. § 68-11-213(i)(2) and Tenn. Comp. R & Reg. 1200-08-25-.05(4),(5).

Upon a finding by the Board that an assisted-care living facility has violated any provision of the Health Facilities and Resources Act, Part 2 – Regulation of Health and Related Facilities or the rules promulgated pursuant thereto, action may be taken, upon proper notice to the license, to impose a civil penalty, deny, suspend, or revoke its license. Tenn. Comp. R & Reg. 1200-08-25-.05(4). The Board has established by rule, a schedule designating the minimum and maximum civil penalties which may be assessed. Tenn. Code Ann. § 68-11-213(i)(2) and Tenn. Comp. R & Reg. 1200-08-025-.05(4),(5).

Proceedings for disciplinary action against a facility are conducted in accordance with the Tennessee Administrative Procedures Act, Title 4, Chapter 5, of Tenn. Code Ann. Tenn. Comp. R. & Reg. 1200-08-25-.05(7). A Respondent in a disciplinary action is entitled to be represented by legal counsel, to personally appear before the Board, to present witnesses, to have subpoenas issued and to receive thirty (30) days' notice of the charges before being required to appear for a hearing. A Respondent who cannot afford legal counsel may be eligible for free or low-cost counsel. Tenn. Code ann. § 4-5-101, et. seq.

STIPULATION OF FACTS

1. At all times pertinent hereto, FOXBRIDGE ASSISTED LIVING & MEMORY CARE has been licensed as an assisted-care living facility, having been issued license number 00000015 on November 18, 1998. Respondent's license has a current expiration date of June 14, 2020.
2. On or about June 4, 2019, surveyors conducted an annual health licensure survey at Respondent facility. During this survey, the surveyors observed violations of state laws and regulations.
3. Resident #4, a hospice patient, was placed on a low-sodium diet on May 5, 2019 by the hospice nurse practitioner. Interview with the Director of Nursing confirmed that Resident #4 was on a regular diet because the hospice Family Nurse Practitioner could not write Resident #4's diet orders.
4. A review of Resident #5's medical record revealed that on April 12, 2018 Resident #5's physician ordered that Resident #5 be on a normal 2000 calorie/day diet. A review of therapeutic diet manual in the facility's kitchen revealed that that facility's licensed dietician had placed Resident #5 on a low concentrated sweets diet.
5. Further review of the diet book revealed that one (1) resident was listed as being on a "cardiac" diet and one (1) resident was on an "American Heart Association" diet. However, the diet manual did not have any American Heart Association or cardiac diets listed. Interview with the facility's dietician revealed that these two (2) residents were on regular diets.

GROUND FOR DISCIPLINE

The Stipulations of Fact, *supra*, are sufficient to establish grounds for the discipline of Respondent's Assisted-Care Living Facility license. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Board is authorized.

6. The facts stated in paragraphs three (3) through five (5) are sufficient to establish Respondent violated the provisions of Rule 1200-08-25.07(7)(c)(3)(ii)[SERVICES PROVIDED], the relevant portion of which reads as follows:

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

(c) Dietary services.

(3) An ACLF shall ensure that menus meet the needs of the residents as follows:

(ii) An ACLF shall meet nutritional needs, in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of residents.

7. The facts stated in paragraphs three (3) through five (5) are sufficient to establish Respondent violated the provisions of Rule 1200-08-25-.07(7)(c)(3)(iii)[SERVICES PROVIDED], the relevant portion of which reads as follows:

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

(c) Dietary services.

(3) An ACLF shall ensure that menus meet the needs of the residents as follows:

(iii) An ACLF shall have a current therapeutic diet manual approved by the dietician readily available to all ACLF personnel.

ORDER

Now therefore, it is **ORDERED**, based upon the agreement of the parties and, as follow:
The Respondent shall be assessed two (2) civil monetary penalties, in the amount of five hundred dollars (\$500.00), for a total assessment of one thousand (\$1,000.00);

Payment of the civil monetary penalties shall be submitted to the following address within thirty (30) days of the effective date of this Order:

**Tennessee Department of Health
Division of Health Care Facilities
Attn: Eddie J. Stewart
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243**

The Board shall ratify this Consent Order as indicated by the signature of the Chairperson below;

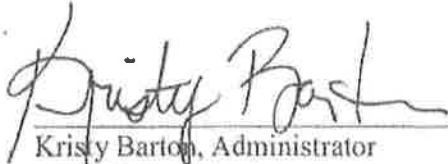
The terms of this Consent Order, including deficiencies and civil penalties, once ratified by the Board, shall be listed in the public Disciplinary Action Report pursuant to T.C.A. § 68-1-114; and

This **CONSENT ORDER** shall be a **FINAL ORDER** upon ratification by a majority of members of the Tennessee Board for Licensing Health Care Facilities at a public meeting, a quorum having been verified.

ENTERED THIS 2 DAY OF October, ²⁰¹⁹ this Order having been approved and ratified by a majority of members of the Tennessee Board for Licensing Health Care Facilities at a public meeting, a quorum having been verified.

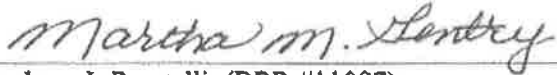

Chairperson
Board for Licensing Health Care Facilities

AGREED TO and APPROVED:



Kristy Barton, Administrator
Foxbridge Assisted Living & Memory Care
Respondent

9/17/19
Date



Barbara J. Perutelli (BPR #11097)
Douglas E. Jones (BPR #4324)
Martha M. Gentry (BPR #11496)
Schulman LeRoy & Bennett P.C.
501 Union Street, Suite 701
Nashville, TN 37219-0676

9/20/2019

Date



Caroline R. Tippens (BPR #030375)
Assistant General Counsel
Department of Health
665 Main Stream Drive, 2nd Floor
Nashville, TN 37243
(615) 741-1611

10-02-2019

Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon counsel for Foxbridge, Barbara J. Perutelli, Schulman LeRoy & Bennett P.C., 501 Union Street, Suite 701, Nashville, TN 37219-0676 by delivering in the United States mail, first class, with sufficient postage thereon to reach its destination and via United States Certified Mail.

7017 0190 0001 0037 3067 and via hand delivery.

This 3rd day of October, 2019.



Caroline Tippens
Assistant General Counsel