



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
OFFICE OF GENERAL COUNSEL

665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243
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**CONFIDENTIAL CLOSING MEMORANDUM:
CASE DISPOSITION without a BOARD MEETING**

TO: File

FROM: Caroline Tippens, Senior Associate General Counsel *CT*

DATE: April 2nd, 2020

RE: Closure of Case No. 2020008111
Board of Licensing Health Care Facilities
Prosperity Pointe, ACLF, License No. 00000431

This case is closed pursuant to the attached Closing Document. Pursuant to OGC / IOP Records Management, 10-012 eff. July 12, 2010, this file was closed either:

- a) ☒ after all protected health information was removed and secured;
- b) ☐ after being designated to hold in the Closed File Room until the time to file an appeal has run or any appeal is over; or,
- c) ☐ after being designated as on litigation hold.

Pursuant to RDA 1581, the case file remains at OGC for two years, then goes to the Archive for eight years prior to destruction.

This Memo with the attached Closing Document must be electronically distributed as follows:

1. Mary K. Bratton	Chief Deputy General Counsel	Yes	☒
2. Kyonzté Hughes-Toombs	Deputy General Counsel	Yes	☒
3. Caroline Tippens	Senior Associate General Counsel	Yes	☒
4. Ann R. Reed	Director of Licensure	Yes	☒
5. Vincent Davis	Director, Health Care Facilities	Yes	☒
6. Brent Culberson	Assistant Commissioner, Health	Yes	☒
7. Craig L. Parish	Facilities Construction Director	Yes	☒
8. Lori Leonard	Disciplinary Coordinator	Yes	☒

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BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES

HEALTH CARE FACILITIES

IN THE MATTER OF:

Prosperity Pointe
214 Prosperity Drive
Knoxville, TN 37923

License No. ACLF 00000431

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Case Number#: 202000811

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 1st day of April, 2020, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Prosperity Pointe** (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,

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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, **Prosperity Pointe**, located at 214 Prosperity Drive, Knoxville, TN 37923 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number **00000431** on November 22, 2016. Respondent has an active license with an expiration date of November 21, 2020.
2. The Department conducted investigation into three (3) complaints at Respondent facility

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on or about February 5, 2020.

3. Resident #1 was admitted to the facility in July 2019 with diagnoses of end stage renal disease without dialysis, history of multiple falls, depression, and anxiety. Resident #1 was on hospice at the time of his admission.
4. Resident #1 was approximately 6 ft. 2 inches tall and weighed approximately two hundred and ninety (290) pounds.
5. From July 2019 through November 2019, Resident #1 experienced eleven (11) falls. The local fire department was called seven (7) times to provide assistance in moving Resident #1 from the floor back to his bed or wheelchair.
6. Nursing notes in Resident #1's medical record revealed that the facility was unable to move Resident #1 off the floor without the assistance of the fire department due to his size.
7. The facility implemented interventions to prevent falls, such as placing rubber fall mats placed around Resident #1's bed and clipping a call light to his pillow. However, due to Resident #1's cognitive status, Resident #1 often failed to use the call light. The facility also required Resident #1 to be checked on every two (2) hours to determine whether or not he needed toileting.
8. Resident #1 was ordered a bariatric bed with an air mattress due to pressure sores. Resident #1 also had bed rails on his bed. Surveyors viewed photographs of Resident #1's bed and observed that there was a visible gap between the bed rail and the air mattress.
9. On November 20, 2019, Resident #1 was found on the floor with his head stuck between the bed rail and the mattress and his lower body on the floor. Resident #1 had expired.

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10. The facility was unable to safely and effectively meet the needs of Resident #1.
11. The facility failed to provide safety to Resident #1.

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 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.

12. The facts stated in paragraph three (3) through eleven (11) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.07(a)(2)[SERVICES PROVIDED], the relevant portion of which reads as follows:

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

(a) Each ACLF shall provide each resident with at least the following personal services:

(2) Safety when in the ACLF.

13. The facts stated in paragraph three (3) through eleven (11) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.08(1)(d)[ADMISSIONS, DISCHARGES, AND TRANSFERS], the relevant portion of which reads as follows:

(1) An ACLF shall not admit or permit the continued stay of any ACLF resident who has any of the following conditions:

(f) Has needs that cannot be safely and effectively met in the ACLF.

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ORDER

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

14. The assessment of two (2) civil monetary penalties in the amount of five thousand dollars each for a total assessment of ten thousand dollars (\$10,000.00).

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**

15. 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.

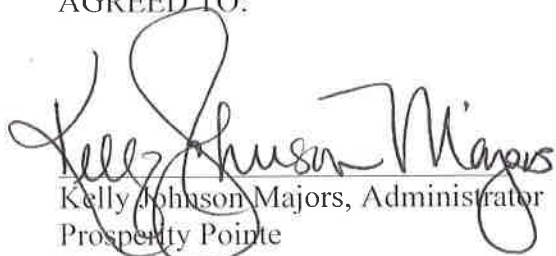
Upon the agreement of the parties, this **CONSENT ORDER** is approved as a **FINAL ORDER** by a majority of a quorum of the Tennessee Board for Licensing Health Care Facilities at a public meeting of the Board and signed this 1 day of April, 2020.

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

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AGREED TO:


Kelly Johnson Majors, Administrator
Prosperity Pointe
Respondent

3.12.20
Date


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

4-1-2020
Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Respondent, PROSPERITY POINTE, ATTN: KELLY JOHNSON MAJORS, 214 PROSPERITY DRIVE, KNOXVILLE, TN 37923 AND TO NU-SOUTH, LLC, 10121 WINTER SUN LANE, KNOXVILLE, TN 37922 by delivering same in the United States mail, certified return receipt 7019 2970 00021304 5264 and 7019 2970 00021304 5271 via United States Postal Service first class, with sufficient postage thereon to reach its destination.

This 2nd day of April, 2020.


Caroline R. Tippens
Senior Associate General Counsel

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