

BEFORE THE TENNESSEE BOARD FOR LICENSING HEALTH CARE FACILITIES

In The Matter of:)
)
PRESTIGE CARE HOME)
License No. 00000565, Home for the Aged)
)
Respondent)

ORDER OF SUMMARY SUSPENSION

This cause came to be heard on the 1st of December, 2016 at a public meeting, before the Tennessee Board for Licensing Health Care Facilities (“Board”), upon the application of the Tennessee Department of Health, Office of Health Care Facilities, and the Office of General Counsel (“State”), for a summary suspension of Respondent’s license pursuant to Tennessee Code Annotated Section (“T.C.A. §”) 4-5-320(c). The State presented evidence that the public health, safety, and welfare imperatively require this emergency action in light of the fact that the Respondent, Prestige Care Home (“Respondent”), refuses to allow Health and Life Safety surveyors on to the premises to survey the facility and check on the welfare of the residents, in violation of Tenn. Code Ann. § 68-11-201 *et seq.* In support of the application for Summary Suspension, the State presented the affidavits of Kathy Schulz Brandon Maness, and Kathy Zeigler, who are surveyors with the Department of Health.

JURISDICTION

1. The Board for Licensing Health Care Facilities (hereinafter “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. § 68-11-210 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.

2. The Board has the authority to suspend or revoke the license of any facility licensed under Tenn. Code Ann. § 68-11-201 *et. seq.* Tenn. Code Ann. § 68-11-207(a).
3. In imposing the sanctions authorized in [§ 68-11-207], the board may consider all factors that it deems relevant, including, but not limited to, the following:
 1. The degree of sanctions necessary to ensure immediate and continuous compliance;
 2. The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;
 3. The conduct of the facility against whom the notice of violation is issued in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
 4. Any prior violations by the facility of statutes, regulations or orders of the board.
4. The board may, in its discretion, after the hearing, hold the case under advisement and make a recommendation as to requirements to be met by the facility in order to avoid either suspension or revocation of license or suspension of admissions.
5. Under T.C.A. § 4-5-320(c), the Board has the authority to summarily suspend a license if it finds that the public health, safety, or welfare imperatively requires emergency action.

FACTS

6. At all times pertinent hereto, Prestige Care Home, 2051 Montreat Drive, Memphis, TN 38134, has been licensed as a home for the aged, having been issued license number 00000565 on July 1, 2010. Respondent has an active license with an expiration date of February 17, 2017.
7. Prestige Care Home is licensed to provide care for six (6) residents. Past surveys indicate that at least three (3) of the residents within the home have dementia diagnoses.

8. Surveyors performed a survey on October 3, 2016 and noted numerous deficiencies.
9. Prestige Care Home failed to timely submit a Plan of Corrections for the violations found on the October 3, 2016 survey.
10. On October 18, 2016, at 7:50 A.M., two (2) Life Safety Inspectors arrived at the facility. The Life Safety inspectors knocked on the front door and rang the doorbell. Voices could be heard coming from the inside of the facility. However, the occupants would not open the door. The inspectors then went to the other door in the carport and knocked again. The occupants of the home would not open the door.
11. Further observations revealed that there were three (3) cars parked in the driveway of the facility.
12. At 8:15 A.M., inspector #1 attempted to contact the facility by phone. However, there was no answer. At 8:20 A.M., the inspectors knocked again on both doors and the occupants continued to ignore the knocks. At 8:21 A.M., inspector #1 again attempted to contact the facility by phone; however, there was no answer.
13. From October 18, 2016 until approximately November 18, 2016, the West Tennessee Regional Office made numerous phone calls in an attempt to reach the Administrator of the facility. The administrator did not return the surveyors' calls.
14. On November 18, 2016, Life Safety surveyors again returned to facility to gain entry and conduct the annual Life Safety survey of the facility. The administrator opened the door, but refused to allow entry of the surveyors and demanded that the surveyors leave her property. The administrator stated that she had sent letters to the West Tennessee Regional Office to close her license. However, no letters were ever received. The administrator stated that the residents were at her mother's home (unlicensed) because she takes care of them at night. Since the residents could not be located, the surveyors called the Memphis Police Department.

15. Memphis Police Department arrived. The administrator refused entry to the home. Memphis Police indicated that that in order to gain access to the home, a warrant would be necessary if the owner would not allow entry. The administrator identified herself to the police, stated that she was no longer licensed by the Department of Health, and that the residents had “all gone back to where they came from.”
16. A Life Safety surveyor then received a follow-up call from the officer, stating that he had talked to a neighbor. The police officer stated that he had talked to a neighbor and the neighbor strongly believes that there are residents still in the home because he still sees facility employees reporting to the home for work.
17. On or about November 20, 2016, the State Long Term Care Ombudsman attempted to conduct a welfare check on the residents of Prestige Care Home. The Long Term Care Ombudsman knocked on the door of the facility, but did not receive any answer.
18. To date, Prestige Care Home has failed to submit a Plan of Corrections for the October 3, 2016 deficiencies or allow surveyors back in the home.

CONCLUSIONS OF LAW

The facts stated in the Grounds for Summary Suspension section, *supra*, are sufficient to establish that grounds for the discipline of Respondent’s license exist. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Board is authorized:

19. The facts stated in paragraphs six (6) through eighteen (18) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.04(6)(i) [ADMINISTRATION], the relevant portion of which reads as follows:

(6) Each home for the aged shall:

(i) Cooperate in the Department's inspections, including allowing entry at any hour and providing all the required records.

20. The facts stated in paragraphs six (6) through eighteen (18) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-11-.10(1)(d) [RECORDS AND REPORTS].

(1) An individual resident file shall be maintained for each resident in the home. Personal information shall be confidential and shall not be disclosed, except to the resident, the department and others with written authorization from the resident. These files shall be retained for one (1) year after the resident is transferred or discharged. The resident file shall include:

(d) Date of admission, transfer, discharge and any new forwarding address.

POLICY STATEMENT

The summary suspension statute requires a showing that protection of "public health, safety, or welfare imperatively requires emergency action." T.C.A. § 4-5-320(c). The failures of the Respondent and Respondent's staff resulted in a serious threat to the health and safety of the residents residing in the Respondent's facility. The Board's position is that the severity of the Respondent's conduct constitutes a serious threat to the public health, safety, and welfare.

SUSPENSION

In consideration of the evidence presented, and pursuant to the authority granted under T.C.A. § 4-5-320(c), T.C.A. §§ 68-11-207(a), the Board hereby preliminarily finds that the misconduct of Respondent, **PRESTIGE CARE HOME**, is so severe that it imperatively requires emergency action in order to protect the public health, safety and welfare prior to the initiation of formal disciplinary charges.

It is therefore **ORDERED** that:

21. Respondent's license as a home for the aged, license #00000565, is hereby **SUMMARILY SUSPENDED**.

22. Upon receipt of this Order, Respondent shall not accept any new residents.

23. Respondent shall immediately facilitate the transfer of its residents to appropriate facilities. All residents must be removed from the home within seven (7) calendar days.

24. Respondent shall allow **immediate** access to the Tennessee Department of Health surveyors.

25. If there are any residents remaining in the facility within twenty-four (24) hours of receipt of this Order, then the Respondent shall have a monitor, approved by the Division Director, placed in the facility and shall remain in the facility until every remaining resident is transferred to an appropriate facility.

26. Respondent shall be responsible for the costs of any transfers and the cost of any monitoring.

27. Respondent shall immediately submit a plan of correction to the Department.

28. This suspension shall be effective immediately and shall remain in effect until the conclusion of the contested case hearing against Respondent or until otherwise ordered by the Board.

29. Pursuant to Tenn. Code Ann. § 4-5-320(d)(1), Respondent may present its version of the facts to the Board at an informal conference, if a timely request is made by 4:00pm December 8, 2016, to Ann R. Reed, Director of Licensure, 665 Main Stream Drive, 2nd Floor, Nashville, TN 37243.

30. The sole issue at the informal conference mentioned above shall be whether the public health, safety or welfare imperatively required emergency action by the Board.

SO ORDERED, this 1st day of December, 2016.


Chairperson
Tennessee Board for Licensing Health Care Facilities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, Prestige Care Home, c/o Shirley Johnson, Administrator, 2051 Montreat Drive, Memphis, TN 38134, by certified mail number 70161970 0006197 4707 on the 1st day of December, 2016 and by FedEx, tracking number 808910183383 on the 1st day of December, 2016.



Caroline R. Tippens
Assistant General Counsel