

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

In The Matter of:)	
)	
The Waters of Smyrna,)	
Skilled Nursing Home,)	
License No. 221,)	Case No. 2024023851
)	
Respondent.)	
)	
Smyrna, 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 The Waters of Smyrna (“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. "Nursing home" means any institution, place, building or agency represented and held out to the general public for the express or implied purpose of providing care for one (1) or more nonrelated persons who are not acutely ill, but who do require skilled nursing care and related medical services; and "Nursing Home" shall be restricted to facilities providing skilled nursing care and related medical services to individuals, beyond the basic provision of food, shelter and laundry, admitted because of illness, disease or physical infirmity for a period of not less than twenty-four (24) hours per day. T.C.A. § 68-11-201(37)(A)(B).
4. 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).
5. Upon a finding by the Commission that a nursing home 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

6. At all times pertinent hereto, Respondent, The Waters of Smyrna, 202 Enon Springs Road East Smyrna, Tennessee 37167, was licensed by the Commission as a nursing home, having been granted license number 221 on July 1, 1992, which currently has an expiration date of August 5, 2026.
7. On or about June 21, 2024, a survey of the facility was completed resulting in deficiencies being cited for failure to maintain sufficient staff, failure to ensure appropriate individualized plans of care were maintained for residents, improper use of physical restraints, and failure to ensure residents were free from physical abuse.

8. At all times relevant, the facility failed to maintain sufficient staffing resulting in inadequate care for Residents #1, #10, #12, #13, #17, #19, #20, and #21. That inadequate care included resident call lights going unanswered for over forty-five (45) minutes, residents that required assistance with feeding not being timely fed, and residents that required assistance with toileting remaining in soiled clothing for extended periods of time.
9. A comprehensive care plan for Resident #6, dated April 17, 2024, did not include any interventions to address the resident's multiple incidents of inappropriate sexual contact with other residents. The facility did not report any allegations of sexual abuse related to these incidents to the State Survey Agency ("SSA").
10. A comprehensive care plan for Resident #10, dated May 2, 2024, did not include any interventions to address the resident's inappropriate sexual conduct/communications with other residents. The facility did not report any allegations of sexual abuse related to these incidents to the SSA.
11. A comprehensive care plan for Resident #18, dated May 14, 2024, did not include any interventions to address the resident's inappropriate sexual conduct/communication with another resident. The facility did not report any allegations of sexual abuse related to these incidents to the SSA.
12. On or about June 11, 2024, and June 12, 2024, Resident #15 was placed in a geriatric chair with a connected tray table across her lap. The resident was unable to release the connected table which effectively functioned as a physical restraint. The facility maintained no documentation or appropriate authorization for a physical restraint for Resident #15.

III. GROUNDS FOR DISCIPLINE

The facts in Section II, *supra*, are sufficient to establish that grounds exist for the discipline of Respondent's nursing home license. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Commission is authorized.

13. The facts in paragraph eight (8) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-18-.06(4)(a), the relevant portion of which reads as follows:

Each home shall have a licensed practical nurse or registered nurse on duty at all times and at least two (2) nursing personnel on duty each shift.

14. The facts in paragraphs nine (9) through eleven (11) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-18-.06(4)(f), the relevant portion of which reads as follows:

The facility must ensure that an appropriate individualized plan of care is prepared for each resident with input from appropriate disciplines, the resident and/or the resident's family or the resident's representative.

15. The facts in paragraph twelve (12) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-18-.06(4)(w), the relevant portion of which reads as follows:

Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the resident may be exercised and offered toilet access.

16. The facts in paragraphs nine (9) through eleven (11) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-18-.12(1)(g), the relevant portion of which reads as follows:

(1) The nursing home shall establish and implement written policies and procedures setting forth the rights of residents for the protection and preservation of dignity, individuality and, to the extent medically feasible, independence. Residents and their families or other representatives shall be fully informed and documentation shall be maintained in the resident's file of the following rights:

(g) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) working days. The Tennessee Department of Human Services, Adult Protective Services shall be notified immediately as required in T.C.A. §71-6-103.

IV. REPRESENTATIONS OF RESPONDENT

17. Respondent understands and admits the allegations, charges, and stipulations in this Order.
18. 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.
19. 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.
20. Respondent agrees that facsimile/PDF copies of this Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.

21. 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.
22. Respondent voluntarily waives these rights in order to avoid further administrative action.
23. 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:

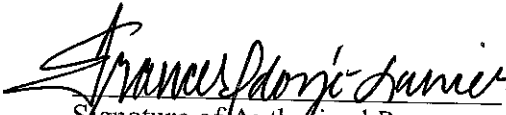
24. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500)** for the violation(s) identified in paragraph thirteen (13) above.
25. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500.00)** for the violation(s) identified in paragraph fourteen (14) above.
26. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500.00)** for the violation(s) identified in paragraph fifteen (15) above.
27. Respondent is hereby assessed one (1) Civil Monetary Penalty in the amount of **five hundred dollars (\$500.00)** for the violation(s) identified in paragraph sixteen (16) above.
28. The total assessed CMP amount is **two thousand dollars (\$2,000.00)**.
29. 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
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243**

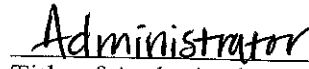
PLEASE DO NOT REMIT PAYMENT UNTIL THE CONSENT ORDER HAS
BEEN RATIFIED AND APPROVED BY THE COMMISSION

30. 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.

APPROVED FOR ENTRY:


Signature of Authorized Representative
The Waters of Smyrna
License No. 221
Respondent


Printed Name of Authorized Representative


Title of Authorized Representative

Vishan J. Ramcharan (BPR # 034403)
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: vishan.j.ramcharan@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 _____, 202__.

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, The Waters of Smyrna, c/o Administrator, Alan Hall, 202 Enon Springs Road East Smyrna, Tennessee 37167, and The Waters of Smyrna, CT Corporation System, c/o Registered Agent, 300 Montvue Road, Knoxville, Tennessee 37919-5546 by delivering same in the United States regular mail and United States certified mail, numbers **7020 0640 0001 4807 2810** and **7020 0640 0001 4807 2827**, return receipts requested, with sufficient postage thereon to reach its destination. A copy was sent via electronic mail to: administrator@watersofsmryna.com and legal@ihconsulting.com.

This _____ day of _____, 202__.

Vishan J. Ramcharan
Senior Associate General Counsel