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BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES

IN THE MATTER OF:)
)
Shelby Gardens Place)
1535 Appling Care Lane)
Cordova, TN 38018)
)
License No. 00000026)

Case #: 201805193

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HEALTH CARE FACILITIES

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 2nd day of October, 2019, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Shelby Gardens Place** (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.

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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 child care 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. Further, TENN. CODE ANN. § 68-11-202(b)(1)(A) gives the Department of Health ("Department") the authority to conduct reviews of assisted-care living facilities to determine compliance with fire and life safety code regulations promulgated by the Board.

Tenn. Code Ann. § 68-11-210 provides that the Department 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. 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)

The Board is also authorized to establish a system for assessing civil monetary penalties for assisted care living facilities, adult care homes and traumatic brain injury residential homes that are in serious violation of state laws and regulations resulting in endangerment to the health, safety and welfare of residents. Tenn. Code Ann. § 68-11-213(i)(2) and Tenn. Comp. R. & Reg. 1200-08-25-05(4)(3)

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Upon a finding by the Board that an assisted-care living facility has violated any provision of the Health Facilities and Resources Act, Part 2 – Regulation of Health and Related Facilities or the rules promulgated pursuant thereto, action may be taken, upon proper notice to the licensee, to impose a civil penalty, deny, suspend, or revoke its license. Tenn. Comp. R. & Reg. 1200-08-25-.05(4). The Board has established by rule a schedule designating the minimum and maximum civil penalties which may be assessed. Tenn. Code Ann. § 68-11-213(j)(2) and Tenn. Comp. R. & Reg. 1200-08-25-.05(4),(5).

Proceedings for disciplinary action against a facility are conducted in accordance with the Tennessee Administrative Procedures Act, Title 4, Chapter 5, of Tenn. Code Ann. Tenn. Comp. R. & Regs. 1200-08-25-.05(7). 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 thirty (30) days' notice of the charges before being required to appear for a hearing. A Respondent who cannot afford legal counsel may be eligible for free or low-cost counsel. Tenn. Code Ann. § 4-5-101, *et seq.*

STIPULATIONS OF FACT

1. At all times pertinent hereto, **Shelby Gardens Place**, located at 1535 Appling Care Lane, Cordova, TN 38018 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number 00000026 on July 1, 1998. Respondent has an active license with an expiration date of August 12, 2020.
2. On or about October 15, 2018, surveyors conducted an annual licensure survey at Respondent facility. Deficiencies related to the health, safety, and welfare of the residents were cited.

- 3 Residents #1 and #6 had diagnoses of diabetes and had physician prescribed low sodium diets.
- 4 Residents #2 and #3 all had diagnoses of hypertension and were required to be on a low sodium diet.
- 5 An interview with the dietary manager revealed that all residents were on regular diets. Further, salt shakers were observed on all the tables, including those tables of residents with dementia.
- 6 An interview with the corporate dietician confirmed that the dietician could provide no documentation which calculated the amount of carbohydrate or sodium for the menus served.
- 7 An interview with the Wellness Director confirmed that nurses did not encourage residents who had hypertension not to use salt, as all residents were on regular diets.
- 8 The facility failed to follow the prescribed therapeutic diets for Residents #1, 2, 3, and 6.
- 9 On or about December 31, 2018, the Department conducted a revisit survey to ensure that the deficiencies cited had been corrected.
- 10 Resident #1, a diabetic, was prescribed a consistent carbohydrate diet in October 2018. However, interview the Dietary Director confirmed that Resident #1 was on a regular diet.
- 11 Interview with nursing staff revealed that Resident #1 was being switched to a regular diet, as the facility did not have a consistent carbohydrate diet. Review of the facility's diet manual revealed that the facility had a consistent carbohydrate diet.
- 12 Resident #2 a diabetic, also had a physician prescribed diet for consistent carbohydrates. However, Resident #2's physician received documentation from the facility which stated

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that all diets were planned to appropriately distribute the amount of carbohydrates in three meals throughout the day. As such, a consistent carbohydrate diet was unnecessary. Thereafter, Resident #2's physician switched Resident #2 to a regular diet.

13. Yet, Resident #2's meal order sheets reflected that Resident #2 preferred diabetic options. A meal request form revealed that Resident #2 requested to receive half of sweet desserts due to diabetic needs.

14. Resident #3, also had diagnoses of diabetes and hypertension, and had a physician order for a diabetic diet. However, Resident #3 was also receiving a regular diet.

15. The facility was recited for failure to implement its plan of corrections, as the facility failed to follow the prescribed therapeutic diets for Residents #1, 2, and 3.

16. On or about February 20, 2019, surveyors conducted a second revisit survey. The facility was found to have corrected the previously cited deficiencies and was back in compliance.

GROUND FOR DISCIPLINE

The facts stated in the Stipulations of Fact section, *supra*, are sufficient to establish that grounds for the discipline of Respondent's Assisted Care Living Facility license exist. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Board is authorized:

17. The facts stated in paragraphs two (2) through fifteen (15) are sufficient to establish that Respondent has violated the provisions of Rule 1200.08-25-07(7)(c)(3)(ii) [SERVICES PROVIDED], the relevant portion of which reads as follows:

(7) An ACLF shall provide personal services as follows:

(c) Dietary services

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- (3) An ACLF shall ensure that menus meet the needs of the residents as follows:
- (ii) An ACLF shall meet nutritional needs, in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of residents.

ORDER

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

7. The assessment of two (2) civil monetary penalties, one in the amount of five hundred dollars (\$500.00), and one civil monetary penalty in the amount of one thousand dollars (\$1,000.00), for a total assessment of one thousand five hundred dollars (\$1,500.00).

Payment shall be submitted to the following address within thirty (30) days of the effective date of this Order:


**Tennessee Department of Health
Division of Health Care Facilities
Attn: Eddie J. Stewart
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243**

8. Upon ratification by the Board, the listing of the public discipline, including deficiencies and civil penalties on the Disciplinary Action Report pursuant to T.C.A. § 68-1-114


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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 3rd day of October 2019.


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

AGREED TO:


Kathy G. Gibbs, Administrator
Shelby Gardens
Respondent

9/10/2019
Date


Caroline R. Tippens (BPR #: 020175)
Assistant General Counsel
Department of Health
665 Main Stream Dr., 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

10.2.2019
Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Shelby Gardens Place, c/o Kathy Garbus, 1535 Appling Care Lane, Cordova, TN 38018, and also through Cordova BG OPCO, LLC, 330 N. Wabash Ave., Suite 3700, Chicago, IL 60611 by delivering in the United States mail, first class, with sufficient postage thereon to reach its destination and via United States Certified Mail # 7018 1836 0000 5102 0765 and

7018 1836 0000 5102 0772

This 3rd day of October, 2019.


Caroline Tippens
Assistant General Counsel