

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

In The Matter of:)	
)	
The Bay At Highlands)	
Health And Rehabilitation Center)	
Nursing Home)	Docket No. 25.02-233274J
License No. 257,)	
)	
Respondent.)	
)	
Memphis, Tennessee)	

AGREED ORDER

The Tennessee Health Facilities Commission (“Commission”), by and through the Office of Legal Services (“OLS”), and **The Bay At Highlands Health And Rehabilitation Center** (“Respondent”), 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 complaint survey was conducted on the premises of the facility and the survey team exited on May 5, 2023, resulting in deficiencies cited which affected the health, safety, and welfare of the residents within the nursing home. A copy of the State Statement of Deficiencies was mailed to the Respondent on May 18, 2023.
20. On May 30, 2023, the Executive Director of the Health Facilities Commission issued the eight (8) day Notice Letter and Suspension of Admission with assessment of Civil Monetary Penalty Order.
21. On June 7, 2023, the Respondent filed an appeal and demand for a hearing with the Commission.
22. On July 26, 2023, the Suspension of Admission was lifted based upon a follow-up survey report that the deficient practices detrimental to the health, safety, or welfare of the residents was corrected.
23. On January 2, 2024, the Statement of Deficiencies was amended.

III. POSITIONS 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 incident involving Resident #8 took place on April 20, 2023. Incidences involving Resident #9 took place over a period of time ranging from November 18, 2022 to March 4, 2023, and incidences involving Resident #15 took place on September 9, 2022 and in March 2023 and April 2023.

B. RESPONDENT’S POSITION

- 25. Respondent was in compliance with all federal and state regulations at all pertinent times. No condition at Respondent’s facility was or was likely to be detrimental to the health, safety and welfare of any residents during the pertinent time periods.
- 26. As a result of the suspension of admissions, numerous residents who wanted to be cared for at Respondent’s facility had to be turned away resulting in financial losses.
- 27. In relation to Respondent’s Counterclaim included in its Answer and Petition for Hearing and Incorporated Counterclaim, Respondent lost substantial revenue as a result of the suspension of admission imposed by the Executive Director, which was ultimately lifted.

IV. STIPULATED GROUNDS FOR DISCIPLINE

For the purpose of avoiding further administrative action with respect to this cause, Respondent agrees to accept discipline in the form of a best interest agreement to resolve this matter.

24. Tenn. Comp. R. and Reg. 0720-18-.04(15) [formerly 1200-08-06-.04(15)]. Each nursing home shall adopt safety policies for the protection of residents from accident and injury.

25. Tenn. Comp. R. and Reg. 0720-18-.06(9)(d)3 [formerly 1200-08-06-.06(9)(d)3]. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

V. STIPULATED DISPOSITION

26. For the purpose of avoiding further administrative action with respect to this cause, the Commission and Respondent agree to the following:
- a. The Type A Civil Monetary Penalty for tag N424 shall be one thousand, five-hundred dollars (\$1,500.00); payable within thirty (30) calendar days from the effective date of this Order.
 - b. The Type A Civil Monetary Penalty for tag N754 shall be one thousand, five-hundred dollars (\$1,500.00); payable within thirty (30) calendar days from the effective date of this Order.
27. 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.
28. 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 Order.
29. 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

- 30. 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.
- 31. 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.

VI. Notice

- 32. The Civil Monetary Penalty shall be paid by submitting a **certified check, cashier’s check, or money order**, payable to the Tennessee Health Facilities Commission, by mail. All payments can be mailed or delivered to:

**Tennessee Health Facilities Commission
 Attn: Licensure and Regulation
 665 Mainstream Drive, Second Floor
 Nashville, Tennessee 37243**

- 33. A **violation** of this Order shall constitute a **separate violation** and is grounds for further disciplinary action by the Board, including revocation of Respondent’s license.

[THIS SECTION INTENTIONALLY LEFT BLANK]

APPROVED FOR ENTRY:

/s/Craig C. Conley

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

*Attorneys for The Bay at Highlands
Health and Rehabilitation Center*




Vishan J. Ramcharan (BPR # 034403)
Associate General Counsel
Health Facilities Commission
Office of Legal Services
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243
Office: (615) 741-2364
Fax: (615) 741-9884
Email: vishan.j.ramcharan@tn.gov

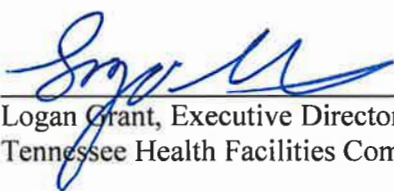
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Upon the agreement of the parties and the record as a whole, this **AGREED ORDER** was approved as a **FINAL ORDER** by the Executive Director or Designee and signed this 28th day of May, 2024.

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



Hon. Michael Begley
Administrative Judge
Administrative Procedures Division



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, The Bay At Highlands Health And Rehabilitation Center, c/o counsel for Respondent, Craig C. Conley, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC., 165 Madison Avenue, Suite 2000 Memphis, Tennessee 38103, by delivering same in the United States regular mail and United States certified mail, number 70200640000148070168 return receipt requested, with sufficient postage thereon to reach its destination. A copy was sent via electronic mail to: cconley@bakerdonelson.com, qcarlson@bakerdonelson.com.

This 29th day of May, 2024.



Vishan J. Ramcharan
Associate General Counsel

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