

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

MORNING BREEZE, INC. d/b/a
MORNING BREEZE ASSISTED
LIVING FACILITY,

Respondent.

AHCA No: 2021017005
License No. 12455
File No. 11968563
Provider Type: Assisted Living

EMERGENCY SUSPENSION ORDER

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

THE PARTIES

1. The Agency for Health Care Administration (hereinafter "the Agency"), is the licensure and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing assisted living facilities. Chs. 408, Part II, and 429, Part I, Fla. Stat. (2021), Ch. 59A-36, 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. (2021).

2. The Respondent, Morning Breeze, Inc. d/b/a Morning Breeze Assisted Living Facility (hereinafter "the Respondent"), was issued a license (License Number 12455) by the Agency to operate a fourteen (14) bed assisted living facility (hereinafter "the Facility") located

at 5940 Northwest 19th Court, Lauderhill, Florida 33313, 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, or governmental entity, or other entity that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2021). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2021). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2021). § 408.803(12), Fla. Stat. (2021). Assisted living facilities are regulated by the Agency under Chapter 429, Part I, Florida Statutes (2021), and listed in Section 408.802, Florida Statutes (2021). § 408.802(11), Fla. Stat. (2021). Assisted living facility patients are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2021).

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 (2021), and Chapter 59A-36, Florida Administrative Code.

5. As of the date of this Emergency Suspension Order, the census at the Facility is nine (9) 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 (2021), 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. (2021). 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. (2021).

LEGAL DUTIES OF AN ASSISTED LIVING FACILITY

Staffing Standards

7. Florida law provides:

(1) ADMINISTRATORS. Every 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.

(a) An administrator must:

1. Be at least 21 years of age;
2. If employed on or after October 30, 1995, have, at a minimum, a high school diploma or G.E.D.;
3. Be in compliance with Level 2 background screening requirements pursuant to sections 408.809 and 429.174, F.S.;
4. Complete the core training and core competency test requirements pursuant to rule 59A-36.011, F.A.C., no later than 90 days after becoming employed as a facility administrator. Administrators who attended core training prior to July 1, 1997, are not required to take the competency test unless specified elsewhere in this rule; and,
5. Satisfy the continuing education requirements pursuant to rule 59A-36.011, F.A.C. Administrators who are not in compliance with these requirements must retake the core training and core competency test requirements in effect on the date the non-compliance is discovered by the agency or the department.

...

(2) STAFF.

...

(b) Staff must be qualified to perform their assigned duties consistent with their level of education, training, preparation, and experience. Staff providing services requiring licensing or certification must be appropriately licensed or certified. All staff must exercise their responsibilities, consistent with their qualifications, to observe residents, to document observations on the appropriate resident's record, and to report the observations to the resident's health care provider in accordance with this rule chapter.

(c) All staff must comply with the training requirements of rule 59A-36.011, F.A.C.

...

(3) STAFFING STANDARDS.

(a) Minimum staffing:

...

3. At least one staff member who has access to facility and resident records in case of an emergency must be in the facility at all times when residents are in the facility. Residents serving as paid or volunteer staff may not be left solely in charge of other residents while the facility administrator, manager or other staff are absent from the facility.

4. In facilities with 17 or more residents, there must be at least one staff member awake at all hours of the day and night.

5. A staff member who has completed courses in First Aid and Cardiopulmonary Resuscitation (CPR) and holds a currently valid card documenting completion of such courses must be in the facility at all times.

...

(b) Notwithstanding the minimum staffing requirements specified in paragraph (a), all facilities, including those composed of apartments, must have enough qualified staff to provide resident supervision, and to provide or arrange for resident services in accordance with the residents' scheduled and unscheduled service needs, resident contracts, and resident care standards as described in rule 59A-36.007, F.A.C.

(c) The facility must maintain a written work schedule that reflects its 24-hour staffing pattern for a given time period. Upon request, the facility must make the daily work schedules of direct care staff available to residents or their representatives.

Fla. Admin. Code R. 59A-36.010(1)(a)(1-5), (2)(b), (3)(a(3-5), and (3)(b).

Supervision

8. Florida law provides:

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 59A-36.012, 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.

(e) Contacting the resident's family, guardian, health care surrogate, or case

manager if the resident is discharged or moves out.

(f) 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.

Fla. Admin. Code R. 59A-36.007(1).

9. Florida law provides:

(3) STAFFING STANDARDS.

(a) Minimum staffing:

1. Facilities must maintain the following minimum staff hours per week:

Number of Residents, Day Care Participants, and Respite Care Residents	Staff Hours/Week
0-5	168
6-15	212
16- 25	253
26-35	294
36-45	335
46-55	375
56- 65	416
66-75	457
76-85	498
86-95	539

For every 20 total combined residents, day care participants, and respite care residents over 95 add 42 staff hours per week.

...

(b) Notwithstanding the minimum staffing requirements specified in paragraph (a), all facilities, including those composed of apartments, must have enough qualified staff to provide resident supervision, and to provide or arrange for resident services in accordance with the residents' scheduled and unscheduled service needs, resident contracts, and resident care standards as described in rule 59A-36.007, F.A.C.

Fla. Admin. Code R. 59A-36.010(3)(c).

FACTS JUSTIFYING EMERGENCY ACTION

10. On December 8, 2021, the Agency commenced a survey of the Facility.
11. Based upon this survey, the Agency makes the following findings:

- a. On December 5, 2021, local emergency medical services responded to a call from the Facility at 6:28 p.m. The call was placed by a resident of the Facility.
- b. Upon arrival, emergency personnel could locate no Facility staff and the nine (9) residents were left without any supervision. Emergency medical personnel reported the door to the Facility office was open and the medication cabinet was unlocked. The resident who called emergency services informed emergency services that he or she had ingested a medication that did not belong to the resident.
- c. The assistant administrator arrived at the Facility approximately seven (7) minutes after emergency services had responded. The assistant administrator reported he had gone to the store.
- d. The administrator of the Facility did not respond to Agency inquiries. The assistant administrator indicates the administrator comes to the Facility one (1) or two (2) times monthly.
- e. The assistant administrator resides on the property. There is only one (1) other employee of the Facility, hired December 6, 2021, whose schedule is Monday through Friday from 8:00 a.m. to 9:00 p.m. At all other times, the assistant administrator is the sole care giver.
- f. Neither of the two (2) persons identified as Facility staff have the required training and certifications to provide qualified services to assisted living facility residents. *See generally*, Rule 59A-36.011, Florida Administrative Code. The new employee has had none of the required training and does not hold a current certification in cardiopulmonary resuscitation or First Aid. The assistant administrator does not have CORE update training, has not been trained in assistance with the self-administration of medications, and does not hold current certification in cardiopulmonary resuscitation.

- g. The new employee did not appear for work on December 9, 10, 11, or 12, 2021.
- h. The Facility's water bill is three (3) months delinquent, and the electric bill has not been paid.
- i. Residents are doing both the cooking and laundry for the Facility. One (1) of the Facility's refrigerators is inoperable as is the Facility washing machine, necessitating residents take laundry to a local laundromat.
- j. The minimum staffing hours for the Facility is two hundred twelve (212) hours per week. The Facility could produce no records to reflect that these minimum hours are being met. Based upon the assistant administrator's explanation, staff coverage is one (1) person at most times of the week, resulting in approximately one hundred sixty-eight (168) hours of staffing hours per week.
- k. According to the assistant administrator, the ninety percent (90%) owner of the family held licensee passed away in February 2021, and since that time management and operations of the Facility has not been consistent with several members of the remaining ownership having withdrawn from participation in or operations of the Facility, including fiscal management.
- l. On December 13, 2021, at 12:56 p.m., the assistant administrator of the Facility tendered a letter to the Agency's local field office purporting to surrender the license to the Agency. The Facility, however, still has nine (9) residents living in the Facility.

NECESSITY FOR EMERGENCY ACTION

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 assisted living facilities. Ch. 429, Part I, Fla. Stat. (2021), Ch. 408, Part II, Fla. Stat. (2021); Ch. 59A-36, 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.

13. Residents of assisted living facilities must receive the care and services, including supervision, appropriate to their needs. Fla. Admin. Code R. 59A-36.010(1). When a resident requires a higher level of care, the resident must be discharged to receive that care. Fla. Admin. Code R. 59A-36.006(1),(4), and (5). The Facility administrator 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. Fla. Admin. Code R. 59A-36.010(1).

14. As the facts reflect, Respondent has failed to meet these minimum licensure standards and these failures are not isolated events, but operational and management system deficiencies affecting the health, safety, and well-being of Respondent's current or future resident population.

15. 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.

16. In this instance, Respondent has demonstrated an inability or unwillingness to comply with the regulatory scheme related to staffing minimum requirements in assisted living facilities. The scope of services which assisted living facility personnel provide is wide and varied. Competency in these services cover care and services which may be provided on a daily basis or required only in emergent conditions. Staff qualified to competently perform the panoply of resident services required, ranging from dietary services, assistance or supervision with activities of daily living, and assistance with self-administration or administration of medication, must be available to meet resident needs. These services must be available and provided at all times. In addition, staff must be qualified, through training and education, to

meet emergent resident needs such as the provision of First Aid or cardiopulmonary resuscitation.

17. Respondent's failure to meet these standards is not an isolated event, but a demonstrated pattern of non-compliance. Whether this non-compliance intentional or negligent in its genesis, it is clear Respondent has not demonstrated the ability to address its staffing qualifications and availability conditions to assure residents have qualified and competent staff available to meet resident known or emergent needs at all times.

18. In addition, the Facility's fiscal health appears in disrepair. Utility bills, necessary to the health, safety, and well-being of residents, remain past due and unpaid, placing residents at immediate risk of loss of water and electrical services.

19. The operation of the Facility is not being overseen by an administrator to coordinate and assure day-to-day operations are organized in such a manner resident needs are being met.

20. Respondent knew or should have known that it was woefully insufficient in its staffing practices. Despite that, and the ongoing threat to resident health and safety presented by these failures, Respondent has not taken action to ensure that it has sufficient and qualified personnel to meet resident needs.

21. These failures illustrate conditions under which supervision of residents and their ongoing health and well-being is simply not being provided by qualified staff.

22. Clearly, this presents an immediate risk to residents and the deficient practices permeate Facility operations.

23. Individually and collectively, these facts reflect that the residents of this Facility are not currently receiving care and services, including supervision, appropriate to their needs, Fla. Admin. Code R. 59A-36.007, and are not receiving the services of an administrator to

provide appropriate care to all residents by qualified personnel, Fla. Admin. Code R. 59A-36.010. No resident of an assisted living facility should be placed or maintained in such an environment.

24. The Legislature created the Assisted Living Facilities Act. §§ 429.01, et seq., Fla. Stat. (2021). “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. (2021).

25. 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

26. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 429, Part I, Florida Statutes, and Chapter 59A-36, Florida Administrative Code.

27. 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. (2021), and to receive care and services, including supervision, appropriate to meet their needs, Fla. Admin. Code R. 59A-36.007.

28. 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.

29. 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 deficient infection control practices, and (3) being placed in an assisted living facility where the regulatory mechanisms enacted for residents protection have been repeatedly overlooked.

30. The Respondent's deficient practices exist presently, have existed for an extended period of time in the past without corrective action, and 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. Such deficient practices and conditions justify the imposition of an Emergency Suspension Order. 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.

31. 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:

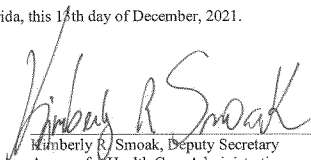
32. The Respondent's license to operate this assisted living facility is **SUSPENDED effective December 15, 2021 at 5:00 p.m.**

33. 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.

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

35. 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 (2021), at the time that such action is taken.

ORDERED in Tallahassee, Florida, this 13th day of December, 2021.



Kimberly R. Smoak, Deputy 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 *Brovles 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.