

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

IN THE MATTER OF:

**Olive Branch Assisted Living, LLC
110 Luther Road
Dickson, TN 37055**

License No. ACLF 00000081

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CASE #: 201805944

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 5th day of June, 2019, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Olive Branch Assisted Living, L.L.C.** (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 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,

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 licensee, 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. 1200-08-25-.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. & 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. 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, **Olive Branch Assisted Living, L.L.C.**, located at 110 Luther Road, Dickson, 37055 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number **00000081** on September 9, 1998. Respondent has an active license with an expiration date of June 3, 2019.
2. In September 2015, Respondent facility entered into a Consent Order before the Board of

Licensing for Health Care Facilities for life safety deficiencies which included failure to ensure maintenance checks had been completed for five (5) fire extinguishers. This deficiency had previously been cited in June 2012. As a result, the Respondent facility agreed to pay one civil monetary penalty in the amount of five hundred dollars (\$500.00). A copy of the Consent Order is attached hereto as Exhibit A.

3. In October 2018, the Department conducted a life safety survey at the Respondent facility.
4. Space heaters were observed in the facility in the administrator's office; entrance to common room area; storage closet across from Room 121; and electrical storage room.
5. Coffee makers without shut off timers were found in the following resident's apartments:
 - a. Room 133;
 - b. Room 206;
 - c. Room 207;
 - d. Room 204; and
 - e. Room 302.
6. On or about December 10, 2018, surveyors conducted a revisit survey at the Respondent facility and determined that the facility had failed to implement its plan of corrections. The facility was also cited for two (2) new deficiencies.
7. Surveyors again observed space heaters on December 10, 2018, in the administrator's office; entrance to common room area; storage closet across from Room 121; and electrical storage room. The facility was recited for this deficient practice a second time.
8. Surveyors again observed coffee makers without shut off timers in:
 - a. Room 206;

b. Room 207; and

c. Room 204.

these had automatic shut-off.

The facility was recited for this deficient practice a second time.

9. The fire alarm panel was showing a tamper trouble signal in the sprinkler riser room. There was no water pressure for the sprinkler system and the sprinkler service was out of service as of December 3, 2018. The facility was without the required fire-fighting equipment for seven (7) days which posed a significant risk to residents and staff. The facility was cited for failure to maintain the necessary fire-fighting equipment.
10. Despite the sprinkler system being out of service, the facility had not notified the Department of Health, nor had the facility conducted a fire watch. The facility was cited for failure to report, pursuant to T.C.A. § 68-11-211.

GROUND FOR DISCIPLINE

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

11. The facts stated in paragraphs four (4) and seven (7) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.10(2)(h)[Life Safety], the relevant portion of which reads as follows:
 - (2) An ACLF shall ensure fire protection for residents by doing at least the following:
 - (h) Prohibit open flame and portable space heaters.
12. The facts stated in paragraphs five (5) and eight (8) are sufficient to establish that

Respondent has violated the provisions of Rule 1200-08-25-.10(2)(i)[Life Safety], the relevant portion of which reads as follows:

- (2) An ACLF shall ensure fire protection for residents by doing at least the following:
 - (i) Ensure that upon entering the ACLF, the resident or his or her responsible party is asked if they wish to have a cooking appliance that is appropriate for their level of cognition. If the facility chooses to provide a requested cooking appliance, it shall be in accordance with the facility's policies. If the resident or his or her responsible party wishes to provide their own cooking appliance, it shall meet the facility's policies and safety standards. The cooking appliances shall be designed so that they can be disconnected and removed for resident safety or if the resident choose not to have cooking capability within his or her apartment. The cooking appliances shall have an automatic timer.

13. The facts stated in paragraph nine (9) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.10(2)(b)[Life Safety], the relevant portion of which reads as follows:

- (2) An ACLF shall ensure fire protection for residents by doing at least the following:
 - (b) Install necessary fire-fighting equipment.

14. The facts stated in paragraph ten (10) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.13(2)[Reports], the relevant portion of which reads as follows:

- (2) The ACLF shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211:
 - (a) Strike by staff at the facility;
 - (b) External disasters impacting the facility;
 - (c) Disruption of any service vital to the continued safe operation of the ACLF or to the health and safety of its patients and personnel; and
 - (d) Fires at the ACLF that disrupt the provision of patient care services or cause harm to the patients or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.

ORDER

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

7. The assessment of two (2) civil monetary penalties in the amount of one thousand dollars (\$1000.00), and one civil monetary penalty in the amount of five hundred dollars (\$500.00) for a total assessment of two thousand five dollars (\$2,500.00).

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

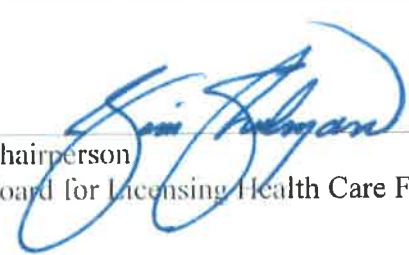
**Tennessee Department of Health
Division of Health Care Facilities
Attn: Eddie J. Stewart
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243**

8. 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.

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 5th day of June 2019.

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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:

Martha Bullington
Martha Bullington, Administrator
Olive Branch Assisted Living, L.L.C.
Respondent

3-7-2019
Date

Caroline Tippens
Caroline R. Tippens, BPR # 030375
Assistant General Counsel
Tennessee Department of Health
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243
(615) 741-1611

6/5/2019
Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Martha Bullington, Administrator for Olive Branch Assisted Living, 110 Luther Road, Dickson, TN 37055 by delivering in the United States mail, first class, with sufficient postage thereon to reach its destination and via United States Certified Mail

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This 7th day of June, 2019.

Caroline Tippens
Caroline Tippens
Assistant General Counsel

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