

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2012 DEC 21 A 11:39

SOUTHERN PARKS, INC. d/b/a
SOUTHERN OAKS ALF,

Petitioner,

vs.

DOAH No. 12-2274

AHCA No. 2012005197

RENDITION NO.: AHCA-12-1245 -S-OLC

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

FINAL ORDER

Having reviewed the Amended Notice of Intent to Deny, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency has jurisdiction over the above-named Petitioner pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.
2. The Agency issued the attached Amended Notice of Intent to Deny and Election of Rights form to the Petitioner. (Ex. 1) The Election of Rights form advised of the right to an administrative hearing.
3. The parties have since entered into the attached Settlement Agreement. (Ex. 2)

Based upon the foregoing, it is **ORDERED**:

4. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement, which set forth requirements of continued licensure imposed upon the Petitioner. The failure to comply with these requirements may result in licensure revocation or application denial as set forth in the Settlement Agreement.

ORDERED at Tallahassee, Florida, on this 21 day of December, 2012.



Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

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.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 21st day of December, 2012.



Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Bldg. #3, Mail Stop #3
Tallahassee, Florida 32308-5403
Telephone: (850) 412-3630

Jan Mills Facilities Intake Unit (Electronic Mail)	Shaddrick Haston, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)
Suzanne S. Hurley Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Rafael Gaitan, Esq. Gus Suarez, Esq. Counsel for Southern Parks, Inc. 1110 Brickell Avenue, Suite 407. Miami, Florida 33131-3135 (U.S. Mail)
Pat Caufman, Field Office Manager Area 5/6 Agency for Health Care Administration (Electronic Mail)	R. Bruce McKibben Administrative Law Judge Division of Administrative Hearings (Electronic Mail)
Paul Brown, Health Facility Evaluator Supervisor Area 5/6 Agency for Health Care Administration (Electronic Mail)	



RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
INTERIM SECRETARY

August 8, 2012

Sanny P. Panningbatan, Administrator
Southern Parks, Inc. d/b/a/ Southern Oaks ALF
P.O. Box 789
Wauchula, FL 33873

re: Case No.: 2012005197

AMENDED NOTICE OF INTENT TO DENY

Dear Ms. Panningbatan:

The Agency for Health Care Administration hereby DENIES the application by Southern Parks, Inc. d/b/a Southern Oaks ALF for renewal of its Assisted Living Facility license.

The Specific Basis for this determination is a failure by the facility to pay outstanding fines and assessed fees from 2008 in the amount of \$154; a failure by the facility to pay an outstanding Medicaid fine in the amount of \$6000 in Case #121947000; a failure by the facility to obtain a satisfactory Level 2 background screen for its Chief Financial Officer; and the facility has shown a pattern of deficient practice as indicated in detail below. The applicant failed to meet minimum licensure standards pursuant to Sections 408.809, 408.815(1)(d), 408.831, 429.14(1)(e), 429.14(3), and 429.174, Florida Statutes.¹

On June 22, 2010, a complaint investigation was conducted. A widespread Class I deficiency was cited because the facility was found out of compliance with local authorities that oversee building construction codes and water and fire safety standards. The county fire jurisdiction had to issue a cease and desist order to suspend the use of the facility as related to multiple electrical violations; a "boil water" alert had also been put in place and all of the facility's 49 residents had to be relocated on an emergency basis. A widespread Class II deficiency was also cited for the facility's failure to maintain a safe and decent living environment and physical plant. The place was filthy throughout, including mattresses in the rooms, dirty floors & walls, bathrooms had mold, toilets were filled with feces and cigarette butts, blinds were broken, cockroaches were everywhere. The facility agreed to an immediate moratorium on admissions until corrections were made and approved by the Agency.

On May 18, 2011, a complaint investigation was conducted. Four Class III deficiencies were cited because the facility had failed to assure that its staff had received training in basic CPR and

¹ For each citation subsequently noted, the relevant section(s) of the Florida Statutes or Administrative Rule(s) violated, as was provided contemporaneously to the facility in writing, is incorporated herein by reference.

Headquarters
2727 Mahan Drive
Tallahassee, FL 32308
<http://ahca.myflorida.com>



Area Office
525 Mirror Lake Drive, N.
Sebring Building, #330H
St. Peter FL 33701

EXHIBIT 1

First Aid, failed to assure proper training for its staff who worked with mental health residents, failed to assure sufficient staff to provide the necessary supervision, safety and care to the residents, and failed to obtain and keep the required medical examination reports for the residents. A patterned Class II deficiency was also cited for the facility's failure to assure the required criminal background clearance for employees who were providing personal services.

On June 28, 2011, a revisit to the complaint investigation was conducted and the facility had failed to correct the cited deficiencies. The Agency cited four uncorrected Class III deficiencies as it still lacked sufficient staff to provide proper care and supervision; it lacked sufficient qualified staff to care for the mental health residents; it failed to provide minimum staffing hours and it had still not required proper training in CPR and First Aid for the staff providing services.

On July 22, 2011, a follow up survey was conducted in regard to the above and three Class III deficiencies were cited. The deficiencies included that the facility was failing to provide care and services appropriate to the needs of the residents, medications were being mishandled, and the physical plant was still filthy with evidence of pest and/or insect droppings.

On September 15, 2011, a second revisit to the June 28 complaint investigation was conducted and two uncorrected Class III deficiencies were cited. The facility had still not required the proper training in CPR and First Aid for staff providing personal services and had failed to assure that one staff member trained in CPR and First Aid were available on all shifts. Corrections were not completed until October 27, 2010.

On August 4, 2011, a monitoring visit was conducted with "operation spot check." Twelve Class III deficiencies were cited, including: a) residents' health assessments indicated that they were inappropriate for assisted living; b) some residents lacked the required health assessments; c) documentation was lacking to show that the residents were receiving proper activities; d) the facility had no elopement policy and had failed to conduct elopement drills as required; e) the facility was assisting a resident with medication when there was no signed physician order for same; f) the facility had failed to put in place the required Do Not Resuscitate ("DNR") policy; g) staff members were lacking the required training in abuse, neglect, resident rights, emergency procedures and reporting adverse incidents; h) the facility administrator lacked the required nutrition and food service training; i) the facility staff lacked the required training for DNR; j) the facility had failed to obtain the required surety bond before acting as representative payee for residents; j) the facility had failed to maintain a safe living environment with regard to sanitation; and k) the facility had failed to assure that it had contracts with all of its residents.

On November 17, 2011, another complaint survey was conducted along with a revisit. Two Class III deficiencies were cited. The medication observation record was found not to match the medication orders for residents on healthcare forms signed by their physicians. The residents had been receiving medications which were not ordered and had been missing medications that their physicians had ordered for them. The deficiencies appeared to be corrected on January 31, 2012, when the Agency conducted three complaint surveys.

On March 5, 2012, a complaint survey was conducted in conjunction with a revisit survey and two Class III deficiencies were cited. The facility was failing to fill out the medication

observation record appropriately and it was using an outdated form for the healthcare assessments for the residents. Corrections had been made when the Agency returned on April 26, 2012.

The Class I and Class II deficiencies along with an extraordinarily-large number of Class III deficiencies supports the Agency's denial.

EXPLANATION OF RIGHTS

Pursuant to Section 120.569 Florida Statutes, you have the right to request an administrative hearing. In order to obtain a formal proceeding before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes, your request for an administrative hearing must conform to the requirements in Section 28-106.201, Florida Administrative Code and must state the material facts you dispute.

SEE ATTACHED ELECTION OF RIGHTS FORM

Sincerely,

A handwritten signature in black ink, appearing to read "Shad H", written in a cursive style.

Shaddrick A. Haston, Manager
Assisted Living Unit
Bureau of Long Term Care Services

Copy to: Jan Mills, Office of the General Counsel

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: SOUTHERN PARKS, INC. d/b/a
SOUTHERN OAKS ALF

CASE NO.: 2012005197

ELECTION OF RIGHTS¹

This Election of Rights form is attached to a proposed action by the Agency for Health Care Administration (AHCA). The title may be **Notice of Intent to Deny, Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.**

Your Election of Rights must be returned by mail or by fax within 21 days of the day you receive the attached Notice of Intent to Deny, Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint.

If your Election of Rights with your selected option is not received by AHCA within twenty-one (21) days from the date you received this notice of proposed action by AHCA, you will have given up your right to contest the Agency's proposed action and a final order will be issued.

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes (2012) and Rule 28, Florida Administrative Code.)

PLEASE RETURN YOUR ELECTION OF RIGHTS TO THIS ADDRESS:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308.
Phone: 850-412-3630 Fax: 850-921-0158.

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS:

OPTION ONE (1) ____ **I admit to the allegations of facts and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint and I waive my right to object and to have a hearing.** I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) ____ **I admit to the allegations of facts contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, but I wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.**

¹ Here filed in response to the Agency's Amended Notice of Intent to Deny

OPTION THREE (3) ____ I dispute the allegations of fact contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing (pursuant to Subsection 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing OPTION THREE (3), by itself, is NOT sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above within 21 days of your receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. Your name, address, and telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

License type: _____ (ALF? nursing home? medical equipment? Other type?)

Licensee Name: _____ License number: _____

Contact person: _____

Name		Title
Address: _____	_____	_____
Street and number	City	Zip Code

Telephone No. _____ Fax No. _____ Email(optional) _____

I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ Date: _____

Print Name: _____ Title: _____

Deny/Late fee/fine/AC

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

**SOUTHERN PARKS, INC. d/b/a
SOUTHERN OAKS ALF,**

Petitioner,

vs.

**DOAH Case No. 12-2274
AHCA Case No. 2012005197**

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

Respondent.

_____ /

SETTLEMENT AGREEMENT

Respondent, the State of Florida, Agency for Health Care Administration (the “Agency”), through its undersigned representatives, and Petitioner, Southern Parks, Inc. d/b/a Southern Oaks ALF (“Petitioner”), pursuant to Section 120.57(4), Florida Statutes, each individually, a “party,” collectively as “parties,” hereby enter into this Settlement Agreement (“Agreement”) and agree as follows:

WHEREAS, Petitioner is an assisted living facility licensed pursuant to Chapters 429, Part I and 408, Part II, Florida Statutes, and Chapter 58A-5, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Petitioner, pursuant to Chapters 429, Part I and 408, Part II, Florida Statutes; and

WHEREAS, the Agency served Petitioner with a Notice of Intent to Deny dated May 10, 2012, and an Amended Notice of Intent to Deny dated August 8, 2012, notifying the Petitioner of the Agency’s intent to deny Petitioner’s renewal application for licensure to operate an assisted living facility in the State of Florida; and

WHEREAS, Petitioner requested a formal administrative proceeding by selecting Option “3” on the Election of Rights form or by the filing of a Petition; and

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

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

1. All recitals herein are true and correct and are expressly incorporated herein.
2. Both parties agree that the “whereas” clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Petitioner agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under § 120.57(2), Florida Statutes, a formal proceeding under § 120.57(1), Florida Statutes, appeals under § 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and 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 that the form of the Final Order remains consistent with the recitals, “whereas” clauses, and terms of this Settlement Agreement; and, further that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, the parties stipulate and agree as follows:
 - a. Petitioner shall contract with and maintain as a consultant Ms. Marlene Hunter, MS CHCRM, commencing September 1, 2012, and extending for two (2) years thereafter. Petitioner shall cause its consultant to review and complete a written quarterly report on a monthly basis regarding the facility’s operations and regulatory compliance. Said quarterly report shall include, but not be limited to: assessments of and actions taken related to medication administration and records, quality of care, risk management activities, staff training activities, and the adoption or amendment of facility policy and

procedures. The quarterly report shall be maintained by Petitioner and provided to the Agency upon request.

b. The provisions of subparagraph (a) above and the affirmative duties therein, shall continue in full force and effect throughout any renewal of the Petitioner's license as necessary during the two (2) year period referenced herein.

c. Petitioner places itself under a Voluntary Limitation on Admissions effective (retroactive to) August 17, 2012. The Voluntary Limitation on Admissions prohibits Petitioner from admitting any resident which would result in the Facility's census exceeding forty (40) residents.

d. A violation of the Voluntary Limitation on Admissions shall result in administrative sanctions by the Agency just as if for violation of a duly-entered Emergency Immediate Moratorium on Admissions.

e. On or after February 17, 2013, the Petitioner may request the Agency's authorization to discontinue its Voluntary Limitation on Admissions. Any such request shall be supported by documentation, including but not limited to, reports or records of Petitioner's consultant referenced in subparagraph (a) above, which demonstrate actions undertaken by Petitioner to assure current and future compliance with the regulatory mandates. Upon receipt of any such request, the Agency may take such action as is appropriate and prudent, including but not limited to: a survey of the Facility, a request for further information or direct communication with Petitioner's consultant. The Agency agrees to review any request in good faith, in a timely manner and not to unreasonably withhold consent. Said review shall be conducted as soon as possible and/or practical for the Agency. Should consent be denied, the Agency shall state in writing the reasons for

denial and will provide, if applicable, corrective measures to be taken by Petitioner to receive consent. Petitioner may seek further consent at any time.

f. Upon adoption of this Agreement as a Final Order of the Agency, the Agency for Health Care Administration shall issue to Petitioner a renewal license for a facility capacity of sixty (60) residents, valid for a period of two calendar years commencing on May 5, 2012.

g. On or after September 1, 2013, the Petitioner may apply to increase its licensed capacity at the Facility as provided by law. Any application to increase the licensed capacity of the Petitioner's facility filed prior to September 1, 2013, shall be summarily denied based upon the terms of this Agreement and that the Petitioner waives any right to challenge said summarily denied application in any judicial or quasi-judicial forum. The Agency further agrees to review any application, received on or after September 1, 2013, to increase Petitioner's licensed capacity in good faith and not to unreasonably deny the same other than as provided by law. Should Petitioner's application be denied, the reasons for the denial shall be set forth in writing or as provided by law.

h. Should Petitioner be cited for one Class I, one Class II, or three or more uncorrected Class III deficient practices at any survey over a two-year period from the date of the issuance of the renewal license (i.e., May 5, 2012), Petitioner stipulates that the deficient practice(s) will, if proven, constitute grounds for revocation of the Petitioner's license (if provided for by law) in addition to additional Agency action pursuant to applicable provisions of law.

5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.

6. By executing this Agreement, Petitioner denies the allegations set forth in the Notice of Intent to Deny and the Amended Notice of Intent to Deny, and the Agency asserts the validity of the allegations raised in these Notices of Intent to Deny. No agreement made herein shall preclude the Agency from imposing a penalty against Petitioner for any deficiency/ violation of statute or rule identified in a future survey of Petitioner, which constitutes a “repeat” or “uncorrected” deficiency from surveys identified in the administrative complaint.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the Notice of Intent to Deny in any decision regarding licensure of Petitioner, including, but not limited to, licensure for limited mental health, limited nursing services, extended congregate care, or a demonstrated pattern of deficient performance, as provided for by then existing law. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency as provided for by law. Further, Petitioner acknowledges that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the administrative complaint. This agreement does not prohibit the Agency from taking action regarding Petitioner’s Medicaid provider status, conditions, requirements or contract.

8. 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.

9. Each party shall bear its own costs and attorney’s fees.

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

11. Petitioner for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of

Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from 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 Petitioner or related facilities; provided and limited, however, that Petitioner's rights to any costs, expenses or attorneys fees arising from or relating to enforcement of this Settlement Agreement shall survive.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

13. In the event that Petitioner was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

14. Petitioner agrees that if any funds to be paid under this agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Petitioner in the Final Order, or any portion thereof, owed by Petitioner to the Agency from any present or future funds owed to Petitioner by the Agency, and that the Agency shall hold a lien against present and future funds owed to Petitioner by the Agency for said amounts until paid.

15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it. Petitioner has the capacity to execute this Agreement.

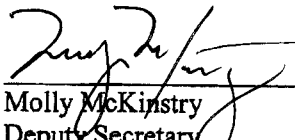
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

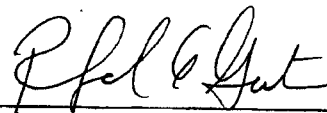
17. This Agreement supersedes any prior oral or written agreements between the parties.

18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

19. All parties agree that a facsimile signature suffices for an original signature.

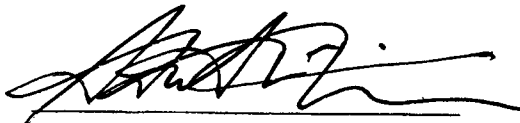
The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

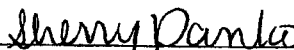

Molly McKinstry
Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308


Rafael Gaitan, Esq.
Florida Bar No. 17987
Gus Suarez, Esq.
Florida Bar No. 616613
Counsel for Southern Parks, Inc.
1110 Brickell Avenue, Suite 407
Miami, Florida 33131-3135

DATED: 12/21/12

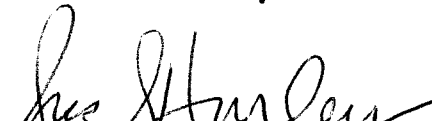
DATED: 10/4/2012


Stuart F. Williams
General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Building #3
Tallahassee, Florida 32308-5407


Name (printed): Sherry Danlo
Position: President
Southern Parks, Inc.

DATED: 12/11/12

DATED: 9-19-12


Suzanne Suarez-Hurley, Senior Attorney
Florida Bar No. 0985775
Agency for Health Care Administration
525 Mirror Lake Drive, Suite 330H
St. Petersburg, Florida 33701

DATED: 10/9/2012