BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES

IN THE MATTER OF:	)	
	)	
Loving Arms of Memphis, Inc.	)	
667 Bethel Ave.,	)	**Case No: 201902322**
Memphis, TN 38107	)	
	)	
License No. 00000158	)	

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 2nd day of October, 2019, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **LOVING ARMS OF MEMPHIS, INC.** (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

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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(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 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, 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,

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safety and welfare of residents. Tenn. Code Ann. § 68-11-213(i)(2) and Tenn. Comp. R. & Reg. 1200-08-11 *et. seq.*

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, deny, suspend, or revoke its license. Tenn. Comp. R. & Reg. 1200-08-11-.03. 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. 1200-08-11-.03.

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. & Regs. 1200-08-11-.03. 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.*

STIPULATIONS OF FACT

1. At all times pertinent hereto, **LOVING ARMS OF MEMPHIS, INC.**, 667 Bethel Ave., Memphis, TN 38107 has been licensed as a residential home for the aged ("RHA") by the Board, having been issued license number 00000158 on August 1, 1985. Respondent has an active license with an expiration date of April 15. 2020.

2. An annual licensure survey were conducted on the premises of the facility on November

6, 2018.

3. Surveyors cited deficiencies affecting the health, safety, and welfare, of the residents within the residential home for the aged.

4. An annual licensure survey were conducted on the premises of the facility on November 6, 2018.

5. Upon entering the home, surveyors determined that the Administrator was not present. The facility failed to have a policy manual which reflected whom the Owner/Administrator had designated to act in her absence.

6. The facility also failed to have a log listing all the residents in the home.

7. The facility also failed to promulgate a policy on infectious or hazardous waste disposal. Surveyors noted that no biohazard containers were found within the facility. Resident #4 utilizes diabetic testing strips and Resident #6 receives insulin injections. The facility failed to provide a container for contaminated sharps.

8. Four (4) caregivers were providing care to the residents in the home. However, the facility could only produce one employee personnel file. The personnel file provided did not indicate as to whether or not the Abuse Registry was checked prior to the caregiver being hired.

9. The facility failed to ensure that liability insurance information was posed in the main entrance to the home.

10. The facility failed to have a policy addressing charity care and failed to ensure that charity care information was posted in an area accessible to the public.

11. The facility failed to ensure, and provide documentation, that all residents were free of communicable disease, as medical records for Residents #1-6 did not contain any TB skin

test results.

12. The facility also failed to post and of the information required, including posters regarding information on adult protective services (APS), the number for the local district attorney's office; a statement on elder abuse, or a poster regarding victims of domestic violence.

13. The facility failed to ensure that the resident files shall be maintained for each resident in the home. The facility could not provide any records indicating resident next of kin, name, address, or telephone number. Record review also revealed that Residents #1-6 did not have any written admission agreement or a procedure for handling the transfer of or discharge of residents. Further, the facility could not provide any statement regarding fees and services provided to the residents upon admissions.

14. The caregiver on duty confirmed that the facility administered medications to the residents of the facility. The caregiver also indicated that the facility administers insulin injections to Resident #6, as she refuses to self-administer. None of the caregivers were licensed nurses.

15. The facility failed to provide evidence of at least three (3) meals per day that constitute an acceptable diet. The facility failed to provide documentation that no more than fourteen (14) hours occurred between morning and evening meals. There was also no dietary menu or meal time schedule posted for review.

16. The caregiver on duty indicated that she had not received any disaster preparedness training and could not provide the surveyor with the list of her duties in the event of a disaster. The facility failed to ensure a tornado and severe weather drill, bomb threat drill, flood drill, severe hot or cold weather drill. earthquake disaster drill, were conducted

annually in the home.

17. The facility also failed to ensure participation in the annual Tennessee Emergency Management Agency (TEMA) emergency plan.

18. On or about February 14, 2019, surveyors conducted a revisit survey at the facility to determine whether or not the facility had corrected its deficient practices. The Administrator was not present at the time of the revisit survey.

19. During the revisit survey, the surveyors reviewed the personnel file for four employees. None of their personnel files contained any Abuse Registry checks prior to employment.

20. The facility was recited for failure to provide proof of liability insurance posted at the main entrance.

21. The facility failed to ensure Resident #1 and #3 had documentation in their medical records that they had received pneumonia vaccination. Additionally, the medical records did not contain any information on next of kin, legal guardian, or any other contact information.

22. The facility also failed to include any health information in the medical record, such as major changes in resident's habits, health status, results of physician's visits, or any health care instructions.

23. Interview with a caregiver on duty revealed that the facility places each resident's medication in a cup for the resident. The caregiver also indicated that resident #1 had to be injected by the night attendant, as he shook too badly to self-administer medications.

24. Surveyors observed two different menus in the facility's kitchen. However, the caregiver on duty could not show the surveyor any food listed on the provided menus. All the food found in the home was frozen in the freezer.

25. Surveyors observed a biohazard container on top of the filing cabinet in the facility. Interview with the caregiver on duty revealed that although Resident #1 required injections, the caregiver on duty did not know where to discard used sharps or lancets.

26. The caregiver could not provide documentation to the surveyor that the facility had participated in any local county emergency management agency training on an annual basis.

27. The facility has not submitted an adequate Plan of Correction ("POC") to correct the deficiencies recited on the revisit survey to date.

GROUNDS FOR DISCIPLINE

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

28. The facts stated in paragraph five (5) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(5)(a)[Administration], the relevant portion of which reads as follows:

> (2) The licensee must designate in writing a capable and responsible person to act on administrative matters and to exercise all the powers and responsibilities of the licensee as set forth in this chapter in the absence of the licensee.

29. The facts stated in paragraphs nine (9) and nineteen (19) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(5)(c) [Administration], the relevant portion of which reads as follows:

(6) Each home for the aged shall:

(c) Maintain documentation of the checks of the Registry of Persons who have Abused or Intentionally Neglected Elderly or Vulnerable Individuals" prior to hiring any employee.

30. The facts stated in paragraph seven (7) and twenty (20) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(5)(e)[Administration], the relevant portion of which reads as follows:

(6) Each home for the aged shall:

(e) Post whether they have liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height and displayed at the main public entrance.

31. The facts stated in paragraph ten (10) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(6)(n)[Administration], the relevant portion of which reads as follows:

(n) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

32. The facts stated in paragraph eleven (11) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(7)[Administration], the relevant portion of which reads as follows:

(7) No occupant or employee who has a reportable communicable disease, as stipulated by the department, is permitted to reside or work in a home unless the home has a written protocol approved by the department.

33. The facts stated in paragraph twelve (12) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(8)[Administration], the relevant portion of which reads as follows:

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(8) 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 for the local district attorney ' s office;

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

34. The facts stated in paragraph thirteen (13) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.05(3)(b)[Admissions, Discharges, and Transfers], the relevant portion of which reads 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.

35. The facts stated in paragraph six (6) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.06(2)[Personal Services], the relevant portion of which reads as follows:

(6) Each home for the aged shall:

(f) Keep a written up-to-date log of all residents and produce the log for the local fire department in the event of an emergency.

36. The facts stated in paragraph thirteen (13) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.05(3)(b)[Admissions, Discharges, and Transfers], the relevant portion of which reads as follows:

(3) The home shall:

(c) Have an accurate written statement regarding fees and services which will be provided upon admission.

37. The facts stated in paragraph twelve (12) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.06(2)[Personal Services], the relevant portion of which reads as follows:

(2) Medications shall be self-administered. If the home chooses to employ a currently licensed nurse, medications may be administered by the nurse.

38. The facts stated in paragraph fourteen (14) and twenty-three (23) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.06(4)[Personal Services], the relevant portion of which reads as follows:

(4) All medications shall be stored so that no resident can obtain another resident's medication.

39. The facts stated in paragraphs fifteen (15) and twenty-four (24) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.06(10)[Personal Services], the relevant portion of which reads as follows:

(10) Residents shall be provided at least three (3) meals per day. The meals should constitute an acceptable diet. There shall be no more than fourteen (14) hours between the evening and morning meals. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140F or above) or cold (41F or less). The food must be adapted to the habits, preferences, needs, and physical abilities of the residents.

40. The facts stated in paragraphs seven (7) and twenty-five (25) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.09(1)[Infectious and Hazardous Waste], the relevant portion of which reads as follows:

(1) 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.

41. The facts stated in paragraphs seven (7) and twenty-five (25) are sufficient to establish

that Respondent has violated the provisions of Rule 1200-08-11-.09(3)[Infectious and Hazardous Waste], the relevant portion of which reads as follows:

(2) Infectious and hazardous waste must be segregated from other waste at the point of generation (i.e., the point at which the material becomes a waste) within the facility.

42. The facts stated in paragraphs seven (7) and twenty-five (25) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.09(4)(a)[Infectious and Hazardous Waste], the relevant portion of which reads as follows:

(3) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the packages will contain, how the waste will be treated and disposed, and how it will be handled and transported, prior to treatment and disposal.

(a) Contaminated sharps must be directly placed in leakproof, rigid, and puncture-resistant containers which must be tightly sealed.

43. The facts stated in paragraphs thirteen (13) and twenty-one (21) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.10(b)[Records and Reports], the relevant portion of which reads as follows:

(1) 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.

44. The facts stated in paragraphs twenty-two (22) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.10(1)(g)[Records and Reports], the relevant portion of which reads as follows:

(1) 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:

(g) Health information including all current prescriptions, major changes in resident's habits or health status, results of physician's visits, and any healthcare instructions.

45. The facts stated in paragraphs sixteen (16), seventeen (17), and twenty-six (26) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.13[Disaster Preparedness], the relevant portion of which reads as follows:

(1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans and the specific emergency numbers related to that type of disaster shall be readily available at all times. Each of the following plans shall be exercised annually:

(a) Fire Safety Procedures Plan shall include:
1. Minor fires;
2. Major fires;
3. Fighting the fire;
4. Evacuation procedures; and
5. Staff functions.

(b) Tornado/Severe Weather Procedures Plan shall include:
1. Staff duties; and
2. Evacuation procedures.

(c) Bomb Threat Procedures Plan:
1. Staff duties;
2. Search team, searching the premises;

3. Notification of authorities;
4. Location of suspicious objects; and
5. Evacuation procedures.

(d) Flood Procedure Plan, if applicable:
1. Staff duties;

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2. Evacuation procedures; and
3. Safety procedures following the flood.

(e) Severe Cold Weather and Severe Hot Weather Procedure Plans:
1. Staff duties;
2. Equipment failures;
3. Evacuation procedures; and
4. Emergency food service.

(f) Earthquake Disaster Procedures Plan:
1. Staff duties;
2. Evacuation procedures;
3. Safety procedures; and
4. Emergency services.

(2) All facilities shall participate in the Tennessee Emergency Management Agency local/county emergency plan on an annual basis. Participation includes filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency. Documentation of participation must be maintained and shall be made available to survey staff as proof of participation.

ORDER

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

46. Respondent's license to operate as a Residential Home for the Aged shall be **placed on probation for no less than six (6) months.** During the period of probation, the Respondent shall submit an **acceptable** Plan of Correction.

47. If Respondent has not already done so prior to the ratification of this Order, Respondent shall submit a completed plan of correction within ten (10) business days for approval.

48. Respondent shall appear at the February 2020 Board of Licensing for Healthcare Facilities' Board meeting and provide an update to the Board regarding whether or not the cited deficiencies have been corrected.

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49. During the six (6) month period of probation, any **new** serious violation affecting the health, safety, and welfare of residents within the facility shall result in a suspension of admissions pending a prompt hearing by the Board.

50. Pursuant to Tenn. Code Ann. § 68-11-213(l), if the same or different deficiencies are cited on the third (3rd) revisit survey, Respondent agrees to pay costs for all revisit surveys incurred by the Department. The Department will prepare an assessment of cost in this matter. Such costs shall not exceed five thousand dollars ($5,000.00). The facility may pay this amount in installment payments. A payment plan may be set up by contacting: Eddie J. Stewart, at:

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

51. The terms listed in paragraphs forty-six (46) through fifty (50) must be met before the facility may petition the Board to have its probationary status lifted. **The facility shall submit its petition in written form to be considered at a regularly scheduled Board meeting.**

52. Upon ratification by the Board, the listing of the public discipline, including deficiencies and civil penalties on the Disciplinary Action Report pursuant to T.C.A. § 68-1-114.

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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 2nd day of October, 2019.

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:

8.30.19
DATE

Mary Chambers/Timika Chambers
Administrator(s)
Loving Arms of Memphis, Inc.
Respondent

October 2, 2019
DATE

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

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CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon ~~Respondent~~, Loving Arms of Memphis, Inc. by and through its Administrator(s), Mary & Timika Chambers, 667 Bethel Avenue, Memphis, TN 38107, by delivering same in the United States mail, first class, and United States certified mail # 7018 2290 0001 1903 6175 with sufficient postage thereon to reach its destination.

This 3rd day of October, 2019.

Caroline R. Tippens

Caroline Tippens
Assistant General Counsel

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