STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

MIRACLES HOUSE, INC., d/b/a AMAZING WONDERS,

Respondent.
_____/

AHCA No. 2017006661
License No. 12756
File No. 11968864
Provider Type: Assisted Living Facility

EMERGENCY SUSPENSION ORDER

THIS CAUSE came on for consideration before the Secretary of the Agency for Health Care Administration, or his 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. (2016), 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. (2016).

2. The Respondent, Miracles House, Inc. d/b/a Amazing Wonders (hereinafter "the Respondent"), was issued a license by the Agency to operate a five (5) bed assisted living facility (hereinafter "Facility") located at 2323 NW 85th Street, Miami, Florida 33147, and was at all material times required to comply with the 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, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2016). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2016). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2016). § 408.803(11), Fla. Stat, (2016). Assisted living facilities are regulated by the Agency under Chapter 429, Part I, Florida Statutes (2016), and listed in Section 408.802, Florida Statutes (2016). § 408.802(13), Fla. Stat. (2016). Assisted living facility patients are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2016). 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 (2016), and Chapter 58A-5, Florida Administrative Code.

5. As of the date of this Emergency Suspension Order, the census at the Facility is three (3) residents/clients.

THE AGENCY'S EMERGENCY ORDER AUTHORITY

6. The Agency may impose an immediate moratorium or emergency suspension as defined in section 120.60, Florida Statutes (2016), 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. (2016). 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. (2016).

LEGAL DUTIES OF AN ASSISTED LIVING FACILITY

Resident Admission and Continued Residency

7. Under Florida law,

429.26 Appropriateness of placements; examinations of residents.—

(1) The owner or administrator of a facility is responsible for determining the appropriateness of admission of an individual to the facility and for determining the continued appropriateness of residence of an individual in the facility. A determination shall be based upon an assessment of the strengths, needs, and preferences of the resident, the care and services offered or arranged for by the facility in accordance with facility policy, and any limitations in law or rule related to admission criteria or continued residency for the type of license held by the facility under this part. A resident may not be moved from one facility to another without consultation with and agreement from the resident or, if applicable, the resident's representative or designee or the resident's family, guardian, surrogate, or attorney in fact. In the case of a resident who has been placed by the department or the Department of Children and Families, the administrator must notify the appropriate contact person in the applicable department.

...

(4) If possible, each resident shall have been examined by a licensed physician, a licensed physician assistant, or a licensed nurse practitioner within 60 days before admission to the facility. The signed and completed medical examination report shall be submitted to the owner or administrator of the facility who shall use the information contained therein to assist in the determination of the appropriateness of the resident's admission and continued stay in the facility. The medical examination report shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection or upon request. An assessment that has been completed through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program fulfills the requirements for a medical examination under this subsection and s. 429.07(3)(b)6.

(5) Except as provided in s. 429.07, if a medical examination has not been

completed within 60 days before the admission of the resident to the facility, a licensed physician, licensed physician assistant, or licensed nurse practitioner shall examine the resident and complete a medical examination form provided by the agency within 30 days following the admission to the facility to enable the facility owner or administrator to determine the appropriateness of the admission. The medical examination form shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection by the agency or upon request.

(6) Any resident accepted in a facility and placed by the department or the Department of Children and Families shall have been examined by medical personnel within 30 days before placement in the facility. The examination shall include an assessment of the appropriateness of placement in a facility. The findings of this examination shall be recorded on the examination form provided by the agency. The completed form shall accompany the resident and shall be submitted to the facility owner or administrator. Additionally, in the case of a mental health resident, the Department of Children and Families must provide documentation that the individual has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be in the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident providing it was completed within 90 days prior to admission to the facility. The applicable department shall provide to the facility administrator any information about the resident that would help the administrator meet his or her responsibilities under subsection (1). Further, department personnel shall explain to the facility operator any special needs of the resident and advise the operator whom to call should problems arise. The applicable department shall advise and assist the facility administrator where the special needs of residents who are recipients of optional state supplementation require such assistance.

(7) The facility must notify a licensed physician when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment. The notification must occur within 30 days after the acknowledgment of such signs by facility staff. If an underlying condition is determined to exist, the facility shall arrange, with the appropriate health care provider, the necessary care and services to treat the condition.

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(11) No resident who requires 24-hour nursing supervision, except for a resident who is an enrolled hospice patient pursuant to part IV of chapter 400, shall be retained in a facility licensed under this part.

§ 429.26(1, 4, 5, 6, 7, 11), Fla. Stat. (2016).

8. Under Florida law,

58A-5.0181 Admission Procedures, Appropriateness of Placement and Continued Residency Criteria.

(1) ADMISSION CRITERIA.

(a) An individual must meet the following minimum criteria in order to be admitted to a facility holding a standard, limited nursing or limited mental health license:

1. Be at least 18 years of age.

2. Be free from signs and symptoms of any communicable disease that is likely to be transmitted to other residents or staff; however, an individual who has human immunodeficiency virus (HIV) infection may be admitted to a facility, provided that the individual would otherwise be eligible for admission according to this rule.

3. Be able to perform the activities of daily living, with supervision or assistance if necessary.

4. Be able to transfer, with assistance if necessary. The assistance of more than one person is permitted.

5. Be capable of taking medication, by either self-administration, assistance with self-administration, or by administration of medication.

a. If the resident needs assistance with self-administration, the facility must inform the resident of the professional qualifications of facility staff who will be providing this assistance. If unlicensed staff will be providing assistance with self-administration of medication, the facility must obtain written informed consent from the resident or the resident's surrogate, guardian, or attorney-in-fact.

b. The facility may accept a resident who requires the administration of medication, if the facility has a nurse to provide this service, or the resident or the resident's legal representative, designee, surrogate, guardian, or attorney-in-fact contracts with a licensed third party to provide this service to the resident.

6. Not have any special dietary needs that cannot be met by the facility.

7. Not be a danger to self or others as determined by a physician, or mental health practitioner licensed under Chapter 490 or 491, F.S.

8. Not require 24-hour licensed professional mental health treatment.

9. Not be bedridden.

10. Not have any stage 3 or 4 pressure sores. A resident requiring care of a stage 2 pressure sore may be admitted provided that:

a. Such resident either:

(I) Resides in a standard licensed facility and contracts directly with a licensed home health agency or a nurse to provide care, or

(II) Resides in a limited nursing services licensed facility and services are provided pursuant to a plan of care issued by a health care provider, or the resident contracts directly with a licensed home health agency or a nurse to provide care;

b. The condition is documented in the resident's record and admission and discharge log; and

c. If the resident's condition fails to improve within 30 days as documented by a health care provider, the resident must be discharged from the facility.
11. Not require any of the following nursing services:
a. Oral, nasopharyngeal, or tracheotomy suctioning;
b. Assistance with tube feeding;
c. Monitoring of blood gases;
d. Intermittent positive pressure breathing therapy; or
e. Treatment of surgical incisions or wounds, unless the surgical incision or wound and the condition that caused it, has been stabilized and a plan of care developed.
12. Not require 24-hour nursing supervision.
13. Not require skilled rehabilitative services as described in Rule 59G-4.290, F.A.C.
14. Have been determined by the facility administrator to be appropriate for admission to the facility. The administrator must base the decision on:
a. An assessment of the strengths, needs, and preferences of the individual, and the medical examination report required by Section 429.26, F.S., and subsection (2) of this rule;
b. The facility's admission policy and the services the facility is prepared to provide or arrange in order to meet resident needs. Such services may not exceed the scope of the facility's license unless specified elsewhere in this rule; and
c. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established in Section 429.41, F.S. and Rule Chapter 69A-40, F.A.C.
(b) A resident who otherwise meets the admission criteria for residency in a standard licensed facility, but who requires assistance with the administration and regulation of portable oxygen, assistance with routine colostomy care, or assistance and monitoring of the application of anti-embolism stockings or hosiery as prescribed by a health care provider in accordance with manufacturer's guidelines, may be admitted to a facility with a standard license as long as the following conditions are met:
1. The facility must have a nurse on staff or under contract to provide the assistance or to provide training to the resident to perform these functions.
2. Nursing staff may not provide training to unlicensed persons to perform skilled nursing services, and may not delegate the nursing services described in this section to certified nursing assistants or unlicensed persons as defined in Section 429.256(1)(b), F.S. Certified nursing assistants may not be delegated the nursing services described in this section, but may apply anti-embolism stockings or hosiery under the supervision of a nurse in accordance with paragraph 64B9-15.002(1)(e), F.A.C. This provision does not restrict a resident or a resident's representative from contracting with a licensed third party to provide the assistance if the facility is agreeable to such an arrangement and the resident otherwise meets the criteria for admission and continued residency in a facility with a standard license.
(c) An individual enrolled in and receiving hospice services may be admitted to an assisted living facility as long as the individual otherwise meets resident admission criteria.

(d) Resident admission criteria for facilities holding an extended congregate care license are described in Rule 58A-5.030, F.A.C.
(2) HEALTH ASSESSMENT. As part of the admission criteria, an individual must undergo a face-to-face medical examination completed by a health care provider as specified in either paragraph (a) or (b) of this subsection.
(a) A medical examination completed within 60 calendar days before to the individual's admission to a facility pursuant to Section 429.26(4), F.S. The examination must address the following:
1. The physical and mental status of the resident, including the identification of any health-related problems and functional limitations;
2. An evaluation of whether the individual will require supervision or assistance with the activities of daily living;
3. Any nursing or therapy services required by the individual;
4. Any special diet required by the individual;
5. A list of current medications prescribed, and whether the individual will require any assistance with the administration of medication;
6. Whether the individual has signs or symptoms of Tuberculosis, Methicillin Resistant Staphylococcus Aureus, Scabies or any other communicable disease, which are likely to be transmitted to other residents or staff;
7. A statement on the day of the examination that, in the opinion of the examining health care provider, the individual's needs can be met in an assisted living facility; and
8. The date of the examination, and the name, signature, address, telephone number, and license number of the examining health care provider. The medical examination may be conducted by a health care provider licensed under Chapters 458, 459 or 464, F.S.
(b) A medical examination completed after the resident's admission to the facility within 30 calendar days of the admission date. The examination must be recorded on AHCA Form 1823, Resident Health Assessment for Assisted Living Facilities, October 2010. The form is hereby incorporated by reference. AHCA Form 1823 may be obtained http://www.flrules.org/Gateway/reference.asp?No=Ref-04006. Faxed or electronic copies of the completed form are acceptable. The form must be completed as instructed.
1. Items on the form that may have been omitted by the health care provider during the examination do not necessarily require an additional face-to-face examination for completion. The facility may obtain the omitted information either orally or in writing from the health care provider.
2. Omitted information must be documented in the resident's record. Information received orally must include the name of the health care provider, the name of the facility staff recording the information, and the date the information was provided.
3. Electronic documentation may be used in place of completing the section on AHCA Form 1823 referencing Services Offered or Arranged by the Facility for the Resident. The electronic documentation must include all of the elements described in this section of AHCA Form 1823.
(c) Any information required by paragraph (a) that is not contained in the medical examination report conducted before the individual's admission to the facility

must be obtained by the administrator using AHCA Form 1823 within 30 days after admission.

...

(f) Any orders for medications, nursing, therapeutic diets, or other services to be provided or supervised by the facility issued by the health care provider conducting the medical examination may be attached to the health assessment. A health care provider may attach a DH Form 1896, Florida Do Not Resuscitate Order Form, for residents who do not wish cardiopulmonary resuscitation to be administered in the case of cardiac or respiratory arrest.
(g) A resident placed on a temporary emergency basis by the Department of Children and Families pursuant to Section 415.105 or 415.1051, F.S., is exempt from the examination requirements of this subsection for up to 30 days. However, a resident accepted for temporary emergency placement must be entered on the facility's admission and discharge log and counted in the facility census; a facility may not exceed its licensed capacity in order to accept such a resident. A medical examination must be conducted on any temporary emergency placement resident accepted for regular admission.

...

(4) CONTINUED RESIDENCY. Except as follows in paragraphs (a) through (c) of this subsection, criteria for continued residency in any licensed facility must be the same as the criteria for admission. As part of the continued residency criteria, a resident must have a face-to-face medical examination by a health care provider at least every 3 years after the initial assessment, or after a significant change, whichever comes first. A significant change is defined in Rule 58A-5.0131, F.A.C. The results of the examination must be recorded on AHCA Form 1823, which is incorporated by reference in paragraph (2)(b) of this rule. The form must be completed in accordance with that paragraph.
(a) The resident may be bedridden for up to 7 consecutive days.
(b) A resident requiring care of a stage 2 pressure sore may be retained provided that:
1. The resident contracts directly with a licensed home health agency or a nurse to provide care, or the facility has a limited nursing services license and services are provided pursuant to a plan of care issued by a health care provider;
2. The condition is documented in the resident's record; and
3. If the resident's condition fails to improve within 30 days, as documented by a health care provider, the resident must be discharged from the facility.
(c) A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:
1. The resident qualifies for, is admitted to, and consents to the services of a licensed hospice that coordinates and ensures the provision of any additional care and services that may be needed;
2. Continued residency is agreeable to the resident and the facility;
3. An interdisciplinary care plan, which specifies the services being provided by

hospice and those being provided by the facility, is developed and implemented by a licensed hospice in consultation with the facility; and
4. Documentation of the requirements of this paragraph is maintained in the resident's file.
(d) The administrator is responsible for monitoring the continued appropriateness of placement of a resident in the facility at all times.
(e) A hospice resident that meets the qualifications of continued residency pursuant to this subsection may only receive services from the assisted living facility's staff within the scope of the facility's license.
(f) Assisted living facility staff may provide any nursing service permitted under the facility's license and total help with the activities of daily living for residents admitted to hospice; however, staff may not exceed the scope of their professional licensure or training.
(g) Continued residency criteria for facilities holding an extended congregate care license are described in Rule 58A-5.030, F.A.C.

(5) DISCHARGE. If the resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with Section 429.28, F.S.

Fla. Admin. Code R. 58A-5.0181.

Resident Rights

9. 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; and . . . (j) [a]ccess to adequate and appropriate health care consistent with established and recognized standards within the community." § 429.28(1), Fla. Stat. (2016): Assisted living facilities must provide a safe living environment pursuant to Section 429.28(1)(a), Florida Statutes. Fla. Admin. Code R. 58A-5.023(3)(a).

Supervision

10. Florida law provides:

58A-5.0182 Resident Care Standards.
An assisted living facility must provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) SUPERVISION. Facilities must offer personal supervision as appropriate for each resident, including the following:
(a) Monitoring of the quantity and quality of resident diets in accordance with Rule 58A-5.020, F.A.C.
(b) Daily observation by designated staff of the activities of the resident while on the premises, and awareness of the general health, safety, and physical and emotional well-being of the resident.
(c) Maintaining a general awareness of the resident's whereabouts. The resident may travel independently in the community.
(d) Contacting the resident's health care provider and other appropriate party such as the resident's family, guardian, health care surrogate, or case manager if the resident exhibits a significant change; contacting the resident's family, guardian, health care surrogate, or case manager if the resident is discharged or moves out.
(e) Maintaining a written record, updated as needed, of any significant changes, any illnesses that resulted in medical attention, changes in the method of medication administration, or other changes that resulted in the provision of additional services.

(8) ELOPEMENT STANDARDS.
(a) Residents Assessed at Risk for Elopement. All residents assessed at risk for elopement or with any history of elopement must be identified so staff can be alerted to their needs for support and supervision.
1. As part of its resident elopement response policies and procedures, the facility must make, at a minimum, a daily effort to determine that at risk residents have identification on their persons that includes their name and the facility's name, address, and telephone number. Staff attention must be directed towards residents assessed at high risk for elopement, with special attention given to those with Alzheimer's disease or related disorders assessed at high risk.
2. At a minimum, the facility must have a photo identification of at risk residents on file that is accessible to all facility staff and law enforcement as necessary. The facility's file must contain the resident's photo identification within 10 days of admission or within 10 days of being assessed at risk for elopement subsequent to admission. The photo identification may be provided by the facility, the resident, or the resident's representative.
(b) Facility Resident Elopement Response Policies and Procedures. The facility must develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures must provide for:
1. An immediate search of the facility and premises;
2. The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
3. The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident

is not located pursuant to subparagraph (8)(b)1.; and
4. The continued care of all residents within the facility in the event of an elopement.
(e) Facility Resident Elopement Drills. The facility must conduct and document resident elopement drills pursuant to Sections 429.41(1)(a)3. and 429.41(1)(l), F.S.

Fla. Admin. Code R. 58A-5.0182(1), (8).

Medication

11. Florida law provides:

(4) MEDICATION ADMINISTRATION.
(a) For facilities that provide medication administration, a staff member licensed to administer medications must be available to administer medications in accordance with a health care provider's order or prescription label.
(b) Unusual reactions or a significant change in the resident's health or behavior must be documented in the resident's record and reported immediately to the resident's health care provider. The contact with the health care provider must also be documented in the resident's record.
(c) Medication administration includes conducting any examination or testing, such as blood glucose testing, or other procedure necessary for the proper administration of medication that the resident cannot conduct personally and that can be performed by licensed staff.

...

(5) MEDICATION RECORDS.
(a) For residents who use a pill organizer managed in subsection (2), the facility must keep either the original labeled medication container; or a medication listing with the prescription number, the name and address of the issuing pharmacy, the health care provider's name, the resident's name, the date dispensed, the name and strength of the drug, and the directions for use.
(b) The facility must maintain a daily medication observation record (MOR) for each resident who receives assistance with self-administration of medications or medication administration. A medication observation record must include the name of the resident and any known allergies the resident may have; the name of the resident's health care provider, the health care provider's telephone number; the name, strength, and directions for use of each medication; and a chart for recording each time the medication is taken, any missed dosages, refusals to take medication as prescribed, or medication errors. The medication observation record must be immediately updated each time the medication is offered or administered.
(c) For medications that serve as chemical restraints, the facility must, pursuant to Section 429.41, F.S., maintain a record of the prescribing physician's annual evaluation of the use of the medication.

Fla. Admin. Code R. 58A-5.0185(4)-(5).

Facility Staff Training

12. Florida law provides:

(2) STAFF IN-SERVICE TRAINING. Facility administrators or managers shall provide or arrange for the following in-service training to facility staff:
(a) Staff who provide direct care to residents, other than nurses, certified nursing assistants, or home health aides trained in accordance with Rule 59A-8.0095, F.A.C., must receive a minimum of 1 hour in-service training in infection control, including universal precautions, and facility sanitation procedures before providing personal care to residents. Documentation of compliance with the staff training requirements of 29 CFR 1910.1030, relating to blood borne pathogens, may be used to meet this requirement.
(b) Staff who provide direct care to residents must receive a minimum of 1 hour in-service training within 30 days of employment that covers the following subjects:
1. Reporting major incidents.
2. Reporting adverse incidents.
3. Facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.
(c) Staff who provide direct care to residents, who have not taken the core training program, shall receive a minimum of 1 hour in-service training within 30 days of employment that covers the following subjects:
1. Resident rights in an assisted living facility.
2. Recognizing and reporting resident abuse, neglect, and exploitation.
(d) Staff who provide direct care to residents, other than nurses, CNAs, or home health aides trained in accordance with Rule 59A-8.0095, F.A.C., must receive 3 hours of in-service training within 30 days of employment that covers the following subjects:
1. Resident behavior and needs.
2. Providing assistance with the activities of daily living.
(e) Staff who prepare or serve food, who have not taken the assisted living facility core training must receive a minimum of 1-hour-in-service training within 30 days of employment in safe food handling practices.
(f) All facility staff shall receive in-service training regarding the facility's resident elopement response policies and procedures within thirty (30) days of employment.
1. All facility staff shall be provided with a copy of the facility's resident elopement response policies and procedures.
2. All facility staff shall demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.

...

(5) ASSISTANCE WITH SELF-ADMINISTERED MEDICATION AND MEDICATION MANAGEMENT. Unlicensed persons who will be providing assistance with self-administered medications as described in Rule 58A-5.0185, F.A.C., must meet the training requirements pursuant to Section 429.52(5), F.S., prior to assuming this responsibility. Courses provided in fulfillment of this requirement must meet the following criteria:
(a) Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.

...

(c) Unlicensed persons, as defined in Section 429.256(1)(b), F.S., who provide assistance with self-administered medications and have successfully completed the initial 4 hour training, must obtain, annually, a minimum of 2 hours of continuing education training on providing assistance with self-administered medications and safe medication practices in an assisted living facility. The 2 hours of continuing education training shall only be provided by a licensed registered nurse, or a licensed pharmacist.

...

(11) DO NOT RESUSCITATE ORDERS TRAINING.
(a) Currently employed facility administrators, managers, direct care staff and staff involved in resident admissions must receive at least one hour of training in the facility's policies and procedures regarding DNROs within 60 days after the effective date of this rule.
(b) Newly hired facility administrators, managers, direct care staff and staff involved in resident admissions must receive at least one hour of training in the facility's policy and procedures regarding DNROs within 30 days after employment.
(c) Training shall consist of the information included in Rule 58A-5.0186, F.A.C.

Fla. Admin. Code R. 58A-5.0191(2), (5), (11).

Administrator

13. Under Florida law, every assisted living facility must be under the supervision of

an administrator who is responsible for the operation and maintenance of the facility including the management of all staff and the provision of appropriate care to all residents as required by Chapters 408, Part II, 429, Part I, F.S. and Rule Chapter 59A-35, F.A.C., and this rule chapter. Fla. Admin. Code R. 58A-5.019(1).

Resident Records

14. Florida law provides:

58A-5.024 Records.
The facility must maintain required records in a manner that makes such records readily available at the licensee's physical address for review by a legally authorized entity. If records are maintained in an electronic format, facility staff must be readily available to access the data and produce the requested information. For purposes of this section, "readily available" means the ability to immediately produce documents, records, or other such data, either in electronic or paper format, upon request.

. . .

(3) RESIDENT RECORDS. Resident records must be maintained on the premises and include:
(a) Resident demographic data as follows:
1. Name;
2. Sex;
3. Race;
4. Date of birth;
5. Place of birth, if known;
6. Social security number;
7. Medicaid and/or Medicare number, or name of other health insurance carrier;
8. Name, address, and telephone number of next of kin, legal representative, or individual designated by the resident for notification in case of an emergency; and
9. Name, address, and telephone number of the health care provider and case manager, if applicable.
(b) A copy of the Resident Health Assessment form, AHCA Form 1823 described in Rule 58A-5.0181, F.A.C.
(c) Any orders for medications, nursing services, therapeutic diets, do not resuscitate orders, or other services to be provided, supervised, or implemented by the facility that require a health care provider's order.
(d) Documentation of a resident's refusal of a therapeutic diet pursuant to Rule 58A-5.020, F.A.C., if applicable.
(e) The resident care record described in paragraph 58A-5.0182(1)(e), F.A.C.
(f) A weight record that is initiated on admission. Information may be taken from AHCA Form 1823 or the resident's health assessment. Residents receiving

assistance with the activities of daily living must have their weight recorded semi-annually.
(g) For facilities that will have unlicensed staff assisting the resident with the self-administration of medication, a copy of the written informed consent described in Rule 58A-5.0181, F.A.C., if such consent is not included in the resident's contract.
(h) For facilities that manage a pill organizer, assist with self-administration of medications or administer medications for a resident, copies of the required medication records maintained pursuant to Rule 58A-5.0185, F.A.C.
(i) A copy of the resident's contract with the facility, including any addendums to the contract as described in Rule 58A-5.025, F.A.C.
(j) For a facility whose owner, administrator, staff, or representative thereof, serves as an attorney in fact for a resident, a copy of the monthly written statement of any transaction made on behalf of the resident as required in Section 429.27, F.S.
(k) For any facility that maintains a separate trust fund to receive funds or other property belonging to or due a resident, a copy of the quarterly written statement of funds or other property disbursed as required in Section 429.27, F.S.

...

(o) The resident's Do Not Resuscitate Order, DH Form 1896, if applicable.
(p) For independent living residents who receive meals and occupy beds included within the licensed capacity of an assisted living facility, but who are not receiving any personal, limited nursing, or extended congregate care services, record keeping may be limited to the following at the discretion of the facility:
1. A log listing the names of residents participating in this arrangement;
2. The resident demographic data required in this paragraph;
3. The health assessment described in Rule 58A-5.0181, F.A.C.;
4. The resident's contract described in Rule 58A-5.025, F.A.C.; and
5. A health care provider's order for a therapeutic diet if such diet is prescribed and the resident participates in the meal plan offered by the facility.
(q) Except for resident contracts, which must be retained for 5 years, all resident records must be retained for 2 years following the departure of a resident from the facility unless it is required by contract to retain the records for a longer period of time. Upon request, residents must be provided with a copy of their records upon departure from the facility.

...

(4) RECORD INSPECTION.
(a) The resident's records must be available to the resident; the resident's legal representative, designee, surrogate, guardian, attorney in fact, or case manager; or the resident's estate, and such additional parties as authorized in writing or by law.
(b) Pursuant to Section 429.35, F.S., agency reports that pertain to any agency survey, inspection, or monitoring visit must be available to the residents and the

public. In facilities that are co-located with a licensed nursing home, the inspection of record for all common areas is the nursing home inspection report.

Fla. Admin. Code R. 58A-5.024(3)-(4).

Background Screening

15. Under Florida law, "An employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the agency as provided under s. 435.07." § 435.06(2)(a), Fla. Stat. (2016).

FACTS JUSTIFYING EMERGENCY ACTION

16. On May 25, 2017, and June 9, 2017, and June 21, 2017, the Agency conducted a series of surveys of the Facility.

17. Based upon these surveys, the Agency makes the following findings:

a. Respondent's controlling interest holds licensure from Florida's Agency for Persons with Disabilities to operate facilities in locations other than the assisted living facility at issue.

b. At some time in the fall of 2016, Respondent's administrator accepted a transfer of a resident from one of those associated Agency for Persons with Disabilities facilities into Respondent's assisted living facility. Hospital records reflect the resident's extremities were constricted, the resident suffered from dysphagia, a swallowing

disorder, diabetes, and a sacral wound.

c. The exact date of this resident admission cannot be determined as Respondent has not and does not maintain an admission and discharge log as required by law. *See*, Fla. Admin. Code R. 58A-5.024(1)(b).

d. Respondent did not obtain or maintain a resident health assessment for this resident as required by law. *See*, § 429.26(4)-(5), Fla. Stat. (2016); Fla. Admin. Code R. 58A-5.024(3)(b).

e. The resident was hospitalized in January 2017 for treatment for conditions including pneumonia; seizure disorder; aspiration; decline in function; infectious disease urinary tract infection; coli pneumonia; and malnutrition related to gastrointestinal problems.

f. The resident was again hospitalized on March 10, 2017, with diagnoses including Ileus, a disruption of normal intestinal processes; bowel obstruction; dysphagia; and Chronic Kidney Disease.

g. Upon discharge from the hospital on March 26, 2017, the resident had a percutaneous endoscopic gastrostomy (hereinafter "PEG") tube for the provision of nutrition and water. The resident required feeding of Jevity 1.5 mg, via PEG tube at the rate of 65 ccs per hour with clear water flushes of 300 ccs every four (4) hours. In addition, the resident had been prescribed at least eleven (11) medications. Hospital records further indicate the resident was to be discharged to a skilled nursing facility.

h. Respondent's administrator indicated that Respondent provided the resident with no food by mouth after the resident returned to the Facility from this hospitalization. The administrator further indicated that facility personnel, none of whom are licensed to provide nursing or medical care, provided nutrition and medications to the resident via

the resident's PEG tube. Respondent maintained no records reflecting the nutrition or medications provided to the resident by unlicensed staff.

i. The resident died on April 7, 2017.

j. A second resident was admitted to the Respondent Facility on an unknown date.[1]

k. This resident's undated health assessment, *see*, Rule 58A-5.024(3)(b), Florida Administrative Code, indicated that the resident was at risk of elopement and that the resident required twenty-four (24) hour per day nursing or psychiatric care.

l. A resident may not be admitted to or maintained in an assisted living facility when the resident requires twenty-four (24) hour nursing or psychiatric care. *See*, § 429.26(11), Fla. Stat. (2016); Fla. Admin. Code R. 58A-5.0181(1)(a)8.

m. Facility records reflect the resident did not receive prescribed medications, including psychiatric medications from February 1 through 14, 2017.

n. In March 2017, the resident eloped from Respondent's Facility. The date of the elopement is not documented, however, the elopement was reported to law enforcement on March 16, 2017, and the resident was located in a hospital two (2) weeks later.

o. Two (2) months after returning to the Respondent Facility after the hospitalization, Facility records reflect the resident did not receive prescribed medications, including psychiatric medications from May 1 through 13, 2017, a period of thirteen (13) days, the resident again eloped from the Facility. The date of the elopement is not documented, however the elopement was reported to law enforcement on May 16, 2017, and the resident was located in the Florida Keys three (3) weeks later by law enforcement.

---

[1] As no resident admission and discharge log was maintained by Respondent, the exact date of admission could not be determined. *See*, Fla. Admin. Code R. 58A-5.024(1)(b).

p. Respondent could not demonstrate that it had conducted an assessment of this resident related to elopement risk, had obtained and maintained a photograph of the resident, or assured the resident maintained on his person identification. *See*, Rule 58A-5.0182(8), Florida Administrative Code. Respondent could not demonstrate that its policy related to response to resident elopement had been implemented on either occasion, or that staff were cognizant of such policies and procedures.

q. Respondent could demonstrate no action or interventions it took to supervise the resident to ensure the resident did not elope from the resident's admission or through the resident's two (2) elopements.

r. Four (4) people remained in the facility at that time.

s. Respondent's administrator asserts that one (1) of these persons is not a resident, yet Respondent maintains the resident's medications in central storage. Further Respondent maintains a document from Florida's Agency for Persons with Disabilities reflecting this resident suffers from schizoaffective disorder, is at high risk for elopement, and requires a high level of supervision to prevent elopement.

t. Of the other three (3) residents, Respondent has no health assessment describing one resident's health care needs. A document from 2011 reflects the resident suffers from schizoaffective disorder.

u. Respondent's administrator readily admits to a lack of knowledge regarding the regulatory scheme regulating licensed assisted living facilities. Among the other regulatory violations confirmed during the Agency's survey was the lack of two (2) staff having undergone criminal history background screening or being listed on the Criminal Background Screening Clearinghouse, *see*, § 429.174, Florida Statutes (2016); Chapter 435, Florida Statutes (2016); the failure to maintain resident records, *see*, Rule 58A-

5.024(3), Florida Administrative Code, including a written record, updated as needed, of any significant changes, any illnesses that resulted in medical attention, changes in the method of medication administration, or other changes that resulted in the provision of additional services, *see*, Rule 58A-5.0182(1)(e), Florida Administrative Code; that the Facility's three (3) unlicensed staff had received required training related to assistance with the self-administration of medications, *see*, Rule 58A-5.0191(5), Florida Administrative Code; that two (2) Facility caregivers, who were left as the sole staff members to care for residents, had obtained and maintained training or certification in cardiopulmonary resuscitation and First Aid, *see*, Rule 58A-5.0191(4), Florida Administrative Code; the failure to maintain resident medication records, *see*, § 429.256(3)(f), Fla. Stat. (2016); Rule 58A-5.0185(5)(b), Florida Administrative Code; and the failure to prepare and file adverse incident reports, *see*, § 429.23, Fla. Stat. (2016); Rule 58A-5.0241, Florida Administrative Code.

NECESSITY FOR EMERGENCY ACTION

18. 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. (2016), Ch. 408, Part II, Fla. Stat. (2016); 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.

19. 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. (2016); Fla. Admin. Code R. 58A-5.023(3)(a). Residents of assisted living facilities must receive the care and

services, including supervision, appropriate to their needs. Fla. Admin. Code R. 58A-5.0182(1).

20. Residents who 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.

21. In this instance, Respondent has failed to ensure that these minimum requirements of law are being met. These failures encompass the full panoply of statutory and rule provisions which codify minimum standards for assisted living facilities.

22. In the present case, Respondent has inappropriately admitted or maintained in its care two (2) residents. One resident clearly required skilled care for the resident's care and services related to PEG feeding and maintenance. Respondent knowingly utilized unlicensed staff to provide care and services beyond the scope of their qualifications, training, or skills. Another resident was identified upon admission as requiring twenty-four (24) hour nursing or psychiatric care, a fact disqualifying the resident from residence in an assisted living facility.

23. Respondent has demonstrated that care and services provided to all residents of the facility do not meet minimum standards. Respondent knew or should have known that a resident was at high risk of elopement, yet undertook no steps, either those required by law, or other interventions, to provide the care and supervision to minimize the risk presented to the resident by these elopement behaviors or to react thereto. In addition, Respondent has not obtained and maintained staff members with the minimum qualifications to meet resident care and service needs, both expected and emergent, for the resident population. Staff members lack training in medication assistance, lack skills related to cardiopulmonary resuscitation and First Aid, and have not successfully undergone required criminal history backgrounds screening.

24. These failures permeate Respondent's operations. Respondent's administrator,

responsible for the overall operations and services of the Facility, *see*, Rule 58A-5.019(1), Florida Administrative Code, readily admits her lack of knowledge of the care and service provisions of law governing assisted living facilities. The condition of Respondent and its current operations are stark evidence of the lack of this knowledge and the lack of actions necessary to meet minimum licensure standards

25. The most basic of resident needs are not known by Respondent to ensure that appropriate services are provided. Absent a health assessment, these needs, and Respondent's ability to meet these needs, may not be determined. Medication assistance, if not medication administration, to residents are being provided by untrained, unqualified, and unlicensed personnel on a regular basis. Further, the failure to obtain and maintain resident records, including a written record of any significant changes, and medication observation records, inhibit the ability of Respondent and resident health care providers of evaluating the effectiveness of care, supervision, medical interventions, or behavioral interventions, necessary to meet resident medical and psychological needs.

26. Individually and collectively, these facts reflect that the residents of this Facility are not currently residing in a safe and decent living environment free from abuse and neglect, § 429.28(1)(a) and (b), Fla. Stat. (2016), and are not receiving the care and services, including supervision, appropriate to resident needs, Fla. Admin. Code R. 58A-5.0182(1). 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. (2016). "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. (2016).

27. The Respondent's deficient practices exist presently; have existed in the past, and more likely than not will 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.

CONCLUSIONS OF LAW

28. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 429, Part I, Florida Statutes, and Chapter 58A-5, Florida Administrative Code.

29. 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. (2016), and to receive care and services, including supervision, appropriate to meet their needs, Fla. Admin. Code R. 58A-5.0182(1).

30. 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 emergency suspension of Respondent's licensure to operate an assisted living 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 emergency suspension of Respondent's licensure to operate an assisted living facility in the State of Florida.

31. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Emergency Suspension of Respondent's Licensure 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 for resident health,

safety and welfare because of supervision and care deficiencies, and (3) being placed in an assisted living facility where the regulatory mechanisms enacted for residents protection have been repeatedly overlooked.

32. 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. Respondent's administrator is unaware of the regulatory minimums required to operate an assisted living facility. The facility's operations illustrate either this lack of knowledge or an inability to or unwillingness to meet these minimum requirements. Such deficient practices and conditions justify the imposition of an Emergency Suspension of Licensure. Less restrictive actions, such as the assessment of administrative fines or the implementation of a moratorium on admissions, will not ensure that the current residents or future residents receive the appropriate care, services, and environment dictated by Florida law.

33. 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 facts and circumstances. This remedy is narrowly tailored to address the specific harm in this instance.

IT IS THEREFORE ORDERED THAT:

34. The Respondent's license to operate this assisted living facility is **SUSPENDED** effective June 23, 2017, at 5:00 p.m.

35. Upon receipt of this order, the Respondent shall post this Order on its premises in a place that is conspicuous and visible to the public.

36. As of the effective date and time of the suspension, the Respondent shall not operate this assisted living facility.

37. The Agency shall promptly file an administrative action against the Respondent

based upon the facts set out in this Emergency Suspension Order and provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2016), at the time that such action is taken.

ORDERED in Tallahassee, Florida, this 21st day of June, 2017.

for Justin M. Senior, 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

JUSTIN M. SENIOR
SECRETARY

DELEGATION OF AUTHORITY
To Execute
Emergency Orders

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

This delegation of authority shall be valid from the date of October 4, 2016 until revoked by the Secretary.

Justin M. Senior, Secretary

2/24/17
Date

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RICK SCOTT
GOVERNOR

JUSTIN M. SENIOR
SECRETARY

MEMORANDUM

To: Justin Senior, Secretary

From: Molly McKinstry, Deputy Secretary, Division of Health Quality Assurance

Date: June 20, 2017

Subject: Delegation of Authority

I will be out of the office on business travel from June 21st through June 23rd. Laura MacLafferty will serve as the acting Deputy Secretary of the Division of Health Quality Assurance during this time. Should you have any questions or issues that arise, please contact Laura at 44340 or Traci at 44334.

Thank you.

cc: Ryan Fitch
Laura MacLafferty
Nikole Helvey
Kim Smoak
Scott Waltz
Lucy Frederick
Annette Howard-Lewis
Cindy Krell