

BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES

IN THE MATTER OF:

Riverdale Assisted Living Facility
6880 E. Raines Road
Memphis, TN 38115

License No. 00000370

Case No: 201901084

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 Riverdale Assisted Living Facility (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,

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

At all times pertinent hereto, Riverdale Assisted Living Facility, 6880 E. Raines Road, Memphis, TN 38115 has been licensed as an assisted care living facility ("ACLF") by the Board, having been issued license number 00000370 on March 14, 2012. Respondent's license is EXPIRED as of March 14, 2019. The facility has filed an application for a Change of Ownership (CHOW) to be ratified by the Board in June 2019.

2. On February 14, 2019, health surveyors conducted a complaint survey at the Respondent facility for two (2) complaints.
3. Resident #1 was admitted to the facility in September 2017 with diagnoses of psychosis, depression, and agitation.
4. On or about December 30, 2018, two staff members observed Resident Aide #1 to yell and curse at Resident #1 when he asked for a cigarette. When Resident #1 stated to Resident Aide #1 not to curse at him, Resident Aide #1 responded by verbally threatening Resident #1.
5. Resident Aide #1 was not immediately terminated after this incident. Resident Aide #1 was allowed to work the remainder of her shift. Resident Aide #1 was then terminated the next day on December 31, 2018.
6. The facility substantiated that Resident Aide #1 verbally abused Resident #1. However, the facility failed to report such an incident of verbal abuse to the State, pursuant to Tenn. Code Ann. § 68-11-211 *et. seq.*
7. Resident #2 was admitted to the facility in August 2013 with diagnoses of Alzheimer's disease and hypertension.
8. Resident #2 began to lose weight. In April 2018, the Power of Attorney (POA) for Resident #2 observed that she had lost a significant amount of weight. Staff for the facility were unable to tell the POA if she had lost weight, as they did not keep track of resident weights.
9. The facility could not provide any documentation that Resident #2 had ever be weighed while living in the facility. Further, Resident #2's plan of care was never revised or updated to reflect any interventions for weight loss.

10. In May 2018, the POA observed that Resident #2 had a pressure ulcer on her buttocks. No one from the facility ever called her and notified her that Resident #2 had a pressure ulcer.
11. Review of the medical record for Resident #2 revealed that on May 5, 2018, Resident #2 was placed in bed at 9:15 AM so, "...her sore bottom can heal." There was no documentation that nursing staff assessed the sore or that the facility put in place interventions to address the pressure sore.
12. The Director of Nursing admitted that Resident #2's family had not been informed of her pressure ulcer.
13. Resident #2 was removed from the facility by her POA and placed in a long term care facility on May 10, 2018.

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.

14. The facts stated in paragraphs three (3) through six (6) are sufficient to establish that Respondent has violated provisions of Rule 1200-08-25-.14(1)(b)[Resident Rights], the relevant portion of which reads as follows:

(1) An ACLF shall ensure at least the following rights for each resident:

- (b) To be free from mental and physical abuse. Should this right be violated, the ACLF shall notify the Department and the Tennessee Department of Human Services. Adult Protective Services at 1-888-277-8366.

15. The facts stated in paragraphs three (3) through six (6) are sufficient to establish that Respondent has violated provisions of Rule 1200-08-25-.13(1)[Reports], the relevant portion of which reads as follows:

(1) The ACLF shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. 68-11-211.

16. The facts stated in paragraphs seven (7) through thirteen (13) are sufficient to establish that Respondent has violated provisions of Rule 1200-08-25-.12(5)(b)(1)[Resident Records], the relevant portion of which reads as follows:

(5) Plan of care.

(b) The Plan of Care shall describe:

- (1) The needs of the resident, including the activities of daily living and medical services for which the resident requires assistance, i.e., what assistance/care, how much, who will provide the assistance/care, how often, and when.

ORDER

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

17. Respondent is also hereby three (3) civil monetary penalties in the amount of five hundred dollars (\$500.00) each for a total assessment of one thousand five hundred dollars (\$1,500.00).

18. 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

19. Upon ratification by the Board, the listing of the public discipline, including deficiencies, 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.

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:


Richard Blair Wheeler, Administrator
Riverdale Assisted Living Facility
Respondent

5/23/19
Date

Caroline R. Tippens

Caroline R. Tippens (BPR # 030375)
Assistant General Counsel
Department of Health
665 Main Stream Dr., 2nd 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 Respondent, Riverdale Assisted Living Facility, ATTN: Administrator, Richard Blair Wheeler, 6880 E. Raines Road, Memphis, TN 38115, and AMERICARE-TENNESSEE PROPERTY GROUP, LLC, 9114 Technology Lane, Fishers, IN 46038 via United States Mail Certified Numbers 7018 2290 00011403 2112 7018 2290 00011403 0866 delivering same in the United States mail, first class, with sufficient postage thereon to reach its destination.

This 7th day of June 2019.

Caroline R. Tippens

Caroline Tippens
Assistant General Counsel

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