

BEFORE THE TENNESSEE BOARD
FOR LICENSING HEALTH CARE FACILITIES

IN THE MATTER OF:)	
)	
Schilling Gardens Assisted Living)	
by AmeriCare)	
15 Schilling Bend Commons)	Case #: 202000065
Collierville, TN 38017)	
)	
License No. 00000290)	

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 13th day of March, 2020, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Schilling Gardens Assisted Living by Americare** (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

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independently entered into evidence or introduced as admissions.

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 of Health (“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.

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safety and welfare of residents. Tenn. Code Ann. § 68-11-213(i)(2) and Tenn. Comp. R. & Reg. 1200-08-25-.05(4),(5).

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, **Schilling Gardens Assisted Living by Americare**, located at 15 Schilling Bend Commons, has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number 00000290 on June 25, 2009. Respondent has an active license with an expiration date of March 17, 2021.
2. On or about December 16-17, 2019, surveyors conducted an annual survey at the facility.

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3. On or about December 16, 2019, the Dietary Manager stated that the facility policy was to keep food in the refrigerator no longer than three (3) days and all food was to be covered, labeled, and dated.
4. On or about December 16, 2019, surveyors observed an open plastic bag of corned beef dated November 14, 2019 in the kitchen, along with previously opened bag of corned beef, pepperoni, and chicken legs which were neither labeled nor dated. The bag of chicken legs were not sealed and were open to the air. Surveyors also observed unlabeled containers containing cole slaw, a container of bow tie pasta dated December 5, 2019, and a dish of discolored ground beef dated December 10, 2019 in violation of the facility's policies.
5. The dietary manager failed to assume responsibility to ensure foods were dated and labeled.
6. Surveyors also observed that there was no sanitizer liquid in the sanitizer bucket which the facility used for cleaning kitchen rags. A trash can was also observed uncovered and covered in debris.
7. Interview with the Dietary Manager confirmed that all trash cans were to be covered and dirty rags were to be placed in a bucket with sanitizing liquid.

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.

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8. The facts stated in paragraphs two (2) through fourteen (14) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.07(7)(c)(2) [SERVICES PROVIDED], the relevant portion of which reads as follows:

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

(c) Dietary services.

(2) An ACLF shall have an employee who:

- (i) Serves as director of the food and dietetic service;
- (ii) Is responsible for the daily management of the dietary services and staff training; and
- (iii) Is qualified by experience or training.

9. The facts stated in paragraphs two (2) through fourteen (14) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.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.

ORDER

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

10. The assessment of two (2) civil monetary penalties in the amount of five hundred dollars (\$500.00) each for a total assessment of one thousand dollars (\$1,000.00) in civil

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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**


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 13th day of March, 2020.

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:


Kirk Talmadge Pallord, Administrator
Schilling Gardens Assisted Living by Americare
Respondent

3/5/2020
Date

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Caroline Tippens
Caroline R. Tippens (BPR #: 030375)
Senior Associate General Counsel
Department of Health
665 Main Stream Dr., 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

3/13/2020
Date

CERTIFICATE OF SERVICE

A true and exact copy of this Consent Order is being served upon Schilling Gardens Assisted Living by America c/o Kirk Talmadge Pafford, 15 Schilling Bend Commons, Collierville, TN 38017 and Southridge Nursing, LLC, 15 Schilling Bend Commons, Collierville, TN 38017 by delivering in the United States mail, first class, with sufficient postage thereon to reach its destination and via United States Certified Mail # 7019 29700002 1304 5240 and 7019 2970 0002 1304 5257.

This 10th day of March, 2020.

Caroline R. Tippens
Caroline Tippens
Senior Associate General Counsel

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