

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

IN THE MATTER OF: )  
 )  
**Morning Pointe of Powell** )  
**7700 Dannaher Drive** )  
**Powell, Tennessee** )  
 )  
**License No. 00000389** )

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**CONSENT ORDER**

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This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (hereinafter "the Board") on the 7<sup>th</sup> day of June, 2017, pursuant to the request of the Tennessee Department of Health, by and through the Office of General Counsel, and **Morning Pointe of Powell** (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.

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## JURISDICTION

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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,

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.*

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#### STIPULATIONS OF FACT

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1. At all times pertinent hereto, Morning Pointe of Powell, 7700 Dannaher Drive, Powell, TN 37849 has been licensed as an Assisted-Care Living Facility by the Board, having been issued license number 00000389 on April 8, 2014. Respondent has an active license with an expiration date of April 7, 2017.
2. On or about February 15, 2017, Department surveyors conducted complaint survey on

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the Respondent facility. During this survey, the surveyors observed serious violations of state laws and regulations resulting in endangerment to the health, safety and welfare of residents.

3. Resident #5 resides at Respondent's facility. Resident #5 is wheelchair bound due to diagnoses of multiple sclerosis, history of bladder cancer, and hypertension.
4. On or about November 10, 2016, Respondent facility arranged for an off-campus outing for nine (9) residents, including Resident #5. The residents were transported from the facility using the facility's van. On the return trip from the outing, the Program Coordinator heard a "thud" and observed that the wheelchair of Resident #5 had ~~tilted~~ <sup>tilted</sup> over, causing an abrasion and blood to be observed on Resident #5's temple.
5. Further investigation revealed that Resident #5's wheelchair was not strapped down in the van during the off-campus outing.
6. Respondent failed to provide a secure environment and to ensure the safety of Resident #5.

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### GROUNDS FOR DISCIPLINE

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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.

7. The facts stated in paragraphs three (3) through six (6) are sufficient to establish that Respondent has violated the provisions of Rule 1200-08-25-.07(a)(2) [LIFE SAFETY],

the relevant portion of which reads as follows:

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

(a) Each ACLF shall provide each resident with at least the following personal services:

(2) Safety when in the ACLF.

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**ORDER**

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

7. The assessment of one (1) civil monetary penalty in the amount of five hundred dollars (\$500.00) for a total assessment of five hundred dollars (\$500.00).

Payment shall be submitted to the following address within thirty (30) days of the effective date of this Order:

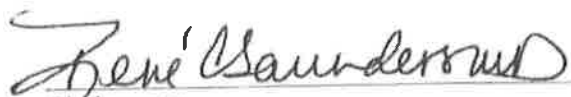
**Tennessee Department of Health  
Division of Health Care Facilities  
Attn: Eddie J. Stewart  
665 Mainstream Drive, Second Floor  
Nashville, Tennessee 37243**

8. 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.

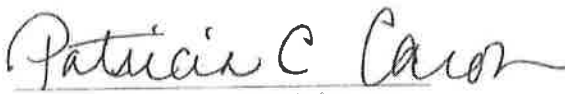
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Upon the agreement of the parties, this **CONSENT ORDER** is approved as a **FINAL ORDER** by a majority of a quorum of the Tennessee Board for Licensing Health Care Facilities at a public meeting of the Board and signed this 7th day of June, 2017

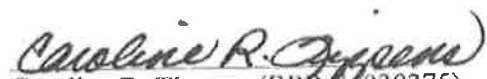
**ACCORDINGLY, IT IS ORDERED** that the agreement of the parties does hereby become the Final Order of the Board.

  
Chairperson  
Board for Licensing Health Care Facilities

AGREED TO:

  
Patricia C. Caron, Administrator  
Morning Pointe of Powell  
Respondent

March 21, 2017  
Date

  
Caroline R. Tippens (BPR # 030375)  
Assistant General Counsel  
Department of Health  
665 Main Stream Dr., 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 741-1611

6/07/2017  
Date

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**CERTIFICATE OF SERVICE**

A true and exact copy of this Consent Order is being served upon Respondent, Morning Pointe of Powell, by and thru its Administrator, Patricia C. Caron, 7700 Dannaher Drive, Powell, TN 37849 by delivering same in the United States mail, first class, with sufficient postage thereon to reach its destination.

This 8<sup>th</sup> day of June, 2017.

Caroline R. Tippens  
Caroline Tippens  
Assistant General Counsel