

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

In The Matter of:)	
)	
Shelby Gardens, LLC,)	
f.k.a. Shelby Gardens Place,)	
Assisted Care Living Facility,)	
License No. 26,)	Case No. 2024014581
)	
Respondent.)	
)	
Cordova, Tennessee)	

CONSENT ORDER

This matter came to be heard before the Tennessee Health Facilities Commission ("Commission"), by and through the Office of Legal Services, and Shelby Gardens Place, LLC, formerly known as Shelby Gardens Place, Assisted Care Living Facility License No. 26 ("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, prescribed 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. "Assisted-care living facility" ("ACLF") means 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 that a minimum of 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. An assisted-care living facility 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)(8) 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, 1535 Appling Care Lane, Cordova, Tennessee 38018, was licensed by the Commission as an ACLF, having been granted license number 26 on July 1, 1998, which currently has an expiration date of August

12, 2025.

9. On July 12, 2024, the Commission conditionally approved the change in ownership and transfer of license number 26 previously granted to Shelby Gardens Place, then owned by Cordova BG Opco., LLC, to Shelby Gardens LLC pending completion and submission of the Bill of Sale.
10. On August 20, 2024, the Commission granted the transfer of License number 26 to Shelby Gardens, LLC.
11. **All references to “Respondent” with a date prior to the change in ownership (CHOW) of July 12, 2024, refer to Shelby Gardens Place under the prior ownership of Cordova BG Opco., LLC. All references to “Respondent” after July 12, 2024, refer to the current holder of ACLF License No. 26, being Shelby Gardens, LLC.**
12. Respondent (fka Shelby Gardens Place), under the prior ownership of Cordova BG Opco., LLC was previously cited for multiple deficiencies incurred, on or about June 12, 2023, and submitted an acceptable Plan of Correction (POC) to the Commission. Subsequently, new complaints were received, and Commission surveyors conducted a survey from March 15, 2024 through April 8, 2024.
13. Respondent’s previously submitted POC noted safety concerns including elopements, falls, electrical hazards, sharp hazards, falls, and specified how the Respondent would address these problems for current and future residents.
14. Respondent’s Service Assessment/Negotiated Service Plan dated August 24, 2023, and November 24, 2023, failed to document Resident #1's fall risk and no documentation was provided by Shelby Garden Place that interventions were developed and

implemented to prevent falls.

15. Respondent filed an incident report, dated February 25, 2024, which stated that Resident #1 was found by facility staff lying on the floor beside her bed complaining of pain in their ribs.
16. Respondent's staff moved Resident #1 back into their bed and notified the doctor, who ordered the resident to be transported to the local hospital. Resident #1 was subsequently diagnosed with Contusion of Rib on Right Side, and Rib Fracture resulting from a fall.
17. Respondent failed to follow its undated "Emergency Resident Fall Response Policy" when staff transferred Resident #1 from the floor to the bed after sustaining injuries.
18. No documentation was provided by Respondent to show that interventions were developed and implemented to prevent falls for Resident #1 before or after February 25, 2024.
19. Resident #3 was noted to have fallen on at least four (4) occasions: August 24, 2023, December 6, 2023, January 3, 2024, and February 27, 2024. Resident #3 sustained injuries on all above listed dates excluding August 24, 2023.
20. Respondent's Service Assessment/Negotiated Service Plan dated December 15, 2023, failed to document Resident #3's fall risk and no documentation was provided by Respondent that interventions were developed and implemented to prevent falls.
21. Resident #4 became agitated and wanting to leave the facility on or about June 6, 2023, Respondent's nurse left the room to check medication for the resident and returned to find the resident lying on the floor with lacerations to their face.
22. Resident #4 had been noted in Respondent's prior POC, dated June 12, 2023, as having

fall and elopement concerns.

23. Respondent's Universal Incident Reports dated June 6, 2023, June 26, 2023, and December 11, 2023, noted that Resident #4 had sustained a fall on those dates.
24. Respondent's Service Assessment/Negotiated Service Plan dated December 11, 2023, verified there was no documentation of falls for Resident #4, or that Respondent had performed a re-assessment for fall risk for Resident #4.
25. Respondent was unable to furnish documentation for Resident #4 that the Service Plan was reviewed or revised with safety interventions put in place after the falls.
26. Surveyors observed an aluminum foil box with a sharp cutting edge in Resident #11's room, presenting a safety risk to Resident #11.
27. On or about March 28, 2024, LPN #3 admitted that Resident #11 should not have access to sharp objects in the Secure Memory Unit.
28. On or about March 26, 2024, Respondent's Regional Director of Operations admitted that they were unable to provide documentation showing implementation of the POC for the previous survey complete on June 12, 2023.
29. Respondent failed to implement its previously approved Plan of Correction to keep residents in the facility safe.
30. On or about April 8, 2024, Respondent's Director of Nursing admitted that resident care plans were not being reviewed and revised after reportable incidents because she was not aware that it was required.
31. The above-mentioned violations occurred while Cordova BG Opco. LLC owned and operated ACLF License No. 26 and Shelby Gardens Place was managed by a separate entity, believed to be Enlivant BG (UNEN) which was replaced by Trustwell

Management Cordova, LLC. Neither of these entities are involved any longer as upon Shelby Gardens LLC's assumption of ownership, Trustwell Management Cordova, LLC was terminated as manager and Shelby Gardens LLC's affiliate took over management of Shelby Gardens.

III. GROUND FOR DISCIPLINE

The facts in Section II, *supra*, are sufficient to establish that grounds exist for the discipline of Respondent's ACLF License No 26. Specifically, the prior owner and operator of License No. 26, Shelby Garden Place violated the following statutes and/or rules, for which disciplinary action by the Commission is authorized.

32. The facts in paragraphs twelve (12) through twenty-nine (29) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.07 (7)(a)(2) [Services Provided], 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

33. The facts in paragraphs fifteen (15), seventeen (17), twenty-two (22), and twenty-seven (27) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.12 (5)(a) [Resident Records], the relevant portion of which reads as follows:

(5) Plan of care.

(a) 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. The plan of care shall be reviewed and/or revised as changes in resident needs occur, but not less than semi- annually by the above-appropriate individuals.

IV. **REPRESENTATIONS OF RESPONDENT**

34. 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 about the facts referenced herein , the right to testify and to present evidence , 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.
35. Understanding that this enforcement action is imposed against Respondent's ACLF License No. 26 and that **all the violations cited herein, occurred under the prior ownership of Shelby Gardens Place and not Shelby Gardens, LLC, the current owner**. As such, Respondent desires to resolve this matter and voluntarily waives the above described rights in order to avoid further administrative action.
36. 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.

37. Respondent agrees that facsimile/PDF copies of this Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.
38. 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.
39. 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, being the current holder of ACLF License No. 26, for the sole purpose of avoiding further administrative action with respect to this cause, agrees to the following:

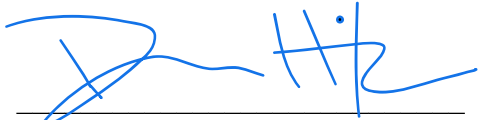
40. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for the deficiency of failing to provide safety while in the ACLF.
41. ACLF License No. 26 is hereby assessed one (1) Civil Monetary Penalty in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for the deficiency of failing to maintain, revise, and update the Plan of Care for each resident.
42. The total amount for all Civil Monetary Penalties assessed in this Order is **four thousand dollars (\$4,000.00)**.
43. 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**

APPROVED FOR ENTRY:



Signature of Authorized Representative
Shelby Gardens, LLC
License No. 26
Respondent

Daniel M. Hamister

Printed Name of Authorized Representative

Successor Manager

Title of Authorized Representative

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

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 _____ day of _____, 2024.

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

Chairperson
Health Facilities Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, Shelby Gardens Place, c/o Dennis Vacco, Esq., Lippes Mathias, LLP, 50 Fountain Plaza, Suite 1700 Buffalo, NY 14202-2216 by delivering same via electronic mail to: dvacco@lippes.com

This _____ day of _____, 2024.

Jeremy Gourley
Senior Associate General Counsel