

**BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES**

IN THE MATTER OF:)

Deane Hill Place)
401 Catherine McAuley Way)
Knoxville, TN 37919)

Case Number: 201802898

License No. ACLF 00000088)

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 5th day of September, 2018, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Deane Hill 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 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),(5).

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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(i)(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, Deane Hill Place, located at 401 Catherine McAuley Way, Knoxville, TN 379191 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number **00000088** on September 25, 1998. Respondent has an active license with an expiration date of May 22, 2019.
2. From on or about June 11, 2018 to June 13, 2018, the Department conducted a complaint survey at the Respondent facility.
3. On or about March 22, 2018, Resident Care Provider #1 ("RCP #1) allegedly verbal

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abused Resident #5. RCP #1 was allowed to finish their shift and was not immediately separated from Resident #5 after the facility became aware of the instance of verbal abuse.

4. Facility policy on incidents of abuse, neglect, and exploitation requires that, "...in any case of known or suspected/alleged abuse, the resident and abuser will be separated."
5. Interview with the Director of Memory Care confirmed the facility failed to follow their policy on abuse and neglect, as the facility failed to separate Resident #5 from RCP #1 to ensure Resident #5's safety.
6. Review of the local fire department incident list revealed that the local fire department went to the facility on sixteen (16) different occasions from January 22, 2018 – April 24, 2018 on calls for assistance involving Resident #3.
7. Interview with Licensed Practical Nurse #1 ("LPN #1) revealed that the reason that the facility called the fire department was for lifting assistance to get Resident #3 off the floor, out of bed, into or out of her wheelchair, assistance with lifting her up into the bed, and for turning her for incontinence care.
8. Surveyors then interviewed the Administrator who indicated that the facility was unable to provide the ability and readiness to intervene when crises arose with Resident #3.
9. Further interview with the Administrator confirmed that the facility was unable to safely and effectively meet the needs of Resident #3 while she resided in the assisted living facility.
10. Review of medical records for Resident #3 revealed that she was admitted to hospice care in March 2018 and remained on hospice care until her death on April 26, 2018. The facility was unable to provide documentation from her treating physician certifying that



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her care would be appropriately provided in the ACLF after her admission to hospice.

11. During an interview with the Administrator, the Administrator revealed that the facility had failed to obtain a physician certification for Resident #3 certifying that her care needs could be appropriately met in the ACLF setting after her admission to hospice.

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 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.

12. The facts stated in paragraphs three (3) through five (5) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.07(7)(a)(2)[Services Provided], the relevant portion of which reads as follows:

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

(a) Each ACLF shall provide each resident with at least the following personal services:

(2) Safety when in the ACLF.

13. The facts stated in paragraph six (6) through eight (8) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.07(7)(a)(4)[Services Provided], the relevant portion of which reads as follows:

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

(a) Each ACLF shall provide each resident with at least the following personal services:

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(4) The ability and readiness to intervene if crises arise.

14. The facts stated in paragraph nine (9) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.08(1)(f)[Admissions, Discharges, and Transfers], the relevant portion of which reads as follows:

(1) An ACLF shall not admit or permit the continued stay of any ACLF resident who has any of the following conditions:

(f) Has needs that cannot be safely and effectively met in the ACLF.

15. The facts stated in paragraph ten (10) through eleven (11) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.08(5)(a)[Admissions, Discharges, and Transfers], the relevant portion of which reads as follows:

(5) An ACLF resident qualifying for hospice care shall be able to receive hospice care services and continue as a resident if the resident's treating physician certifies that such care can be appropriately provided in the ACLF.

(a) In the event that the resident is able to receive hospice services in an ACLF, the resident's hospice provider and the ACLF shall be jointly responsible for a plan of care that is prepared pursuant to current hospice guidelines promulgated by the Centers for Medicaid and Medicare and ensures both the safety and well-being of the resident's living environment and provision of the resident's health care needs.

ORDER

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

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16. The assessment of one (1) civil monetary penalty in the amount of one thousand dollars (\$1,000.00), for failure to safely and effectively meet the needs of Resident #3, and three (3) civil monetary penalties in the amount of five hundred dollars (\$500.00) each, for a total assessment of two thousand five hundred dollars (\$2,500.00) in civil monetary penalties.

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.

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 5th day of September, 2018. **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:


Kevin Michael Potts, Administrator
Deane Hill Place

8/14/2018
Date

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Caroline R. Tippens

Caroline R. Tippens, BPR # 030375
Assistant General Counsel
Tennessee Department of Health
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243
(615) 741-1611

9/5/2018

Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Respondent, Deane Hill Place, ATTN: Kevin Michael Potts, at 401 Catherine Mcauley Way, Knoxville, TN 37919 and Knoxville BG OPCO LLC, 330 N. Wabash Ave., Suite 3700, Chicago, IL 60611, by delivering same in the United States mail, certified return receipts numbers 7017 3380 0000 9978 0602 and 70 17 3380 0000 9978 0619 and via United States Postal Service first class, with sufficient postage thereon to reach its destination.

This 5th day of September, 2018.

Caroline R. Tippens

Caroline R. Tippens
Assistant General Counsel