

**STATE OF TENNESSEE
HEALTH FACILITIES COMMISSION
BEFORE THE BOARD FOR LICENSING HEALTH CARE FACILITIES**

In The Matter of:)	
)	
Summit View of Rocky Top)	
Nursing Home)	
License No. 3,)	Case No. 2022029121
)	
Respondent.)	
)	
Rocky Top, Tennessee)	

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter “the Board”) pursuant to the request of the Tennessee Health Facilities Commission (“Commission”), by and through the Office of Legal Services, and **Summit View of Rocky Top** (hereinafter “Respondent”) that the Board adopt this Consent Order, the terms of which have been agreed upon by the parties, as signified by their signatures below.

Respondent, by signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review of this matter.

Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should the Consent Order not be ratified. Likewise, all matters, admissions, and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

JURISDICTION

The Board has the power to license and regulate hospitals, recuperation centers, nursing homes, homes for the aged, residential HIV supportive living facilities, assisted-care living facilities, home care organizations, residential hospices, birthing centers, prescribed childcare centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential homes. Tenn. Code Ann. § 68-11-202.

The Health Facilities Commission shall conduct on-site inspections and investigations as may be necessary to safeguard and ensure at all times, the public's health, safety, and welfare. Tenn. Code Ann. § 68-11-210. The Board has the authority to suspend or revoke the license of any facility licensed under Tenn. Code Ann. § 68-11-201 *et. seq.* The Board may also place a facility on probation. Tenn. Code Ann. § 68-11-207(f)(2). If the Board determines during or at the end of the probation that the facility is not taking steps to correct non-compliance or otherwise not responding in good faith pursuant to the plan of correction, the board may take any additional action as authorized by law. Tenn. Code Ann. 68-11-207(f)(8).

If a nursing home is more than ninety (90) days delinquent in paying an installment of its annual nursing home assessment fee, the Bureau of TennCare (hereinafter "TennCare") shall initiate proceedings before the Board in accordance with the Uniform Administrative Procedures Act (hereinafter "UAPA"), so that the Board **may suspend admissions** to the facility or otherwise direct the facility to pay the assessment fee and any accrued penalties and interest in full within a prescribed period of time. Tenn. Code Ann. § 71-5-1006(c)(2).

If the facility does not pay the assessment fee and any accrued penalties and interest in full within the prescribed period of time as directed by the Board, the Board **shall suspend admissions** to the facility. Any suspension of admissions imposed shall immediately be lifted following the full payment of the assessment fee and any accrued penalties and interest by the facility. Tenn. Code Ann. § 71-5-1006(c)(3).

If full payment is not received within sixty (60) days from the first day of the suspension of admissions, TennCare shall be authorized to initiate proceedings before the Board in accordance with the UAPA so that the Board may consider **revocation** of the facility's license. Tenn. Code Ann. § 71-5-1006(c)(4).

TennCare **may** for good cause approve an **alternative payment plan**, as long as full payment of the assessment fee plus any penalties are made. So long as the facility is current with payment of the current assessment and any authorized payment plan approved by the TennCare, no further penalties will be applied. Any payments after a penalty is assessed under this section shall be credited first to unpaid assessment amounts rather than to penalty amounts, beginning with the most delinquent installment. TennCare **may**, as part of an approved payment plan, **waive, in whole or in part**, any penalty or interest imposed under this section. A waiver shall excuse the payment of that penalty or interest amount but **shall not** excuse payment of any assessments. Nothing in this section shall require the bureau of TennCare to agree to or approve any waiver under this section, and the waivers shall only be approved after the bureau's determination that there is good cause for the waiver. Tenn. Code Ann. § 71-5-1006(b).

Proceedings for disciplinary action against a facility are conducted in accordance with the Tennessee Uniform Administrative Procedures Act, Title 4, Chapter 5, of Annotated Tennessee Code. Tenn. Comp. R. & Regs. 0720-18-.03(9). A Respondent in a disciplinary action is entitled

to be represented by legal counsel, to personally appear before the Board, to present witnesses, to have subpoenas issued and to receive notice of the charges before being required to appear for a hearing. Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative. Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, other representative. Tenn. Code Ann. § 4-5-305, *et seq.*

STIPULATIONS OF FACT

1. At all times pertinent hereto, Summit View of Rocky Top, 204 Industrial Park Road, Rocky Top, Tennessee 37769 has been licensed as a Nursing Home by the Board, having been issued license number 3 on July 1, 1992. Respondent has an active license with an expiration date of July 28, 2023.
2. On or about August 24th, 2022 the Health Facilities Commission received notification from TennCare that Respondent has failed to pay their nursing home assessment fees as required by law.
3. The Respondent and TennCare have successfully negotiated a payment plan for the past due amounts owed to TennCare as shown in **Attachment 1** attached hereto and hereby incorporated by reference in its entirety herein.

GROUNDS FOR DISCIPLINE

The facts stated in the Stipulations of Fact section, *supra*, are sufficient to establish that grounds for the discipline of Respondent's Nursing Home license exist. Specifically,

Respondent has violated the following statutes and/or rules, for which disciplinary action by the Board is authorized.

4. The facts stated in paragraph two (2) are sufficient to establish that Respondent has violated the provisions of Tenn. Code Ann. § 71-5-1003(a), the relevant portion of which reads as follows:

(a) Each nursing home shall pay the nursing home assessment in monthly installments to the account in accordance with this part.

5. Given the aforementioned violation, the Board is empowered to act pursuant to the provisions of Tenn. Code Ann. § 71-5-1006 (a-b) and (c)(1-6) the relevant portions of which read as follows:

(a) If any part of any assessment fee imposed by § 71-5-1003 is not paid on or before the due date, a penalty of **five percent (5%)** of the amount due shall at once accrue and be added to such assessment fee. Thereafter, on the first day of each month during which any part of any assessment fee or any prior accrued penalty remains unpaid, an **additional penalty of five percent (5%)** of the then unpaid balance shall accrue and be added to such assessment fee or prior accrued penalty. Payment shall be deemed to have been made upon date of deposit in the United States mail.

(b) TennCare **may** for good cause approve an **alternative payment plan**, as long as full payment of the assessment fee plus any penalties are made. So long as the facility is current with payment of the current assessment and any authorized payment plan approved by the TennCare, no further penalties will be applied. Any payments after a penalty is assessed under

this section shall be credited first to unpaid assessment amounts rather than to penalty amounts, beginning with the most delinquent installment. TennCare **may**, as part of an approved payment plan, **waive, in whole or in part**, any penalty or interest imposed under this section. A waiver shall excuse the payment of that penalty or interest amount but **shall not** excuse payment of any assessments. Nothing in this section shall require the bureau of TennCare to agree to or approve any waiver under this section, and the waivers shall only be approved after the bureau's determination that there is good cause for the waiver.

- (c)(1) If a nursing facility fails to pay a quarterly installment of the nursing home assessment fee within thirty (30) days of its due date or becomes or is in arrears for payment of its nursing home assessment fee on the first day of the state fiscal year, and does not have an approved payment plan for which payments are current, TennCare **shall** direct its contracted managed care organizations (MCOs) to recover the full amount of the then-outstanding nursing home assessment fee and any applicable penalties and interest, which shall be accomplished through recoupment from payments made by the MCOs to nursing facilities to recover the full amount of the then-outstanding nursing home assessment fee and any related penalties and interest. TennCare MCOs shall remit promptly any of these recouped payments to the bureau of TennCare. TennCare may recoup such amounts in as few or as many installment payments as it deems appropriate.
- (c)(2) If a nursing facility is more than ninety (90) days delinquent in paying any

installment of its annual nursing home assessment fee; or becomes delinquent in any approved payment plan by more than ninety (90) days or fails to provide timely payment of any and all subsequent quarterly installments of its annual nursing home assessment fee while past due amounts are being recouped pursuant to subdivision (c)(1), TennCare **shall**:

- (A) Initiate a proceeding before the board for licensing health care facilities, in accordance with the Uniform Administrative Procedures Act, for the purpose of having the board indefinitely **suspend admissions** to the facility until all outstanding nursing home assessment fees and applicable penalties and interest have been repaid. Failure of a nursing facility to pay a quarterly installment of the nursing home assessment fee, or any penalties or interest required to be paid by this part, shall be considered by the board to be a license deficiency; and
- (B) Initiate proceedings to **terminate** the nursing facility's TennCare identification number.

(c)(3) Upon initiation of a proceeding before the board for licensing healthcare facilities by TennCare pursuant to subdivision (c)(2), the board **shall suspend admissions** to the facility after TennCare meets the burden of proof required by the Uniform Administrative Procedures Act. The board **shall have no discretion** to impose any sanction or take any action other than that set out in this subdivision (c)(3) in the proceeding. Immediately following the full payment by the facility, or its successor, of all then-

outstanding assessment fees and any applicable penalties and interest, any suspension of admissions to the nursing facility imposed according to this section **shall be automatically lifted** without requiring further action by the board, so long as the full payment of then-outstanding amounts are made within the sixty (60) days immediately following the date of the suspension of admissions.

(c)(4) On or after the sixtieth (60th) day following the date of suspension of admissions to the nursing facility if either the nursing facility fails to pay all then-outstanding nursing home assessment fees and any applicable penalties and interest accrued thereon or the nursing facility fails to be current on the terms of its payment plan if a plan is in place, then TennCare shall initiate proceedings before the board for licensing healthcare facilities in accordance with the Uniform Administrative Procedures Act for the purpose of **revoking** the nursing facility's license. Upon initiation of a proceeding before the board by TennCare pursuant to this subdivision (c)(4), the board **shall revoke** the nursing facility's license upon the bureau of TennCare meeting the burden of proof required by the Uniform Administrative Procedures Act. The board **shall have no discretion** to impose any sanction or take any action other than that set out in this subdivision (c)(4) in the proceeding.

(c)(5) Revocation of either the nursing facility's license or the nursing facility's TennCare identification number **shall not remedy, discharge, satisfy, or otherwise extinguish** the nursing facility's liability for the then-outstanding

nursing home assessment fees and any related penalties and interest.

- (c)(6) Upon revocation of the nursing facility's license or termination of the nursing facility's TennCare identification number, the nursing facility shall **be required to reapply for a license**, TennCare identification number, or both the license and the identification number, in order to provide services to the TennCare population. As a condition of reapplication, the nursing facility, or its successor shall pay in full all then-outstanding nursing home assessment fees, penalties, and interest.


ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

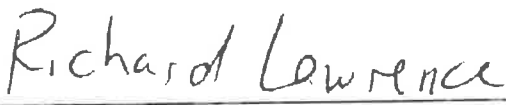
6. The Respondent shall comply with the terms of the payment plan dated March 27th, 2023 and executed on or about April 3rd, 2023 as shown in **Attachment 1** attached hereto and hereby incorporated by reference in its entirety herein.
7. The Respondent is required to remit payment of five-thousand dollars (\$5,000) no later than the 10th of each month until the closing sale of the facility is complete.
8. The final payment will be a lump sum payment of the remaining balance left on the account (less \$51,089.71, which will be waived at the time of payment plan completion). The final payment will be due no later than 15 days after the closing sale of the Respondent's facility is complete.

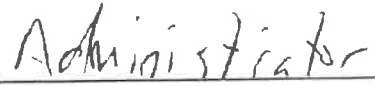
9. Failure to make payment on or before the due dates will constitute a breach of the payment plan.
10. If payment is not made in accordance with the executed payment plan contained in **Attachment 1**, then **admissions** to the Respondent's facility **shall be immediately suspended** without any further action required by the Board.
11. If admissions are suspended due to a failure to comply with the repayment plan, then upon full payment of the principal portion of the assessment fee and any applicable penalties and interest, the suspension of admissions shall be lifted.
12. If payment in full is not made within sixty (60) days of the first day that admissions are suspended, then further disciplinary action may be taken, including revocation of Respondent's license.
13. Failure to adhere to the terms of a payment plan approved by TennCare may subject Respondent to further disciplinary action including, but not limited to accrued penalties and interest, in whole or in part, mandatory withholding, and up to revocation of Respondent's license.
14. Upon ratification by the Board, the listing of the public discipline, including deficiencies and civil penalties, shall be listed on the Facility Action and Abuse Report.

AGREED TO:



 Summit View of Rocky Top
 License No. 3
 Signature of Authorized Representative
 Respondent



 Printed Name of Authorized Representative


 Title of Authorized Representative



Jeremy Gourley (BPR # 022812)
Senior Associate General Counsel
Health Facilities Commission
665 Mainstream Dr. 2nd Floor
Nashville, Tennessee 37243
Office: (615) 741-7221
Fax: (615) 741-7051

Approval by the Board

Upon the agreement of the parties, this **CONSENT ORDER** is approved as a **FINAL ORDER** by a majority of a quorum of the Tennessee Board for Licensing Health Care Facilities at a public meeting of the Board and signed this 16th day of June, 2023.

ACCORDINGLY, IT IS ORDERED that the agreement of the parties does hereby become the Final Order of the Board.



Chairperson
Board for Licensing Health Care Facilities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, Summit View of Rocky Top, c/o Ms. Amy Mahone, Esq. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 1900 Republic Centre 633 Chestnut Street Chattanooga, TN 37450 by delivering same in the United States regular mail and United States certified mail, number **7022 3330 0001 2193 4277** return receipt requested, with sufficient postage thereon to reach its destination. A copy was sent via electronic mail to: amahone@bakerdonelson.com

This 16th day of June, 2023.



Jeremy Gourley
Senior Associate General Counsel



Division of
TennCare

March 27, 2023

Summit View of Rocky Top
C/O Amy Mahone
204 Industrial Park Rd.
Rocky Top, TN 37769

Dear Ms. Mahone,

Summit View of Rocky Top has requested a payment plan for the outstanding SFY23 Q3 nursing facility assessment, penalties, and interest. In response to your recent letter on March 17, 2023, in which you express interest in entering into a payment plan, TennCare has reviewed and proposed the following payment plan arrangement.

The current outstanding assessment, penalty, and interest debt totals: **\$227,811.45**. TennCare has reviewed your penalty waiver request and has decided to waive \$51,089.71 of your outstanding penalty debt upon adherence and completion of the following payment schedule:

1 st Payment Due Date: April 10, 2023	\$ 5,000.00
2 nd Payment Due Date: May 10, 2023	\$ 5,000.00
3 rd Payment Due Date: June 10, 2023	\$ 5,000.00
4 th Payment Due Date: July 10, 2023	\$ 5,000.00
5 th Payment Due Date: August 10, 2023	\$ 5,000.00
6 th Payment Due Date: September 10, 2023	\$ 5,000.00

Summit View of Rocky Top is required to remit payment of five thousand dollars (\$5,000) no later than the 10th of each month until the closing sale of the facility is complete. The final payment will be a lump sum payment of the remaining balance left on the account (less \$51,089.71, which will be waived at the time of payment plan completion). The final payment will be due no later than 15 days after closing. Failure to make payment on or before the due dates will constitute a breach of the payment plan.

Finally, a payment plan agreement like this would typically also require that the SFY23 Q4 assessment be paid on time, in full, by the due date of **June 30, 2023**. However, given Summit View of Rocky Top's current financial situation, the SFY23 Q4 assessment may be built into the outstanding assessment balance as part of your payment plan. TennCare anticipates the SFY23 Q4 assessment invoice will be sent no later than May 31, 2023. Failure to comply with the agreed upon payment plan will result in the imposition of penalties and potentially MCO withholds.

Please sign below and return in agreement. If you have any questions, please contact Philip Q. Lester, Accountant & Billing Specialist at Philip.Q.Lester@tn.gov or (615)-507-6895.

Sincerely,

Samantha F. Rummage
Fiscal Chief of Staff
Division of TennCare



Administrator Signature:  Date: 4/3/23
Amy Mahone / Richard Lawrence