

**STATE OF TENNESSEE
HEALTH FACILITIES COMMISSION
BEFORE THE EXECUTIVE DIRECTOR**

IN THE MATTER OF:)
)
PERRY COUNTY NURSING HOME)
S.N.F., LIC. NO. 201,) **DOCKET NO.: 25.02-234775J**
)
RESPONDENT.)
)
LINDEN, TENNESSEE)
)

AGREED DISMISSAL ORDER

The Tennessee Health Facilities Commission (“Commission”), by and through the Office of Legal Services (“Office”), and the Respondent, Perry County Nursing Home (“Respondent” or “Perry County”), by and through its legal counsel, hereby stipulate and agree, subject to approval by the Tennessee Health Facilities Commission Executive Director or Designee, to the following:

I. AUTHORITY AND JURISDICTION

1. The Board for Licensing Health Care Facilities (“Board”) has the authority 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, prescribe childcare centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential home. T.C.A. § 68-11-202.

2. A “Nursing Home” means any institution, place, building or agency represented and held out to the general public for the express or implied purpose of providing care for one (1) or more nonrelated persons who are not acutely ill, but who do require skilled nursing care and related medical services; and “Nursing Home” shall be restricted to facilities providing skilled nursing care and related medical services to individuals, beyond the basic provision of food, shelter and laundry, admitted because of illness, disease or physical infirmity for a period of not less than twenty-four (24) hours per day. T.C.A. § 68-11-201(31).
3. The Commission has the authority to conduct reviews of facilities licensed under this part to determine compliance with fire and life safety code regulations promulgated by the Board. T.C.A. § 68-11-202(b)(1)(A).
4. The 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. T.C.A. § 68-11-210(c).
5. The executive director has the authority to suspend the admission of any new patients or residents to any facility or licensee in those cases where the executive director has a factual basis upon which to believe that the conditions in any such facility or licensee are, or are likely to be, detrimental to the health, safety, or welfare of a patient or resident. T.C.A. § 68-11-252(a).
6. For the purposes of this section, “facility or licensee” means any entity licensed under this part. The executive director may suspend admissions pending a prompt hearing before the board, or an administrative judge if the board cannot be convened promptly. T.C.A. § 68-11-252(b).

7. An order in all cases contesting a suspension of admissions shall be issued within ten (10) business days after the hearing contesting the suspension of admissions, regardless of whether the hearing is conducted before the board or an administrative judge. The order must determine whether the suspension of admissions was initially valid and whether conditions at the facility or licensee continue to be detrimental to the health, safety, or welfare of a patient or resident to justify the continuation of the suspension of admissions if not previously lifted. T.C.A. § 68-11-252(h).
8. The executive director of the health facilities commission shall assess Type A civil penalties in the executive director's order suspending the admission of any new patients to the nursing home, as provided in § 68-11-252. T.C.A. § 68-11-813.
9. The executive director of the health facilities commission has the authority to impose civil monetary penalties upon deficient nursing homes, as defined by § 68-11-201, under the circumstances provided in this part. T.C.A. § 68-11-801(a).
10. In addition to the civil monetary penalties specifically enumerated in this part, the executive director has the authority to impose civil monetary penalties in such amount, scope, manner and circumstances as required by the federal Nursing Home Reform Act of 1987. T.C.A. § 68-11-801(b).
11. The executive director has the authority to promulgate rules and regulations to impose the civil monetary penalties described in subsection (b). T.C.A. § 68-11-801(c).
12. Type A civil monetary penalties may be imposed whenever the executive director of the health facilities commission finds the conditions in a nursing home are, or are likely to be, detrimental to the health, safety or welfare of the patients, and the

executive director has accompanied this finding by ordering the nursing home to suspend the admission of any new patients, as provided by § 68-11-802(a).

13. Should any nursing home exercise its right to a hearing in contest of both the assessment of a type A civil penalty and the suspension of admissions, the matters shall be consolidated for hearing before an administrative judge and, should reconsideration of the administrative judge's initial order be requested by either party pursuant to § 4-5-317, the matters may be separated with the board for licensing health care facilities reviewing the suspension of admissions and the civil penalty being reviewed as provided in §§ 68-11-811 — 68-11-820. T.C.A. § 68-11-813(c).
14. Upon hearing a case or reviewing an initial order, the administrative judge, if sitting alone during a hearing, shall have the power to determine whether the imposition of any civil monetary penalty was proper and lawful, and, if so, whether the amount of the penalty was authorized by law and justified by the facts of the matter. T.C.A. § 68-11-820(a).
15. The administrative judge, when sitting alone, may find that no penalty should have been assessed; and, if so, the case shall be dismissed and the penalty abated. T.C.A. § 68-11-820(b).
16. Pursuant to T.C.A. § 68-11-820(c), when it finds that a civil penalty was properly assessed for a violation specified in §§ 68-11-801 — 68-11-805, the administrative judge, when sitting alone, may uphold the amount originally imposed, correct the amount of the assessment to conform with the law, or reduce the amount of the penalty, but the amount may be reduced only after considering the following factors:
 - (1) Those set forth in § 68-11-207(c);

(2) Whether the nursing home had recognized the violation, had voluntarily notified the health facilities commission prior to any inspection, and had documented the correction of the violation within five (5) working days after the inspection;

(3) Whether the violation was an unintended and temporary consequence typical of the on-going operation of a health care facility, which had minimal impact upon the care of the patients; and

(4) Whether the nursing home has a dispute, made in good faith and not solely for the purposes of delay, regarding the health facilities commission executive director's legal authority to impose an assessment.

17. All contested cases shall be conducted according to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The hearing shall be conducted within thirty (30) days of the nursing home's demand, and an order shall be issued within ten (10) working days after the hearing. T.C.A. § 68-11-817.
18. In accordance with Public Chapter 1119 (2022), all rule citations cited as 1200-08-06, shall now be referenced as 0720-18.

II. STIPULATIONS OF FACTS

19. A survey was conducted on the premises of the facility from July 24, 2023 to August 1, 2023, resulting in deficiencies cited which the Commission alleged affected the health, safety and welfare of the residents within the nursing home.
20. On August 11, 2023, the Executive Director of the Health Facilities Commission sent a letter to Respondent with the results of the aforementioned survey.

21. On August 21, 2023, the Executive Director of the Health Facilities Commission issued the Executive Order suspending admissions and assessing four (4) Type A Civil Monetary Penalties.
22. A Notice of Rights was included within the Executive Order.
23. On September 8, 2023, Respondent filed an Answer and Incorporated Counterclaim in response to the Notice of Suspension of Admissions.

III. POSITION OF THE PARTIES

The Parties agree that if a hearing were held in this matter, each side is prepared to present the following evidence:

A. COMMISSION'S POSITION

24. An event involving Resident #84 took place at the Facility on June 1, 2023.

B. RESPONDENT'S POSITION

27. Respondent was in compliance with all federal and state regulations at all pertinent times. No condition at Perry County was or was likely to be detrimental to the health, safety and welfare of any residents during the pertinent time periods.
28. As a result of the suspension of admissions, numerous residents who wanted to be cared for at Perry County had to be turned away resulting in financial losses.
29. In relation to Respondent's Counterclaim included in its Answer and Incorporated Counterclaim, Perry County lost substantial revenue as a result of the suspension of admissions imposed by the Executive Director, which was lifted effective September 11, 2023.

IV. STIPULATED GROUNDS FOR DISPOSITION

30. In order to avoid further litigation costs and to avoid further administrative action with respect to this cause, the Petitioner agrees to dismiss its charges and Respondent agrees to dismiss its Counterclaim.

V. STIPULATED DISPOSITION

31. For the purpose of avoiding further administrative action with respect to this cause, the Commission and Respondent agree to the following settlement terms.
32. In order to avoid further administrative action with respect to this matter, Petitioner agrees to dismiss its charges and Respondent agrees to forego its Counterclaim. Respondent, therefore, agrees to waive recovery of any possible damages recoverable under TENN. CODE ANN. § 68-11-252, or any other applicable law, in this matter. Moreover, Petitioner agrees not to impose any further suspension of admissions or assess any civil penalties in relation to the survey ending August 1, 2023.
33. Upon ratification, the parties agree to list this Agreed Settlement Order, including deficiencies and civil penalty, in place of the previously issued Executive Order, and this Agreed Settlement Order will replace the Statement of Deficiencies from the survey ending August 1, 2023.
34. In addition to the foregoing, each party to this action hereto shall bear its own respective costs, expenses, and attorneys' fees with respect to the Appeal of the Suspension of Admissions and this Agreed Settlement Order. Each condition of discipline herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be

affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

V. REPRESENTATIONS OF RESPONDENT

- 35. Respondent understands the rights found in the Code, Rules, and the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 thru 4-5-404, including the right to a hearing, the right to appear personally and by legal counsel, the right to confront and to cross-examine witnesses who would testify against Respondent, the right to testify and to present evidence on Respondent’s own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, as well as the right to appeal for judicial review. Respondent voluntarily waives these rights in order to avoid further administrative action.
- 36. Respondent agrees that no threats or promises of any kind have been made by the State or any agent or representative thereof, except such as is detailed herein.

APPROVED FOR ENTRY:



Christy Tosh Crider (BPR #18932)
1600 West End Avenue, Suite 2000
Nashville TN 37203
(615) 726-5608 - Phone
ccrider@bakerdonelson.com

Craig C. Conley (BPR #19341)
165 Madison Avenue, Suite 2000
Memphis, TN 38103
(901) 526-2000 – Phone
cconley@bakerdonelson.com

Attorneys for Perry County Nursing Home

Nathaniel E. Flinchbaugh, Esq.

Nathaniel Flinchbaugh (BPR #34233)
Vishan Ramcharan (BPR #34403)
Jim Christoffersen (BPR #17049)
Health Facilities Commission
665 Mainstream Dr. 2nd Floor
Nashville, Tennessee 37243
Office: (615) 741-7221
Fax: (615) 741-7051

Attorney for Health Facilities Commission

Upon the agreement of the parties and the record as a whole, this **AGREED ORDER** was approved as a **FINAL ORDER** by the Executive Director or Designee and signed this 5th day of October, 2023.

ACCORDINGLY, IT IS ORDERED that the agreement of the parties does hereby become the Final Order, entered and effective this 5th day of October 2023.

Rachel Waterhouse

Rachel Waterhouse
Administrative Judge
Administrative Procedures Division
TN Secretary of State's Office

Logan Grant/JC

Logan Grant, Executive Director
Tennessee Health Facilities Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent's counsel, Perry County Nursing Home c/o Christy Tosh Crider, Esq., 1600 West End Avenue, Suite 2000, Nashville, Tennessee 37203 and Craig C. Conley, Esq., 165 Madison Avenue, Suite 2000, Memphis, Tennessee 38103, by delivering same in the United States regular mail and United States certified mail, numbers 7022 3330 0001 2193 5069 and 7022 3330 0001 2193 5083, return receipt requested, with sufficient postage thereon to reach its destination. Electronic copies were sent to: ccrider@bakerdonelson.com and cconley@bakerdonelson.com.

This the 5th day of October, 2023.



Nathaniel Flinchbaugh
Deputy General Counsel