

**STATE OF TENNESSEE
HEALTH FACILITIES COMMISSION
BEFORE THE BOARD FOR LICENSING HEALTH CARE FACILITIES**

IN THE MATTER OF:)
)
SOMERBY OF FRANKLIN)
ASSISTED CARE LIVING FACILITY)
LICENSE NO. 434,) **CASE NO. 2021024191**
RESPONDENT.)
)
FRANKLIN, TENNESSEE)

CONSENT ORDER

This matter came to be heard before the Tennessee Board for Licensing Health Care Facilities (“Board”), pursuant to the request of the Tennessee Health Facilities Commission (“Commission”), by and through the Office of Legal Services, and Somerby of Franklin (“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.

I. JURISDICTION

1. 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, 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(a)(1).
2. The Commission has the authority to conduct reviews of assisted-care living facilities to determine compliance with fire and life safety code regulations promulgated by the Board. 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) [formerly cited as 1200-08-25-.02(7)].
4. “Primarily aged persons” 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. 1200-08-25-.02(34).
5. The ACLF shall provide on-site to its residents’ room and board 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) [formerly cited as 1200-08-25-.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 Board 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.
8. The Commissioner may suspend admissions pending a prompt hearing before the Board, or an administrative judge if the Board cannot be convened promptly. (Tenn. Code Ann. 68-11-252(b).)
9. Pursuant to Tenn. Code Ann. § 68-11-252(c), the Commissioner shall initiate a suspension of admissions by delivering to the facility or licensee a notice stating the Commissioner's

decision to suspend the admissions of new patients. The Commissioner's notice to suspend admissions must:

- (1) Detail what conditions are considered detrimental to the health, safety, or welfare of the patients;
- (2) Provide an explanation of the specific time frame when and conditions under which the facility or licensee can reasonably expect the suspension to be lifted; and
- (3) Be received by the facility or licensee within ten (10) business days of the conclusion of the Department's survey.

10. The Commissioner is authorized, at any time prior to a hearing, based on information presented to the Commissioner showing that such conditions have been and will continue to remain corrected, to revoke the suspension of admissions. Tenn. Code Ann. § 68-11-252(i).
11. During a suspension of admissions pursuant to § 68-11-252, the Commissioner shall appoint one (1) or more special monitor, and costs related to the special monitor(s) shall be recoverable in certain circumstances. Tenn. Code Ann. § 68-11-221.

II. STIPULATIONS OF FACT

12. At all times pertinent hereto, Respondent, Somerby of Franklin, 870 Oak Meadow Drive, Franklin, Tennessee 37064, was licensed by the Board as an ACLF, having been granted license number 434 on August 14, 2017, which currently has an expiration date of August 13, 2023.
13. From August 27, 2021, through September 2, 2021, a complaint investigation of the facility was conducted. Multiple deficiencies were identified, including failure to ensure staff members were not listed on the Abuse Registry maintained by the Department of Health,

failed to ensure safety and whereabouts for at least one (1) resident, failure to timely develop a plan of care for at least one (1) resident, and failure to report allegations of theft/misappropriation to the Department of Health.

14. The facility had no documentation showing whether or not four (4) staff members were confirmed to not be on the Abuse Registry before beginning employment at the facility.
15. On or about July 30, 2021, Resident #1 was admitted to the facility's Memory Care Unit, with a primary diagnosis of Dementia.
16. On or about August 6, 2021, Resident #1 was discovered in the facility parking lot by a facility staff member. It is unknown how the resident exited the Memory Care Unit or how long the resident was missing. The Memory Care staff were unaware that Resident #1 had exited the facility.
17. As of August 27, 2021, twenty-eight (28) days after the resident's admission, the facility did not have a documented plan of care for Resident #1. The facility failed to create a plan of care for Resident #1 within five (5) days of the resident's admission to the facility.
18. The facility failed to investigate and report to the Department of Health four (4) allegations of theft/misappropriation made by residents from June 2021 through August 2021. Four (4) different residents reported thefts of money, checks and/or property up to several thousands of dollars in value to the facility's Executive Director. Two of the allegations were made against named staff members, which were corroborated by video surveillance and/or police investigations. The facility failed to properly/timely report each of these allegations of misappropriation/theft to the Department of Health.

III. GROUNDS 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 Board is authorized.

19. The facts in paragraphs nine (9) and ten (10) are sufficient to constitute a violation of Tenn. Comp. R. and Reg. 0720-26-.06(1)(a)6 [formerly cited as 1200-08-25-.06(1)(a)6], the relevant portion of which reads as follows:

An ACLF may not employ an individual listed on the Abuse Registry maintained by the Department of Health

20. The facts in paragraphs nine (9), eleven (11), and twelve (12) are sufficient to constitute a violation of Tenn. Comp. R. and Reg. 0720-26-.07(7)(a)2 [formerly cited as 1200-08-25-.07(7)(a)2], the relevant portion of which reads as follows:

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

...

2. Safety when in the ACLF[.]

21. The facts in paragraphs nine (9), eleven (11), and twelve (12) are sufficient to constitute a violation of Tenn. Comp. R. and Reg. 0720-26-.07(7)(a)3 [formerly cited as 1200-08-25-.07(7)(a)3], the relevant portion of which reads as follows:

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

...

3. Daily awareness of the individual's whereabouts[.]

22. The facts in paragraphs nine (9), eleven (11), and thirteen (13) are sufficient to constitute a violation of Tenn. Comp. R. and Reg. 0720-26-.12(5)(a) [formerly cited as 1200-08-25-.12(5)(a)], the relevant portion of which reads as follows:

An ACLF shall develop a plan of care for each resident admitted to the ACLF with input and participation from the resident or the resident's legal representative, treating physician, or other licensed health care professionals or entity delivering patient services within five (5) days of admission.

23. The facts in paragraphs nine (9) and fourteen (14) are sufficient to constitute a violation of Tenn. Comp. R. and Reg. 0720-26-.13(1) [formerly cited as 1200-08-25-.13(1)], the relevant portion of which reads as follows:

The ACLF shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.

IV. REPRESENTATIONS OF RESPONDENT

24. Respondent understands and admits the allegations, charges, and stipulations in this Order.
25. 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.
26. Respondent agrees that presentation of this Order to the Board and the Board's consideration of it and all matters divulged during that process shall not constitute unfair disclosure such that the Board 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.

27. Respondent agrees that facsimile/PDF copies of this Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.
28. Respondent also agrees that the Board may issue this Order without further process. If the Board rejects this Order for any reason, it will be of no force or effect for either party.
29. 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

30. Respondent is hereby placed on **PROBATION** for a period of six (6) months from the effective date of this Order.
 - a. An authorized representative of the facility shall attend the next regularly scheduled board meeting following ratification of this Order to provide proof of compliance with the required registry checks, resident checks, proper plans of care, and provide any additional information requested by the Board.
31. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **one thousand dollars (\$1,000.00)** for the violation referenced in paragraph fifteen (15).
32. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500.00)** for the violation referenced in paragraph sixteen (16).


33. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500.00)** the violation referenced in paragraph seventeen (17).
34. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500.00)** for the violation referenced in paragraph eighteen (18).
35. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **one thousand dollars (\$1,000.00)** for the violation referenced in paragraph nineteen (19).
36. Payment shall be submitted to the following address withing **thirty (30) calendar days** of the effective date of this Order.

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

37. 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.


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APPROVED FOR ENTRY


Somerby of Franklin
Assisted Care Living Facility
License No. 434
Signature of Authorized Representative
Respondent

Sandra K. Griffin Burksteck
Printed Name of Authorized Representative


Executive Director / Administrator
Title of Authorized Representative


Vishan J. Ramcharan (BPR # 034403)
Associate General Counsel
Health Facilities Commission
665 Mainstream Dr. 2nd Floor
Nashville, Tennessee 37243
(615) 741-7221

Approval by the Board

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 Tennessee Board for Licensing Health Care Facilities at a public meeting of the Board and signed this 18th day of June, 2023.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, Somerby of Franklin, 870 Oak Meadow Drive, Franklin, Tennessee 37064, by delivering same in the United States regular mail and United States certified mail, number **7021 2720 0000 2319 1870**, return receipt requested, with sufficient postage thereon to reach its destination.

This 10th day of June, 2023.



Vishan J. Ramcharan
Associate General Counsel