

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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2016 FEB -8 P 5:02

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

AHCA No. 2016001391

License No. 12192

File No. 11965829

EILEEN CHEA HARAN d/b/a  
ALITA AND JOHN HARAN ALF,

Provider Type : Assisted Living Facility

Respondent.

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**IMMEDIATE MORATORIUM ON ADMISSIONS**

THIS CAUSE came on for consideration before the Secretary of the Agency for Health Care Administration, or her duly appointed designee, who after careful review of the matter at hand and being otherwise fully advised, finds and concludes as follows:

**THE PARTIES**

1. The Agency for Health Care Administration (hereinafter "the Agency"), is the licensure and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing assisted living facilities. Chs. 408, Part II, and 429, Part I, Fla. Stat. (2015), Ch. 58A-5, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including a limitation of license, a moratorium on admissions and an emergency suspension order, when circumstances dictate such action. §§ 120.60(6), 408.814, Fla. Stat. (2015).

2. The Respondent, Eileen Chea Haran d/b/a Alita and John Haran ALF (hereinafter "the Respondent"), under authority of the Agency, operates a six (6) bed assisted living facility (hereinafter "Facility") located at 1532 Flamingo Court, Homestead, Florida 33035, and was at

all material times required to comply with the applicable statutes and rules governing such facilities.

3. As the holder of such a license, the Respondent is a licensee. "Licensee" means "an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2015). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2015). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2015). § 408.803(11), Fla. Stat. (2015). Assisted living facilities are regulated by the Agency under Chapter 429, Part I, Florida Statutes (2015), and listed in Section 408.802, Florida Statutes (2015). § 408.802(13), Fla. Stat. (2015). Assisted living facility patients are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2015). The Respondent holds itself out to the public as an assisted living facility that fully complies with state laws governing such providers.

4. The Respondent holds itself out to the public as an assisted living facility that complies with the laws governing assisted living facilities. These laws exist to protect the health, safety and welfare of the residents of assisted living facilities. As individuals receiving services from an assisted living facility, these residents are entitled to receive the benefits and protections under Chapters 120, 408, Part II, and 429, Part I, Florida Statutes (2015), and Chapter 58A-5, Florida Administrative Code.

5. As of the date of this Immediate Moratorium on Admissions, the census at the Respondent's Facility is zero (0).

#### **THE AGENCY'S MORATORIUM AUTHORITY**

6. The Agency may impose an immediate moratorium or emergency suspension as

defined in section 120.60, Florida Statutes (2015), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2015). If the Agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the Agency may take such action by any procedure that is fair under the circumstances. § 120.60(6), Fla. Stat. (2015).

7. As provided under s. 408.814, the agency shall impose an immediate moratorium on an assisted living facility that fails to provide the agency with access to the facility or prohibits the agency from conducting a regulatory inspection. The licensee may not restrict agency staff from accessing and copying records at the agency's expense or from conducting confidential interviews with facility staff or any individual who receives services from the facility. § 429.14(6), Fla. Stat. (2015).

#### **LEGAL DUTIES OF AN ASSISTED LIVING FACILITY**

8. Under Florida law, "No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to: (a) [l]ive in a safe and decent living environment, free from abuse and neglect; (b) [b]e treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy..." § 429.28(1), Fla. Stat. (2015).

9. Under Florida law, all assisted living facilities must: 1. Provide a safe living environment pursuant to Section 429.28(1)(a), Florida Statutes. Fla. Admin. Code R. 58A-5.023(3)(a).

## SURVEY OF THE RESPONDENT

10. On or about February 5, 2016, the Agency attempted to complete a survey inspection of the Respondent's Facility.

11. Based upon this attempt, the Agency makes the following findings:

a. On February 5, 2016, at 9:00 AM, Agency personnel requested that they be permitted entry to conduct a survey inspection and access was refused. A second attempt was made at 12:45 PM and access to the Facility was again denied.

b. On February 6, 2016, Agency personnel requested access to the Facility at 3:15 PM and access was denied.

c. Agency personnel have reviewed an incident/investigation report of the Homestead Police Department, Case Number 160203-0034, dated February 3, 2016. This report reflects the following:

i. Law enforcement entered the Facility with Respondent's consent during the early afternoon of February 3, 2015.

ii. The Facility had a strong odor of urine, an ammonia smell, and the physical plant contained a large number of cats. Animal feces were noted throughout the structure.

iii. A resident was identified behind a partition in the living room lying on a mattress which appeared to be saturated in urine. The living room contained animal feces and a number of litter boxes.

iv. On the upper floor extension cords ran along the flooring, a broken refrigerator with rotten foodstuffs was located, and the hallway and hallway

bathroom were saturated from a water leak.

v. Structures in the back yard appeared to be designed to house animals, with one structure containing a freezer which held a dozen cat carcasses.

vi. Homestead Code Enforcement arrived and condemned the structure, Homestead Code Enforcement number CE16020051.

vii. Representatives of Florida's Department of Children and Families relocated four (4) vulnerable adults identified as residents of the assisted living facility.

viii. Animal control removed sixteen (16) dogs and would arrange for the rescue of approximately forty-five (45) cats on the property.

ix. Respondent was arrested for neglect.

d. Subsequent efforts by Agency personnel, including on February 8, 2016, to gain access to the physical plant, have been denied by the Respondent.

e. Notification of the condemnation of the physical plant was posted on the building by the City of Homestead, Code Enforcement Department, on February 3, 2016. The bright red sign on the Facility states: WARNING – This Building Has Been Condemned As Unsanitary and Unfit for Human Habitation and It Is Unlawful for Any Person to Occupy Same.

12. A licensee is required to comply with applicable provisions of law regarding the maintenance of physical plant, including a requirement that licensees must ensure that all existing architectural, mechanical, electrical and structural systems and appurtenances are maintained in good working order. *See* Rule 58A-5.023(3), Florida Administrative Code.

13. The local jurisdiction with authority, in this cause the City of Homestead, Code

Enforcement Department, has determined the physical plant is unfit for human habitation. *See*, Fla. Admin. Code R. 58A-5.161(1).

**NECESSITY FOR AN IMMEDIATE MORATORIUM ON ADMISSIONS**

14. The Agency is charged with the responsibility of enforcing the laws enacted to protect the health, safety and welfare of residents and clients in Florida's assisted living facilities. Ch. 429, Part I, Fla. Stat. (2015), Ch. 408, Part II, Fla. Stat. (2015); Ch. 58A-5, Fla. Admin. Code. In those instances, where the health, safety or welfare of an assisted living facility resident is at risk, the Agency will take prompt and appropriate action.

15. The residents of assisted living facilities enjoy a statutorily enacted Bill of Rights which mandates that assisted living facilities provide a safe and decent living environment, free from abuse and neglect. An assisted living facility must protect these resident rights, including the provision of a safe and decent living environment. § 429.28, Fla. Stat. (2015); Fla. Admin. Code R. 58A-5.023(3)(a). The residents that reside in assisted living facilities oftentimes suffer from disease or disability. They typically consist of the frail, elderly or vulnerable. By law, the Respondent has been licensed and entrusted to provide care and services to this class of people, and as such, must comply with the statutes and rules that have been enacted for the special needs of these residents.

16. In this instance, the Respondent has failed to demonstrate that these minimum requirements of law are being met. Residents of the Respondent's Facility have been living, based upon law enforcement observations, in conditions that are squalid, reek of animal waste, and contain dangers related to water leaks and electrical lines.

17. Homestead's Code Enforcement agency has condemned the structure.

18. The Respondent has elected to not allow Agency personnel access to the Facility,

thereby violating conditions of its licensure. *See* § 408.811(1), Fla. Stat. (2015). This refusal constitutes any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. *See* § 429.14(6), Fla. Stat. (2015).

19. Individually and collectively, these facts reflect that the Facility is not a safe and decent living environment free from abuse and neglect. § 429.28(1)(a) and (b), Fla. Stat. (2015). No resident of an assisted living facility should be placed or maintained in such an environment. The Legislature created the Assisted Living Facilities Act. §§ 429.01, *et seq.*, Fla. Stat. (2015). “The purpose of this act is to promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote the dignity, individuality, privacy, and decision making ability of such persons, to provide for the health, safety, and welfare of residents of assisted living facilities in the state, . . . to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents of such facilities through the efforts of” several state agencies. § 429.01(2), Fla. Stat. (2015).

#### **CONCLUSIONS OF LAW**

20. Each resident of an assisted living facility has the statutory right to live in a safe and decent living environment. § 429.28(1)(a), Fla. Stat. (2015).

21. Based upon the above stated provisions of law and findings of fact, the Agency concludes that: (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent’s Facility which justifies an immediate moratorium on admissions to Respondent Facility, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate

moratorium on admissions to the Facility.

22. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Immediate Moratorium on Admissions is necessary in order to protect the residents from (1) the unsafe conditions and deficient practices that currently exist, (2) being placed at risk of living in an environment ill-equipped to provide systems designed and implemented to protect residents from abuse and neglect, and (3) being placed in an assisted living facility unit where the regulatory mechanisms enacted for residents protection have been overlooked.

23. The Respondent's deficient practices exist presently and will more likely than not continue to exist if the Agency does not act promptly. If the Agency does not act, it is likely that the Respondent's conduct will continue. Such deficient practices and conditions justify the imposition of an Immediate Moratorium on Admissions. Less restrictive actions, such as the assessment of administrative fines, will not ensure that the current residents or future residents receive the appropriate care, services, and environment dictated by Florida law.

24. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. This remedy is narrowly tailored to address the specific harm in this instance.

**IT IS THEREFORE ORDERED THAT:**

25. An Immediate Moratorium on Admissions is placed on Respondent's assisted living facility based upon the above-referenced provisions of law. The Respondent shall not admit for services any individual until such time as this Immediate Moratorium on Admissions is lifted by the Agency in writing.



26. This Immediate Moratorium on Admissions shall be posted and visible to the public at the Respondent's assisted living facility until the moratorium is lifted. § 408.41(4), Fla. Sta. (2015).

27. During the Immediate Moratorium on Admissions, the Agency may regularly monitor the Respondent's Facility.

28. The Agency shall promptly proceed with the filing of an administrative action against the Respondent based upon the facts set out within this Order and any other facts that may be discovered during the Agency's continuing investigation. The Agency shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2015), when the administrative action is brought.

**ORDERED** in Tallahassee, Florida, this 8 day of February, 2016.



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Elizabeth Dudek, Secretary  
Agency for Health Care Administration

#### **NOTICE OF RIGHT TO JUDICIAL REVIEW**

This emergency order is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b) and (c). See Fla. R. App. P. 9.190(b)(2). In order to be timely, the petition for review must be filed within thirty (30) days of the rendition of this non-final emergency order.



RICK SCOTT  
GOVERNOR

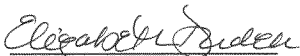
ELIZABETH DUDEK  
SECRETARY

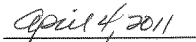
**DELEGATION OF AUTHORITY  
To Execute  
Immediate Orders of Moratorium**

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I specifically delegate the authority to execute Immediate Orders of Moratorium to Molly McKinstry, Deputy Secretary, Health Quality Assurance, or her delegate.

This delegation of authority shall be valid from date of October 1, 2010, until revoked by the Secretary.

  
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Elizabeth Dudek, Secretary

  
\_\_\_\_\_  
Date

