

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

FILED
AHCA
AGENCY CLERK

**NEVER ALONE HOME CARE
INC.,**

2009 MAR 27 4:15 PM
Case No. 08-5655PH

Petitioner,

vs.

Fraes No. 2008011656

**STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,**

RENDITION NO.: AHCA-09-181 -S-OLC

Respondent.

FINAL ORDER

Having reviewed the Notice of Intent to Deny dated October 13, 2008, attached hereto and incorporated herein (Ex. 1), and all other matters of record, the Agency for Health Care Administration ("Agency") has entered into a Settlement Agreement (Ex. 2) with the parties to these proceedings, and being well-advised in the premises, finds and concludes as follows:

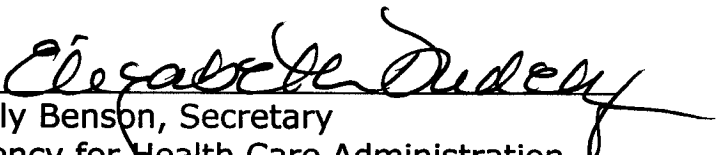
ORDERED:

1. The attached Settlement Agreement is approved and adopted as part of this Final Order, and the parties are directed to comply with the terms of the Settlement Agreement.

2. The Applicant's initial application for registration for homemaker companion service is withdrawn from further review in accordance with the terms of the Settlement Agreement.

3. The Petitioner's request for formal administrative proceeding is withdrawn.
4. Each party shall bear its own costs and attorney's fees.
5. The above-styled case is hereby closed.

DONE and **ORDERED** this 26 day of March, 2009,
in Tallahassee, Leon County, Florida.


 Holly Benson, Secretary
 Agency for Health Care Administration

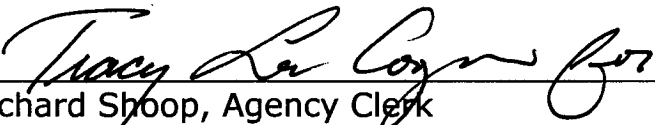
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY, ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW OF PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Karen L. Goldsmith, Esquire Jonathan S. Grout, Esquire Goldsmith and Grout, P.A. 2160 Park Avenue North Winter Park, Florida 32789 (U.S. Mail)	Thomas M. Hoeler, Senior Attorney Office of the General Counsel Agency for Health Care Admin. 525 Mirror Lake Drive North, #330 St. Petersburg, Florida 33701 (Interoffice Mail)
Jan Mills Agency for Health Care Admin. 2727 Mahan Drive, Bldg. #3, MS #3 Tallahassee, Florida 32308 (Interoffice Mail)	Honorable Lawrence P. Stevenson Administrative Law Judge Division of Administrative Hearings The Desoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (Interoffice Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the above-named person(s) and entities by U.S. Mail, or the method designated, on this 27th day of March, 2009.


Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Building #3
Tallahassee, Florida 32308-5403
(850) 922-5873



CHARLIE CRIST
GOVERNOR

HOLLY BENSON
SECRETARY

October 13, 2008

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Vera Clark, Managing Employee
Never Alone Home Care Inc.
1074 Wynn Street
Sanford, FL 32773

RECEIVED
GENERAL COUNSEL

OCT 14 2008

**Agency for Health
Care Administration**

NOTICE OF INTENT TO DENY

Certified Article Number

7160 3901 9848 1046 4201

SENDERS RECORD

File Number: 39965490

Case #: 2008011656

It is the decision of this Agency that the application for registration as a homemaker companion service for Never Alone Home Care Inc., is **DENIED**.

Never Alone Home Care Inc. submitted an application for registration as a homemaker companion service that was received by the Agency for Health Care Administration on June 11, 2008. The application was reviewed and a letter regarding an item omitted from the application was sent on July 8, 2008, which was payment so that the fingerprint card sent for the managing employee could be reviewed and processed by the Florida Department of Law Enforcement and FBI. The payment was received on July 16, 2008 and an acceptable clearance for the fingerprint card was received by the Agency on August 20, 2008.

On August 14, 2008, a complaint of unregistered activity was investigated. Never Alone Home Care was found to be operating without being registered the Agency for Health Care Administration. A Notice of Unregistered Operation was given to Vera Clark on August 14, 2008, that stated Never Alone Home Care Inc. could not provide or offer homemaker companion services according to Florida law since it was not registered.

A follow up visit was made to Never Alone Home Care Inc. on September 8, 2008. There was evidence that Never Alone Home Care, Inc. was contracting to place personnel to provide personal care services including assistance with bathing, bathroom activities, and other activities of daily living included in personal care. Since the personal care services by independent contractors require a nurse registry license per state law, a Notice of Unlicensed Activity stating that Never Alone Home Care Inc. must cease and desist operating as a nurse registry was given to Vera Clark on September 19, 2008.

Never Alone Home Care Inc. was found to be providing services that cannot be provided by homemakers and companions in section 400.462, F.S. Since Never Alone Home Care Inc. was providing services that are beyond the scope of a homemaker companion service and require a nurse registry license per state law, the application for homemaker companion services cannot be approved.

2727 Mahan Drive, MS#34
Tallahassee, Florida 32308



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<http://ahca.myflorida.com>

EXHIBIT

Never Alone was previously registered as a homemaker companion service and this registration expired without renewal on July 13, 2006. On April 19, 2005, Never Alone was found have placed a companion in the home of a hospice patient that provided personal care and administered medication. These were services beyond the scope of the homemaker companion services registration. A Notice of Unlicensed Operation as a home health agency was sent to Never Alone on April 20, 2005.

The basis for this action is pursuant to authority of Section 120.60 Florida Statutes (F.S.) and Section 408.815 (1) (c), F.S. which states as follows:

(1) In addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest:

(c) A violation of this part, authorizing statutes, or applicable rules.

(d) A demonstrated pattern of deficient performance.

400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.--

(1) Any organization that provides companion services or homemaker services and does not provide a home health service to a person is exempt from licensure under this part. However, any organization that provides companion services or homemaker services must register with the agency.

(2) The requirements of part II of chapter 408 apply to the provision of services that require registration or licensure pursuant to this section and part II of chapter 408 and entities registered by or applying for such registration from the Agency for Health Care Administration pursuant to this section. Each applicant for registration and each registrant must comply with all provisions of part II of chapter 408. Registration or a license issued by the agency is required for the operation of an organization that provides companion services or homemaker services.

400.462, F.S. (7) "Companion" or "sitter" means a person who spends time with or cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual. A companion may not provide hands-on personal care to a client.

400.462, F.S. (16) "Homemaker" means a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance, and routine household activities for an elderly, handicapped, or convalescent individual. A homemaker may not provide hands-on personal care to a client.

400.506 (1), F.S. A nurse registry is exempt from the licensing requirements of a home health agency but must be licensed as a nurse registry. The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 400.506-400.518 and part II of chapter 408 and to entities licensed by or applying for such license from the Agency for Health Care Administration pursuant to ss. 400.506-400.518. A license issued by the agency is required for the operation of a nurse registry.

400.506 (21), F.S. "Nurse registry" means any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chapter 395, this chapter, or chapter 429 or other business entities.

400.506 (6) (b), F.S. Nurse Registry "... A certified nursing assistant or home health aide referred for contract in a private residence shall be limited to assisting a patient with bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself were he or she physically capable."

408.812 (1), F.S. A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.

(2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.



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[FAQs](#)

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**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

NEVER ALONE HOME CARE, INC.,)	DOAH No. 08-5655
)	
Petitioner,)	Fraes No. 2008011656
)	
vs.)	
)	
STATE OF FLORIDA,)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
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SETTLEMENT AGREEMENT

The Petitioner, Never Alone Home Care, Inc. (“the Applicant”), and Respondent, State of Florida, Agency for Health Care Administration (“the Agency”), by and through their undersigned representatives, and pursuant to Section 120.57(4), Florida Statutes, each individually, a “party,” collectively as “parties,” enter into this Settlement Agreement (“the Agreement”) and agree as follows:

WHEREAS, the Applicant filed an initial application for homemaker companion service registration pursuant to Chapter 408, Part II, Chapter 400, Part III, Florida Statutes (2008), and Chapter 59A-8, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the registration and regulatory authority over the registration sought by the Applicant; and

WHEREAS, the Agency served the Applicant a Notice of Intent to Deny the registration dated October 13, 2008, along with an Election of Rights form; and

WHEREAS, the Applicant requested an formal proceeding by selecting Option 3 on the Election of Rights form and filing a petition for formal hearing; and

EXHIBIT

WHEREAS, the Parties have agreed that a fair, efficient, and cost effective resolution of this dispute would avoid the expenditure of substantial sums to litigate the dispute; and

WHEREAS, the Parties stipulate to the adequacy of considerations exchanged; and

WHEREAS, the Parties have negotiated in good faith and agreed that the best interest of all the Parties will be served by a settlement of this proceeding;

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the Parties intending to be legally bound, agree as follows:

1. All recitals are true and correct and are expressly incorporated herein.
2. All Parties agree that the “whereas” clauses incorporated herein are binding findings of the Parties.
3. Upon full execution of the Agreement, the Applicant agrees to waive any and all proceedings and appeals to which it may be entitled, including, but not limited to: an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court (DOAH) of competent jurisdiction; and further agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled. Provided, however, that no agreement herein shall be deemed a waiver by either party of its right to the judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, the Parties agree that the Applicant’s initial application will be withdrawn from further review without prejudice to the Applicant filing a new initial application for registration in the future. The Applicant recognizes that it will have to fully satisfy the requirements of law in place at the time of any such future application, if applicable. The Applicant recognizes that the Agency reserves the right to deny any such future application, if

such application is required, based upon the grounds set forth in the Notice of Intent.

5. Venue for any action brought to interpret, challenge or enforce the terms of this Agreement or its adopting Final Order shall lie solely within the State Circuit Court in and for Leon County, Florida.

6. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case(s).

7. Each party shall bear its own costs and attorney's fees.

8. This Agreement shall become effective on the date upon which it is fully executed by all the Parties.

9. The Applicant, for itself and its related or resulting organizations, successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the Agency and its agents, representatives, and attorneys, of all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this Agreement, by or on behalf of the Applicant or its related or resulting organizations.

10. This Agreement is binding upon all Parties herein and those identified in the aforementioned paragraph of this Agreement.

11. The undersigned have read and understand this Agreement and have authority to bind their respective principals. The Applicant understands that Agency counsel represents only the Agency and that Agency counsel has not provided any legal advice to the Applicant, or otherwise influenced it, in its decision to enter into this Agreement.

Mar. 12. 2009 9:29AM Goldsmith, Grout & Lewis

No. 5538 P. 5

12. This Agreement contains the entire understandings and agreements of the Parties. This Agreement supersedes any prior oral or written agreements that may have existed between the Parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

13. All Parties agree that a facsimile signature suffices for an original signature.

The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.



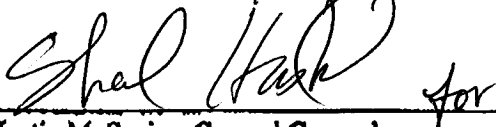
Elizabeth Dudek, Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive, Bldg. #1
Tallahassee, Florida 32308

DATED: 3/20/2009



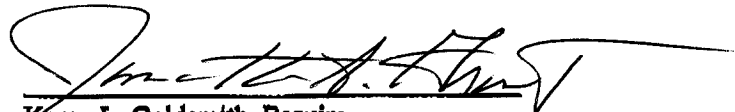
Vera Clark
Never Alone Home Care, Inc.
1074 Wynn Street
Sanford, Florida 32773

DATED: 3-12-09

 for

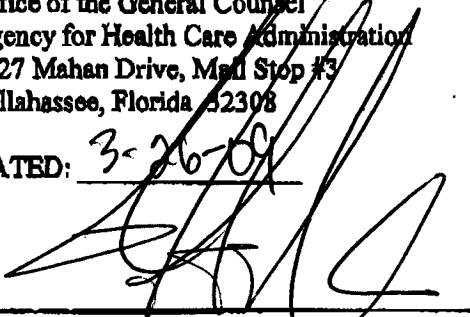
Justin M. Senior, General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 3-26-09



Karen L. Goldsmith, Esquire
Jonathan S. Grout, Esquire
Goldsmith and Grout, P.A.
2160 Pare Avenue North
Winter Park, Florida 32789

DATED: 3-12-09



Thomas M. Hoeler, Senior Attorney
Office of the General Counsel
Agency for Health Care Administration
525 Mirror Lake Drive North, Suite 330
St. Petersburg, Florida 33701

DATED: 3/18/09