

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

IN THE MATTER OF:)
)
 Mabry Health Care & Rehab Center)
 1340 N. Grundy Quarles Hwy)
 P. O. Box 7)
 Gainsboro, TN 38562)
)
 License No. 136)

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 14th day of October, 2017, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Mabry Health Care & Rehab Center** (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.

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).

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). If the facility does not pay the

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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. 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. *Id.*

The Board may waive, in whole or in part, any penalty imposed...upon a determination that there is good cause for such a waiver. Tenn. Code Ann. § 71-5-1006(d). A board waiver shall excuse the payment of that penalty amount but shall not excuse payment of any assessments. *Id.*

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. 1200-08-06-.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 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, Mabry Health Care, 1340 N. Grundy Quarles Hwy, P.O. Box 7, Gainesboro, TN 38562 has been licensed as a Nursing Home by the Board, having been issued license number 00000136 on July 1, 1992. Respondent has an active license with an expiration date of January 1, 2018.

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2. On or about July 7, 2017, the Tennessee Department of Health received notification from TennCare that Respondent has failed to pay the 4th quarter of 2016, and all four (4) quarters of its 2017 annual nursing home assessment fee. As a result, five (5) payments of the nursing home assessment fees owed to TennCare are over ninety (90) days past due.

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.

3. 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.

Given the aforementioned violation, the Board is empowered to act pursuant to the provisions of Tenn. Code Ann. § 71-5-1006 (a) and (c), the relevant portion of which reads 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

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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.

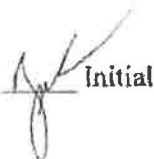
- (c) If a nursing home is more than ninety (90) days delinquent in paying an installment of its annual nursing home assessment fee or becomes delinquent on an approved payment plan, the bureau of TennCare shall initiate proceedings before the board for licensing health care facilities (board), in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, so that the board may suspend admissions to the facility or otherwise direct the facility to pay the assessment fee and any accrued penalties in full within a prescribed period of time. If the facility does not pay the assessment fee and any accrued penalties 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 according to this section shall immediately be lifted following the full payment of the assessment fee and any accrued penalties by the facility. If full payment of the assessment fee and any accrued penalties is not paid within sixty (60) days from the first day of the suspension of admissions, the bureau of TennCare shall be authorized to initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act so that the board may consider the revocation of the facility's license.

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ORDER

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


4. All accrued penalties and interest are waived. Respondent shall immediately submit payment to TennCare of the principal portion of the past due assessment fee.
5. Payment shall be made within 90 days of the effective date of this Order.
6. If payment in full cannot be made within 90 days of the effective date of this Order, then Respondent shall enter into a payment plan approved by TennCare prior to the expiration of the aforementioned 90 day period.
7. **If payment is not made within 90 days of the effective date of this Order and/or there is no payment plan in place with TennCare, then admissions to the Respondent's facility shall be immediately suspended.**
8. Upon full payment of the principal portion of the assessment fee, the suspension of admissions shall be lifted.
9. 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.
10. 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, reinstatement of accrued penalties and interests, in whole or in part, up to revocation of Respondent's license.

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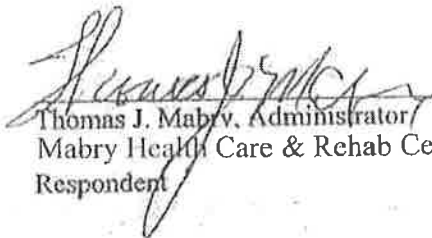
11. Upon ratification by the Board, the listing of the public discipline, including deficiencies and civil penalties, on the Disciplinary Action Report pursuant to T.C.A. § 68-1-114.

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 4 day of October, 2017.

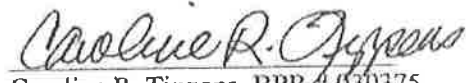
ACCORDINGLY, IT IS ORDERED that the agreement of the parties does hereby become the Final Order of the Board.


Chairperson
Board for Licensing Health Care Facilities


AGREED TO:


Thomas J. Mabry, Administrator
Mabry Health Care & Rehab Center, Inc.
Respondent

2 Oct 2017
Date


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

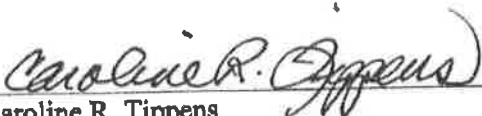
10/4/2017
Date

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CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Mabry Health Care & Rehab Center, ATTN: Thomas J. Mabry, c/o Carolyn Olson, 1340 N. Grundy Quarles Hwy, P.O. Box 7, Gainesboro, TN 38562 by delivering same in the United States mail, first class, with sufficient postage thereon to reach its destination.

This 5th day of October, 2017.



Caroline R. Tippens
Assistant General Counsel

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