

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

2014 NOV 26 A 11:32

Petitioner,

v.

AHCA NO.: 2013007746

DOAH NO.: 14-522

RENDITION NO.: AHCA-14-0955-S-01C

SUMMERVILLE 15 LLC d/b/a EMERITUS
AT BOYNTON BEACH,

Respondent.

FINAL ORDER

Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

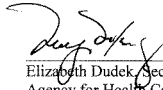
1. The Agency has jurisdiction over the above-named Respondent pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.
2. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The Election of Rights form advised of the right to an administrative hearing.
3. The parties have since entered into the attached Settlement Agreement. (Ex. 2)

Based upon the foregoing, it is **ORDERED**:

1. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement.
2. The Respondent shall pay the Agency \$4,000. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Office of Finance and Accounting
Revenue Management Unit
Agency for Health Care Administration
2727 Mahan Drive, MS 14
Tallahassee, Florida 32308

ORDERED at Tallahassee, Florida, on this 26 day of November, 2014.



Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 26 day of November, 2014.



Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Bldg. #3, Mail Stop #3
Tallahassee, Florida 32308-5403
Telephone: (850) 412-3630

Jan Mills Facilities Intake Unit (Electronic Mail)	Finance & Accounting Revenue Management Unit (Electronic Mail)
Andrea M. Lang, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Theodore E. Mack, Esq. Powell and Mack Attorney for Respondent 3700 Bellwood Drive Tallahassee, Florida 32303 (U.S. Mail)
Darren A. Schwartz Administrative Law Judge Division of Administrative Hearings (Electronic Mail)	

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

Case No. 2013007746

SUMMERVILLE 15 LLC
d/b/a EMERITUS AT BOYNTON BEACH,

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration (hereinafter "the Agency"), by and through its undersigned counsel, and files this Administrative Complaint against the Respondent, SUMMERVILLE 15 LLC d/b/a EMERITUS AT BOYNTON BEACH (hereinafter "the Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2012), and states:

NATURE OF THE ACTION

This is an action to impose an administrative fine against an assisted living facility in the sum of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00) based upon two (2) Class II violations.

JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter pursuant to Sections 120.569 and 120.57, Florida Statutes (2012).
2. The Agency has jurisdiction over the Respondent pursuant to Sections 20.42 and 120.60, and Chapters 408, Part II, and 429, Part I, Florida Statutes (2012).
3. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code.

PARTIES

4. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state regulations, statutes and rules governing such facilities. Chapters 408, Part II, and 429, Part I, Florida Statutes (2012); Chapter 58A-5, Florida Administrative Code. The Agency may deny, revoke, or suspend any license issued to an assisted living facility, or impose an administrative fine in the manner provided in Chapter 120, Florida Statutes (2012). Sections 408.815 and 429.14, Florida Statutes (2012).

5. The Respondent was issued a license by the Agency (License Number 9384) to operate a 167-bed assisted living facility located at 8220 Jog Road, Boynton Beach, Florida 33437, and was at all times material required to comply with the applicable state regulations, statutes and rules governing assisted living facilities.

COUNT I

The Respondent Failed To Ensure Medications Ordered By The Physician Were Given Correctly To A Resident In Violation Of Rule 58A-5.0185(3)(a)-(c) And (e)-(f), Florida Administrative Code, And Section 429.256(4)(h), Florida Statutes (2012)

6. The Agency re-alleges and incorporates by reference paragraphs one (1) through five (5).

7. Pursuant to Sections 429.255 and 429.256, Florida Statutes, and Rule 58A-5.0185, Florida Administrative Code, licensed facilities may assist with the self-administration or administration of medications to residents in a facility. A resident may not be compelled to take medications but may be counseled in accordance with Rule 58A-5.0185, Florida Administrative Code.

For facilities which provide assistance with self-administered medication, either: a nurse; or an unlicensed staff member, who is at least 18 years old, trained to assist with self-administered medication in accordance with Rule 58A-5.0191, Florida Administrative Code, and able to demonstrate to the administrator the ability to accurately read and interpret a prescription

label, must be available to assist residents with self-administered medications in accordance with procedures described in Section 429.256, Florida Statutes.

Assistance with self-administration of medication includes verbally prompting a resident to take medications as prescribed, retrieving and opening a properly labeled medication container, and providing assistance as specified in Section 429.256(3), Florida Statutes. In order to facilitate assistance with self-administration, staff may prepare and make available such items as water, juice, cups, and spoons. Staff may also return unused doses to the medication container. Medication, which appears to have been contaminated, shall not be returned to the container.

Staff shall observe the resident take the medication. Any concerns about the resident's reaction to the medication shall be reported to the resident's health care provider and documented in the resident's record.

Pursuant to Section 429.256(4)(h), Florida Statutes, the term "competent resident" means that the resident is cognizant of when a medication is required and understands the purpose for taking the medication.

Pursuant to Section 429.256(4)(i), Florida Statutes, the terms "judgment" and "discretion" mean interpreting vital signs and evaluating or assessing a resident's condition.

Rule 58A-5.0185(3)(a)-(c) and (e)-(f), Florida Administrative Code.

Pursuant to Florida law, assistance with self-administration does not include medications ordered by the physician or health care professional with prescriptive authority to be given "as needed," unless the order is written with specific parameters that preclude independent judgment on the part of the unlicensed person, and at the request of a competent resident.

Section 429.256(4)(h), Florida Statutes (2012).

8. On or about April 26, 2013, the Agency conducted a Complaint Survey (CCR# 2013000430, CCR# 2013001176 and CCR# 2013003903) of the Respondent's facility.

9. Based on record review and interviews, it was determined the facility provided

assistance with self-administration of a medication that was not prescribed by a physician to one (1) out of five (5) residents, specifically Resident number two (2).

10. A review of Resident number two's (2) record indicated that the resident was admitted to the facility on February 11, 2013. A review of the resident's health assessment dated on February 13, 2013 indicated that Resident number two (2) was diagnosed with anxiety, depression, hypertension and insomnia, and needs assistance with ambulation (with walker), bathing, dressing, grooming and toileting. A further review of Resident number two's (2) health assessment also indicated that the resident needed assistance with self-administration of medications. A review of Resident number two's (2) nursing home transfer record dated on February 5, 2013 indicated that the resident received medications including Cardizem, Lovexox, Lopressor and Colace, without inclusion of Coumadin.

11. A review of Resident number two's (2) March 2013 medication observation record indicated that since February 22, 2013 the resident was receiving one (1) 7.5mg tablet of Coumadin at bedtime and this medication was discontinued on March 10, 2013. A review of the clinical lab report dated March 10, 2013 indicated that the resident's prothrombin (PT/INR) values were abnormally elevated and the physician was notified of the results on March 11, 2013. In an interview with the Administrator on April 25, 2013 at 3:15 p.m., the Administrator stated that the resident received the Coumadin by error and upon a facility investigation it was not conclusively determined how a mistaken physician order was entered by a facility nurse into the resident's record or how the medication was sourced. The Administrator stated that upon discovery of Resident number two's (2) reaction to the Coumadin medication, the resident was admitted to the hospital for treatment on March 14, 2013 and the facility self-reported this event to the Agency on March 21, 2013 and April 1, 2013.

12. In an interview by telephone with Resident number two's (2) physician on April 29, 2013 at 11:20 a.m., the physician stated that Resident number two (2) had been under his

care for over a year. Resident number two's (2) physician noticed that upon review of the resident's medications that the resident was receiving Coumadin without his medical approval and the resident was hospitalized on March 14, 2013 due to Coumadin toxicity. The physician stated that he understood Resident number two (2) received certain Coumadin dosages during February and March 2013 in the facility due to another physician 's prescription by mistake or not and that Resident number two's (2) physician did not order or recommend Coumadin for the resident due to Resident number two's (2) medical condition.

13. A review of the facilities adverse incident reports dated on March 21, 2013 and April 1, 2013 indicated that Resident number two (2) was sent to the hospital on March 14, 2013 due to an abnormal increase in PT/INR values. The original Coumadin physician order was not located and Resident number two (2) returned to the facility on March 15, 2013. In an interview with the director of nursing on April 29, 2013 at 12:20 p.m., the director of nursing stated that the facility nurse which transcribed the Coumadin order into Resident number two's (2) medication observation record was reprimanded and attended the medication error training on March 20, 2013.

14. A review of Resident number two's (2) hospital record dated March 14, 2013 indicated that the resident was admitted to the hospital from the facility at approximately 11:20 a.m. due to Coumadin toxicity. A review of the record indicated that Resident number two (2) was sent to the hospital in no apparent distress without pain, and was administered 10mg of vitamin K subcutaneously and one (1) gram of Ceftriaxone intravenously without adverse reactions. A review of Resident number two's (2) hospital record dated March 14, 2013 indicated that his PT-INR values were "improved" and it was unclear how the resident was taking Coumadin when it was not needed. A further review of Resident number two's (2) hospital record dated March 14, 2013 and March 15, 2013 indicated that the resident received frozen fresh plasma without reactions and was discharged to the facility on March 15, 2013.

15. In an interview with Resident number two (2) on April 26, 2013 at 9:05 a.m., the resident presented to be without distress with no wounds on the exposed upper and lower extremities, Resident number two (2) was alert and slightly confused, and stated that he/she receives proper assistance with medications now and does not remember the reason why he/she went to the hospital last month.

16. In an interview with the director of nursing on April 26, 2013 at 10:00 a.m., the director of nursing stated that the medication error training was provided in response to the medication error involving Resident number two (2).

17. The Respondent's deficient practice constituted a Class II violation in that it related to the operation and maintenance of a provider or to the care of clients which the Agency determined directly threatened the physical or emotional health, safety, or security of the clients, other than a Class I violation. Section 429.19(2)(b), Florida Statutes (2012).

18. The Agency shall impose an administrative fine for a cited Class II violation in an amount not less than one thousand dollars (\$1,000.00) and not exceeding five thousand dollars (\$5,000.00) for each violation as set forth in Section 429.19(2)(b), Florida Statutes (2012). A fine shall be levied notwithstanding the correction of the violation.

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, intends to impose an administrative fine against the Respondent in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00) pursuant to Section 429.19(2)(b), Florida Statutes (2012).

COUNT II

Respondent Failed To Ensure That Medication Was Properly Dispensed In Violation Of Rule 58A-5.0185(7), Florida Administrative Code

19. The Agency re-alleges and incorporates by reference paragraphs one (1) through five (5).

20. Pursuant to Florida law, Pursuant to Sections 429.255 and 429.256, Florida

Statutes, and Rule 58A-5.0185, Florida Administrative Code, licensed facilities may assist with the self-administration or administration of medications to residents in a facility. A resident may not be compelled to take medications but may be counseled in accordance with Rule 58A-5.0185, Florida Administrative Code. No prescription drug shall be kept or administered by the facility, including assistance with self-administration of medication, unless it is properly labeled and dispensed in accordance with Chapters 465 and 499, Florida Statutes, and Rule 64B16-28.108, Florida Administrative Code. If a customized patient medication package is prepared for a resident, and separated into individual medicinal drug containers, then the following information must be recorded on each individual container:

1. The resident's name; and
2. Identification of each medicinal drug product in the container.

(b) Except with respect to the use of pill organizers as described in subsection (2), no person other than a pharmacist may transfer medications from one storage container to another.

(c) If the directions for use are "as needed" or "as directed," the health care provider shall be contacted and requested to provide revised instructions. For an "as needed" prescription, the circumstances under which it would be appropriate for the resident to request the medication and any limitations shall be specified; for example, "as needed for pain, not to exceed 4 tablets per day." The revised instructions, including the date they were obtained from the health care provider and the signature of the staff who obtained them, shall be noted in the medication record, or a revised label shall be obtained from the pharmacist.

(d) Any change in directions for use of a medication for which the facility is providing assistance with self-administration or administering medication must be accompanied by a written medication order issued and signed by the resident's health care provider, or a faxed copy of such order. The new directions shall promptly be recorded in the resident's medication observation record. The facility may then place an "alert" label on the medication container

which directs staff to examine the revised directions for use in the Medication Observation Record, or obtain a revised label from the pharmacist.

(e) A nurse may take a medication order by telephone. Such order must be promptly documented in the resident's medication observation record. The facility must obtain a written medication order from the health care provider within ten (10) working days. A faxed copy of a signed order is acceptable.

(f) The facility shall make every reasonable effort to ensure that prescriptions for residents who receive assistance with self-administration of medication or medication administration are filled or refilled in a timely manner.

(g) Pursuant to Section 465.0276(5), Florida Statutes, and Rule 64F-12.006, Florida Administrative Code, sample or complimentary prescription drugs that are dispensed by a health care provider, must be kept in their original manufacturer's packaging, which shall also include the practitioner's name, the resident's name for whom they were dispensed, and the date they were dispensed. If the sample or complimentary prescription drugs are not dispensed in the manufacturer's labeled package, they shall be kept in a container that bears a label containing the following:

1. Practitioner's name;
2. Resident's name;
3. Date dispensed;
4. Name and strength of the drug;
5. Directions for use; and
6. Expiration date.

(h) Pursuant to Section 465.0276(2)(c), Florida Statutes, before dispensing any sample or complimentary prescription drug, the resident's health care provider shall provide the resident with a written prescription, or a fax copy of such order.

Rule 58A-5.0185(7), Florida Administrative Code.

21. On or about April 26, 2013, the Agency conducted a Complaint Survey (CCR# 2013000430, CCR# 2013001176 and CCR# 2013003903) of the Respondent's facility.

22. Based on record review and interview, the facility kept and administered a medication that was not properly dispensed for one (1) of three (3) residents, specifically Resident number two (2).

23. A review of Resident number two's (2) record indicated that the resident was admitted to the facility on February 11, 2013. A review of the resident's health assessment dated on February 13, 2013 indicated that Resident number two (2) was diagnosed with anxiety, depression, hypertension and insomnia, and needs assistance with ambulation (with walker), bathing, dressing, grooming and toileting. A further review of Resident number two's (2) health assessment also indicated that the resident needed assistance with self-administration of medications. A review of Resident number two's (2) nursing home transfer record dated on February 5, 2013 indicated that the resident received medications including Cardizem, Lovenox, Lopressor and Colace, without inclusion of Coumadin.

24. A review of Resident number two's (2) March 2013 medication observation record indicated that since February 22, 2013 the resident was receiving one (1) 7.5mg tablet of Coumadin at bedtime and this medication was discontinued on March 10, 2013. A review of the clinical lab report dated March 10, 2013 indicated that the resident's prothrombin (PT/INR) values were abnormally elevated and the physician was notified of the results on March 11, 2013. In an interview with the Administrator on April 25, 2013 at 3:15 p.m., the Administrator stated that the resident received the Coumadin by error and upon a facility investigation it was not conclusively determined how a mistaken physician order was entered by a facility nurse into the resident's record or how the medication was sourced. The Administrator stated that the facility kept and assisted the resident with self-administration of the Coumadin medication from

February 22, 2013 to March 10, 2013 without positive proof of a physician order and did not locate the medication after they realized Resident number two (2) was taking it in error.

25. In an interview by telephone with Resident number two's (2) physician on April 29, 2013 at 11:20 a.m., the physician stated that Resident number two (2) had been under his care for over a year. Resident number two's (2) physician noticed that upon review of the resident's medications that the resident was receiving Coumadin without his medical approval and the resident was hospitalized on March 14, 2013 due to Coumadin toxicity. The physician stated that he understood Resident number two (2) received certain Coumadin dosages during February and March 2013 in the facility due to another physician's prescription by mistake or not and that Resident number two's (2) physician did not order or recommend Coumadin for the resident due to Resident number two's (2) medical condition.

26. A review of the facilities adverse incident reports dated on March 21, 2013 and April 1, 2013 indicated that Resident number two (2) was sent to the hospital on March 14, 2013 due to an abnormal increase in PT/INR values. The original Coumadin physician order was not located and Resident number two (2) returned to the facility on March 15, 2013. In an interview with the director of nursing on April 29, 2013 at 12:20 p.m., the director of nursing stated that the facility nurse which transcribed the Coumadin order into Resident number two's (2) medication observation record was reprimanded and attended the medication error training on March 20, 2013.

27. A review of Resident number two's (2) hospital record dated March 14, 2013 indicated that the resident was admitted to the hospital from the facility at approximately 11:20 a.m. due to Coumadin toxicity. A review of the record indicated that Resident number two (2) was sent to the hospital in no apparent distress without pain, and was administered 10mg of vitamin K subcutaneously and one (1) gram of Ceftriaxone intravenously without adverse reactions. A review of Resident number two's (2) hospital record dated March 14, 2013 indicated

that his PT-INR values were "improved" and it was unclear how the resident was taking Coumadin when it was not needed. A further review of Resident number two's (2) hospital record dated March 14, 2013 and March 15, 2013 indicated that the resident received frozen fresh plasma without reactions and was discharged to the facility on March 15, 2013.

28. In an interview with Resident number two (2) on April 26, 2013 at 9:05 a.m., the resident presented to be without distress with no wounds on the exposed upper and lower extremities, Resident number two (2) was alert and slightly confused, and stated that he/she receives proper assistance with medications now and does not remember the reason why he/she went to the hospital last month.

29. In an interview with the director of nursing on April 26, 2013 at 10:00 a.m., the director of nursing stated that the medication error training was provided in response to the medication error involving Resident number two (2).

30. The Respondent's deficient practice constituted a Class II violation in that it related to the operation and maintenance of a provider or to the care of clients which the Agency determined directly threatened the physical or emotional health, safety, or security of the clients, other than a Class I violation. Section 429.19(2)(b), Florida Statutes (2012).

31. The Agency shall impose an administrative fine for a cited Class II violation in an amount not less than one thousand dollars (\$1,000.00) and not exceeding five thousand dollars (\$5,000.00) for each violation as set forth in Section 429.19(2)(b), Florida Statutes (2012). A fine shall be levied notwithstanding the correction of the violation.

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, intends to impose an administrative fine against the Respondent in the amount of TWO THOUSAND DOLLARS (\$2,000.00) pursuant to Section 429.19(2)(b), Florida Statutes (2012).

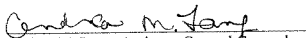
CLAIM FOR RELIEF

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration,

respectfully requests the Court to grant the following relief:

1. Enter findings of fact and conclusions of law in favor of the Agency.
2. Impose an administrative fine against the Respondent in the amount of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00).
3. Order any other relief that the Court deems just and appropriate.

Respectfully submitted on this 6th day of September, 2013.


Andrea M. Lang, Assistant General Counsel
Florida Bar No. 0364568
Agency for Health Care Administration
Office of the General Counsel
2295 Victoria Avenue, Room 346C
Fort Myers, Florida 33901
Telephone: (239) 335-1253

NOTICE

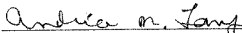
RESPONDENT IS NOTIFIED THAT IT/HE/SHE HAS A RIGHT TO REQUEST AN ADMINISTRATIVE HEARING PURSUANT TO SECTIONS 120.569 AND 120.57, FLORIDA STATUTES. THE RESPONDENT IS FURTHER NOTIFIED THAT IT/HE/SHE HAS THE RIGHT TO RETAIN AND BE REPRESENTED BY AN ATTORNEY IN THIS MATTER. SPECIFIC OPTIONS FOR ADMINISTRATIVE ACTION ARE SET OUT IN THE ATTACHED ELECTION OF RIGHTS.

ALL REQUESTS FOR HEARING SHALL BE MADE AND DELIVERED TO THE ATTENTION OF: THE AGENCY CLERK, AGENCY FOR HEALTH CARE ADMINISTRATION, 2727 MAHAN DRIVE, BLDG #3, MS #3, TALLAHASSEE, FLORIDA 32308; TELEPHONE (850) 412-3630.

THE RESPONDENT IS FURTHER NOTIFIED THAT IF A REQUEST FOR HEARING IS NOT RECEIVED BY THE AGENCY FOR HEALTH CARE ADMINISTRATION WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF THIS ADMINISTRATIVE COMPLAINT, A FINAL ORDER WILL BE ENTERED BY THE AGENCY.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form has been served to: Maria Soriano-Cabal, Administrator, Summerville 15 LLC d/b/a Emeritus at Boynton Beach, 8220 Jog Road, Boynton Beach, Florida 33437, by U.S. Certified Mail, Return Receipt No. 7011 1570 0002 1695 9174 and to Corporation Service Company, Registered Agent, Summerville 15 LLC d/b/a Emeritus at Boynton Beach, 1201 Hays Street, Tallahassee, Florida 32301, by U.S. Certified Mail, Return Receipt No. 7011 1570 0002 1695 9181 on this 6th day of September 2013.



Andrea M. Lang, Assistant General Counsel
Florida Bar No. 0364568
Agency for Health Care Administration
Office of the General Counsel
2295 Victoria Avenue, Room 346C
Fort Myers, Florida 33901
Telephone: (239) 335-1253

Copy furnished to:

Maria Soriano-Cabal, Administrator Summerville 15 LLC d/b/a Emeritus at Boynton Beach 8220 Jog Road Boynton Beach, Florida 33437 (U.S. Certified Mail)	Andrea M. Lang, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration 2295 Victoria Avenue, Room 346C Fort Myers, Florida 33901
Corporation Service Company Registered Agent Summerville 15 LLC d/b/a Emeritus at Boynton Beach 1201 Hays Street Tallahassee, Florida 32301 (U.S. Certified Mail)	Arlene Mayo-Davis Field Office Manager Agency for Health Care Administration 5150 Linton Boulevard, Suite 500 Delray Beach, Florida 33484 (Electronic Mail)

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: Emeritus at Boynton Beach

ACHA No. 2013007746

ELECTION OF RIGHTS

This Election of Rights form is attached to an Administrative Complaint. It may be returned by mail or facsimile transmission, **but must be received by the Agency Clerk within 21 days, by 5:00 pm, Eastern Time, of the day you received the Administrative Complaint.** If your Election of Rights form or request for hearing is not received by the Agency Clerk within 21 days of the day you received the Administrative Complaint, you will have waived your right to contest the proposed agency action and a Final Order will be issued imposing the sanction alleged in the Administrative Complaint.

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.)

Please return your Election of Rights form to this address:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
Telephone: 850-412-3630 Facsimile: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) _____ I admit to the allegations of fact and conclusions of law alleged in the Administrative Complaint and waive my right to object and to have a hearing. I understand that by giving up the right to object and have a hearing, a Final Order will be issued that adopts the allegations of fact and conclusions of law alleged in the Administrative Complaint and imposes the sanction alleged in the Administrative Complaint.

OPTION TWO (2) _____ I admit to the allegations of fact alleged in the Administrative Complaint, but wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed agency action is too severe or that the sanction should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact alleged in the Administrative Complaint and request a formal hearing (pursuant to Section 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing **OPTION THREE (3)**, by itself, is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be

received by the Agency Clerk at the address above within 21 days of your receipt of this proposed agency action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

Licensee Name: _____

Contact Person: _____ Title: _____

Address: _____
Number and Street City Zip Code

Telephone No. _____ Fax No. _____

E-Mail (optional) _____

I hereby certify that I am duly authorized to submit this Election of Rights form to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ Date: _____

Printed Name: _____ Title: _____

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA,
AGENCY FOR HEALTH
CARE ADMINISTRATION,

Petitioner,

vs.

AHCA NO.: 2013007746
DOAH NO.: 14-522

SUMMERVILLE 15 LLC d/b/a
EMERITUS AT BOYNTON BEACH,

Respondent.
_____ /

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the “Agency”), through its undersigned representatives, and Respondent, Summerville 15 LLC d/b/a Emeritus at Boynton Beach (hereinafter “Respondent”), pursuant to Section 120.57(4), Florida Statutes, each individually, a “party,” collectively as “parties,” hereby enter into this Settlement Agreement (“Agreement”) and agree as follows:

WHEREAS, Respondent is an Assisted Living Facility licensed pursuant to Chapters 408, Part II, and 429, Part I, Florida Statutes, Section 20.42, Florida Statutes and Chapter 58A-5, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent, pursuant to Chapter 429, Florida Statutes; and

WHEREAS, the Agency served Respondent with an administrative complaint on or about September 9, 2013, notifying the Respondent of its intent to impose administrative fines in the amount of Five Thousand Five Hundred Dollars (\$5,500) ; and

WHEREAS, Respondent requested a formal administrative proceeding by filing a Petition for Formal Administrative Hearing; and

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals herein are true and correct and are expressly incorporated herein.
2. Both parties agree that the “whereas” clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, Respondent agrees to pay Four Thousand Dollars (\$4,000) in administrative fines to the Agency within thirty (30) days of the entry of the Final Order.
5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.

6. By executing this Agreement, Respondent neither admits nor denies, and the Agency asserts the validity of the allegations raised in the administrative complaint referenced herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule identified in a future survey of Respondent, which constitutes a “repeat” or “uncorrected” deficiency from surveys identified in the administrative complaint. The parties agree that in such a “repeat” or “uncorrected” case, the deficiencies from the surveys identified in the administrative complaint shall be deemed found without further proof.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent, including, but not limited to, licensure for limited mental health, limited nursing services, extended congregate care, or a demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the administrative complaint.

8. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case.

9. Each party shall bear its own costs and attorney’s fees.

10. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related facilities.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

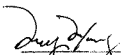
13. In the event that Respondent was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

14. Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.


15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it.

16. This Agreement contains and incorporates the entire understandings and agreements of the parties.
17. This Agreement supersedes any prior oral or written agreements between the parties.
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.
19. All parties agree that a facsimile signature suffices for an original signature.


The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.


Molly McKinstry
Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive, Bldg #1
Tallahassee, Florida 32308


DATED: 11/26/14


Stuart F. Williams, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 11/24/14


Theodore E. Mack, Esq.
Powell and Mack
3700 Bellwood Drive
Tallahassee, Florida 32303
Attorney for Respondent

DATED: 8/28/14


Tony Sanford, Administrator
Summerville 15 LLC d/b/a Emeritus
at Boynton Beach
8220 Jog Road
Boynton Beach, Florida 33437

DATED: 8/26/14

Andrea M. Lang
Andrea M. Lang, Senior Attorney
Agency for Health Care Administration
2295 Victoria Avenue
Fort Myers, Florida 33901

DATED: 11/12/14