

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

**FILED**  
AHCA  
AGENCY CLERK

2010 AUG 26 P 12: 56

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

**Petitioner,**

**v.**

**NOVLETTE WHYTE-MILLER,**

**AHCA No.: 2009007809**

**DOAH No.: 10-2462**

**Respondent.**

**AHCA No.: 2010004824**

**AHCA No.: 2010004825**

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

**Petitioner,**

**v.**

**FRIENDS ASSISTED LIVING, INC.,**

**AHCA No.: 2010005437**

**Respondent.**

**FINAL ORDER**

Having reviewed the administrative complaints against Respondent, Novlette Whyte-Miller, dated March 26, 2010 [AHCA No. 2009007809; DOAH No. 10-2462] (Exhibit 1), dated June 7, 2010 [AHCA No. 2010004824] (Exhibit 2), and dated June 17, 2010 [AHCA No. 2010004825] (Exhibit 3), and the administrative complaint against Respondent, Friends Assisted Living, Inc., dated June 14, 2010 [AHCA No. 2010005437] (Exhibit 4), which

are attached and incorporated by reference, and all other matters of record, the Agency for Health Care Administration ("the Agency") having entered into a Settlement Agreement (Exhibit 5) with the parties to these proceedings, and being otherwise well-advised in the premises, it is:

**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. An administrative fine of \$27,000.00 is imposed upon the Respondent, Novlette Whyte-Miller, and the Agency's Facilities Intake Unit shall maintain an alert on Respondent Miller's file. The collection of the administrative fine, however, is STAYED, and the Agency shall not collect the administrative fine. Should Respondent Miller or any entity in which she is a principal or controlling interest apply to the Agency for licensure in the future, the administrative fine will be immediately due and payable. In addition, should Respondent Miller be determined by a final order to be operating an unlicensed assisted living facility, the administrative fine shall will be immediately due and payable.

3. The assisted living facility license of Friends Assisted Living, Inc., (License No. 10400), is REVOKED. The Respondent ALF shall promptly discharge the residents in a safe and orderly manner with all due regard to the health, safety and welfare of the residents.

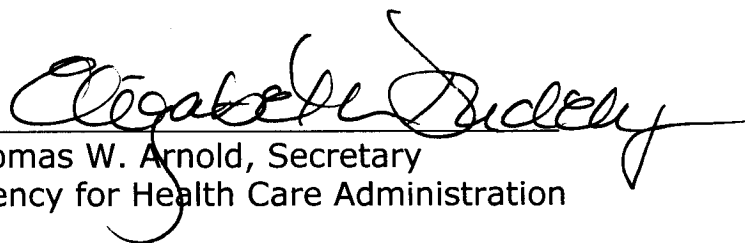
4. In accordance with Florida and federal law, the Respondent ALF is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in authorizing statutes and applicable rules. The Respondent ALF is advised of Section 408.810, Florida Statutes (2009), set forth below.

5. In accordance with Florida law, the Respondent ALF is responsible for any refunds that may have to be made to the clients. The Respondent ALF is advised of Sections 429.24 and 429.31, Florida Statutes (2009), set forth below.

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

7. The above-styled cases are hereby closed.

**DONE** and **ORDERED** this 25 day of August, 2010,  
in Tallahassee, Leon County, Florida.

  
Thomas W. Arnold, Secretary  
Agency for Health Care Administration

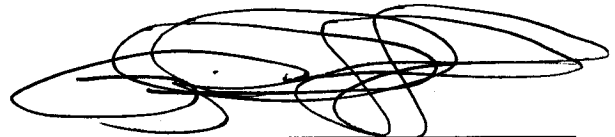
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY, ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT 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:

J. Garry Rooney, Esq. Brooker & Rooney, P.A. Attorney for Respondent 2145 - 14 <sup>th</sup> Avenue, Suite 20 Vero Beach, Florida 32960 (U. S. Mail)	Alba M. Rodriguez, Esq. Assistant General Counsel Agency for Health Care Admin (Interoffice Mail)
Finance & Accounting Agency for Health Care Admin. 2727 Mahan Drive, MS #14 Tallahassee, Florida 32308 (Interoffice Mail)	June C. McKinney Administrative Law Judge Division of Administrative Hearings (Electronic Mail)
Jan Mills Facilities Intake Unit Agency for Health Care Admin. (Interoffice Mail)	Shaddrick Haston, Unit Manager Assisted Living Unit Agency for Health Care Admin. (Interoffice Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Interoffice Mail)	Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (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 the 26<sup>th</sup> day of August, 2010.



Richard J. Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Building #3  
Tallahassee, Florida 32308  
(850) 412-3630

## **NOTICE OF FLORIDA LAW**

### **408.804 License required; display.--**

(1) It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.

(2) A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

### **408.811 Right of inspection; copies; inspection reports; plan for correction of deficiencies.**

(1) An authorized officer or employee of the agency may make or cause to be made any inspection or investigation deemed necessary by the agency to determine the state of compliance with this part, authorizing statutes, and applicable rules. The right of inspection extends to any business that the agency has reason to believe is being operated as a provider without a license, but inspection of any business suspected of being operated without the appropriate license may not be made without the permission of the owner or person in charge unless a warrant is first obtained from a circuit court. Any application for a license issued under this part, authorizing statutes, or applicable rules constitutes permission for an appropriate inspection to verify the information submitted on or in connection with the application.

(a) All inspections shall be unannounced, except as specified in s. 408.806.

(b) Inspections for relicensure shall be conducted biennially unless otherwise specified by authorizing statutes or applicable rules.

(2) Inspections conducted in conjunction with certification, comparable licensure requirements, or a recognized or approved accreditation organization may be accepted in lieu of a complete licensure inspection. However, a licensure inspection may also be conducted to review any licensure requirements that are not also requirements for certification.

(3) The Agency shall have access to and the licensee shall provide, or if requested send, copies of all provider records required during an inspection or other review at no cost to the Agency, including records requested during an offsite review.

(4) A deficiency must be corrected within 30 calendar days after the provider is notified of inspection results unless an alternative timeframe is required or approved by the Agency.

(5) The Agency may require an applicant or licensee to submit a plan of correction for deficiencies. If required, the plan of correction must be filed with the Agency within 10 calendar days after notification unless an alternative timeframe is required.

(6)(a) Each licensee shall maintain as public information, available upon request, records of all inspection reports pertaining to that provider that have been filed by the agency unless those reports are exempt from or contain information that is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution or is otherwise made confidential by law. Effective October 1, 2006, copies of such reports shall be retained in the records of the provider for at least 3 years following the date the reports are filed and issued, regardless of a change of ownership.

(b) A licensee shall, upon the request of any person who has completed a written application with intent to be admitted by such provider, any person who is a client of such provider, or any relative, spouse, or guardian of any such person, furnish to the requester a copy of the last inspection report pertaining to the licensed provider that was issued by the agency or by an accrediting organization if such report is used in lieu of a licensure inspection.

#### **408.812 Unlicensed activity. --**

(1) 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.

(4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.

**408.810 Minimum licensure requirements.**--In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

\* \* \*

(4) Whenever a licensee discontinues operation of a provider:

(a) The licensee must inform the agency not less than 30 days prior to the discontinuance of operation and inform clients of such discontinuance as

required by authorizing statutes. Immediately upon discontinuance of operation by a provider, the licensee shall surrender the license to the agency and the license shall be canceled.

(b) The licensee shall remain responsible for retaining and appropriately distributing all records within the timeframes prescribed in authorizing statutes and applicable rules. In addition, the licensee or, in the event of death or dissolution of a licensee, the estate or agent of the licensee shall:

1. Make arrangements to forward records for each client to one of the following, based upon the client's choice: the client or the client's legal representative, the client's attending physician, or the health care provider where the client currently receives services; or

2. Cause a notice to be published in the newspaper of greatest general circulation in the county in which the provider was located that advises clients of the discontinuance of the provider operation. The notice must inform clients that they may obtain copies of their records and specify the name, address, and telephone number of the person from whom the copies of records may be obtained. The notice must appear at least once a week for 4 consecutive weeks.

#### **429.24 Contracts.--**

(3)(a) The contract shall include a refund policy to be implemented at the time of a resident's transfer, discharge, or death. The refund policy shall provide that the resident or responsible party is entitled to a prorated refund based on the daily rate for any unused portion of payment beyond the termination date after all charges, including the cost of damages to the residential unit resulting from circumstances other than normal use, have been paid to the licensee. For the purpose of this paragraph, the termination date shall be the date the unit is vacated by the resident and cleared of all personal belongings. If the amount of belongings does not preclude renting the unit, the facility may clear the unit and charge the resident or his or her estate for moving and storing the items at a rate equal to the actual cost to the facility, not to exceed 20 percent of the regular rate for the unit, provided that 14 days' advance written notification is given. If the resident's possessions are not claimed within 45 days after notification, the facility may dispose of them. The contract shall also specify any other conditions under which claims will be made against the refund due the resident. Except in the case of death or a discharge due to medical reasons, the refunds shall be computed in accordance with the notice of relocation requirements specified in the contract. However, a resident may not be required to provide the licensee with more than 30 days' notice of



termination. If after a contract is terminated, the facility intends to make a claim against a refund due the resident, the facility shall notify the resident or responsible party in writing of the claim and shall provide said party with a reasonable time period of no less than 14 calendar days to respond. The facility shall provide a refund to the resident or responsible party within 45 days after the transfer, discharge, or death of the resident. The Agency shall impose a fine upon a facility that fails to comply with the refund provisions of the paragraph, which fine shall be equal to three times the amount due to the resident. One-half of the fine shall be remitted to the resident or his or her estate, and the other half to the Health Care Trust Fund to be used for the purpose specified in s. 429.18.

#### **429.31 Closing of facility; notice; penalty.--**

(1) In addition to the requirements of part II of chapter 408, the facility shall inform each resident or the next of kin, legal representative, or agency acting on each resident's behalf, of the fact and the proposed time of discontinuance of operation, following the notification requirements provided in s. 429.28(1)(k). In the event a resident has no person to represent him or her, the facility shall be responsible for referral to an appropriate social service agency for placement.

(2) Immediately upon the notice by the agency of the voluntary or involuntary termination of such operation, the agency shall monitor the transfer of residents to other facilities and ensure that residents' rights are being protected. The department, in consultation with the Department of Children and Family Services, shall specify procedures for ensuring that all residents who receive services are appropriately relocated.

(3) All charges shall be prorated as of the date on which the facility discontinues operation, and if any payments have been made in advance, the payments for services not received shall be refunded to the resident or the resident's guardian within 10 working days of voluntary or involuntary closure of the facility, whether or not such refund is requested by the resident or guardian.

(4) The Agency may levy a fine in an amount no greater than \$5,000 upon each person or business entity that owns any interest in a facility that terminates operation without providing notice to the agency and the residents of the facility at least 30 days before operation ceases. This fine shall not be levied against any facility involuntarily closed at the initiation of the agency. The Agency shall use the proceeds of the fines to operate the facility until all residents of the facility are relocated.

**429.34 Right of entry and inspection.**--In addition to the requirements of s. 408.811, any duly designated officer or employee of the department, the Department of Children and Family Services, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a member of the state or local long-term care ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable rules. Data collected by the state or local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.