

BEFORE THE TENNESSEE BOARD FOR LICENSING HEALTH CARE FACILITIES

IN THE MATTER OF:)
)
Legacy Assisted Living and Memory Care)
6551 Knight Arnold Road)
Memphis, TN 38115)
)
License No. ACLF 00000279)

CONSENT ORDER

This cause came to be heard on the 7th day of October, 2020 at a public meeting, before the Tennessee Board for Licensing Health Care Facilities ("Board"), pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Legacy Assisted Living and Memory Care, 6551 Knight Arnold Road, Memphis, TN 38115** (hereinafter "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.

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 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, prescribed child care centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential homes. Tenn. Code Ann. § 68-11-202. 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 fire and life safety code regulations promulgated by the Board.

Tenn. Code Ann. § 68-11-210 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 has the authority to suspend or revoke the license of any facility licensed under Tenn. Code Ann. § 68-11-201 *et. seq.* The Board may also place a facility on probation. Tenn. Code Ann. § 68-11-207(a), (f)(2). If the Board determines during or at the end of the probation that the facility is not taking steps to correct non-compliance or is otherwise not responding in good faith pursuant to the plan of correction, the Board may take any additional action as authorized by law. Tenn. Code Ann. § 68-11-207(f)(8).

The Board is also authorized to establish a system for assessing civil monetary penalties for assisted-care living facilities, homes for the aged, adult care homes and traumatic brain injury residential homes that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety and welfare of residents. Tenn. Code Ann. § 68-11-213(i)(2); 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 licensee, to impose a civil penalty, and/or to 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); Tenn. Comp. R. & Reg. 1200-08-25-.05(5).

Proceedings for disciplinary action against a facility are conducted in accordance with the Tennessee Administrative Procedures Act. Tenn. Comp. R. & Regs. 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.

STIPULATIONS OF FACT

1. At all times pertinent hereto, Legacy Assisted Living & Memory Care at Lenox Park, located at 6551 Knight Arnold Road, Memphis, TN 38115 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number 00000279 on June 13, 2006. Respondent has an active license with an expiration date of May 29, 2020. As a result of surveys in November and December 2017, the facility entered into a Consent Order which was approved and ratified by the Board in April 2018. A copy of the Consent Order is attached hereto as Exhibit I.
2. On or about June 6, 2018, the Board for Licensing Health Care Facilities heard statements from both the facility and Department of Health surveyors that deficiencies cited on the May 22-23, 2018 survey were serious deficiencies affecting the health, safety, and welfare of the residents.

3. On or about June 7, 2018, the Board suspended admissions to Respondent facility. A copy of the Suspension of Admissions is attached hereto as Exhibit 2.
4. On July 16, 2018 through August 2018 surveyors were present at the facility for a revisit survey in which three (3) deficiencies were cited. As such, the facility remained under a Suspension of Admissions.
5. On or about August 16, 2018, the facility submitted a Plan of Correction. A revisit survey was scheduled for September 2018.
6. On or about September 13, 2018 surveyors exited the facility. Surveyors re-cited the facility for failure to correct their deficiencies and one new deficiency.
7. On or about October 3, 2018, the facility appeared before the Board and entered into a new Consent Order. A copy of the Consent Order is attached hereto as Exhibit 3.
8. On or about October 8, 2018, the facility submitted a Plan of Correction which was deemed to be acceptable to correct the September 2018 deficiencies.
9. From November 26, 2018 through December 6, 2018 surveyors conducted a revisit and complaint survey to ensure the September 2018 deficiencies had been corrected. A deficiency was re-cited from the revisit survey and new deficiencies were identified during the complaint investigation.
10. On or about December 11, 2018, pursuant to a petition filed under docket number CH-18-1714 in the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, the Chancery Court entered an order appointing KCP Advisory Group, LLC as Receiver (the "Receiver") for Respondent.
11. On or about February 5, 2019 the facility entered into an Agreed Order. Under the terms of the Agreed Order the facility was placed on probation from February 5, 2019 until February 5, 2020 unless earlier lifted by the Board. The facility also submitted a Plan of Correction with certain of

the corrective actions being re-cited in the Agreed Order. The facility also agreed to remain under the Suspension of Admissions until the Plan of Correction was accepted and all deficiencies were corrected. The facility agreed a representative would appear at each Board meeting up to and including the February 2020 Board meeting and make progress reports to the Board at such meetings. A copy of the Agreed Order is attached as Exhibit 4.

12. On or about May 9, 2019, as a result of a revisit survey conducted during May 22-23, 2018, the Department lifted the Suspension of Admissions. A copy of the Suspension of Admissions Lift Letter is attached as Exhibit 5.

13. On or about October 2, 2019, the facility appeared before the Board and entered into an Agreed Order. In the Agreed Order, the facility agreed that the Department would file a Notice of Charges and set this case for a hearing before the Board in February 2020. A copy of the Agreed Order is attached hereto as Exhibit 6.

14. On or about February 5, 2020, the facility appeared before the Board and entered into an Agreed Order in which the facility agreed to be suspended effective June 3, 2020, if prior to that date, all deficiencies were not cleared, and all of the following conditions were not met by the facility:

- a) The Respondent facility must hire a new management company from a state approved provider list.
- b) The management company must be in the facility five (5) days a week, one day of which must be a Saturday or Sunday. This five day a week requirement can be met if either the facility Administrator or Director of Nursing is a direct employee of the management company, and if another employee of the management company, to whom the Administrator or DON reports, is also on-site at the facility on a reasonably frequent basis, as needed.

- c) The receiver or its authorized representative must be in the facility one day a week. The authorized representative must be an individual who is contractually obligated to report directly to Mr. Paul Valentine. This authorized representative of the receiver will provide oversight of the management company, and coordinate with the consultant and the management company, and keep the receiver reasonably apprised as to the facility's compliance.
- d) Within fourteen (14) days of the date of this Order, the Respondent facility shall hire a consultant from a State approved list who must submit every other month an acceptable report to Board staff which must contain the following:
 - 1) the facility's staffing ratio;
 - 2) the amount of payment that the facility is paying to the management company;
 - 3) the number of residents in the facility;
 - 4) a clinical assessment of each resident's condition;
 - 5) each resident's payor source; and
 - 6) a transfer plan for each resident which must be updated bimonthly.
- e) Each resident shall be issued a notice of discharge thirty (30) days prior to June 3, 2020 in case the facility is unable to comply with these terms.
- f) If the Respondent facility is unable to comply with these terms, the facility hereby agrees that all residents will be transferred out of the facility by June 3, 2020.
- g) If the facility is able to comply with the terms set forth in [paragraph](d)(1-6) and successfully clear all its deficiencies, the suspension set to take effect June 3, 2020 shall be null and void, and the Respondent facility shall be able to apply to

have their probationary status lifted at the June 3, 2020 Board meeting. In order to facilitate Respondent facility's compliance with this Agreed Order, the appropriate representatives of the Department will participate with the receiver and/or its counsel and representatives in a conference call upon the submission of each report by the consultant.

A copy of the Agreed Order is attached hereto as Exhibit 7.

15. On or about March 3, 2020, a complaint survey revealed serious deficient practices. On or about March 13, 2020, at the request of the Office of General Counsel, the Board for Licensing Health Care Facilities issued an Order Summarily Suspending Respondent's license, a copy of which is attached hereto as Exhibit 8.
16. On or about March 23, 2020, the Shelby County Chancery Court issued an Order staying the Board from enforcing its March 13, 2020 Order of Summary Suspension. As a result of the Shelby County Chancery Court's Order, the Board changed Respondent's licensure status to reflect that the Summary Suspension Order was Stayed.
17. Starting in July 2020, the Receiver, representatives from the Department, the State Long Term Care Ombudsman's office, TennCare, and the Respondent facility participated in weekly conference calls regarding the transfer of residents from the facility.
18. On or about July 31, 2020, the Office of Health Care Facilities conducted a desk review of Respondent's Plans for Correction from the outstanding complaint surveys from December 2019 through March 2020. The Office of Health Care Facilities found that Respondent was back in compliance with the Board's rules and regulations and no new deficient practice was cited.
19. On or about August 13, 2020, the final remaining residents from Respondent facility were transferred to other licensed long-term care facilities in the Shelby County area.

20. Shortly thereafter, the Office of Health Care Facilities received a communication from the Respondent facility indicating that Respondent facility intended to close.

CONCLUSIONS OF LAW

The facts stated in the Stipulations of Facts section, *supra*, are sufficient to establish that grounds for the discipline of Respondent's license exist. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Board is authorized:

21. The facts stated in paragraphs one (1) through twenty-one (21) are sufficient to establish that Respondent has violated the provisions of Tenn. Code Ann. § 68-11-207(a)(3) and (c), which indicate that the Board may suspend or revoke the license issued under this part based on any of the following grounds:

(a)(3) Conduct or practice found by the board to be detrimental to the welfare of the patients in such institutions.

(c) In imposing the sanctions authorized in this section, the Board may consider all factors that it deems relevant, including, but not limited to, the following:

- (1) The degree of sanctions necessary to ensure immediate and continued compliance;
- (2) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;
- (3) The conduct of the facility against whom the notice of violation is issued in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
- (4) Any prior violations by the facility of statutes, regulations or orders of the Board.

ORDER

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

22. The Board for Licensing for Health Care Facilities hereby LIFTS the Stayed Summary Suspension of Respondent's license.
23. Respondent's license is hereby placed on INACTIVE status for the period of one (1) calendar year.
If Respondent wishes to extend the period of inactive status beyond one calendar year, Respondent must petition the Board to extend its inactive status at a regularly scheduled Board meeting.
24. By its signature herein, Respondent hereby agrees to dismiss its action in the Shelby County Chancery Court against the Board for Licensing Health Care Facilities within five (5) days of ratification of this Consent Order.
25. Upon ratification by the Board of this Consent Order, Respondent agrees that this action shall be placed on the Disciplinary Action Report pursuant to T.C.A. § 68-1-114.

Upon the agreement of the parties, this **CONSENT ORDER** is 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 9th day of October, 2020.

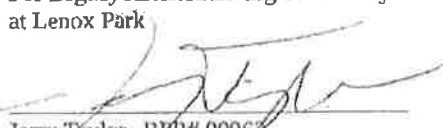
ACCORDINGLY, IT IS ORDERED that the agreement of the parties does hereby become the
Final Order of the Board.


Chairperson
Board for Licensing Health Care Facilities

AGREED TO:


By Paul Valentine on behalf of
KCP Advisory Group, LLC as Receiver
For Legacy Assisted Living & Memory Care
at Lenox Park

10/6/20
Date


Jerry Taylor, BPR# 09962
Thompson Burton PLLC
One Franklin Park
6100 Tower Circle, Suite 200
Franklin, Tennessee 37067

10/6/20
Date

and


Emily C. Taube (019323)
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222 2nd Ave S, Suite 2000
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etaube@burr.com

10/6/20
Date


Caroline R. Tippens, BPR # 030376
Senior Associate General Counsel
Tennessee Department of Health
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243

10/9/2020
Date

(615) 741-1611

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent facility, Legacy Assisted Living and Memory Care, by and through its counsel, Jerry Taylor, Thompson Burton PLLC, One Franklin Park, 6100 Tower Circle, Suite 200, Franklin, Tennessee 37067 via United States Postal Service certified mail number 7019 2970 0002 and via United States Postal Service First Class mail on the 12th day of October, 2020. 1304 5516


Caroline R. Tippens
Senior Associate General Counsel