

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

<b>In The Matter of:</b>	)	
	)	
<b>Charter Senior Living at Hermitage, Assisted Care Living Facility, License No. 270,</b>	)	<b>Case No. 2024010051</b>
	)	
<b>Respondent.</b>	)	
	)	
<b>Hermitage, Tennessee</b>	)	

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**CONSENT ORDER**

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This matter came to be heard before the Tennessee Health Facilities Commission (“Commission”), by and through the Office of Legal Services, and Charter Senior Living at Hermitage (“Respondent”) that the Commission adopt this Consent Order, the terms of which have been agreed upon by the parties, as signified by their signatures below.

**I. JURISDICTION**

1. The Commission is empowered 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 homes. T.C.A. § 68-11-202(a)(1).
2. The Commission has the authority to conduct reviews of all facilities licensed under this part in order to determine compliance with fire and life safety code rules as promulgated by the Commission. T.C.A. § 68-11-202(b)(1)(A).

3. An assisted care living facility (“ACLF”) is a facility, building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services. T.C.A. § 68-11-201(4)(A) and Tenn. Comp. R. & Regs. 0720-26-.02(7).
4. “Primarily aged” means at least fifty-one percent (51%) of the population of the facility is at least sixty-two (62) years of age. Tenn. Comp. R. & Regs. 0720-26-.02(34).
5. The ACLF shall provide on-site to its residents’ room and Commission and non-medical living assistance services appropriate to each resident’s needs, such as assistance with bathing, dressing, grooming, preparation of meals and other activities of daily living. T.C.A. § 68-11-201(4)(B) and Tenn. Comp. R. & Regs. 0720-26-.02(2).
6. 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).
7. Upon a finding by the Commission that an ACLF has violated any provision of Tenn. Code Ann. §§ 68-11- 201, et seq., 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. T.C.A. § 68-11-207.

## **II. STIPULATIONS OF FACT**

8. At all times pertinent hereto, Respondent, Charter Senior Living at Hermitage, 4131 Andrew Jackson Parkway Hermitage, Tennessee 37076, was licensed by the Commission as an ACLF, having been granted license number 270 on October 3, 2006, which currently has an expiration date of May 17, 2025.
9. Resident #23 was admitted inappropriately to Respondent’s facility.

10. Resident #23 was a hospice patient, bedridden, and needed two (2) person assistance for transfers, toileting, dressing, bathing, and personal hygiene when they were admitted in 2024.
11. The Respondent failed to maintain a clean and sanitary kitchen as follows:
  - a. Brown and black residue was found on the wall behind the behind the sink.
  - b. Hood vents were found to have thick brown debris.
  - c. The deep fryer and convection oven were found to have grease build-up.
  - d. Kitchen floors were found to have a black grime covering throughout.
  - e. Baseboards were dirty and covered in grime.
  - f. The door to dry-storage was found to have grime and required repainting.
12. The Respondent's Dietary manager admitted to Commission surveyors on February 20, 2024, that the kitchen had "issues" and that he had been trying to get them straightened out since starting six (6) months prior.
13. The Respondent failed to maintain the corridors clear of equipment.
14. On or around February 20, 2024, the exit door from the memory care area was obstructed by multiple wheelchairs.
15. Respondent's Maintenance Director was present with surveyors when the wheelchairs were observed blocking the door.
16. The Respondent's Administrator admitted to surveyors during the exit conference on February 20, 2024, that the wheelchairs were blocking the exit door to the memory unit.
17. On or about February 20, 2024, a portable space heater was found next to the air conditioning unit in a resident's room.
18. An open flame space heater was observed in the janitorial closet by the dining room.

19. On February 20, 2024, Respondent's Maintenance Director admitted that the heater was used during cold weather in December of 2023.
20. Respondent failed to ensure that there are electrically-operated smoke detectors in each sleeping unit.
21. On or about February 20, 2024, Respondent failed to have operable interconnected smoke alarms in multiple resident rooms.
22. Respondent's Maintenance Director was present with surveyors when the smoke alarms were observed to be missing.
23. The Respondent's Administrator admitted during the exit conference on February 20, 2024 that the smoke alarms were missing and were not properly connected.
24. The Respondent failed to provide documentation that a fire drill had been conducted during sleeping hours for the second quarter of 2023.
25. On February 20, 2024, the Respondent's Administrator admitted during the exit conference on that the fire drills had not been conducted as required.
26. Respondent failed to complete an initial assessment on Resident #22 within 72 hours of their admission.
27. Resident #22 was not assessed by the Respondent until five (5) days after their admission.

### **III. GROUND FOR DISCIPLINE**

The facts in Section II are sufficient to establish that grounds exist for the discipline of Respondent's ACLF license. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Commission is authorized.

28. The facts in paragraphs nine (9) through ten (10) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.05(5) Regulatory Standards, the relevant portion of which reads as follows:

(5) Civil Penalties. The Commission may, in a lawful proceeding respecting licensing (as defined in the Uniform Administrative Procedures Act), in addition to or in lieu of other lawful disciplinary action, assess civil penalties for violations of statutes, rules or orders enforceable by the Commission in accordance with the following schedule:

Violation	Penalty
T.C.A. § 68-11-213(i)(2)	\$0-\$3000

(Admission or Retention of Inappropriately Placed Resident)

Each resident shall constitute a separate violation.

In determining the amount of any civil penalty to be assessed pursuant to this rule the Commission may consider such factors as the following:

- (a) Willfulness of the violation;
- (b) Repetitiveness of the violation;
- (c) Magnitude of the risk of harm caused by the violation.

29. The facts in paragraphs eleven (11) through twelve (12) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.07 (7)(c)(5) Services Provided, the relevant portion of which reads as follows:

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

(c) Dietary services.

5. An ACLF shall maintain a clean and sanitary kitchen.

30. The facts in paragraphs thirteen (13) through sixteen (16) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(f) Life Safety, the relevant portion of which reads as follows:

(2) An ACLF shall ensure fire protection for residents by doing at least the following:

(f) Keep corridors and exit doors clear of equipment, furniture and other obstacles at all times. Passage to exit doors leading to a safe area shall be clear at all times.

31. The facts in paragraphs seventeen (17) through nineteen (19) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(h) Life Safety, the relevant portion of which reads as follows:

(2) An ACLF shall ensure fire protection for residents by doing at least the following:

(h) Prohibit open flame and portable space heaters.

32. The facts in paragraphs twenty (20) through twenty (23) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(m) Life Safety, the relevant portion of which reads as follows:

(2) An ACLF shall ensure fire protection for residents by doing at least the following:

(m) Ensure that there are electrically-operated smoke detectors with battery back-up power operating at all times in, at least, resident sleeping units, day rooms, corridors, laundry room, and any other hazardous areas.

33. The facts in paragraphs twenty-four (24) through twenty-five (25) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (3)(b) Life Safety, the relevant portion of which reads as follows:

(3) An ACLF shall conduct fire drills in accordance with the following:

(b) There shall be one (1) fire drill per quarter during sleeping hours.

34. The facts in paragraphs twenty-six (26) through twenty-seven (27) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.12 (4) Resident Records, the relevant portion of which reads as follows:

(4) An ACLF shall complete a written assessment of the resident to be conducted by a direct care staff member within a time-period determined by the ACLF, but no later than seventy-two (72) hours after admission.

#### **IV. REPRESENTATIONS OF RESPONDENT**

35. Respondent understands and admits the allegations, charges, and stipulations in this Order.

36. 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.

37. Respondent agrees that presentation of this Order to the Commission and the Commission's consideration of it and all matters divulged during that process shall not constitute unfair disclosure such that the Commission or any of its members become prejudiced requiring their disqualification from hearing this matter should this Order not be ratified. All matters, admissions, and statements disclosed during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.
38. Respondent agrees that facsimile/PDF copies of this Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.
39. Respondent also agrees that the Commission may issue this Order without further process. If the Commission rejects this Order for any reason, it will be of no force or effect for either party.
40. Respondent agrees that the facility has not received any threats or promises of any kind by the State or any agent or representative thereof, except such as is detailed herein.

#### V. ORDER

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

41. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five-hundred dollars (\$500.00)**. This CMP is issued for the deficiency of "Admission or Retention of Inappropriately Placed Resident."
42. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **two-thousand dollars (\$2,000.00)**. This CMP is issued for the deficiency failure to maintain a clean and sanitary kitchen.

43. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five-hundred dollars (\$500.00)**. This CMP is issued for the deficiency of failure to keep corridors and exit doors clear of equipment, furniture and other obstacles at all times.
44. Respondent hereby agrees to correct the deficiency of “Prohibit open flame and portable space heaters” **by removing all open flame and space heaters from the facility.**
45. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five-hundred dollars (\$500.00)**. This CMP is issued for the deficiency of failing to ensure that there are electrically-operated smoke detectors with battery back-up power operating at all times.
46. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five-hundred dollars (\$500.00)**. This CMP is issued for the deficiency failure to conduct one (1) fire drill per quarter during sleeping hours.
47. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five-hundred (\$500.00)**. This CMP is issued for the deficiency of failure to complete a written assessment withing 72-hours of a resident’s admission.
48. The **total** Civil Monetary Penalty is a total of **forty-five hundred dollars (\$4,500.00)**.
49. Payment shall be submitted to the following address within **thirty (30) calendar days** of the effective date of this Order.

**Tennessee Health Facilities Commission  
Attention: Disciplinary Coordinator  
665 Mainstream Drive, Second Floor  
Nashville, Tennessee 37243**

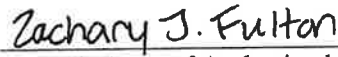
**PLEASE DO NOT REMIT PAYMENT UNTIL THE CONSENT ORDER HAS  
BEEN RATIFIED AND APPROVED BY THE COMMISSION**

50. 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.

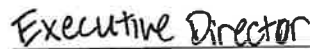
**APPROVED FOR ENTRY:**



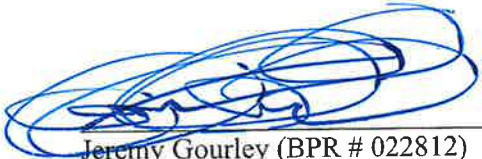
Charter Senior Living at Hermitage  
License No. 270  
Signature of Authorized Representative  
Respondent



Printed Name of Authorized Representative



Title of Authorized Representative



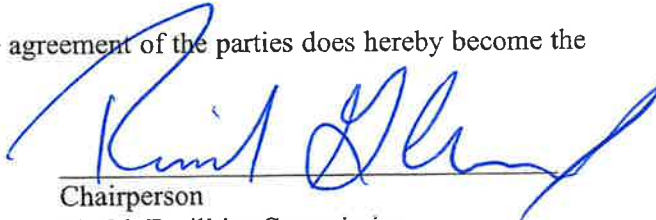
Jeremy Gourley (BPR # 022812)  
Senior Associate General Counsel  
Health Facilities Commission  
Office of Legal Services  
Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, Tennessee 37243  
Office: (615) 741-2364  
Fax: (615) 741-9884  
Email: Jeremy.J.Gourley@tn.gov

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**Approval by the Commission**

Upon the agreement of the parties and the record as a whole, this **CONSENT ORDER** was approved as a **FINAL ORDER** by a majority of a quorum of the Health Facilities Commission at a public meeting of the Commission and signed this 26 day of August, 2024.

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


  
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Chairperson  
Health Facilities Commission

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, Charter Senior Living at Hermitage, c/o Administrator, Danny Phillips, 4131 Andrew Jackson Parkway Hermitage, Tennessee 37076, and Charter Senior Living at Hermitage, c/o Registered Agent, COGENCY Global, Inc., 992 Davidson Dr. Suite B, Nashville, Tennessee 37205-1051, by delivering same in the United States regular mail and United States certified mail, numbers **7020 0640 0001 4807 0250** and **7020 0640 0001 4807 0236**, return receipts requested, with sufficient postage thereon to reach its destination. A copy was sent via electronic mail to: [office@charterhermitage.com](mailto:office@charterhermitage.com).

This 28th day of August, 2024.

  
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Jeremy Gourley  
Senior Associate General Counsel