

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED  
AHCA  
AGENCY CLERK

2016 DEC 23 A 9:47

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NO. 16-5664

AHCA No. 2016009180

License No. 6906795

File No. 52963185

vs.

Provider Type : Adult Family Care Home

SYLOTTE PIERRE,

RENDITION NO.: AHCA-16-0290-S-OLC

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 issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2)

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


2. The Respondent's license is REVOKED.

3. In accordance with Florida law, the Respondent is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. The Respondent is advised of Section 408.810, Florida Statutes.

4. In accordance with Florida law, the Respondent is responsible for any refunds that may have to be made to the clients.

5. The Respondent is given notice of Florida law regarding unlicensed activity. The Respondent is advised of Section 408.804 and Section 408.812, Florida Statutes. The Respondent should also consult the applicable authorizing statutes and administrative code provisions. The Respondent is notified that the cancellation of an Agency license may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

**ORDERED** at Tallahassee, Florida, on this 22 day of December, 2016.



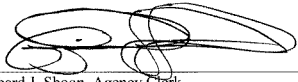
Justin M. Senior, Interim Secretary  
Agency for Health Care Administration

**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 23<sup>rd</sup> day of December, 2016.



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

Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Laura Manville, Unit Manager Licensure Unit Agency for Health Care Administration (Electronic Mail)
Central Intake Unit Agency for Health Care Administration (Electronic Mail)	Jon Seehawer, Field Office Manager Local Field Office Agency for Health Care Administration (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	Lindsey Miller, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
Shawn McCauley Medicaid Contract Management Agency for Health Care Administration	Sylotte Pierre 510 Lincoln Avenue Lehigh Acres, Florida 33972

(Electronic Mail)	(U.S. Mail)
J. Bruce Culpepper Administrative Law Judge Presiding Officer (Electronic Mail)	Elizabeth P. Perez, P.A. 8004 NW 154 Street, Suite 280 Miami Lakes, Florida 33016 (U.S. Mail)

## **NOTICE OF FLORIDA LAW**

### **408.804 License required; display.--**

(1) It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.

(2) A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

### **408.812 Unlicensed activity. --**

(1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licensee may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.

(2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.

(4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.

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

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

AHCA No. 2016009180

License No. 6906795

File No. 52963185

SYLOTTE PIERRE,

Provider Type : Adult Family Care Home

Respondent.

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**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, Sylotte Pierre (hereinafter "the Provider"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2016), and alleges:

**NATURE OF THE ACTION**

This is an action to revoke the license of an adult family care home provider and to impose an administrative fine of one thousand seven hundred fifty dollars (\$1,750.00) plus any additional amounts that may be found by the finder of fact up to the statutory cap based upon one class I violation and three unclassified violations.

**PARTIES**

1. The Agency is the licensing and regulatory authority that oversees adult family care homes in Florida and enforces the applicable state statutes and rules governing such facilities. Chs. 408, Part II, 429, Part II, Fla. Stat. (2016), Ch. 58A-14, Fla. Admin. Code. The Agency may deny, suspend or revoke the license of, and in addition to any liability or penalty provided by law, impose an administrative fine on, an adult family care home. §§ 408.813, 408.815,

429.69, 429.71, Fla. Stat. (2016).

2. The Provider was issued a license by the Agency to operate a 4-bed adult family care home located at 510 Lincoln Avenue, Lehigh Acres, Florida 33972, and was at all times material required to comply with the applicable statutes and rules governing such facilities. An "adult family-care home" means "a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives." § 429.65(2), Fla. Stat. (2016).

3. The Florida Legislature has expressly stated its intent and purpose with respect to the licensure and regulation of adult family care homes. "The Legislature encourages the provision of care for disabled adults and frail elders in family-type living arrangements in private homes." § 429.63(1), Fla. Stat. (2016) "Adult family-care homes provide housing and personal care for disabled adults and frail elders who choose to live with an individual or family in a private home. The adult family-care home provider must live in the home. The purpose of this part is to provide for the health, safety, and welfare of residents of adult family-care homes in the state." § 429.63(2), Fla. Stat. (2016) "The Legislature recognizes that adult family-care homes are an important part of the continuum of long-term care. The personal care available in these homes, which may be provided directly or through contract or agreement, is intended to help residents remain as independent as possible in order to delay or avoid placement in a nursing home or other institution. Regulations governing adult family-care homes must be sufficiently flexible to allow residents to age in place if resources are available to meet their needs and accommodate their preferences." § 429.63(3), Fla. Stat. (2016) "The Legislature further finds and declares that licensure under this part is a public trust and a privilege, and not an entitlement. This principle must guide the finder of fact or trier of law at any administrative proceeding or

circuit court action initiated by the department to enforce this part.” § 429.63(4), Fla. Stat.  
(2016)

**COUNT I (Tag 810)**  
**Resident Rights**

4. Section 429.85, Florida Statutes (2016) provides as follows:

**429.85 Residents’ bill of rights.—**

(1) A resident of an adult family-care home may not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the State Constitution, or the Constitution of the United States solely by reason of status as a resident of the home. Each resident has the right to:

- (a) Live in a safe and decent living environment, free from abuse and neglect.
- (b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and privacy.

\* \* \*

(i) Exercise civil and religious liberties, including the right to independent personal decisions. Religious beliefs or practices and attendance at religious services may not be imposed upon a resident.

§ 429.85 (1)(a)-(b), (i), F.S. (2016).

5. Rule 58A-14.007, Florida Administrative Code, provides as follows:

**58A-14.007 Standards and Practices for Care and Services.**

The adult family-care home provider shall ensure the provision of the following in accordance with Chapter 429, Part II, F.S., this rule chapter, and the residency agreement:

(1) PERSONAL SERVICES.

(a) Assistance with or supervision of the activities of daily living as required by the resident. For a diabetic resident or a resident who has documented circulatory problems, cutting toenails shall only be permitted with written approval of the health care provider.

(b) Assistance with or supervision of the self-administration of medication, or medication administration.

1. Residents who are capable of self-administering their medications shall be encouraged and allowed to do so.

2. For residents who require supervision or assistance with self-administration, the provider or staff shall, as needed:

- a. Remind residents when to take medications;
- b. Prepare and make available such items as water, juice, cups, spoons, or other items necessary for administering the medication;

- c. Obtain the medication and provide it to the resident;
- d. Observe the resident take the medication and verify that the resident is taking the dosage as prescribed; and
- e. Provide any other assistance at the express direction of the resident or the resident's representative, except for administering the medication as defined in Section 465.003, F.S.

3. Medication administration in an AFCH is a nursing service and may only be provided as described in subsection (5) of this rule, except that instead of nursing progress notes, a record of medication administration shall be maintained which includes the name of the resident and any known allergies the resident may have; the name of the resident's health care provider and the health care provider's telephone number; the name of each medication prescribed, its strength, and directions for use; and a chart for recording each time the medication is taken, any missed dosages, refusals to take medication as prescribed, or medication errors. The chart must be updated each time the medication is administered.

4. A list of currently prescribed medications shall be maintained for all residents who self-administer or who require supervision or assistance with medications which includes the name of each medication prescribed, its strength and directions for use, and common side effects.

5. Nurses may manage weekly pill organizers for residents who self-administer or who require supervision or assistance with self-administration.

6. Prescription medications which are centrally stored by the provider shall be appropriately stored in their legally dispensed, labeled, original containers. Appropriately stored means that the medication be kept in an area free of dampness and abnormal temperatures, except that a medication requiring refrigeration shall be refrigerated.

## (2) SUPERVISION.

The AFCH provider shall provide general supervision 24 hours per day, except as provided in paragraph (a) of this subsection. General supervision means the provider or designee is aware of the resident's whereabouts and well-being while the resident is on the premises of the AFCH. The provider is responsible for determining the level of supervision necessary to ensure the resident's safety and security as well as to remind the resident of any important tasks or activities, including appointments.

(a) A resident may be left without supervision in an AFCH for up to 2 hours in a 24-hour period if his or her licensed health care provider submits written certification that doing so will not compromise the resident's health, safety, security or well-being. This certification is included on AHCA Form 3110-1023, Resident Health Assessment for Adult Family-Care Homes (AFCH), as referenced in Rule 58A-14.0061, F.A.C.

(b) The health care provider's certification must be completed annually from the date of the original assessment, or sooner, if a significant change occurs pursuant to subsection (4) of this rule or when there is a compelling reason why the resident should not be left without supervision in the AFCH.



(c) The provider must be accessible by telephone or pager or other appropriate means so that the resident is able to communicate with him or her during the period that the resident is left without supervision in the AFCH.

Fla. Admin. Code R. 58A-14.007(1)-(2).

6. On July 27, 2016, the Agency conducted a complaint survey of the Provider.

7. Based upon record review, interview, and observation, the Provider placed 5 residents (Residents #1, #2, #3, #4, and #5) at risk by denying them their right to a safe living environment free from neglect. Specifically, the Provider failed to provide resident supervision by trained and qualified staff as required under Florida law. The Provider also failed to ensure resident rights for one resident (Resident #1) by denying the resident access to religious activity.

8. On July 27, 2016 at 10:17 a.m., during an interview with the staff on duty, Staff B stated that he covers the shifts if the designated relief worker cannot cover the shift.

9. Staff B stated that he has not taken all of the required training.

10. Staff B stated that he has not completed a Level II background screening.

11. On July 27, 2016 at 1:15 p.m., in an interview with the staff on duty, Staff B stated he could not provide medication to the residents because he is not comfortable doing it.

12. On July 27, 2016 at 2:50 p.m., in another interview with the staff on duty, Staff B stated he had searched the facility and could not find the requested employee files.

13. On July 27, 2016, in an attempted record review of employee files, the record review could not be completed because the required records were not provided to the Agency.

14. Due to the failure to provide the required records, the training and background screening of employees could not be verified.

15. On July 27, 2016 at 9:50 a.m., during an interview, Resident #1 stated the adult Provider has been gone for a while.

16. Resident #1 stated the residents are left alone all of the time.

17. Resident #1 stated the Provider's daughter, age 11, and the Provider's nephew, age 17, are left in charge of the care of the residents for more than 2 hours.

18. On July 27, 2016 at 10:02 a.m., in an interview, the seventeen-year-old nephew stated he does not know how long the Provider had been gone, but he thought that she had been away for more than a week.

19. The nephew further stated he has assisted them with their medication.

20. On July 27, 2016 at 10:29 a.m., during an interview, the Provider's eleven-year old daughter stated that she helps with the residents and had been left alone with them for more than 2 hours.

21. The eleven-year-old daughter stated she has helped cook, provided medication to residents and helped a resident to the rest room.

22. The eleven-year-old daughter stated the Provider had been away for a while.

23. On July 27, 2016 at 11:15 a.m., during an interview, Resident #4 stated that the residents have been left alone at the facility.

24. Resident #4 stated when they were left alone the two children (ages 11 and 17) were left in charge of the facility.

25. On July 27, 2016 at 12:15 p.m., during a telephone interview with the Provider, the Provider refused to tell the Agency her location or state when she would return to the facility.

26. When asked, the Provider stated she did not know when the designed relief worker would be back in the facility.

27. On July 27, 2016 at 1:30 p.m., during an interview with a hospice nurse, the nurse stated she rarely sees the Provider when she is at the facility.

28. The hospice nurse further stated a second nurse who came to the facility stated to her she has never seen the Provider in the facility.

29. The nurse stated that the Provider would not review the interdisciplinary care plan for Resident #1.

30. On July 27, 2016 at 9:40 a.m., during a tour of the facility, it was observed that bedroom #1 had two queen beds and one single bed.

31. Resident #3 was sleeping in the single bed.

32. On July 27, 2016, at 1:30 p.m., during an interview with the hospice social worker, the social worker stated that hospice has concerns about the rights of Resident #1.

33. The social worker stated Resident #1 had requested to meet with the chaplain, but the chaplain was not allowed to come to the facility.

34. The social worker stated the Provider told her the chaplain was not welcome since he was Catholic.

35. The Provider's deficient practice constituted a class I deficiency.

36. Under Florida law, class I violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice that constitutes a class I violation must be abated or eliminated within 24 hours, unless a fixed period, as determined by the Agency, is required for correction. § 429.71(1), Fla. Stat. (2016). A class I deficiency is subject to an administrative fine in an amount not less than \$500 and not exceeding \$1,000 for each violation. A fine may be levied notwithstanding the correction of the deficiency. § 429.71(1), Fla. Stat. (2016).

37. Under Florida law, each day during which a violation occurs constitutes a separate offense. § 429.71(3), Fla. Stat. (2016).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully seeks an administrative fine against the Provider in the amount of one thousand dollars (\$1,000.00) for the violation found on the day of the survey and one-thousand dollars (\$1,000.00) for each day of violation as may found by the finder of fact.

**COUNT II (Tag Z814)**  
**Background Screening Roster**

38. Under Florida law:

**435.12 - Care Provider Background Screening Clearinghouse.—**

(1) The Agency for Health Care Administration in consultation with the Department of Law Enforcement shall create a secure web-based system, which shall be known as the "Care Provider Background Screening Clearinghouse" or "clearinghouse," and which shall be implemented to the full extent practicable no later than September 30, 2013, subject to the specified agencies being funded and equipped to participate in such program. The clearinghouse shall allow the results of criminal history checks provided to the specified agencies for screening of persons qualified as care providers under s. 943.0542 to be shared among the specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check. The Agency for Health Care Administration and the Department of Law Enforcement may adopt rules to create forms or implement procedures needed to carry out this section.

(2)(a) To ensure that the information in the clearinghouse is current, the fingerprints of an employee required to be screened by a specified agency and included in the clearinghouse must be:

1. Retained by the Department of Law Enforcement pursuant to s. 943.05(2)(g) and (h) and (3), and the Department of Law Enforcement must report the results of searching those fingerprints against state incoming arrest fingerprint submissions to the Agency for Health Care Administration for inclusion in the clearinghouse.
2. Retained by the Federal Bureau of Investigation in the national retained print arrest notification program as soon as the Department of Law Enforcement begins participation in such program. Arrest prints will be searched against retained prints at the Federal Bureau of Investigation and notification of arrests will be forwarded to the Florida Department of Law Enforcement and reported to the Agency for Health Care Administration for inclusion in the clearinghouse.
3. Resubmitted for a Federal Bureau of Investigation national criminal history check every 5 years until such time as the fingerprints are retained by the Federal Bureau of Investigation.
4. Subject to retention on a 5-year renewal basis with fees collected at the time of

initial submission or resubmission of fingerprints.

5. Submitted with a photograph of the person taken at the time the fingerprints are submitted.

(b) Until such time as the fingerprints are enrolled in the national retained print arrest notification program at the Federal Bureau of Investigation, an employee with a break in service of more than 90 days from a position that requires screening by a specified agency must submit to a national screening if the person returns to a position that requires screening by a specified agency.

(c) An employer of persons subject to screening by a specified agency must register with the clearinghouse and maintain the employment status of all employees within the clearinghouse. Initial employment status and any changes in status must be reported within 10 business days.

(d) An employer must register with and initiate all criminal history checks through the clearinghouse before referring an employee or potential employee for electronic fingerprint submission to the Department of Law Enforcement. The registration must include the employee's full first name, middle initial, and last name; social security number; date of birth; mailing address; sex; and race. Individuals, persons, applicants, and controlling interests that cannot legally obtain a social security number must provide an individual taxpayer identification number.

§ 435.12(1)-(2)(a)-(d), Fla. Stat. (2016).

39. Under Florida law:

(2) Processing Screening Requests, Required Documents and Fees.

(a) Providers subject to the screening standards outlined in Section 408.809, F.S., must follow the requirements specified in Section 435.12, F.S. Care Provider Background Screening Clearinghouse and must register and initiate all criminal history checks through the Care Provider Background Screening Clearinghouse before referring an employee or potential employee for electronic fingerprint submission to the Department of Law Enforcement. Providers can access the Care Provider Background Screening Clearinghouse at: [http://ahca.myflorida.com/MCHQ/Central\\_Services/Background\\_Screening/index.shtml](http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/index.shtml).

Fla. Admin. Code R. 59A-35.090(2).

40. Under Florida law, the Agency shall have access to and the licensee shall provide, or if requested send, copies of all provider records required during an inspection or other review at no cost to the Agency, including records requested during an offsite review. § 408.811(3), Fla. Stat. (2016).

41. Based upon record review and interview, the provider failed to complete and

produce a background screening roster upon request.

42. On July 27, 2016 at 12:15 p.m., during an interview with the Facility, a copy of the provider's background screening roster was requested. The provider stated the Agency surveyor that the surveyor would need to come back tomorrow to see the records.

43. On July 27, 2016 at 2:41 p.m., during an interview with the staff on duty at the time of the survey, Staff B was requested to provide a copy of the background screening roster.

44. On July 27, 2016 at 2:50 p.m., during an interview with the staff on duty at the time of the survey, Staff B stated he was not able to locate a background screening roster.

45. On July 27, 2016, during record review of the Agency background screening website, the website did not show a completed background screening roster.

46. The Provider's actions or inactions constituted a violation of Sections 435.12, 408.809 and 408.811, Florida Statutes (2016).

47. The Provider's actions or inactions constituted an unclassified violation.

48. Under Florida law, the Agency may impose an administrative fine for violations which do not qualify as class I, class II, class III, or class IV violations. The amount of the fine shall not exceed \$250 for each violation or \$2,000 in the aggregate. Unclassified violations may include: (a) Violating any term or condition of a license. (b) Violating any provision of this part, part II of chapter 408, or applicable rules. § 429.71(2), Fla. Stat. (2016).

49. Under Florida law, each day during which a violation occurs constitutes a separate offense. § 429.71(3), Fla. Stat. (2016).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine against the Provider in the amount of two hundred and fifty dollars (\$250.00) for the violation found on the day of the survey and two-hundred fifty dollars (\$250.00) for each day of violation as may found by the finder of fact up to the aggregate

of two-thousand dollars (\$2,000.00).

**COUNT III (Tag Z815)**  
**Level 2 Background Screening**

50. Under Florida law:

**429.67 Licensure.—**

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate an adult family-care home in this state.

\* \* \*

(4) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e), including the adult family-care home provider, the designated relief person, and all adult household members, pursuant to chapter 435 and s. 408.809.

51. Under Florida law:

**408.809 Background screening; prohibited offenses.—**

(1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:

- (a) The licensee, if an individual.
- (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.
- (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.
- (d) Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.
- (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

§ 408.809 (1)(a)-(e), Fla. Stat. (2016).

52. Under Florida law:

**408.811 Right of inspection; copies; inspection reports; plan for correction of deficiencies.—**

(1) An authorized officer or employee of the agency may make or cause to be made any inspection or investigation deemed necessary by the agency to determine the state of compliance with this part, authorizing statutes, and applicable rules. The right of inspection extends to any business that the agency has reason to believe is being operated as a provider without a license, but inspection of any business suspected of being operated without the appropriate license may not be made without the permission of the owner or person in charge unless a warrant is first obtained from a circuit court. Any application for a license issued under this part, authorizing statutes, or applicable rules constitutes permission for an appropriate inspection to verify the information submitted on or in connection with the application.

\* \* \*

(3) The agency shall have access to and the licensee shall provide, or if requested send, copies of all provider records required during an inspection or other review at no cost to the agency, including records requested during an offsite review.

§ 408.811(1), (3), Fla. Stat. (2016).

53. Based upon record reviews and interview, the Provider placed residents at-risk by failing to ensure that all persons providing care and supervision to residents in the facility had a satisfactory Level 2 criminal background screening.

54. On July 27, 2016 at 12:15 p.m., during a telephone interview with the Provider, a copy of her staff work schedule and staff files was requested for review. The Provider stated the Agency would need to come back tomorrow to see the records.

55. On July 27, 2016 at 10:17 a.m., during an interview with the staff on duty, Staff B identified one of the names on a list of persons in the home as the relief worker (Staff C).

56. Staff B stated he did not know her date of birth.

57. On July 27, 2016 at 10:17 a.m., in a continued interview with the staff on duty, Staff B provided his demographic information and stated he did not complete a background screening.



58. At the time of the survey, Staff B was the only adult caring for the residents.

59. On July 27, 2016, during a review of the Agency background screening website, the website, by a search of their names, did not show a completed background screening for the relief worker Staff C or Staff B who was currently on duty.

60. The Provider's actions or inactions constituted a violation of Sections 400.215 and 408.809, F.S. (2015).

61. The Provider's actions or inactions constituted an unclassified violation.

62. Under Florida law, the Agency may impose an administrative fine for violations which do not qualify as class I, class II, class III, or class IV violations. The amount of the fine shall not exceed \$250 for each violation or \$2,000 in the aggregate. Unclassified violations may include: (a) Violating any term or condition of a license. (b) Violating any provision of this part, part II of chapter 408, or applicable rules. § 429.71(2), Fla. Stat. (2016).

63. Under Florida law, each day during which a violation occurs constitutes a separate offense. § 429.71(3), Fla. Stat. (2016).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine against the Provider in the amount of two hundred and fifty dollars (\$250.00) for the violation found on the day of the survey and two-hundred fifty dollars (\$250.00) for each day of violation as may found by the finder of fact up to the aggregate of two-thousand dollars (\$2,000.00).

**COUNT IV (Tag Z828)**  
**Exceeding Licensed Capacity**

64. Under Florida law, the requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care

Administration pursuant to this part. A license issued by the agency is required in order to operate an adult family-care home in this state. § 429.67(1), Fla. Stat. (2016). The licensed maximum capacity of each adult family-care home is based on the service needs of the residents and the capability of the provider to meet the needs of the residents. Any relative who lives in the adult family-care home and who is a disabled adult or frail elder must be included in that limitation. § 429.67(7), Fla. Stat. (2016).

65. Based upon record review, observation and interview, the Provider exceeded her licensed capacity of 4 residents.

66. On July 27, 2016, the Provider had a licensed capacity of 4 residents.

67. On July 27, 2016 at 12:15 p.m., during an interview with the Provider, the Provider stated she was licensed to care for 4 residents.

68. At that time, the Provider had 5 adult family care home residents living at the facility. The Provider admitted at the time of the interview that she had 5 residents.

69. On July 27, 2016, during record review of the facility census, the census provided showed the names of 5 residents (Resident #1, #2, #3, #4 and #5).

70. On July 27, 2016 at 9:50 a.m., in an interview with Resident #1, she stated she lives at the facility.

71. On July 27, 2016 at 11:45 a.m., in an interview with Resident #5, he stated he lives at the facility and pointed to the bedroom he sleeps in.

72. On July 27, 2016 at 11:55 a.m., in an interview with Resident #4, he stated he lives at the facility.

73. On July 27, 2016 at 12:45 p.m., in an interview with Resident #2, he stated he lives at the facility.

74. On July 27, 2016 at 10:55 a.m., during a tour of the facility, it was observed

Resident #3 was sleeping in bedroom #1.

75. The Provider's actions or inactions constituted an unclassified violation.

76. Under Florida law, the Agency may impose an administrative fine for violations which do not qualify as class I, class II, class III, or class IV violations. The amount of the fine shall not exceed \$250 for each violation or \$2,000 in the aggregate. Unclassified violations may include: (a) Violating any term or condition of a license. (b) Violating any provision of this part, part II of chapter 408, or applicable rules. . . . (d) Exceeding licensed capacity. (e) Providing services beyond the scope of the license. § 429.71(2), Fla. Stat. (2016).

77. Under Florida law, each day during which a violation occurs constitutes a separate offense. § 429.71(3), Fla. Stat. (2016).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine against the Provider in the amount of two hundred and fifty dollars (\$250.00) for the violation found on the day of the survey and two-hundred fifty dollars (\$250.00) for each day of violation as may found by the finder of fact up to the aggregate of two-thousand dollars (\$2,000.00).

**COUNT V**  
**License Revocation**

78. Under Florida law, in addition to the requirements of part II of chapter 408, the Agency may deny, suspend, and revoke a license for any of the following reasons: Failure to comply with the background screening standards of Chapter 429, Part II, Section 408.809(1), or Chapter 435. § 429.69(1), Fla. Stat. (2016).

79. Under Florida law, in addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest: . . . (b) An

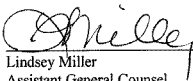
intentional or negligent act materially affecting the health or safety of a client of the provider.  
(c) A violation of this part, authorizing statutes, or applicable rules. (d) A demonstrated pattern of deficient performance. § 408.815(1), Fla. Stat. (2016).

80. The Agency re-alleges and incorporates by reference Counts I through IV set forth above.

81. The Provider's actions or inactions constituted violations of section 429.69(1), Florida Statutes (2016), and section 408.815(1), Florida Statutes (2016).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to revoke the Provider's adult family care home license.

Respectfully Submitted this 15<sup>th</sup> day of August, 2016.

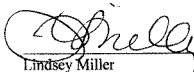


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Lindsey Miller  
Assistant General Counsel  
Florida Bar No. 121410  
Agency for Health Care Administration  
2727 Mahan Drive, Bldg. 3, MS #7  
Tallahassee, Florida 32308  
Tel: (850) 412-3941 Fax: (850) 922-9634  
[Lindsey.Miller@ahca.myflorida.com](mailto:Lindsey.Miller@ahca.myflorida.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights Form were served to the named below by the method designated on this 15<sup>th</sup> day of August, 2016.



Lindsey Miller  
Assistant General Counsel  
Florida Bar No. 121410  
Agency for Health Care Administration  
2727 Mahan Drive, Bldg. 3, MS #7  
Tallahassee, Florida 32308  
Tel: (850) 412-3941 Fax: (850) 922-9634  
[Lindsey.Miller@ahca.myflorida.com](mailto:Lindsey.Miller@ahca.myflorida.com)

Sylotte Pierre 510 Lincoln Avenue Lehigh Acres, Florida 33972 (Certified Mail: 9171999991703363504351 and Regular U.S. Mail)	Sylotte Pierre (Electronic Mail) at <a href="mailto:compassionscare@outlook.com">compassionscare@outlook.com</a>
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STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: AHCA v. Sylotte Pierre

AHCA No.: 2016009180

ELECTION OF RIGHTS

This Election of Rights form is attached to a proposed agency action by the Agency for Health Care Administration (AHCA). The title may be Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint. Your Election of Rights may be returned by mail or by facsimile transmission, **but must be filed within 21 days** of the day that you receive the attached proposed agency action. **If your Election of Rights with your selected option is not received by AHCA within 21 days of the day that you received this proposed agency action, you will have waived your right to contest the proposed agency action and a Final Order will be issued.**

(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** to this address:

Agency for Health Care Administration  
Attention: Agency Clerk  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308.  
Telephone: 850-922-5873      Facsimile: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

**OPTION ONE (1)** \_\_\_\_\_ I admit to the allegations of facts and law contained in the Administrative Complaint and I waive my right to object and to have a hearing. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

**OPTION TWO (2)** \_\_\_\_\_ I admit to the allegations of facts contained in the Administrative Complaint, but I 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 administrative action is too severe or that the fine should be reduced.

**OPTION THREE (3)** \_\_\_\_\_ I dispute the allegations of fact contained in the Administrative Complaint, and I 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 28-106.2016, 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.

License Type: \_\_\_\_\_

Licensee Name: \_\_\_\_\_ License Number: \_\_\_\_\_

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 to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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

**Petitioner,**

**DOAH CASE NO. 16-5664  
AHCA CASE NO. 2016009180**

vs.

**SYLOTTE PIERRE,**

**Respondent.**

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**SETTLEMENT AGREEMENT**

The Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”) and the Respondent, Sylotte Pierre (“the Respondent”), by and through its undersigned representatives, and pursuant to Section 120.57(4), Florida Statutes, agree as follows:

**WHEREAS** the Agency is the licensing and regulatory authority that oversees adult family care homes in Florida and enforces the state laws governing such facilities pursuant to Chapter 408, Part II, Florida Statutes, and Chapter 429, Part II, Florida Statutes, and Chapter 58A-14, Florida Administrative Code; and

**WHEREAS,** the Respondent was issued a license by the Agency to operate this adult family care home in Florida; and

**WHEREAS,** the Agency issued an Administrative Complaints in the above-styled matter on the Respondent seeking \$2,500.00 in administrative fines as well as the revocation of the Respondent’s license to operate this adult family care home; and

**WHEREAS,** the Agency and the Respondent have agreed that a fair and efficient resolution of the above-captioned matters would avoid the expenditure of substantial sums to



further litigate these disputes; and

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

1. The above recitals are true and correct and are expressly incorporated into the Settlement Agreement (hereinafter "the Agreement").

2. The Parties agree that the above recitals are binding findings on the Parties.

3. Upon full execution of this Agreement, the Respondent agrees to a withdrawal of any request for administrative proceeding filed for the above referenced actions, agrees to waive any and all proceedings and appeals under Chapter 120, Florida Statutes, to which they may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), a formal proceeding under Subsection 120.57(1), appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or tribunal (DOAH) of competent jurisdiction, and agree to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled as to this matter. Provided, however, that this Agreement shall not be a waiver by any party of the right to the judicial enforcement of this Agreement.

4. Upon full execution of this Agreement, the Parties stipulate as follows:

a. The Agency shall hold in abeyance the administrative fines in the amount of \$2,500.00.

b. The Respondent agrees to revocation of their license with the Agency effective upon the issuance of the Final Order;

5. Venue for any action brought to interpret, challenge or enforce the terms of this Agreement or the Final Order entered pursuant to this Agreement shall lie solely in the State Circuit Court of Leon County, Florida.

6. This Settlement Agreement is neither an admission of liability by Respondent nor

a concession by the State of Florida that its claims are not well founded. The Respondent and the Agency acknowledge that this Agreement does not affect in any manner any other type of action that is or may be initiated against the Respondent, by any other government agency, regardless of the type of action or the forum in which the action is brought. They also acknowledge that this Agreement may not be admitted into evidence in any type of action that is or may be initiated against them.

7. 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(s).

8. Each party shall bear its own costs and attorney's fees.

9. This Agreement shall become effective on the date upon which it is fully executed by all of the Parties.

10. The Respondent, itself and for any related or resulting organizations, successors or transferees, attorneys, heirs, and executors or administrators, discharge the Agency and its agents, representatives, and attorneys of 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 the above referenced actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including claims arising out of the subject of this Agreement, by or on behalf of the Respondent or related or resulting organizations.

11. This Agreement is binding upon all Parties and those persons and entities identified in the aforementioned paragraph of this Agreement.

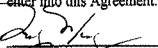
12. In the event that the Respondent was a Medicaid provider at the subject time of the occurrences alleged in the Administrative Complaints, this Agreement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues.

13. The undersigned have read and understand this Agreement and have authority to bind their respective principals. The Parties and their representatives have the legal capacity to execute this Agreement. The Parties have right to consult with their own counsel and have done so in knowingly and freely entering into this Agreement. The Respondent understands that Agency counsel represents solely the Agency and that Agency counsel has not provided any legal advice to them, or influenced them, in the decision to enter into this Agreement.


14. This Agreement contains the entire understandings and agreements of the Parties. This Agreement supersedes any prior oral or written understandings and agreements between the Parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

15. All Parties agree that an electronic signature suffices for an original signature and that this Agreement may be executed in counterpart.


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

  
Molly McKinstrey, Deputy Secretary  
Health Quality Assurance  
Agency For Health Care Administration  
2727 Mahan Drive, Mail Stop #2  
Tallahassee, Florida 32308

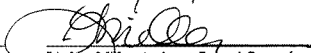
DATED: 12/22/16

  
Stuart F. Williams, General Counsel  
Office of the General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive, MS#3  
Tallahassee, Florida 32308


DATED: 12/20/16

  
Sylotte Pierre, Owner  
Sylotte Pierre  
510 Lincoln Avenue  
Lehigh Acres, Florida 33972

DATED: 11/23/16

  
Lindsey Miller, Assistant General Counsel  
Office of the General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive, MS#3  
Tallahassee, Florida 32308

DATED: 11/30/16



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Elizabeth P. Perez, Esquire  
Law Offices of Elizabeth P. Perez, P.A.  
8004 NW 154 Street, Suite 280  
Miami Lakes, FL 33016

DATED: 11/23/16