

BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES

IN THE MATTER OF:

Elmcroft of Lebanon
801 West Main Street
Lebanon, TN 37087

License No. ACLF 00000138

)
)
)
)
)
)
)

Case Number 2020011941

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 17th day of April, 2021, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **ELMCROFT OF LEBANON** (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

SEM Initial

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

I At all times pertinent hereto, **Elmcraft of Lebanon**, 801 West Main Street, Lebanon, TN 37087 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number **00000138** on June 5, 2000. Respondent has an active license with an expiration date of April 30, 2021.

From on or about March 2, 2020 through March 4, 2020, the Department conducted a

SM Initial

complaint and annual licensure survey at the Respondent facility.

Resident #1 was admitted to the facility July 2019 with a diagnosis of dementia. Resident #1 was independent of all activities of daily living, but exhibited wandering behaviors. Resident #1's care plan required staff to perform two (2) hour rounds for checks on Resident #1's safety and for incontinence care.

6 Resident #2 was admitted in July 2019 with diagnoses of Alzheimer's disease and Parkinson's disease. Resident #2 was independent of all activities of daily living, but needed assistance in picking out clothing. Resident #2's care plan required staff to perform two (2) hour rounds for checks on Resident #2's safety and for incontinence care. Resident #2's file contained no documentation of attempted elopements.

8 Resident #1 and #2 are husband and wife. Both Resident #1 and Resident #2 resided in the memory care unit of the facility.

6. The memory care unit has a keypad. Staff must punch in a numeric code on to the keypad in order to exit the memory care unit.

7 On or about March 2, 2020, Resident #1 and Resident #2 eloped from the facility. Resident #1 and Resident #2 then walked two blocks down the road before a stranger picked them up and returned them to the facility. Residents #1 and #2 were missing approximately thirty (30) minutes before they were found and returned to the facility. Neither resident sustained injuries from their elopement.

8 When asked how they were able to elope, Resident #1 noted that he had previously worked with Morse code in the military. Resident #1 stated that he was able to listen to the code when staff punched in the numbers and was able to figure out the number for the numeric code to exit the memory care unit.

9. On or about February 3, 2020, Resident #1's care plan was revised to increase rounds more and to increase staff ratios to reduce exit seeking behaviors. In order to decrease these exit-seeking behaviors, the facility has also scheduled a walking time for him outside the facility with a staff member present. Resident #1's daughter is also taking him out of the facility more. All codes have been changed on the exit doors in memory care. Staff have been in-serviced on the checking the door.
10. The facility failed to provide daily awareness for the whereabouts of Residents #1 and #2.
11. The facility to provide Residents #1 and #2 with safety while in the assisted care living facility.

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.

12. The facts stated in paragraph three (3) through ten (11) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.07(7)(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 paragraphs three (3) through eleven (11) are sufficient to establish that

Respondent has violated the provisions of Rule 1200-08-25-07(1)(a)(3) [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:

(3) Daily awareness of the individual's whereabouts.

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 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: 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 7th day of April, 2021.

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:


Laci Baxter Walker, Administrator
Elmcroft of Lebanon
Respondent

Stacey E. Meyer
Associate Counsel

2/5/21

Date


~~Caroline R. Tippers~~ BPR # ~~030375~~ 023702
Deputy Senior Associate General Counsel
Tennessee Department of Health
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243
(615) 741-1611

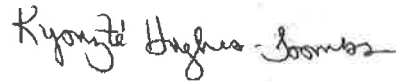
4/7/2021

Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Respondent, Elmcroft of Lebanon, ATTN: Laci Baxter Walker, 801 West Main Street, Lebanon, TN 37087 and to EC OPCO Lebanon TN, LLC, 500 N. Hurstbourne Parkway, Suite 200, Louisville, KY 40222 by delivering same in the United States mail, certified return receipts 7020 2450 0000 1109 0524 and 7020 2450 0000 1109 0531, and also via United States Postal Service first class, with sufficient postage thereon to reach its destination.

This 26th day of April, 2021.



Kyonzté Hughes-Toombs
Deputy General Counsel