

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION 2022 APR 19 P 4: 14

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

777 NINTH STREET NORTH OPERATIONS,
LLC, d/b/a HERITAGE HEALTHCARE AND
REHABILITATION CENTER,

AHCA No. 2022005746

License No. 1224096

File No. 81102

Provider Type: Nursing Home

Respondent.

IMMEDIATE MORATORIUM ON ADMISSIONS

THIS CAUSE came before the Secretary of the Agency for Health Care Administration, or her duly appointed designee, who after careful review of the record and being otherwise fully advised, finds and concludes as follows:

THE PARTIES

1. The Agency for Health Care Administration ("the Agency"), is the licensure and regulatory authority that oversees nursing homes in Florida and enforces the applicable state statutes and rules governing nursing homes. Chs. 408, Part II, and 400, Part II, Fla. Stat. (2021), Ch. 59A-4, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including a limitation of license, a moratorium on admissions and an emergency suspension order, when circumstances dictate such action. §§ 120.60(6), 408.814, Fla. Stat. (2021).

2. The Respondent, 777 Ninth Street North Operations, LLC d/b/a Heritage Healthcare and Rehabilitation Center ("the Respondent"), was issued a license by the Agency to operate a nursing home ("the Facility") located at 777 Ninth Street North, Naples, Florida 34102.

The licensed capacity of the Facility is ninety-seven (97) residents.

3. As the holder of such a license, the Respondent is a licensee. "Licensee" means "an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2021). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2021). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in s. 408.802" Florida Statutes (2021). § 408.803(12), Fla. Stat. (2021). Nursing homes are regulated by the Agency under Chapter 400, Part II, Florida Statutes (2021), and listed in Section 408.802, Florida Statutes (2021). § 408.802(10), Fla. Stat. (2021). Nursing home residents are thus clients. "Client" means "any person receiving services from a provider listed in s. 408.802." § 408.803(6), Fla. Stat. (2021). The Respondent holds itself out to the public as a nursing home that complies with state laws governing such providers.

4. The current census of the Respondent as of this date is fifty-seven (57) residents.

THE AGENCY'S MORATORIUM ON ADMISSIONS AUTHORITY

5. Under Florida law, the Agency may impose an emergency suspension order or immediate moratorium on admissions as defined in section 120.60, Florida Statutes (2021), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2021).

6. Under Florida law, if the Agency finds that an immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the Agency may take such action by any procedure that is fair under the circumstances. § 120.60(6), Fla. Stat. (2021).

LEGAL DUTIES OF A NURSING HOME

7. Under Florida law, all licensees of nursing homes facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following: The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the Agency. § 400.022(1)(l), Fla. Stat. (2021).

8. In addition, the statement shall assure each resident the following: The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety. § 400.022(1)(o), Fla. Stat. (2021).

FACTS JUSTIFYING AN IMMEDIATE MORATORIUM ON ADMISSIONS

9. On April 10, 2022, the Agency commenced a survey of Respondent and its operations.

10. Based upon these visits, the Agency makes the following findings:

a. Resident number thirty-three (33):

- i. On April 1, 2021, the resident scored a twelve (12) on the Braden Scale indicating the resident was at high risk for pressure ulcer development.
- ii. On November 6, 2021, a minimum data set assessment for the resident documented the resident required extensive assistance of two (2) persons for bed mobility.
- iii. Documentation reflects that on January 23, 2022, it was determined that the resident developed a pressure ulcer after a positioning device was applied to the resident's left lower extremity.
- iv. On January 24, 2022, a physician assessed the resident's wound as an unstageable pressure injury, 1.5 cm. in length x 7.5 cm. in width x 0.3 cm. in depth. The wound bed had ninety percent (90%) slough and ten percent (10%) granulation.
- v. On January 24, 2022, the physician wrote an order to cleanse/irrigate wound with normal saline/water, apply Santyl ointment, cover with dry dressing, and change dressing daily.
- vi. The Respondent has no documentation reflecting that the physician order of January 24, 2022 was implemented until January 26, 2022.
- vii. Additional physician orders of January 24, 2022 included a registered dietician consultation to implement a nutritional plan and to optimize nutrition with the following supplements: Multivitamin daily, Vitamin C, protein supplement Prostat every day, shakes three (3) times a day with meals, ensure, and an Air-Fluidize mattress.
- viii. There is no documentation that these orders were implemented or

followed.

- ix. On February 8, 2022, documentation reflects the resident's wound worsened and the resident was transferred to the hospital where the resident was admitted for the worsening of the pressure ulcer and resulted in the resident undergoing a left upper leg amputation.

- b. Resident number one (1):
 - i. On April 6, 2022, an in-house pressure ulcer was identified by the Respondent's staff.
 - ii. On April 11, 2022, a physician assessed the resident's wound as a stage two (2) pressure ulcer to coccyx, 1.5 cm. x 1.5 cm. x 0.1 cm.
 - iii. The physician ordered barrier cream to the wound.
 - iv. There was no documentation reflecting that the prescribed barrier cream was administered as ordered.

- c. Resident number forty-six (46):
 - i. On April 6, 2022, an in-house pressure ulcer was identified by the Respondent's staff.
 - ii. On April 11, 2022, a physician assessed the resident's wound as a stage three (3) pressure ulcer to the left buttocks, 2.3 cm. x 1.4 cm. x 0.3 cm.

- d. Resident number thirty-four (34):
 - i. On April 6, 202, the Respondent's staff identified a pressure ulcer on the resident.
 - ii. On April 11, 2020, a wound care doctor assessed the resident finding deep tissue injury to right heel, 0.7 cm. x 0.5 cm.

- iii. The physician ordered offload pressure, reposition Q2hrs, float heels, heel protectors, registered dietician consult – optimize nutrition for wound healing, and supplements: multivitamin daily, Vitamin C daily.
 - iv. There is no indication that any of the provisions of this care ordered were followed or implemented.
- e. Resident number thirty-two (32):
- i. On April 6, 2022, the resident was assessed to have a pressure ulcer to the right heel, 2.5 cm. x 1.3 cm. x 0.1 cm.
 - ii. No treatment of the wound was noted until April 11, 2022, when a physician assessed the wound as a right heel deep tissue injury, 3.5 cm. x 2.3 cm. x unable to assess.
 - iii. The physician ordered Betadine on the wound: Monday, Wednesday, and Friday, offload heels, use heel protectors, pressure relieving mattress, no shoes, a registered dietician consult, nutritional supplements multivitamin and Vitamin C daily.
 - iv. The physician's orders were neither added to the care plan for the resident nor to the resident's certified nursing assistant Kardex care notes.
 - v. The resident's April 2022 medication administration record does not reflect that the resident was administered the prescribed multivitamin or vitamin C.
 - vi. There was no documentation reflecting that a consultation with a registered dietician was facilitated or completed.
- f. Resident number three (3):

- i. On April 6, 2022, an in-house pressure ulcer was identified by the Respondent's staff.
 - ii. On April 11, 2022, a physician assessed the resident finding as a stage two (2) pressure ulcer to the gluteal fold, 1.5 cm. x 1.7 cm. x 0.1 cm.
- g. Resident number fourteen (14):
 - i. On April 6, 2022, an in-house pressure ulcer was identified by the Respondent's staff as a sacrum wound of 1.5 cm. x 1 cm.
 - ii. On April 11, 2022, a wound care doctor assessed the resident finding a stage two (2) pressure ulcer to the sacrum of 1.4 cm. x 0.6 cm. x 0.2 cm.
 - iii. The physician ordered an alternating pressure mattress bed and repositioning every two (2) hours.
 - iv. There is no documentation reflecting that repositioning was completed by the Respondent's staff as ordered.
 - v. There was no alternating pressure mattress observed on the resident's bed.
- h. Resident number twenty-one (21):
 - i. On April 11, 2022, a wound care doctor assessed the resident finding a stage three (3) pressure ulcer to the left heel, reopened, at 3.1 cm. x 1.5 cm. x 0.2 cm.
 - ii. The original physician orders of February 8, 2022 to address the wound were: XeroFlo dressing 2 x 2 to left heel every day for pressure injury, and wrap with Kerlix dressing.
 - iii. The wound measurement documented March 7, 2022 was a left heel pressure ulcer, 0.8 cm. x 0.8cm.

- iv. There was no further documentation related to the resident's left heel wound until April 11, 2022.
- v. On April 13, 2022, at 10:01 a.m., the resident was observed without a heel protector on the resident.
- vi. On April 13, 2022, at 2:15 p.m., the resident was observed, without any XeroFlo dressing to the resident's wound.

i. Since April 6, 2022, seven (7) residents have been identified as developing pressure wounds while residing in the Facility. In each of these instances, physician orders to treat the identified wounds have not been followed.

j. On April 14, 2022, the Respondent indicated that it would consider the voluntary cessation of new admissions.

11. In this instance, after careful and due consideration, the Agency determines that the practices and conditions at the Facility, as set forth more specifically above, present (1) a threat to the health, safety or welfare of residents of the Facility, (2) a threat to the health, safety or welfare of a client, (3) an immediate serious danger to the public health, safety or welfare, and (4) an immediate or direct threat to the health, safety, or welfare of the residents that constitutes sufficient factual and legal grounds justifying the imposition of an Immediate Moratorium on Admissions to this nursing home.

NECESSITY FOR AN IMMEDIATE MORATORIUM ON ADMISSIONS

12. The Agency is charged with the responsibility of enforcing the laws enacted to protect the health, safety and welfare of residents and clients in Florida's nursing homes. Ch. 400, Part II, Fla. Stat. (2021), Ch. 408, Part II, Fla. Stat. (2021); Ch. 59A-4, Fla. Admin. Code. In those instances where the health, safety or welfare of a nursing home resident is at risk, the

Agency will take prompt and appropriate action.

13. The residents of skilled nursing facilities are entitled to be free from abuse and neglect and to be provided adequate and appropriate health care services. The Respondent in this instance has failed to ensure that these minimum requirements of law are being met. These failures, as illustrated by the above-recited facts, include the Respondent's failure to effectively implement physician orders to address pressure wounds developed while residents resided in the Facility.

14. Here, recent events related to seven (7) separate residents have been identified. More than one failure, ranging from the failure to prevent in-house development of pressure wounds to the failure to promptly implement prescribed interventions to promote healing of the wounds, are prominent in the Facility's operation. The multiples of incidents identified within the course of events described above are clear to even a casual observer. Over ten percent (10%) of the Respondent's resident census have been identified to have developed pressure wounds while in the Facility. Those identified are not receiving the prescribed care and services to promote the healing of these wounds.

15. In order to effectively address patient care, staff must be trained to implement interventions to prevent wound development, and prescribed interventions to promote healing must be promptly and accurately implemented. To meet these objectives, several components of resident care, ranging from care and services provided by certified nursing assistants to administration of medications to dietary services must effectively coordinate care to achieve the most desirable outcome. The facts reflect that these systems in the Facility are not functioning in a manner to achieve these goals.

16. The current ongoing failure of Respondent to assure that it provides adequate and

appropriate health care and protective and support services, and residents do not suffer from abuse or neglect, have resulted in conditions which place residents at immediate risk. These conditions demonstrate the Respondent's failure to provide adequate and appropriate health care and protective and support services consistent with established and recognized practice standards within the community. Similarly, these conditions do not assure that residents do not suffer from abuse or neglect. To assure the safety and well-being of current and prospective residents, these conditions must be adequately addressed.

CONCLUSIONS OF LAW

17. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 400, Part II, Florida Statutes, and Chapter 59A-4, Florida Administrative Code.

18. The Respondent's deficient practice exists presently; have existed in the recent past, and more likely than not will continue to exist if the Agency does not act promptly.

19. Based upon the above stated provisions of law and findings of fact, the Agency concludes that: (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate moratorium on admissions to Respondent Facility, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate moratorium on admissions to the Facility.

20. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Immediate Moratorium on Admissions is necessary in order to protect possible future residents from (1) the unsafe conditions and deficient practices that currently exist, (2) being placed at risk of living in an environment where prescribed care is not timely provided, and (3) being placed in a nursing home where the regulatory mechanisms enacted for residents

protection have been overlooked.

21. The Respondent has failed to identify, investigate, or address deficient practices that were or should have been known to the Respondent and its administration. Such deficient practices and conditions justify the imposition of an Immediate Moratorium on Admissions. Less restrictive actions, such as the assessment of administrative fines, will not ensure that residents receive the appropriate care and services dictated by Florida law. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. This remedy is narrowly tailored to address the specific harm in this instance.

IT IS THEREFORE ORDERED THAT:

22. An Immediate Moratorium on Admissions is placed on the Facility based upon the above-referenced provisions of law. The Respondent shall not admit any new individuals or readmit any discharged residents unless permitted by the Field Office Manager in writing.

23. This Immediate Moratorium on Admissions shall be posted and visible to the public at the Respondent's nursing home. § 408.814(4), Fla. Sta. (2021).

24. During the Immediate Moratorium on Admissions, the Agency may regularly monitor the Facility. Should conditions continue to present risks to residents, the Agency may undertake further action to protect Florida's citizens.

25. The Agency shall promptly proceed with the filing of an administrative action against the Respondent based upon the facts set out within this emergency order and any other facts that may be discovered during the Agency's continuing investigation. The Agency shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2021), when the administrative action is brought.

ORDERED in Tallahassee, Florida, this 19th day of April, 2022.

Kimberly R. Smoak

Kimberly R. Smoak, Deputy Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

This emergency order is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b) and (c). See Fla. R. App. P. 9.190(b)(2). In order to be timely, the petition for review must be filed within thirty (30) days of the rendition of this non-final emergency order.