

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
AND  
INDEXED

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

2015 APR -6 P 12:43

Petitioner,

v.

AHCA NO.: 2013011230

DOAH NO.: 14-2986

RENDITION NO.: AHCA- 15 - 0214 -S-OLC

L & S SENIOR CARE, INC. d/b/a  
ARCADIA OAKS ASSISTED LIVING,

Respondent.

**FINAL ORDER**

Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

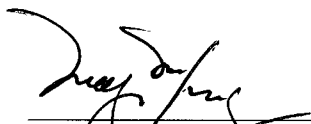
1. The Agency has jurisdiction over the above-named Respondent pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.
2. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 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**:

1. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement.
2. The Respondent shall pay the Agency \$2,700. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Office of Finance and Accounting  
Revenue Management Unit  
Agency for Health Care Administration  
2727 Mahan Drive, MS 14  
Tallahassee, Florida 32308

ORDERED at Tallahassee, Florida, on this 2 day of April, 2015.



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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<sup>th</sup> day of April, 2015.



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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)	Finance & Accounting Revenue Management Unit (Electronic Mail)
Andrea M. Lang, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Evelyn Donato, Administrator L & S Senior Care, Inc. d/b/a Arcadia Oaks Assisted Living 1013 East Gibson Street Arcadia, Florida 34266 (U.S. Mail)
Lynne A. Quimby-Pennock Administrative Law Judge Division of Administrative Hearings (Electronic Mail)	

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

STATE OF FLORIDA,  
AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Petitioner,

vs.

Case No. 2013011230

L&S SENIOR CARE, INC.  
d/b/a ARCADIA OAKS ASSISTED LIVING,

Respondent.

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**ADMINISTRATIVE COMPLAINT**

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration (hereinafter “the Agency”), by and through its undersigned counsel, and files this Administrative Complaint against the Respondent, L&S SENIOR CARE, INC. d/b/a/ ARCADIA OAKS ASSISTED LIVING (hereinafter “the Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes (2013), and states:

**NATURE OF THE ACTION**

This is an action to impose an administrative fine against an assisted living facility in the amount of TWO THOUSAND SEVEN HUNDRED DOLLARS (\$2,700.00) based upon two (2) violations.

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter pursuant to Sections 120.569 and 120.57, Florida Statutes (2013).
2. The Agency has jurisdiction over the Respondent pursuant to Sections 20.42 and 120.60, and Chapters 408, Part II, and 429, Part I, Florida Statutes (2013).
3. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code.

**EXHIBIT 1**

## PARTIES

4. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state regulations, statutes and rules governing such facilities. Chapters 408, Part II, and 429, Part I, Florida Statutes (2013); Chapter 58A-5, Florida Administrative Code. The Agency may deny, revoke, or suspend any license issued to an assisted living facility, or impose an administrative fine in the manner provided in Chapter 120, Florida Statutes (2013). Sections 408.815 and 429.14, Florida Statutes (2013).

5. The Respondent was issued a license by the Agency (License Number 9716) to operate a 65-bed assisted living facility located at 1013 East Gibson Street, Arcadia, Florida 34266, and was at all times material required to comply with the applicable state regulations, statutes and rules governing assisted living facilities.

## COUNT I

### **The Respondent Failed To Discharge A Resident Who Can No Longer Assist With Activities Of Daily Living In Violation Of Rule 58A-5.0181(4) And (5), Florida Administrative Code**

6. The Agency re-alleges and incorporates by reference paragraphs one (1) through five (5).

7. Pursuant to Florida law, except as follows in paragraphs (a) through (e) of this subsection, criteria for continued residency in any licensed facility must be the same as the criteria for admission. As part of the continued residency criteria, a resident must have a face-to-face medical examination by a health care provider at least every 3 years after the initial assessment, or after a significant change, whichever comes first. A significant change is defined in Rule 58A-5.0131, Florida Administrative Code. The results of the examination must be recorded on AHCA Form 1823, which is incorporated by reference in paragraph (2)(b) of this rule. The form must be completed in accordance with that paragraph.

(a) The resident may be bedridden for up to 7 consecutive days.

(b) A resident requiring care of a stage 2 pressure sore may be retained provided that:

1. The resident contracts directly with a licensed home health agency or a nurse to provide care, or the facility has a limited nursing services license and services are provided pursuant to a plan of care issued by a health care provider;

2. The condition is documented in the resident's record; and

3. If the resident's condition fails to improve within 30 days, as documented by a health care provider, the resident must be discharged from the facility.

(c) A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:

1. The resident qualifies for, is admitted to, and consents to the services of a licensed hospice that coordinates and ensures the provision of any additional care and services that may be needed;

2. Continued residency is agreeable to the resident and the facility;

3. An interdisciplinary care plan, which specifies the services being provided by hospice and those being provided by the facility, is developed and implemented by a licensed hospice in consultation with the facility; and

4. Documentation of the requirements of this paragraph is maintained in the resident's file.

(d) The administrator is responsible for monitoring the continued appropriateness of placement of a resident in the facility at all times.

(e) A hospice resident that meets the qualifications of continued residency pursuant to this subsection may only receive services from the assisted living facility's staff within the scope of the facility's license.

(f) Assisted living facility staff may provide any nursing service permitted under the facility's license and total help with the activities of daily living for residents admitted to hospice; however, staff may not exceed the scope of their professional licensure or training.

(g) Continued residency criteria for facilities holding an extended congregate care license are described in Rule 58A-5.030, Florida Administrative Code.

If the resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with Section 429.28, Florida Statutes.

Rule 58A-5.0182(4)(5), Florida Administrative Code.

8. On or about April 9, 2013 through April 19, 2013, the Agency conducted two (2) Complaint Surveys (CCR# 2013001667 and CCR# 20130022380) of the Respondent's facility.

9. Based on record review, observation and interview, the Respondent failed to discharge one (1) of seven (7) residents, specifically Resident number seven (7), who can no longer assist with Activities of Daily Living.

10. On April 10, 2013 at 12:20 p.m., Resident number seven (7) was observed sitting in a wheelchair in a small dining room. Resident number seven (7) remained motionless, and did not attempt to feed him/herself. A staff member fed Resident number seven (7). At 1:36 p.m. of the same day Staff E and Staff B rolled Resident number seven (7) into the resident's room. A sign was observed above Resident number seven's (7) bed. The sign read, "Please remember to rotate Resident number seven (7) every two (2) hours (picture taken)." At approximately 1:37 p.m., Staff E and B were observed transferring Resident number seven (7) from the wheelchair to the bed. Staff E bent over and lifted Resident number seven (7) out of the wheelchair, while Staff B lifted Resident number seven (7) from behind. Resident number seven's (7) feet did not touch the ground during the transfer. Resident number seven (7) remained motionless throughout the transfer process. Staff E and B were observed changing Resident number seven's (7) adult brief

immediately after the transfer. Staff B rolled Resident number seven (7) onto his/her right side while Staff E wiped Resident number seven's (7) bottom, then Staff E rolled Resident number seven (7) onto his/her left side while staff B replaced Resident number seven's (7) bed pad. Staff E pulled a new adult brief over Resident number seven's (7) feet, legs and bottom. Resident number seven (7) was motionless throughout the entire process. Resident number seven (7) was observed not assisting with the Activities of Daily Living.

11. On April 9, 2013 at 4:15 p.m. an interview was conducted with Staff D. Staff D stated Resident number seven (7) was, "Dead weight and could not assist in transfers."

12. On April 10, 2013 at 1:28 p.m. Staff B was interviewed. Staff B explained that staff would not put Resident number seven (7) on the toilet, because the resident would fall off of the toilet. Staff B continued by saying, "I am going to tell you the truth; we have to do everything for Resident number seven (7)."

13. On April 11, 2013, Resident number seven's (7) physician was interviewed. The physician confirmed Resident number seven (7) needed "Total care" with Activities of Daily Living.

14. The Respondent's deficient practice was related to the operation and maintenance of a provider or to the care of clients which the Agency determined indirectly or potentially threatened the physical or emotional health, safety, or security of clients, other than Class I or Class II violations, and constituted a Class III deficiency as provided for in Section 429.19(2)(c), Florida Statutes (2013).

15. The Agency cited the Respondent for a Class III violation in accordance with Section 429.19(2)(c), Florida Statutes (2013).

16. On or about July 18, 2013, the Agency conducted a Revisit Survey of the April 9, 2013 through April 19, 2013 Complaint Surveys (CCR# 2013002380 and CCR# 2013001667) of Respondent.

17. Based on observation and interview, the Respondent failed to ensure two (2) of thirty (30) residents, specifically Resident number six (6) and Resident number twenty one (21), were appropriate for continued residency.

18. An observation of Resident number six (6) on July 17, 2013 revealed that all supplies were to be opened and placed on the table for the resident. The med tech had to verbally cue Resident number six (6) multiple times to open the glucometer strips. Resident number six (6) had to be verbally cued to place the strip into the glucometer. Resident number six (6) had to be prompted to open the needle. Resident number six (6) had to be prompted to place the needle on lancet. Resident number six (6) had a difficult time trying to turn the lancet to place on the needle. The med tech had to open the alcohol swab for the resident. Resident number six (6) had to be prompted to wipe his/her finger with the alcohol swab. Resident number six (6) had to be prompted to poke his/her finger with the lancet. The resident had to be prompted to place his/her finger next to the glucometer strip. Resident number six (6) couldn't hold the glucometer and therefore the med tech held the glucometer. Resident number six (6) had to be prompted to read the glucometer.

19. During an interview on July 17, 2013, Resident number six (6) stated, "I do this all the time. But, I don't know why." Resident number six (6) did not know what the number on the glucometer meant. Resident number six (6) had sliding scale coverage and did not understand when to self-administer insulin and when to hold it.

20. An observation of Resident number twenty one (21) on July 17, 2013 revealed the resident was given the glucometer strip bottle by the med tech. Resident number twenty one (21) attempted to open the bottle with prompts from the med tech. The resident's spouse tried to open the bottle and after many attempts was unable to open the bottle. At that time the med tech took the bottle and opened the top. The med tech took a strip out. The med tech took the glucometer and had the spouse assist with placing the strip in the bottom of the glucometer. Resident number



twenty one (21) was then handed the lancet and the needle. Resident number twenty one (21) was prompted to remove the covering of the needle and was unable to do this. Resident number twenty one's (21) spouse took the needle and pulled the tab off the top. The resident was then prompted to twist the needle onto the lancet. Resident number twenty one (21) was unable to do this after many attempts. The resident's spouse also tried. The spouse was unable to twist the needle on the lancet after multiple attempts. The med assistant twisted the needle onto the lancet. Resident number twenty one's (21) spouse then twisted the lancet and took the top off. The spouse then took an alcohol wipe and cleansed the resident's finger. Resident number twenty one's (21) spouse then poked the resident's finger. The spouse placed the glucometer against the resident's finger until the glucometer beeped. The glucometer read 248. Resident number twenty one (21) was prompted to take the lid off of the insulin pen and was unable to perform that task. The resident's spouse didn't understand how to take the lid off either. The med tech took the lid off of the insulin pen and handed the pen to the resident. The med tech then told the resident what to dial the insulin pen to. Resident number twenty one (21) was able to dial the insulin pen. The residents' spouse wiped the area to be injected with alcohol. Resident number twenty one (21) self-injected with 5 units of novolog insulin.

21. During an interview on July 17, 2013 at approximately 11:45 a.m. Resident number twenty one (21) was asked what to do if his/her blood glucose was 20. Resident number twenty one (21) said, "I don't know." Resident number twenty one (21) was asked what to do if his/her blood glucose was 400. Resident number twenty one (21) said, "I don't know." These questions were asked of Resident number twenty one's (21) spouse and the reply was the same. Resident number twenty one's (21) spouse said that he/she might be able to learn. Both residents are wheel chair bound and had issues with fine motor movement.

22. This remains an uncorrected deficiency.

23. The Respondent's deficient practice was related to the operation and maintenance

of a provider or to the care of clients which the Agency determined indirectly or potentially threatened the physical or emotional health, safety, or security of clients, other than Class I or Class II violations, and constituted a Class III deficiency as provided for in Section 429.19(2)(c), Florida Statutes (2013).

24. The Agency cited the Respondent for a Class III violation in accordance with Section 429.19 (2)(c), Florida Statutes (2013).

25. The Respondent's deficient practice constituted an uncorrected Class III violation in accordance with Section 429.19(2)(c), Florida Statutes (2013).

26. The Agency shall impose an administrative fine for a cited Class III violation in an amount not less than five hundred dollars (\$500.00) and not exceeding one thousand dollars (\$1,000.00) for each violation. Section 429.19(2)(c), Florida Statutes (2013).

**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, intends to impose an administrative fine against the Respondent in the amount of SEVEN HUNDRED DOLLARS (\$700.00) pursuant to Section 429.19(2)(c), Florida Statutes (2013).

### **COUNT II**

#### **The Respondent Allowed Unlicensed Staff To Provide Services To Residents In Violation Of Sections 429.08(1)(a) And 408.812, Florida Statutes (2013)**

27. The Agency re-alleges and incorporates by reference paragraphs one (1) through five (5).

28. Pursuant to Florida law, Section 429.08, Florida Statutes (2013), applies to the unlicensed operation of an assisted living facility in addition to the requirements of Part II of Chapter 408. Section 429.08(1)(a), Florida Statutes (2013).

Pursuant to Florida law, 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 license holder 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 Section 408.814, Florida Statutes (2013) 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), Florida Statutes (2013), 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. Section 408.812, Florida Statutes (2013).

29. On or about April 9, 2013 through April 19, 2013, the Agency conducted two (2) Complaint Surveys (CCR# 2013001667 and CCR# 20130022380) of the Respondent's facility.

30. Based on record review, observations and interviews, the facility allowed unlicensed staff to provide services to four (4) of nine (9) residents observed, specifically Residents #6, #7, #8, and #9, for which the facility does not have a specialty license to provide.

31. On April 7, 2013 a pre-survey record search revealed the facility has a standard license.

32. On April 9, 2013, Resident number six's (6) record was reviewed. The record revealed a physician's order dated April 1, 2012 for two (2) liters of continuous oxygen.

33. On April 9, 2013, Resident number seven's (7) record was reviewed. The record revealed a physician's order dated April 13, 2011 for two (2) liters of continuous oxygen.

34. On April 9, 2013, a review of Resident number eight's (8) record revealed a physician's order for two (2) liters of oxygen continuously through a nasal cannula.

35. On April 9, 2013, Resident number nine's (9) record was reviewed. The record revealed the resident was admitted to the facility on January 11, 2005 with an external colostomy bag.

36. On April 9, 2013 at 12:19 p.m., Staff B was observed changing Resident number eight's (8) oxygen tank in the small dining room. Staff B checked Resident number eight's (8) Oxygen level then removed a large oxygen tank from the back of Resident number eight's (8) wheelchair and replaced it with a new oxygen tank. Staff A turned Resident number eight's (8) oxygen on and set the oxygen level to two (2) liters.

37. On April 9, 2013 at approximately 12:30 p.m., Staff A was observed changing the oxygen tanks for Resident number six (6) and Resident number seven (7). Staff A replaced the tanks for both residents and set both tanks to two (2) liters of oxygen.

38. On April 10, 2013 at 9:45 a.m., Staff D and Staff F were observed assisting

Resident number nine (9) in the bathroom. Staff F disconnected Resident number nine's (9) colostomy bag from the residents' stomach area. Staff D retrieved a new colostomy wafer and bag for Resident number nine (9). Staff D cut a hole in the center of the wafer. Staff E entered the room and relieved Staff F. Staff E verbally prompted Resident number nine (9) to clean around the hole in his/her stomach with a wipe. After seeing Resident number nine (9) unable to properly clean around the area, Staff E grabbed a few wipes and cleansed around the hole in Resident number nine's (9) stomach. Staff D placed a new adhesive wafer around the hole in Resident number nine's (9) stomach. Staff D attached the colostomy bag to the wafer on Resident number nine's (9) stomach. Staff D placed a clamp at the end of the colostomy bag.

39. On April 9, 2013 at approximately 12:21 p.m., Staff B was interviewed. Staff B stated Resident number six (6), Resident number seven (7), and Resident number nine (9) cannot manage or maintain their own oxygen tanks. Staff B stated the facility staff changes the tanks for these residents. Staff B confirmed she was not a nurse.

40. On April 9, 2013 at approximately 12:37 p.m., Staff A was interviewed. Staff A confirmed she was not a nurse. Staff A also stated when she prepared residents who cannot manage their oxygen for bed, she takes the oxygen tank off the wheelchair and adjusts the oxygen level to 0 (zero) liters. Staff A continued by saying she puts the residents on their respective oxygen concentrators and when they get up in the morning she adjusts the oxygen tank back to 2 (two) liters of oxygen.

41. On April 9, 2013 at 12:37 p.m., Staff C was interviewed. Staff C admitted to assisting Resident number six (6), Resident number seven (7) and Resident number eight (8) with their oxygen. Staff C confirmed she was not a licensed nurse.

42. On April 9, 2013 at 12:45 p.m., the Administrator was interviewed. The Administrator confirmed she allowed unlicensed staff members to assist residents with their oxygen tanks and oxygen concentrators. The Administrator confirmed she had a Standard

Assisted Living Facility License without a specialty license. She also confirmed the facility does not have licensed staff providing care and services in this facility.

43. On April 9, 2013 at approximately 4:15 p.m., Staff D was interviewed. Staff D described cleaning caring for Resident number nine's (9) colostomy bag and wound. Staff D stated, "We have to take the colostomy bag off, we remove it [the wafers] from around the hole in the resident's stomach. "Staff D stated [the facility staff] cleans the area around the wound and replaces the wafer and the bag." Staff D stated Resident number nine (9) cannot connect the colostomy bag without assistance. Staff D added, "Resident number nine (9) can't really get the colostomy bag back on the hole like it needs to."

44. On April 9, 2013 at 4:40 p.m., Resident number nine (9) was interviewed. Resident number nine (9) stated the staff changes the colostomy bag and cleans around the open wound.

45. The Respondent's actions or inactions constituted a violation of Section 408.812, Florida Statutes (2013). The Agency may impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation.

46. Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance as set forth in Section 408.812(4), Florida Statutes (2013). A fine shall be levied notwithstanding the correction of the violation.

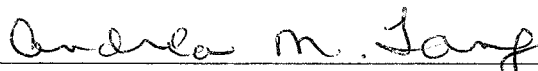
**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, intends to impose an administrative fine against the Respondent in the amount of TWO THOUSAND DOLLARS (\$2,000.00) pursuant to Section 408.812(4) and (5) Florida Statutes (2013).

#### **CLAIM FOR RELIEF**

**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully requests the Court to grant the following relief:

1. Enter findings of fact and conclusions of law in favor of the Agency.
2. Impose an administrative fine against the Respondent in the amount of TWO THOUSAND SEVEN HUNDRED DOLLARS (\$2,700.00).
3. Order any other relief that the Court deems just and appropriate.

Respectfully submitted on this 23rd day of May, 2014.



Andrea M. Lang, Assistant General Counsel  
Florida Bar No. 0364568  
Agency for Health Care Administration  
Office of the General Counsel  
2295 Victoria Avenue, Room 346C  
Fort Myers, Florida 33901  
Telephone: (239) 335-1253

#### **NOTICE**

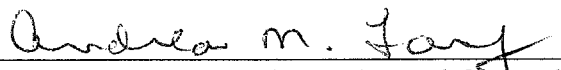
**RESPONDENT IS NOTIFIED THAT IT/HE/SHE HAS A RIGHT TO REQUEST AN ADMINISTRATIVE HEARING PURSUANT TO SECTIONS 120.569 AND 120.57, FLORIDA STATUTES. THE RESPONDENT IS FURTHER NOTIFIED THAT IT/HE/SHE HAS THE RIGHT TO RETAIN AND BE REPRESENTED BY AN ATTORNEY IN THIS MATTER. SPECIFIC OPTIONS FOR ADMINISTRATIVE ACTION ARE SET OUT IN THE ATTACHED ELECTION OF RIGHTS.**

**ALL REQUESTS FOR HEARING SHALL BE MADE AND DELIVERED TO THE ATTENTION OF: *THE AGENCY CLERK, AGENCY FOR HEALTH CARE ADMINISTRATION, 2727 MAHAN DRIVE, BLDG #3, MS #3, TALLAHASSEE, FLORIDA 32308; TELEPHONE (850) 412-3630.***

**THE RESPONDENT IS FURTHER NOTIFIED THAT IF A REQUEST FOR HEARING IS NOT RECEIVED BY THE AGENCY FOR HEALTH CARE ADMINISTRATION WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF THIS ADMINISTRATIVE COMPLAINT, A FINAL ORDER WILL BE ENTERED BY THE AGENCY.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form has been served to: Evelyn Donato, Administrator, L&S Senior Care, Inc. d/b/a Arcadia Oaks Assisted Living, 1013 East Gibson Street, Arcadia, Florida 34266, by U.S. Certified Mail, Return Receipt No. 7012 3460 0001 2195 4148 and to M. C. Edwards, Registered Agent, L&S Senior Care, Inc. d/b/a Arcadia Oaks Assisted Living, 1001 North U.S. Highway One, Suite 400, Jupiter, Florida 33477 by U. S. Certified Mail, Return Receipt No. 7012 3460 0001 2195 4155 on this 23<sup>rd</sup> day of May, 2014.



Andrea M. Lang, Assistant General Counsel  
Florida Bar No. 0364568  
Agency for Health Care Administration  
Office of the General Counsel  
2295 Victoria Avenue, Room 346C  
Fort Myers, Florida 33901  
Telephone: (239) 335-1253

Copy furnished to:

Evelyn Donato, Administrator L&S Senior Care, Inc. d/b/a/ Arcadia Oaks Assisted Living 1013 East Gibson Street Arcadia, Florida 34266 (U.S. Certified Mail)	Andrea M. Lang, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration 2295 Victoria Avenue, Room 346C Fort Myers, Florida 33901 (Interoffice Mail)
M.C. Edwards, Registered Agent L&S Senior Care, Inc. d/b/a/ Arcadia Oaks Assisted Living 1001 North U.S. Highway One, Suite 400 Jupiter, Florida 33477 (U.S. Certified Mail)	Harold Williams Field Office Manager Agency for Health Care Administration 2295 Victoria Avenue, Room 340A Fort Myers, Florida 33901 (Electronic Mail)



STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: Arcadia Oaks Assisted Living

Case No. 2013011230

**ELECTION OF RIGHTS**

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

**Your Election of Rights must be returned by mail or by fax within twenty-one (21) days of the date you receive the attached Administrative Complaint, Notice of Intent to Impose a Late Fee, or Notice of Intent to Impose a Late Fine.**

**If your Election of Rights with your elected 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 in accordance with Chapter 120, Florida Statutes (2013) 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 the allegations of fact 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 the allegations of fact and law contained in the Notice of Intent to Impose a Late Fine or Fee, 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.

OPTION THREE (3) \_\_\_\_ **I dispute the allegations of fact and law 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, 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: \_\_\_\_\_ (Assisted Living Facility, Nursing Home, Medical Equipment, Other)

Licensee Name: \_\_\_\_\_ License Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
Name Title

Address: \_\_\_\_\_  
Street and Number City State Zip Code

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_ E-Mail (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 above licensee.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA,  
AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Petitioner,

vs.

Case No(s): 2013011230

L & S SENIOR CARE, INC. d/b/a  
ARCADIA OAKS ASSISTED LIVING,

Respondent.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the “Agency”), through its undersigned representatives, and Respondent, L & S Senior Care, Inc. d/b/a Arcadia Oaks Assisted Living (hereinafter “Respondent”), 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**, Respondent is an Assisted Living Facility licensed pursuant to Chapters 408, Part II, and 429, Part I, Florida Statutes, Section 20.42, 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 Respondent, pursuant to Chapter 429, Florida Statutes; and

**WHEREAS**, the Agency served Respondent with an administrative complaint on or about May 30, 2014, notifying the Respondent of its intent to impose administrative fines in the amount of \$2,700; and

**EXHIBIT 2**

**WHEREAS**, Respondent requested a formal administrative proceeding by filing a Petition for Formal Administrative Hearing; 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, Respondent 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, Respondent agrees to pay \$2,700 in administrative fines to the Agency within thirty (30) days of the entry of the Final Order.
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, Respondent neither admits nor denies, and the Agency asserts the validity of the allegations raised in the administrative complaint referenced

herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule identified in a future survey of Respondent, which constitutes a “repeat” or “uncorrected” deficiency from surveys identified in the administrative complaint. The parties agree that in such a “repeat” or “uncorrected” case, the deficiencies from the surveys identified in the administrative complaint shall be deemed found without further proof.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent, including, but not limited to, licensure for limited mental health, limited nursing services, extended congregate care, or a demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent 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 administrative complaint.

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. Respondent 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 Respondent or related facilities.

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

13. In the event that Respondent 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. Respondent 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 Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent 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.

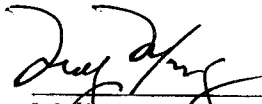
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

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.

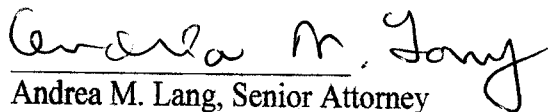
The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

  
Molly McKinstry  
Deputy Secretary  
Agency for Health Care Administration  
2727 Mahan Drive, Bldg #1  
Tallahassee, Florida 32308

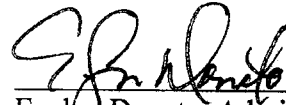
DATED: 4/2/15

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

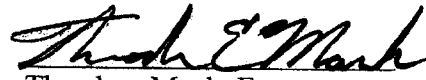
DATED: 3/22/15

  
Andrea M. Lang, Senior Attorney  
Agency for Health Care Administration  
2295 Victoria Avenue  
Fort Myers, Florida 33901

DATED: 3/16/15

  
Evelyn Donato, Administrator  
L & S Senior Care, Inc. d/b/a  
Arcadia Oaks Assisted Living  
1013 East Gibson Street  
Arcadia, Florida 34266

DATED: 3/5/15

  
Theodore Mack, Esq.,  
Powell and Mack  
3700 Bellwood Drive  
Tallahassee, Florida 32303  
Attorney for Respondent

DATED: 3/9/15