

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

IN THE MATTER OF:

**Victorian Square Assisted Living
241 S. Chamberlin Ave.
Rockwood, TN 37854**

License No. ACLF 00000147

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Case Number 201804382

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 **VICTORIAN SQUARE ASSISTED LIVING** (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, Victorian Square Assisted Living, 241 S. Chamberlin Ave., Rockwood, TN 37854 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number 00000147 on February 17, 1999 ("Victorian Square"). Respondent has an active license with an expiration date of April 26, 2020.
2. From on or about August 27, 2018 through August 29, 2018, the Department conducted a

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complaint and annual licensure survey at the Respondent facility.

3. Resident #6 was admitted to the facility in November 2016 with diagnoses of dementia and mood disturbances.
4. In February 2017, Resident #6 forcibly grabbed another resident's shoulder which resulted in the other resident in pain. Staff were unable to redirect Resident #6.
5. On February 17, 2017, Resident #6 received a medication adjustment with the physician noting on the medical orders: "Reason: aggressive behaviors – Goal: to control behaviors with other residents"
6. In March 2017, Resident #6 was involved in numerous incidents with both staff and other residents where Resident #6 displayed aggressive, combative and otherwise inappropriate behaviors compromising the safety of other residents.
7. On March 27, 2017, Resident #6 was dropped from hospice and admitted to the Geriatric-psychiatric unit of Cumberland River Hospital.
8. On April 5, 2017, Resident #6 was discharged from the Geriatric-psychiatric unit of Cumberland River Hospital and returned to the facility.
9. On April 6, and 7, 2017, Resident #6 had an aggressive episode on each day.
10. On April 12, 2017, the facility nursing staff deemed Resident #6 inappropriate for assisted living and made arrangements for her to transfer to a skilled nursing facility through the Cumberland River Hospital Emergency Room.
11. Despite these incidents, Resident #6's plan of care was not updated to document her aggressive behaviors, nor was a safety plan implemented to protect the other residents in her unit.
12. Interview with the Executive Director of the facility revealed that the facility's

"Inappropriate Resident Behavior Policy" had not been followed.

13. Resident #1 was admitted to the facility in March 2010 with diagnoses of hypertension and dementia. Resident #1 was placed in hospice care in December 2017.
14. Resident #1's plan of care was not updated to reflect coordination of services with hospice.
15. In January 2018, Resident #1 fell off the bed, but was not injured. Later that evening, Resident #1 drank shampoo, which resulted in a burning sensation in her throat. Poison Control was contacted and indicated that the resident may experience gastrointestinal upset.
16. Resident #1's plan of care was not updated to reflect her ingestion of substances or her fall from her bed.
17. The facility enacted a Plan of Correction to resolve the above issues, which was accepted by the State Board of Health. After a revisit survey, the facility was deemed to be back in compliance with all state regulations as of January 11, 2019.

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.

18. The facts stated in paragraph two (2) through seventeen (17) 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

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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:
 - (d) Exhibits verbal or physically aggressive behavior which poses an imminent physical threat to self or others, based on behavior, not diagnoses.
 - (b) Ensure that all drugs and biologicals shall be administered by a licensed professional operating within the scope of the professional license and according to the resident's plan of care.
- 19. The facts stated in paragraph two (2) through seventeen (17) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.12(5)(a)[RESIDENT RECORDS], the relevant portion of which reads as follows:
 - (5) Plan of Care.
 - (a) An ACLF shall develop a plan of care for each resident admitted to the ACLF with input and participation from the resident or the resident's legal representative, treating physician, or other licensed health care professionals or entity delivering patient services within five (5) days of admission. The plan of care shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above appropriate individuals.

ORDER

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

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7. The assessment of two (2) civil monetary penalties in the amount of one thousand dollars each (\$1,000.00) for a total assessment of two thousand dollars (\$2,000.00) in civil monetary penalties.

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: Eddic 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.

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:


Trudy Smith, Administrator
Victorian Square Assisted Living
Respondent

6-5-19
Date

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Caroline Tippens
Caroline R. Tippens, BPL # 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 Respondent, Victorian Square Assisted Living, by and through its Administrator, Trudy Smith, 241 S. Chamberlin Ave., Rockwood, TN 37854 and also to Victorian Square, LLC, 12933 W. US Hwy 42, Prospect, KY 40059 by delivering same in the United States mail, certified return receipts

7018 1830 0000 5102 5463 and *7018 1830 0000 5102 5470*

and also via United States Postal Service first class, with sufficient postage thereon to reach its destination.

This *7th* day of *June*, 2019.

Caroline Tippens
Caroline R. Tippens
Assistant General Counsel

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