

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:

HOLLY STREET FAMILY CARE
License No. 40

ELAINE PEEBLES
Certification No. 754
1101 Holly Street
Nashville, Tennessee 37206

) BEFORE THE BOARD FOR LICENSING
) HEALTH CARE FACILITIES

) Docket No.: 17.17-097107A

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Health Care Facilities

ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities on the 12th day of March 2008, pursuant to a Notice of Charges filed against the Respondent. Presiding at the hearing was the Honorable Thomas G. Stovall, Administrative Judge, assigned by the Secretary of State. The State was represented by L. Erin Begley, Assistant General Counsel. The Respondent was not present and was represented by Raymond G. Prince of the Nashville Bar who was also not present. Counsel for the State made a motion pursuant to TENN. CODE ANN. § 4-5-309 to find the Respondent in default. Judge Stovall advised the Board that the Respondent's attorney participated in a telephonic conference with himself and the State's attorney on Monday, March 10, 2008, during which Mr. Prince advised Ms. Begley and the Judge that he and his client would not appear at the hearing. Judge Stovall apprised the Board that the Respondent and her attorney were made aware of her rights and they chose not to appear. By majority vote, the Board GRANTED the State's motion finding the Respondent in DEFAULT and to conduct the proceeding without the participation of the Respondent. After consideration of the Notice of Charges, testimony of witnesses, argument of counsel, and the record as a whole, the Board finds as follows:

counsel, and the record as a whole, the Board finds as follows:

I. FINDINGS OF FACT

1. Respondent, Holly Street Family Care located at 1101 Holly Street in Nashville, Tennessee, was licensed as a residential home for the aged by the State of Tennessee Department of Health, having been granted license number 40 on July 15, 1992. The facility currently has an active license.
2. Respondent, Ms. Elaine Peebles was licensed as a residential/institutional home administrator by the State of Tennessee Department of Health, having been granted certificate number 754 on July 11, 1995. Her certificate is currently in active status and does not expire until June 30, 2008.
3. Ms. Elaine Peebles, at all times pertinent hereto, was the owner, operator, and administrator of Holly Street Family Care and has operated the Respondent facility from July 15, 1992, to the present.
4. During the period of time that the Respondent facility was in operation, as the owner, operator, and administrator of the Respondent facility, Ms. Peebles has allowed conditions to exist at the facility that are detrimental to the welfare of the residents living at the Respondent facility by having unsanitary conditions exist at the facility, and by failing to meet the residents' personal services, including the residents' protective care, safety, and well-being. Specifically, Ms. Peebles has failed to meet the personal needs of the residents, thereby endangering their safety and welfare, by not attending to the residents' personal needs, such as bathing and grooming; by failing to ensure that the

residents' medications are self-administered; by failing to ensure that the Respondent facility is equipped with a forty-eight (48) hour food supply; by failing to ensure that the kitchen at the facility is maintained in a clean and sanitary condition; and by failing to ensure that there is a suitable and comfortable furnished area at the Respondent facility for the residents.

5. On or about October 8, 2007, Ms. Peebles permitted unsanitary conditions to exist at the Respondent facility and conditions that did not meet the residents' personal needs, including but not limited to dirty floors, walls, and furniture throughout the facility as well as a dirty kitchen, bedrooms and bathrooms.
6. The bathrooms and bedrooms also contained a strong odor of urine and almost every room in the Respondent facility was infested with roaches. Many of the rooms in the facility were also infested with flies, black bugs, fleas, and ants.
7. In addition to the facility being unsanitary, the three (3) residents living at the Respondent facility had dirty hair and clothes and emitted body odor.
8. Also, on October 8, 2007, Ms. Peebles failed to have a forty-eight (48) hour food supply maintained or properly stored at the facility; there was only a package of hot dogs, bologna, and chicken quarters at the facility. Ms. Peebles also permitted smoking to occur in areas that were not designated as smoking areas, and does not ensure that the residents are able to medicate themselves as required by applicable rules.
9. The remaining conditions at the facility were also detrimental to the resident welfare, such as failing to have an adequate amount of lighting, failing to have an adequate amount of linens in the facility as well as in the residents' bedrooms.
10. Ms. Peebles also placed the safety and welfare of the three (3) residents in jeopardy by

failing to have a responsible attendant meet the needs of the residents and failing to have an awake attendant on the premises at all times. Ms. Peebles employs one (1) individual by the name of Gary Daniel to meet the residents' needs, but Mr. Daniel is not awake at all times and there is no other attendant awake at the premises. Mr. Daniel transports the residents to and from doctor's appointment, however does not possess a valid driver's license.

11. In addition, Ms. Peebles failed to maintain the safety and well-being of the three (3) residents at the Respondent facility by having each resident place her name along with the respective resident's name on their social security checks and food stamps, such that Ms. Peebles could cash the residents' checks and keep the money for the residents' rent when Ms. Peebles also receives money from the Quality Enabling Program for the residents' rent. The three (3) residents suffer from dementia, psychosis, or a hearing impairment, making it difficult for them to understand and therefore consent to this financial arrangement. Furthermore, this financial arrangement was not reduced to writing and therefore can not be terminated by the resident at anytime.
12. The operation of the Respondent facility by Ms. Peebles was also in violation of applicable rules by failing to have adequate medical records for each resident and failing to have required policies and procedures relative to resident rights, licensee responsibilities, health care decision making, handling infectious waste, and filing complaints and grievances. Ms. Peebles also failed to maintain the following for each resident: written admission agreements, an accurate written statement of fees, a copy of signed resident rights, and records and reports about the condition of the Respondent facility.

13. During a return visit to the Respondent facility on October 11, 2007, unsanitary conditions still existed at the facility, such as dirty floors, walls, and furniture as well as bug and roach infestation. There was also a strong smell of urine in the bedrooms and the living room and the living room contained a sofa that was wet and smelled of urine.
14. The aforementioned conduct committed by Elaine Peebles as the owner of the Respondent facility not only constitutes conduct or practice that impairs the health, safety and welfare of the residents at the Respondent facility, but fails to treat them with consideration, respect and dignity. Such conduct, if permitted to continue would not only be detrimental to the health, safety, and welfare of the current residents of Holly Street Family Care, but would also be detrimental to the health, safety, and welfare of the citizens of Tennessee, in general.

II. CONCLUSIONS OF LAW

The Board, having jurisdiction over this matter finds the facts in this Order are sufficient to establish that the Respondent facility and Respondent have violated the provisions of TENN. CODE ANN. § 68-11-207 and the Tennessee Compilation of Rules and Regulations of the State of Tennessee, 1200-8-11, and these violations constitute grounds for the revocation, suspension, or placement on probation of the Respondent's residential home for the aged license and Respondent's residential/institutional home administrator certificate pursuant to TENN. CODE ANN. §68-11-207 and TENN. COMP. R. & REGS. Rule 1200-8-11-.03.

15. The facts as found in paragraph ten (10) *supra*, are sufficient to establish that the Respondent has violated the provisions of TENN. COMP. R. & REGS. Rule 1200-8-11-

.04(5) [ADMINISTRATION], the relevant portions of which read as follows:

(6) Each home for the aged shall:

- (b) Have a responsible awake attendant on the premises at all times;
- (c) Maintain documentation of the checks of the "Registry of Persons who have Abused or Intentionally Neglected Elderly or Vulnerable Individuals" prior to hiring an employee;
- (d) Have a written statement of policies and procedures outlining the responsibilities of the licensee to the resident and any obligation of the resident to the facility; and
- (g) Maintain written policies and procedures informing the resident of his/her rights and how to register grievance and complaints;

16. The facts as found in paragraph twelve (12) *supra*, constitute violation(s) of Rule 1200-8-

11-.04(7) [ADMINISTRATION], the relevant portion of which reads as follows:

(6) All health care facilities licensed pursuant to T.C.A. §§68-11-201, et seq. shall post the following in the main public entrance:

- (a) Contact information including statewide toll-free number of the division of adult protective services, and the number of the local district attorney's office.

17. The facts as found in paragraph twelve (12) *supra*, constitute violation(s) of Rule 1200-8-

11-.05(3) [ADMISSIONS, DISCHARGES AND TRANSFERS], the relevant portions of

which read as follows:

(3) The home shall:

- (b) Have a written admission agreement that includes a procedure for handling the transfer or discharge of residents and that does not violate the residents' rights under the law or these rules;
- (c) Have an accurate written statement regarding fees and services which will be provided upon admission; and
- (g) Provide to the resident at the time of admission a copy of the Resident's Rights for the resident's review and signature. A signed copy must be provided to the resident at the time of admission;

18. The facts as found in paragraph four (4) *supra*, constitute violation(s) of Rule 1200-8-11-

.05(5) [ADMINISTRATION], the relevant portion of which reads as follows:

- (5) Individuals who are usually, typically or customarily incapable of self-administering medications or who require medications that are usually, typically or customarily not self-administered shall not be admitted to or retained in the home unless provided by a home care organization or physician.

19. The facts as found in paragraphs four (4) through fourteen (14) *supra*, constitute violation(s) of Rule 1200-8-11-.06 [PERSONAL SERVICES], the relevant portions of which read as follows:

- (1) Personal services must include protective care of the resident, responsibility for the safety of the resident when in the facility, daily awareness of the resident's whereabouts and the ability and readiness to intervene if crises arise. Personal services do not include nursing or medical care. Personal services must be provided by employees of the home;
- (2) Medications shall be self-administered. If the home chooses to employ a currently licensed nurse, medications may be administered by the nurse;
- (5) Residents shall be provided assistance, if needed, in personal care such as bathing, grooming and dressing;
- (8) Clean linen shall be maintained in sufficient quantity to provide for the needs of the residents. Linens shall be changed whenever necessary;
- (12) A forty-eight (48) hour supply of food shall be maintained and properly stored at all times;
- (14) The kitchen shall be maintained in a clean and sanitary condition; and
- (16) A suitable and comfortable furnished area shall be provided in the facility for activities and family visits. Furnishings shall include a current calendar and a functioning television set, radio and clock.

20. The facts as found in paragraphs four (4) through nine (9) and thirteen (13) *supra*, constitute violation(s) of Rule 1200-8-11-.07 [BUILDING STANDARDS], the relevant portions of which read as follows:

- (1) The residential home for the aged must be constructed, arranged, and maintained to ensure the safety of the residents; and
- (2) The condition of the physical plant and the overall residential home for the aged

environment must be developed and maintained in such a manner that the safety and well-being of residents are assured.

21. The facts as found in paragraphs four (4) through nine (9), and thirteen (13) and fourteen (14) *supra*, constitute violation(s) of TENN. COMP. R & REGS. Rule 1200-8-11-.08 [LIFE SAFETY], the relevant portions of which read as follows:

- (7) General lighting and night lighting shall be provided for each resident. Night lighting shall be equipped with emergency power;
- (18) Smoking and smoking materials shall be permitted only in designated areas under supervision. Ashtrays must be provided wherever smoking is permitted. Smoking in bed is prohibited. The facility shall have policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for residents who smoke. The designated smoking room or rooms shall not be in the dining room or activity room; and
- (26) The physical environment shall be maintained in a safe, clean and sanitary manner.
 - (a) Any condition on the facility site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.
 - (c) Each resident bedroom shall contain a chair, bed, mattress, springs, linens, chest of drawers and wardrobe or closet space, either provided by the facility or by the resident if the resident prefers. All furniture provided by the resident must meet NFPA. All resident's clothing must be maintained in good repair and suitable for the use of elderly persons.

22. The facts as found in paragraph twelve (12) *supra*, constitute violation(s) of TENN. COMP. R & REGS. Rule 1200-8-11-.09 [INFECTIOUS AND HAZARDOUS WASTE], the relevant portion of which reads as follows:

- (a) Each home for the aged must develop, maintain and implement written policies and procedures for the definition and handling of its infectious waste. These policies and procedures must comply with the standards of this section.

23. The facts as found in paragraphs eleven (11) and twelve (12) *supra*, constitute

violation(s) of TENN. COMP. R. & REGS. Rule 1200-8-1-.10 [RECORDS AND REPORTS], the relevant portions of which read as follows:

- (5) An individual resident file shall be maintained for each resident in the home. Personal information shall be confidential and shall not be disclosed, except to the resident, the department and others with written authorization from the resident. These files shall be retained for one (1) year after the resident is transferred or discharged. The resident file shall include:
 - (b) Name, address and telephone number of next of kin, legal guardian and any other person identified by the resident to contact on his/her behalf;
 - (f) Record of all monies and other valuables entrusted to the home for safekeeping, with appropriate updates; and
 - (h) A copy of the admission agreement signed and dated by the resident.

24. The facts as found in paragraphs eleven (11) and twelve (12) *supra*, constitute violation(s) of Tenn. Comp. R. & Regs. Rule 1200-8-1-.11 [RESIDENT RIGHTS], the relevant portions of which read as follows:

Each resident has at least the following rights:

- (5) To be fully informed of the Resident's Rights, of any policies and procedures governing resident conduct, any services available in the home and the schedule of all fees for all services;
- (9) To manage his or her personal financial affairs, including the right to keep and spend his or her own money. If the resident requests assistance from the home in managing his or her personal financial affairs, the request must be in writing and may be terminated by the resident at any time. The home must separate such monies from the home's operating funds and all other deposits or expenditures, submit a written accounting to the residents at least quarterly, and immediately return the balance upon transfer or discharge. A current copy of this report shall be maintained in the resident's file maintained by the licensee; and
- (10) To be treated with consideration, respect and full recognition of his or her dignity and individuality.

25. The facts as found in paragraph twelve (12) *supra*, constitute violation(s) of TENN. COMP. R. & REGS. Rule 1200-8-1-.12 [POLICIES AND PROCEDURES FOR HEALTH CARE

DECISION-MAKING], the relevant portion of which reads as follows:

- (1) Pursuant to this Rule, each home for the aged shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

REASONS FOR THE DECISION

It is the policy of this Board to protect the health, safety, and welfare of the citizens of the State of Tennessee and the action taken by the Board is appropriate.

ORDER

THEREFORE, it is **ORDERED** as follows:

26. Respondent's residential home for the aged license number 40 and Respondent's residential/institutional home administrator certificate number 754, pursuant to the authority vested in the Board under TENN. CODE ANN. § 68-11-207 AND TENN. COMP. R. & REGS. Rule 1200-8-11-.03 shall be and is hereby **REVOKED**, effective upon the date of entry of this Order with the Administrative Procedures Division.

SO ORDERED this 12 day of March, 2008, by the Tennessee Board for Licensing Health Care Facilities.


Chairperson
Tennessee Board for Licensing Health Care
Facilities.

RECONSIDERATION, ADMINISTRATIVE RELIEF AND JUDICIAL REVIEW

Within fifteen (15) days after the entry of an initial or final order, a party may file a petition to the Board for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition with the Board, it is deemed denied. T.C.A. § 4-5-317.

In addition, a party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order. T.C.A. § 4-5-316.

Finally, a party may seek judicial review by filing a petition for review in the Chancery Court of Davidson County within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend the sixty (60) day period; however, if the petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the petition. T.C.A. § 4-5-322.

PREPARED FOR ENTRY:

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CERTIFICATE OF FILING

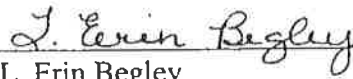
This Order was received for filing in the Office of the Secretary of State, Administrative
Procedures Division, and became effective on the 13th day of March, 2008.

Thomas G. Stovall ~~TS~~
Thomas G. Stovall, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document as entered has been served upon the Respondent's attorney, Raymond G. Prince, PRINCE & HELLINGER, P.C., 150 Second Ave. N., Suite 300, Nashville, TN 37201, by delivering same in the United States mail, certified, return receipt requested, with sufficient postage thereon to reach its destination.

This 14th day of March, 2008.


L. Erin Begley
Assistant General Counsel