

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner.

vs.

REHABILITATION CENTER AT HOLLYWOOD
HILLS, LLC,

AHCA NO. 2017010404

License No. 1238096

File No. 100611

Provider Type: Nursing Home

Respondent.

_____ /

IMMEDIATE MORATORIUM ON ADMISSIONS

THIS CAUSE came before the Secretary of the Agency for Health Care Administration, or his duly appointed designee, who after careful review of the record 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 nursing homes in Florida and enforces the applicable state statutes and rules governing nursing homes. Chs. 408, Part II, and 400, Part II, Fla. Stat. (2017), Ch. 59A-4, 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. (2017).

2. The Respondent, Rehabilitation Center at Hollywood Hills, LLC (hereinafter "the Respondent"), was issued a license by the Agency (License Number 1238096) to operate a nursing home (hereinafter "the Facility") located at 1200 North 35th Avenue, Hollywood, Florida

33021. The licensed capacity of the Facility is one hundred fifty-two (152) residents.

3. As the holder of such a license, the Respondent is a licensee. "Licensee" means "an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2017). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2017). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2017). § 408.803(11), Fla. Stat. (2017). Nursing homes are regulated by the Agency under Chapter 400, Part II, Florida Statutes (2017), and listed in Section 408.802, Florida Statutes (2017). § 408.802(12), Fla. Stat. (2017). Nursing home residents are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2017). The Respondent holds itself out to the public as a nursing home that fully complies with state laws governing such providers.

4. The current census of the Respondent as of this date is zero (0) residents.

THE AGENCY'S MORATORIUM ON ADMISSIONS AUTHORITY

5. Under Florida law, the Agency may impose an emergency suspension order or immediate moratorium on admissions as defined in section 120.60, Florida Statutes (2017), 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. (2017).

6. Under Florida law, if the Agency finds that an 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. (2017).

LEGAL DUTIES OF A NURSING HOME

7. Under Florida law: "Every licensed facility shall comply with all applicable standards and rules of the agency and shall ... Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner." § 400.141(1)(h), Fla. Stat. (2017).

8. Under Florida law: "In addition to the grounds listed in part H of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee ... (1) An intentional or negligent act materially affecting the health or safety of residents of the facility." § 400.102(1), Fla. Stat. (2017).

FACTS JUSTIFYING AN IMMEDIATE MORATORIUM ON ADMISSIONS

9. On September 13, 2017, the Agency commenced a survey of the Respondent and its Facility.

10. Based upon the above survey, the Agency makes the following findings:

a. On September 10, 2017, Respondent became aware that its air conditioning equipment had ceased to operate effectively.

b. In addition to contacting the local electrical power provider, Respondent situated eight (8) portable air coolers throughout the facility and equipped the halls with fans.

c. Between 1:30 AM and 5:00 AM on September 13, 2017, several residents suffered respiratory or cardiac distress. Eight (8) of those residents ultimately expired.

d. Emergency personnel and law enforcement responding to these multiple emergency medical events directed Respondent, as a result of the heat in the building, to evacuate the second floor of the Facility.

e. Respondent ultimately evacuated the entire building.

11. In this instance, after careful and due consideration, the Agency determines that the practices and conditions at the Respondent's Facility, as set forth more specifically above, present (1) a threat to the health, safety or welfare of residents of the Facility, (2) a threat to the health, safety or welfare of a client, (3) an immediate serious danger to the public health, safety or welfare, and (4) an immediate or direct threat to the health, safety, or welfare of the residents

that constitutes sufficient factual and legal grounds justifying the imposition of an Immediate Moratorium on Admissions to this nursing home.

NECESSITY FOR AN IMMEDIATE MORATORIUM ON ADMISSIONS

12. 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 nursing homes. Ch. 400, Part II, Fla. Stat. (2017); Ch. 408, Part II, Fla. Stat. (2017); Ch. 59A-4, Fla. Admin. Code. In those instances where the health, safety or welfare of a nursing home resident is at risk, the Agency will take prompt and appropriate action.

13. A nursing home must ensure it maintains facility premises and equipment and conduct its operations in a safe and sanitary manner." § 400.141(1)(h), Fla. Stat. (2017). Residents of nursing homes suffer from disease or disability, are frail, elderly, or vulnerable. By law, the Respondent has been licensed and entrusted to provide care and services to this special class of people, and as such, must comply with the regulations, statutes and rules that have been enacted for the special needs of these residents.

14. Based upon the foregoing, (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate moratorium on admissions, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate moratorium on admissions.

15. The Respondent's deficient conduct is widespread and places all future residents at immediate threat to their health, safety and welfare. The Respondent has demonstrated that its physical plant cannot currently provide an environment where residents can be provided care and services in a safe and sanitary manner.

16. The above-stated conditions present an immediate serious danger to public health, safety, or welfare and constitute a direct threat to the health, safety or welfare of residents and/or potential residents of the Facility. No resident of a nursing home should be placed in a hazardous environment.

17. The Respondent's deficient practice exist presently; have existed in the past, and more likely than not will continue to exist if the Agency does not act promptly.

18. An Immediate Moratorium on Admissions to this nursing home is necessary to protect the residents from (1) the unsafe conditions and deficient practices that currently exist in the facility, (2) being placed at risk of living in an environment ill-equipped to provide for resident health, safety and welfare, and (3) being placed in a nursing home where the statutory and regulatory mechanisms enacted for their protection have been breached.

CONCLUSIONS OF LAW

19. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 400, Part II, Florida Statutes, and Chapter 59A-4, Florida Administrative Code.

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

21. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Immediate Moratorium on Admissions is necessary in order to protect the residents from (1) the unsafe conditions and deficient practices that currently exist, (2) being

placed at risk of living in an environment ill-equipped to provide a safe and sanitary living environment, and (3) being placed in a nursing home where the regulatory mechanisms enacted for residents protection have been overlooked.

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

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

IT IS THEREFORE ORDERED THAT:

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

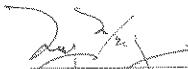
2. This Immediate Moratorium on Admissions shall be posted and visible to the public at the Respondent's nursing home until the moratorium is lifted. § 408.41(4), Fla. Sta. (2017).

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

4. The Agency shall promptly proceed with the filing of an administrative action

against the Respondent based upon the facts set out within this Order and any other facts that may be discovered during the Agency's continuing investigation. The Agency shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2017), when the administrative action is brought.

ORDERED in Tallahassee, Florida, this 13 day of September, 2017.



Austin 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
Immediate Orders of Moratorium**

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

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

Justin M. Senior, Secretary

2/24/17
Date

