

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

GENE COWLES AND AMELIA COWLES,
d/b/a 80th PLACE,

2012 DEC -6 A 9:15

Petitioner,

DOAH No. 12-2641

vs.

AHCA No 2012007214

License No. 10475

File No. 11966250

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Provider Type: Assisted Living Facility

RENDITION NO.: AHCA-12-1171 -S-OLC

Respondent.

FINAL ORDER

Having reviewed the Amended Notice of Intent to Deny and Settlement Agreement, 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.
5. The Petitioner's license renewal application for assisted living facility licensure is withdrawn.
6. The Agency's Amended Notice of Intent to Deny is moot and thus is withdrawn.
7. The Petitioner is responsible for any refunds that may be due to any clients.
8. The Petitioner shall remain responsible for retaining and appropriately distributing client records as prescribed by Florida law. The Petitioner is advised of Section 408.810, Florida Statutes. The Petitioner should also consult the applicable authorizing statutes and administrative code provisions as well as any other statute that may apply to health care practitioners regarding client records.

9. The Petitioner is given notice of Florida law regarding unlicensed activity. The Petitioner is advised of Section 408.804 and Section 408.812, Florida Statutes. The Petitioner should also consult the applicable authorizing statutes and administrative code provisions. The Petitioner is notified that the cancellation of an Agency license may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

ORDERED at Tallahassee, Florida, on this 6 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 6 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)
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Finance & Accounting Revenue Management Unit (Electronic Mail)	Patricia Kaufman, Field Office Manager Areas 5 and 6 Agency for Health Care Administration (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	David Selby, Esq. Assistant General Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	Amelia Cowles, Co-owner 80 th Place 5551 80 th Place Pinellas Park, FL 33781 (U.S. Mail)
R. Bruce McKibben Administrative Law Judge Division of Administrative Hearings (Electronic Mail)	Christina Mesa, Esq. Mesa Law, PA PO Box 10207 Tampa, FL 33679 (U.S. Mail)

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.

408.812 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.



RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
INTERIM SECRETARY

August 29, 2012

Administrator Gene Cowles
80th Place
P.O. Box 1778
Safety Harbor, FL 34689

RE: DOAH Case # 121-2641
AHCA Case # 2012007214

AMENDED "NOTICE OF INTENT TO DENY"

Dear Administrator:

It is the decision of the Agency for Health Care Administration (the "Agency") that your renewal application for an Assisted Living Facility and initial Limited Mental Health specialty license to operate 80th Place be DENIED.

This denial is based on the following:
Your Standard license was due to expire on 20 May, 2012, and you had applied to renew it plus add a Limited Mental Health specialty license. On 14 February, 2012, the Agency, as required by law, attempted to conduct a biennial survey pursuant to re-licensure. No administrators, staff nor residents were present on that date when the surveyor arrived.

The Agency is required by law to inspect ALFs biennially for licensure renewal. Furthermore, these inspections are required by law to be unannounced. Finally, the Agency is required by law if unable to conduct the inspection to deny the renewal application.

Therefore, the following listed laws, but not limited thereto, require denial of your renewal application:

- F.S. 408, Part II, to include
408.806 (7) (a), (c)&(d) (re license application process)
408.811(1) (a)&(b) (re right of inspection)
408.815 (1) (b) & (c) (re denial) *

Headquarters
2727 Mahan Drive
Tallahassee, FL 32308
AHCA.MyFlorida.com



Area Office
525 Mirror Lake Dr. No.,
Suite 330D
St. Petersburg, FL 33701

EXHIBIT 1

F.S. 429, to include
429.14 (1) (h) & (k) (re administrative penalties)
429.17(2); 429.28(3) (a) (re renewal)
429.28(3) (a) & (b) (re residents' rights)
429.34 (re right of entry & inspection)
Rule 58A-5.015, F.A.C. (re renewal)

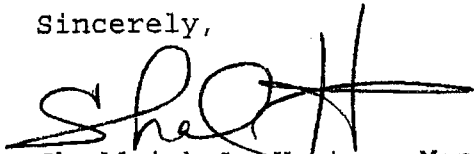
* The 3 July, 2012, Notice of Intent to Deny, mistakenly cited F.S. 408.15 (1) (b) & (c); the correct cite (408.815(1) (b) & (c)) is listed above.

EXPLANATION OF RIGHTS

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

SEE ATTACHED ELECTION OF RIGHTS FORM

Sincerely,



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

Copies to:

Jan Mills, General Counsel Office, Tallahassee
Christina Mesa, Esq., P.O. Box 10207, Tampa, FL 33679-0207
Assisted Living Unit, Tallahassee
Paul Brown, AHCA, Supervisor, Area 5, St. Petersburg
David Selby, AHCA, Assistant General Counsel, St. Petersburg

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

80th PLACE,

Petitioner,
vs.

**DOAH CASE NO. 12-2641
AHCA NO. 2012007214**

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

Respondent.

SETTLEMENT AGREEMENT

Petitioner, 80th Place, and Respondent, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its duly authorized representatives, 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 ("ALF") licensed pursuant to Chapters 408, Part II and 429, Part I, 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 408, Part II and 429, Part I, Florida Statutes; and

WHEREAS, the Agency served Petitioner with a "Notice of Intent to Deny" ("NOI") received on or about 9 July, 2012, and an "Amended Notice of Intent to Deny" on 6 September, 2012, both notifying Petitioner of the Agency's intent to deny Petitioner's license renewal application, 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:

EXHIBIT 2

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 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 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, however, 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:
 - a. Petitioner's request for a hearing in this cause is deemed withdrawn;
 - b. Petitioner's application for licensure renewal is also deemed withdrawn, and
 - c. This cause shall be deemed dismissed as moot.
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, neither party admits or denies the allegations set forth in the Amended NOI, and the Agency asserts the validity of the allegations raised in the Amended NOI referenced herein.
7. The Agency is not precluded from using the subject events identified in the Amended NOI for any purpose within the jurisdiction of the Agency. Further, Petitioner acknowledges and agrees 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 Amended NOI. 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.

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

13. In the event that Petitioner was a Medicaid provider at the subject time of the occurrence alleged in the Amended NOI, this Agreement 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. 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.

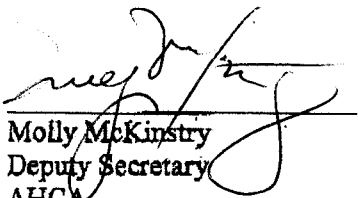
15. This Agreement contains and incorporates the entire understandings and agreements of the parties.

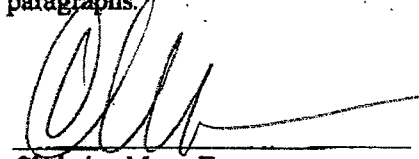
16. This Agreement supersedes any prior oral or written agreements between the parties.

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

18. All parties agree that faxed and scanned signatures suffice for original signatures.

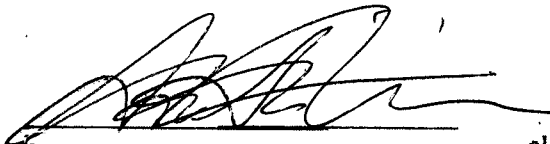
The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement, consisting of the preceding 18 paragraphs.

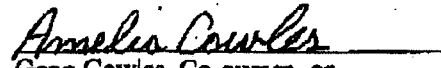

Molly McKinstry
Deputy Secretary
AHCA
2727 Mahan Drive
Tallahassee, Florida 32308


Christina Mesa, Esq.
Florida Bar No. 932388
MESA LAW, PA
PO Box 10207
Tampa, FL 33679-0207
Florida Bar no.: 932388
For Petitioner

DATED: 12/6/12

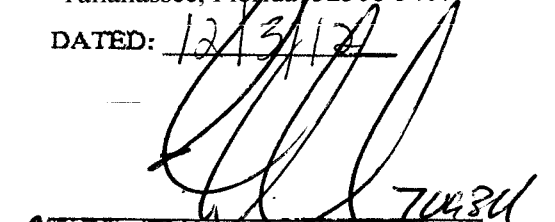
DATED: 10-12-12


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


Gene Cowles, Co-owner -or-
Amelia Cowles, Co-owner
80th Place
5551 80th Place
Pinellas Park, FL 33781

DATED: 12/3/12

DATED: 10-12-12


Edwin D. Selby, Assistant General Counsel
Florida Bar No. 262587
Agency for Health Care Administration
525 Mirror Lake Drive, Suite 330H
St. Petersburg, FL 38701

DATED: 12/2/2012