STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK
2014 OCT 13 P 1:12

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

PARADISE REST, INC. d/b/a
PARADISE REST,

Respondent.
_______________________________/

DOAH Nos. 14-1042
14-1571
AHCA Nos. 2013010760
2013011244
2013012931
RENDITION NO.: AHCA- 14 - 0851 -S-OLC

PARADISE REST, INC. d/b/a
PARADISE REST,

Petitioner,

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.
_______________________________/

DOAH No. 14-1082

AHCA No. 2013012920

FINAL ORDER

Having reviewed the Administrative Complaints, the 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 Paradise Rest, Inc. pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.

2. The Agency issued the attached Administrative Complaints, Notice of Intent to Deny, and Election of Rights forms to Paradise Rest, Inc. (Ex. 1) The Election of Rights forms 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:**

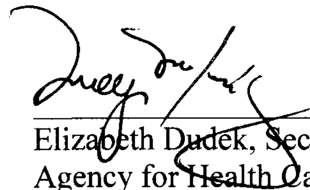
4. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement.

Filed October 14, 2014 2:13 PM Division of Administrative Hearings

5. Paradise Rest, Inc. shall pay the Agency $5,700.00. 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 180 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 10 day of October, 2014.



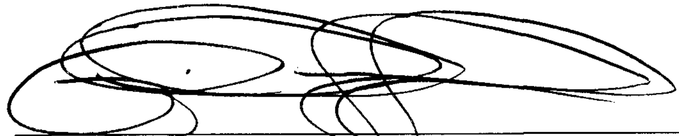
Elizabeth Dudek, Secretary
Agency for Health Care Administration

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 13th day of October, 2014.



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)	Catherine Anne Avery, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)
Finance & Accounting Revenue Management Unit (Electronic Mail)	Patricia Caufman, Field Office Manager Local Field Office Agency for Health Care Administration (Electronic Mail)
Thomas J. Walsh II, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Paul Brown, Supervisor Local Field Office Agency for Health Care Administrator (Electronic Mail)
John D. C. Newton II Administrative Law Judge Division of Administrative Hearings (Electronic Mail)	Theodore E. Mack, Esq. Powell & Mack 3700 Bellwood Drive Tallahassee, Florida 32303 (U.S. Mail)

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v. AHCA Nos. 2013010760
2013011244

PARADISE REST, INC. d/b/a
PARADISE REST,

Respondent.
_______________________________/

ADMINISTRATIVE COMPLAINT

The Petitioner, State of Florida, Agency for Health Care Administration ("the Agency"), files this Administrative Complaint against the Respondent, Paradise Rest, Inc. d/b/a Paradise Rest ("the Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2013), and alleges:

NATURE OF THE ACTION

This is an action to impose an administrative fine of three thousand dollars ($3,000.00) against an assisted living facility based upon five (5) uncorrected Class III deficiencies and one (1) unclassified deficient practice.

PARTIES

1. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing such facilities. Ch. 408, Part II, Ch. 429, Part I, Fla. Stat. (2013); Ch. 58A-5, Fla. Admin. Code. The Agency may deny, revoke, and suspend any license issued to an assisted living facility and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing

EXHIBIT

"1"

statutes or applicable rules. §§ 408.813, 408.815, 429.14, 429.19, Fla. Stat. (2013). In addition to licensure denial, revocation or suspension, or any administrative fine imposed, the Agency may assess a survey fee against an assisted living facility. § 429.19(7), Fla. Stat. (2013).

2. The Respondent was issued a license by the Agency to operate a sixteen (16) bed assisted living facility ("the Facility"), license number 8065, at 1207 30th Avenue East, Bradenton, Florida 34208, and was at all times material required to comply with the applicable statutes and rules governing assisted living facilities. Assisted living facilities are residential care facilities that provide housing, meals, personal care and supportive services to older persons and disabled adults who are unable to live independently. These facilities are intended to be a less costly alternative to the more restrictive, institutional settings for individuals who do not require 24-hour nursing supervision. Assisted living facilities are regulated in a manner so as to encourage dignity, individuality, and choice for residents, while providing them a reasonable assurance for their health, safety and welfare. Generally, assisted living facilities provide supervision, assistance with personal care and supportive services, as well as assistance with, or administration of, medications to residents who require such services.

COUNT I
Criminal Background Screening

3. Under Florida law, the Agency shall require level 2 background screening for personnel as required in Section 408.809(1)(e) pursuant to Chapter 435 and Section 408.809. § 429.174, Fla. Stat. (2012).

4. Under Florida law, level 2 background screening pursuant to Chapter 435 must be conducted through the Agency on each of the following persons, who are considered employees for the purposes of conducting screening under Chapter 435: (a) The licensee, if an individual. (b) The administrator or a similarly titled person who is responsible for the day-to-day operation

of the provider. (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider. (d) Any person who is a controlling interest if the Agency has reason to believe that such person has been convicted of any offense prohibited by Section 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the Agency a description and explanation of the conviction at the time of license application. (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee. § 408.809(1), Fla. Stat. (2012).

5. Under Florida law, every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under Chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the Agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under Section 943.05(2)(g), the person must file a complete set of fingerprints with the Agency and the Agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

The fingerprints may be retained by the Department of Law Enforcement under Section 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person's background screening results are retained in the clearinghouse created under section 435.12, the Agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under Chapter 651, provided that: (a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in section 435.04, and this section; (b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and (c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of Chapter 435 and this section using forms provided by the Agency. § 408.809(2), Fla. Stat. (2012).

6. Under Florida law, in addition to the offenses listed in Section 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the offenses or any similar offense of another jurisdiction listed in Section 408.809(4). § 408.809(4), Fla. Stat. (2012).

7. Under Florida law, if an employer or Agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity. § 435.06(1), Fla. Stat. (2012).

8. Under Florida law, (a) an employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the Agency as provided under Section 435.07. (b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter. (c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to Section 435.07. (d) An employer may hire an employee to a

position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment. § 435.06(2)(a)-(d), Fla. Stat. (2012).

9. Under Florida law, any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed. § 435.06(3), Fla. Stat. (2012).

10. Under Florida law, all staff, who are hired on or after October 1, 1998, to provide personal services to residents, must be screened in accordance with Section 429.174, F.S. ... Rule 58A-5.019(3)(a), Florida Administrative Code.

11. Under Florida law, "Staff" means any person employed by a facility; or contracting with a facility to provide direct or indirect services to residents; or employees of firms under contract to the facility to provide direct or indirect services to residents when present in the facility. The term includes volunteers performing any service which counts toward meeting any staffing requirement of this rule chapter. Rule 58A-5.0131(34), Florida Administrative Code.

12. On or about May 22, 2013, the Agency completed a compliant survey of the Respondent.

13. Based upon record review and interview, the Respondents failed to ensure that the Facility staff had the required background screening or exemption for one (1) of seven (7) sampled staff members, the same being contrary to law.

14. That Petitioner's representative reviewed on May 22, 2013, Respondent's provided employee schedules for May and June, 2013, and noted that employee "G" was not listed on the

schedules.

15. That Petitioner's representative interviewed resident number twelve (12) on May 22, 2013, who indicated that employee "G" worked at the Respondent facility and believed employee "G" to be the individual who cleaned the facility.

16. That Petitioner's representative interviewed resident number four (4) on May 22, 2013, who indicated as follows:

a. Employee "G" was employed by the facility and did cleaning and sometimes cooked.

b. The resident did not care for employee "G" as the employee had taken light bulbs out of the lamp of the resident's room because the bulbs were needed elsewhere in the facility.

17. That Petitioner's representative interviewed resident number seven (7) on May 22, 2013, who indicated as follows:

a. The day of the interview was the "day off" for employee "G."

b. Employee "G" worked at the facility regularly.

c. Employee "G" cleaned the entire facility, including resident rooms, and sometimes helped cook.

d. Employee "G" had sometimes transported the resident to places the resident needed to go.

e. Some residents did not like employee "G" as she could be "harsh."

18. That Petitioner's representative reviewed the Florida Department of Corrections website on May 22, 2013, and noted the following related to employee "G:"

a. The employee had been convicted of possession of and manufacturing or

distributing cocaine in 2007 and sentenced to prison.

b. The employee had multiple prior offenses related to drug possession or sales ranging from 1994 through 1999.

19. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, regarding employee "G" and the administrator indicated as follows:

a. The employee helped clean the facility, including common areas and resident rooms.

b. The administrator did not maintain an employee personnel file for employee "G" and did not have a Level 2 criminal history background screening on the employee.

c. The employee did not work regularly and only did cleaning.

d. The administrator was not aware of the criminal history of the employee.

20. That the above reflects Respondent's failure to ensure, prior to hiring staff for resident services, that the staff member was free of a criminal history which would disqualify the individual from employment in an assisted living facility.

21. The Respondent's actions or inactions constituted a violation of Sections 429.174 and 408.809, Florida Statutes (2012).

22. Under Florida law, in addition to the requirements of part II of Chapter 408, the Agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in Chapter 120 against a licensee for a violation of any provision of Part I or Chapter 429, Part II of Chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under Section 408.809, Florida Statutes, or for the actions of any facility employee: . . . Failure to

comply with the background screening standards of Chapter 429, Part I, Section 408.809(1), or Chapter 435, Florida Statutes. § 429.14(1)(f), Fla. Stat. (2012).

23. Under Florida law, 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. Unless otherwise specified by law, the amount of the fine may not exceed $500 for each violation. Unclassified violations include: Violating any provision of this part, authorizing statutes, or applicable rules. § 408.813(3)(b), Fla. Stat. (2012).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of $500.00 against the Respondent.

COUNT II

24. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

25. That Florida law provides:

(2) SOCIAL AND LEISURE ACTIVITIES. Residents shall be encouraged to participate in social, recreational, educational and other activities within the facility and the community.
(a) The facility shall provide an ongoing activities program. The program shall provide diversified individual and group activities in keeping with each resident's needs, abilities, and interests.
(b) The facility shall consult with the residents in selecting, planning, and scheduling activities. The facility shall demonstrate residents' participation through one or more of the following methods: resident meetings, committees, a resident council, suggestion box, group discussions, questionnaires, or any other form of communication appropriate to the size of the facility.
(c) Scheduled activities shall be available at least six (6) days a week for a total of not less than twelve (12) hours per week. Watching television shall not be considered an activity for the purpose of meeting the twelve (12) hours per week of scheduled activities unless the television program is a special one-time event of special interest to residents of the facility. A facility whose residents choose to attend day programs conducted at adult day care centers, senior centers, mental health centers, or other day programs may count those attendance hours towards the required twelve (12) hours per week of scheduled activities. An activities calendar shall be posted in common areas where residents normally congregate.
(d) If residents assist in planning a special activity such as an outing, seasonal festivity, or an excursion, up to three (3) hours may be counted toward the required activity time.

Rule 58A-5.0182(2), Florida Administrative Code.

26. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

27. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law.

28. That Petitioner's representative interviewed on May 22, 2013 at approximately 10:35 AM resident number eleven (11) who indicated that the facility did not do any activities and, as the resident did not "like TV," the resident normally slept or sat out in front of the facility.

29. That Petitioner's representative interviewed on May 22, 2013 at approximately 12:40 PM resident number three (3) who indicated that the facility was "boring" and that all the residents did was "watch TV or sit out front."

30. That Petitioner's representative interviewed on May 22, 2013 at approximately 11:30 AM resident number four (4) who indicated that the facility did not have any formal activities program and that the residents mainly watched television.

31. That Petitioner's representative interviewed on May 22, 2013 at approximately 2:10 PM the adult sibling of resident number nine (9) who indicated that the facility did not provide any activities to the residents while the former facility of resident number nine (9) did activities. The sibling believed the resident was bored at this facility due to no activities.

32. That Petitioner's representative toured the Respondent facility on May 22, 2013 from approximately 10:15 AM through 11:30 AM and noted that there was not displayed any resident activity schedule as required.

33. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk.

34. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

35. That Petitioner cited Respondent for a Class III violation.

36. That Respondent was provided a mandatory date of correction of July 6, 2013.

37. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

38. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, including the time for each activity to begin and the time that each activity was to end each day.

39. That Petitioner's representative toured the Respondent facility on July 23, 2013, commencing at approximately 10:30 a.m. and noted a posted activity calendar with activities listed twice a day for six (6) days each week, however the calendar did not have the time that the activity was to begin and how long the activity was to last.

40. That Petitioner's representative interviewed on July 23, 2013 at approximately 1:30 PM resident number two (2) who indicated that the resident was bored and all the resident did was watch television.

41. That Petitioner's representative interviewed on July 23, 2013 at approximately 1:50 PM resident number three (3) who indicated that all the resident did all day was watch television.

42. That Petitioner's representative interviewed on July 23, 2013 at approximately 2:15 PM resident number five (5) who indicated that there was nothing for the resident to do but watch television or sit outside.

43. That Petitioner's representative interviewed on July 23, 2013 at approximately 11:10 AM resident number seven (7) who indicated that facility residents had no ongoing daily activities available and that the resident would like to be able to go to church.

44. That during the survey of July 23, 2013, conducted from 10:00 AM until 4:30 PM, the facility did not offer the residents any structured activity, any activity listed on the post calendar, and the residents were observed watching television.

45. That Petitioner's representative interviewed Respondent's employee "A" on July 23, 2013, who indicated that it was not always easy to encourage the residents to get involved in activities and the residents had their own interests.

46. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk

47. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

48. That Petitioner cited Respondent for a Class III violation.

49. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT III

50. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

51. That Florida law provides:

> (b) Facility Resident Elopement Response Policies and Procedures. The facility shall develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures shall include:
> 1. An immediate staff search of the facility and premises;
> 2. The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
> 3. The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident is not located pursuant to subparagraph (8)(b)1.; and
> 4. The continued care of all residents within the facility in the event of an elopement.
> (c) Facility Resident Elopement Drills. The facility shall conduct resident elopement drills pursuant to Sections 429.41(1)(a)3. and 429.41(1)(l), F.S.
>
> Rule 58A-5.0182(8)(b and c), Florida Administrative Code.

52. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

53. That based upon the review of records and interview, Respondent failed to ensure that all staff participated in biannual elopement drills as required, the same being contrary to law.

54. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013 at approximately 4:00 p.m. who indicated that:

a. She was unaware that elopement drills needed to be completed twice yearly.

b. Staff were trained in elopement response (verified) but she acknowledged that she had not had elopement drills for the staff.

55. That the above reflects respondent's failure to all staff all staff participated in biannual elopement drills as required placing residents at risk in emergent situations.

56. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

57. That Petitioner cited Respondent for a Class III violation.

58. That Respondent was provided a mandatory date of correction of July 6, 2013.

59. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

60. That based upon the review of records and interview, Respondent failed to ensure that all staff participated in biannual elopement drills as required, the same being contrary to law.

61. That Petitioner's representative interviewed Respondent's owner on July 23, 2013 at approximately 2:15 p.m. who indicated that:

a. She was unaware that elopement drills needed to be completed twice yearly.

b. Staff were trained in elopement response (verified) but she acknowledged that she had not had elopement drills for the staff.

62. That Petitioner's representative reviewed Respondent's documentation provided by Respondent and noted that the last documented elopement drill was in 2010.

63. That the above reflects respondent's failure to all staff all staff participated in biannual elopement drills as required placing residents at risk in emergent situations.

64. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

65. That Petitioner cited Respondent for a Class III violation.

66. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT IV

67. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

7. That Florida law provides:

> (a) Newly hired staff shall have 30 days to submit a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis. Freedom from tuberculosis must be documented on an annual basis. A person with a positive tuberculosis test must submit a health care provider's statement that the person does not constitute a risk of communicating tuberculosis. Newly hired staff does not include an employee transferring from one facility to another that is under the same management or ownership, without a break in service. If any staff member is later found to have, or is suspected of having, a communicable disease, he/she shall be removed from duties until the administrator determines that such condition no longer exists.
>
> Rule 58A-5.019(2)(a), Florida Administrative Code.
>
> Personnel records for each staff member shall contain, at a minimum, a copy of the original employment application with references furnished and verification of freedom from communicable disease including tuberculosis...
>
> Rule 58A-5.024(2)(a), Florida Administrative Code.

68. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

69. That based upon the review of records and interview, Respondent failed to ensure obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, for three (3) of three (3) sampled staff members, the same being contrary to law.

70. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows:

a. Staff member "B":
    i. The staff member was a direct care provider.
    ii. The staff member was hired on October 13, 2012.
    iii. Absent from the record was any health care provider's statement that the employee was signs or symptoms of a communicable disease including tuberculosis.

b. Staff member "C":
    i. The staff member was a direct care provider.
    ii. The staff member was hired on February 1, 2013.
    iii. Absent from the record was any health care provider's statement that the employee was signs or symptoms of a communicable disease.
    iv. An initial tuberculosis test was completed as completed on May 18, 2013, three (3) months after the employee began work at the facility and well beyond the required testing within thirty (30) days of hire.

c. Staff member "D":

   i. The staff member was a direct care provider.

   ii. The staff member was hired on January 17, 2013.

   iii. Absent from the record was any health care provider's statement that the employee was signs or symptoms of a communicable disease including tuberculosis.

71. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013 at approximately 3:45 p.m. who indicated that:

a. She was not aware that a separate statement of freedom from communicable diseases was needed for all employees with direct resident contact.

b. She thought the tuberculosis test alone was what was needed.

72. That the above reflects respondent's failure to obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, said failures in violation of law and increasing the risk of the spread of communicable disease to residents who often suffer from impaired immune systems.

73. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

74. That Petitioner cited Respondent for a Class III violation.

75. That Respondent was provided a mandatory date of correction of July 6, 2013.

76. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

77. That based upon the review of records and interview, Respondent failed to obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, for one (1) of three (3) sampled staff members, the same being contrary to law.

78. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows:

a. The personnel record for staff member "E" was hired on April 11, 2013.

b. The staff member provided direct care to residents.

c. A medical statement indicating staff member "E" was free from communicable diseases had no date to determine when the statement was written by the medical provider.

79. That Petitioner's representative interviewed Respondent's owner on July 23, 2013 regarding the communicable disease statement of staff member "E" and the owner indicated as follows:

a. She acknowledged that the statement in the personnel file was not dated by the provider.

b. She would obtain a dated medical statement from the medical provider.

80. That a corrected document had not been received from the facility owner or administrator by Petitioner's representative before the completion of the written survey document on approximately June 6, 2013.

81. That the above reflects respondent's failure to obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, said failures in violation of law and increasing the risk of the spread of communicable disease to residents who often suffer from impaired immune systems.

82. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

83. That Petitioner cited Respondent for a Class III violation.

84. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT V

85. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

7. That Florida law provides:

> (2) DIETARY STANDARDS.
> (a) The Tenth Edition Recommended Dietary Allowances established by the Food and Nutrition Board – National Research Council, adjusted for age, sex and activity, shall be the nutritional standard used to evaluate meals. Therapeutic diets shall meet these nutritional standards to the extent possible. A summary of the Tenth Edition Recommended Dietary Allowances, interpreted by a daily food guide, is available from the DOEA Assisted Living Program.
> (b) The recommended dietary allowances shall be met by offering a variety of foods adapted to the food habits, preferences and physical abilities of the residents

and prepared by the use of standardized recipes. For facilities with a licensed capacity of 16 or fewer residents, standardized recipes are not required. Unless a resident chooses to eat less, the recommended dietary allowances to be made available to each resident daily by the facility are as follows:

1. Protein: 6 ounces or 2 or more servings;
2. Vegetables: 3-5 servings;
3. Fruit: 2-4 or more servings;
4. Bread and starches: 6-11 or more servings;
5. Milk or milk equivalent: 2 servings;
6. Fats, oils, and sweets: use sparingly; and
7. Water.

(c) All regular and therapeutic menus to be used by the facility shall be reviewed annually by a registered dietitian, licensed dietitian/nutritionist, or by a dietetic technician supervised by a registered dietitian or licensed dietitian/nutritionist, to ensure the meals are commensurate with the nutritional standards established in this rule. Portion sizes shall be indicated on the menus or on a separate sheet. Daily food servings may be divided among three or more meals per day, including snacks, as necessary to accommodate resident needs and preferences. This review shall be documented in the facility files and include the signature of the reviewer, registration or license number, and date reviewed. Menu items may be substituted with items of comparable nutritional value based on the seasonal availability of fresh produce or the preferences of the residents.

(d) Menus to be served shall be dated and planned at least one week in advance for both regular and therapeutic diets. Residents shall be encouraged to participate in menu planning. Planned menus shall be conspicuously posted or easily available to residents. Regular and therapeutic menus as served, with substitutions noted before or when the meal is served, shall be kept on file in the facility for 6 months.

(e) Therapeutic diets shall be prepared and served as ordered by the health care provider.

1. Facilities that offer residents a variety of food choices through a select menu, buffet style dining or family style dining are not required to document what is eaten unless a health care provider's order indicates that such monitoring is necessary. However, the food items which enable residents to comply with the therapeutic diet shall be identified on the menus developed for use in the facility.

2. The facility shall document a resident's refusal to comply with a therapeutic diet and notification to the resident's health care provider of such refusal. If a resident refuses to follow a therapeutic diet after the benefits are explained, a signed statement from the resident or the resident's responsible party refusing the diet is acceptable documentation of a resident's preferences. In such instances

daily documentation is not necessary.

(f) For facilities serving three or more meals a day, no more than 14 hours shall elapse between the end of an evening meal containing a protein food and the beginning of a morning meal. Intervals between meals shall be evenly distributed throughout the day with not less than two hours nor more than six hours between the end of one meal and the beginning of the next. For residents without access to kitchen facilities, snacks shall be offered at least once per day. Snacks are not considered to be meals for the purposes of calculating the time between meals.

(g) Food shall be served attractively at safe and palatable temperatures. All residents shall be encouraged to eat at tables in the dining areas. A supply of eating ware sufficient for all residents, including adaptive equipment if needed by any resident, shall be on hand.

(h) A 3-day supply of non-perishable food, based on the number of weekly meals the facility has contracted with residents to serve, and shall be on hand at all times. The quantity shall be based on the resident census and not on licensed capacity. The supply shall consist of dry or canned foods that do not require refrigeration and shall be kept in sealed containers which are labeled and dated. The food shall be rotated in accordance with shelf life to ensure safety and palatability. Water sufficient for drinking and food preparation shall also be stored, or the facility shall have a plan for obtaining water in an emergency, with the plan coordinated with and reviewed by the local disaster preparedness authority.

Rule 58A-5.0020(2), Florida Administrative Code.

86. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

87. That based upon the review of records, observations, and interview, Respondent failed to record menu substitutions and thus the ability to evaluate the nutritional equivalency thereof, provide snacks to residents, and to maintain a required emergency food supply, the same being contrary to law.

88. That Petitioner's representative reviewed Respondent's "Week 3" lunch menu scheduled for Wednesday, May 22, 2013, and noted the following items were to be served to the residents: a tomato based ground beef sandwich on a bun, potato fries, and salad.

89. That Petitioner's representative observed the lunch served to the residents on May 22, 2013, at approximately 12:25 p.m., and noted the meal served was bologna sandwiches and vegetable soup.

90. That Petitioner's representative interviewed Respondent's staff member "B" on May 22, 2013, regarding facility dietary services and the staff member indicated as follows:

a. Staff have to notify the administrator the day before to take food out of the locked freezer because only the administrator has the key.
b. Staff have to substitute when what's scheduled on the menu is not brought out of the freezer by the administrator.
c. The only residents who get snacks are the diabetics, near bedtime.
d. Other residents purchase their own snacks

91. That Petitioner's representative reviewed Respondent's menu and substitution folder provided by the administrator during the survey and noted that the last record of a menu substitution was on October 7, 2012.

92. That Petitioner's representative noted that no snacks were observed being offered to residents during the survey of May 22, 2013, which ended at approximately 4:30 p.m.

93. That Petitioner's representative interviewed resident number four (4) on May 22, 2013, who indicated that residents are not given snacks.

94. That Petitioner's representative interviewed resident number three (3) on May 22, 2013, who indicated that they do not get snacks and some of the staff might share some of their own snacks with them.

95. That Petitioner's representative interviewed Respondent's staff member "C" on May 22, 2013, who indicated that no snacks are available for the residents and admitted that she has brought snacks for residents with her own money

96. That Petitioner's representative toured Respondent's pantry and kitchen which was shown to the representative by staff member "B" on May 22, 2013 and noted:

a. There were minimal amounts of non-perishable food for the daily use for the fifteen (15) residents who resided at the facility.

b. There were no powdered dairy products and no water or bags for water.

97. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, who indicated as follows:

a. Residents snack all day long.

b. She bought them snacks and that ice cream or something is offered at 8pm or so.

c. The emergency food supply was at her mother's house.

98. That the above reflects Respondent's failure to record menu substitutions and thus the ability to evaluate the nutritional equivalency thereof, provide snacks to residents, and to maintain a required emergency food supply.

99. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

100. That Petitioner cited Respondent for a Class III violation.

101. That Respondent was provided a mandatory date of correction of July 6, 2013.

102. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

103. That based upon the review of records, observations, and interview, Respondent failed to provide snacks to residents, the same being contrary to law.

104. That Petitioner's representative conducted the follow-up visit on July 23, 2013 beginning at 10:00 a.m. and concluding at approximately 4:00 p.m. and it was noted during that time that residents did not have free access to the facility kitchen and were not offered snacks.

105. That Petitioner's representative interviewed resident number seven (7) on July 23, 2013, who indicated that the resident was required to give the facility money to purchase diabetic snacks for self and the "house, and that the facility expected the residents to purchase their own snacks.

106. That Petitioner's representative interviewed resident number four (4) on July 23, 2013, who indicated that the facility does not provide snacks for the residents at times and the resident would purchase own snacks because if the facility did not have any, the residents would go without.

107. That Petitioner's representative interviewed Respondent's owner on July 23, 2013, who indicated that she was not at the facility to train staff to give snacks to residents separate from meals.

108. That the above reflects respondent's failure to provide snacks to residents as required by law.

109. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than

class I or class II violations.

110. That Petitioner cited Respondent for a Class III violation.

111. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT VI

112. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

113. That Florida law provides:

> (a) A facility with a limited mental health license shall maintain an up-to-date admission and discharge log containing the names and dates of admission and discharge for all mental health residents. The admission and discharge log required under Rule 58A-5.024, F.A.C., shall be sufficient provided that all mental health residents are clearly identified.
> (b) Staff records shall contain documentation that designated staff have completed limited mental health training as required by Rule 58A-5.0191, F.A.C.
> (c) Resident records for mental health residents in a facility with a limited mental health license must include the following … 3. A Community Living Support Plan.
>
> Rule 58A-5.029(2)(a through c), Florida Administrative Code.

114. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

115. That based upon the review of records, observations, and interview, Respondent failed to maintain an admissions and discharge log identifying limited mental health residents, and failed to ensure staff have completed required training related to limited mental health residents, the same being contrary to law.

116. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, who indicated as follows:

a. She did not keep a list of residents identified as receiving limited mental health services.

b. All but two (2) of the facility residents were receiving limited mental health services.

117. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows regarding staff member "B":

a. The staff member had been hired on October 12, 2013, in excess of six (6) months prior to the survey.

b. The staff member's record See, Rule 58A-5.0191, Florida Administrative Code.

118. That the above reflects respondent's failure to maintain an admissions and discharge log identifying limited mental health residents, and failed to ensure staff have completed required training related to limited mental health residents.

119. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

120. That Petitioner cited Respondent for a Class III violation.

121. That Respondent was provided a mandatory date of correction of July 6, 2013.

122. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

123. That based upon the review of records, observations, and interview, Respondent failed to maintain an admissions and discharge log identifying limited mental health residents, and failed to obtain and maintain community living support plans for two (2) of three (3) sampled limited mental health residents, the same being contrary to law.

124. That Petitioner's representative reviewed Respondent's presented admission discharge records and noted that Respondent did not maintain an admission and discharge log that identified limited mental health residents.

125. That Petitioner's representative interviewed Respondent's owner on July 23, 2013, who indicated that she was unsure of which residents were considered limited mental health residents and that she was not aware of the requirements for limited mental health residents.

126. That Petitioner's representative reviewed Respondent's records related to residents numbered seven (7) and eight (8) during the survey and noted:

a. Both were limited mental health residents.

b. No community living support plan for either resident had been obtained or maintained by Respondent.

127. That the above reflects respondent's failure to maintain an admissions and discharge log identifying limited mental health residents, and failed to obtain and maintain community living support plans for limited mental health residents.

128. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

129. That Petitioner cited Respondent for a Class III violation.

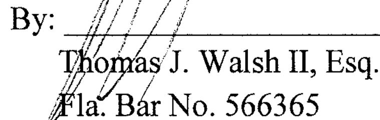
130. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (203).1

Respectfully Submitted,

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION

The Sebring Building
525 Mirror Lake Dr. N., Suite 330
St. Petersburg, Florida 33701
Telephone: (727) 552-1947
Facsimile: (727) 552-1440
walsht@ahca.myflorida.com

By: 

Thomas J. Walsh II, Esq.
Fla. Bar No. 566365

NOTICE

The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.

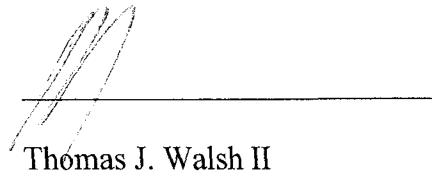
The Respondent is further notified if the Election of Rights form is not received by the Agency for Health Care Administration within twenty-one (21) days of the receipt of this Administrative Complaint, a final order will be entered.

The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan

Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Certified Mail, Return Receipt No 7013 0600 0001 6664 9232 to Sheryl Rainey, Administrator, Paradise Rest, Inc. d/b/a Paradise Rest, 1207 30th Avenue East, Bradenton, Florida 34208, and by regular U.S. Mail to Sheryl Rainey, Registered Agent for Paradise Rest, Inc., 2416 6th Avenue Drive East, Bradenton, FL 34208, on this 19 day of November, 2013.



Thomas J. Walsh II

Copy furnished to:

Sheryl Rainey
Administrator
Paradise Rest, Inc. d/b/a Paradise Rest
1207 30th Avenue East
Bradenton, Florida 34208
(US Certified Mail)

Registered Agent for
Paradise Rest, Inc.
2416 6th Avenue Drive East
Bradenton, FL 34208
(US Mail)

Patricia R. Caufman
Field Office Manager

Thomas J. Walsh II
Senior Attorney
Agency for Health Care Admin.
525 Mirror Lake Drive, #330G
St. Petersburg, FL 33701
(Interoffice Mail)

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Paradise Rest d/b/a Paradise Rest **CASE NO. 2013010760**
2013011244

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 **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 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 Chapter120, Florida Statutes (2006) 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.

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:________________

Late fee/fine/AC

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v. AHCA No. 2013012931

PARADISE REST, INC. d/b/a
PARADISE REST,

Respondent.
______________________________/

ADMINISTRATIVE COMPLAINT

The Petitioner, State of Florida, Agency for Health Care Administration ("the Agency"), files this Administrative Complaint against the Respondent, Paradise Rest, Inc. d/b/a Paradise Rest ("the Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2013), and alleges:

NATURE OF THE ACTION

This is an action to revoke Respondent's licensure to operate an assisted living facility in the State of Florida and to impose an administrative fine of two thousand seven hundred dollars ($2,700.00).

PARTIES

1. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing such facilities. Ch. 408, Part II, Ch. 429, Part I, Fla. Stat. (2013); Ch. 58A-5, Fla. Admin. Code. The Agency may deny, revoke, and suspend any license issued to an assisted living facility and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing

EXHIBIT

"1"

statutes or applicable rules. §§ 408.813, 408.815, 429.14, 429.19, Fla. Stat. (2013). In addition to licensure denial, revocation or suspension, or any administrative fine imposed, the Agency may assess a survey fee against an assisted living facility. § 429.19(7), Fla. Stat. (2013).

2. The Respondent was issued a license by the Agency to operate a sixteen (16) bed assisted living facility ("the Facility"), license number 8065, at 1207 30th Avenue East, Bradenton, Florida 34208, and was at all times material required to comply with the applicable statutes and rules governing assisted living facilities.

COUNT I[1]

3. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

4. That Florida law provides:

(2) SOCIAL AND LEISURE ACTIVITIES. Residents shall be encouraged to participate in social, recreational, educational and other activities within the facility and the community.
(a) The facility shall provide an ongoing activities program. The program shall provide diversified individual and group activities in keeping with each resident's needs, abilities, and interests.
(b) The facility shall consult with the residents in selecting, planning, and scheduling activities. The facility shall demonstrate residents' participation through one or more of the following methods: resident meetings, committees, a resident council, suggestion box, group discussions, questionnaires, or any other form of communication appropriate to the size of the facility.
(c) Scheduled activities shall be available at least six (6) days a week for a total of not less than twelve (12) hours per week. Watching television shall not be considered an activity for the purpose of meeting the twelve (12) hours per week of scheduled activities unless the television program is a special one-time event of special interest to residents of the facility. A facility whose residents choose to attend day programs conducted at adult day care centers, senior centers, mental health centers, or other day programs may count those attendance hours towards the required twelve (12) hours per week of scheduled activities. An activities calendar shall be posted in common areas where residents normally congregate.
(d) If residents assist in planning a special activity such as an outing, seasonal festivity, or an excursion, up to three (3) hours may be counted toward the required activity time.

[1] Paragraphs numbered five (5) through twenty-eight (28) are asserted State of Florida, Agency for Health Care v. Paradise Rest, Inc. d/b/a Paradise Rest, AHCA numbers 2013010760 and 2013011244, attached hereto as Exhibit "A," in paragraphs numbered twenty-six (26) through forty-nine (49).

Rule 58A-5.0182(2), Florida Administrative Code.

5. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

6. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law.

7. That Petitioner's representative interviewed on May 22, 2013 at approximately 10:35 AM resident number eleven (11) who indicated that the facility did not do any activities and, as the resident did not "like TV," the resident normally slept or sat out in front of the facility.

8. That Petitioner's representative interviewed on May 22, 2013 at approximately 12:40 PM resident number three (3) who indicated that the facility was "boring" and that all the residents did was "watch TV or sit out front."

9. That Petitioner's representative interviewed on May 22, 2013 at approximately 11:30 AM resident number four (4) who indicated that the facility did not have any formal activities program and that the residents mainly watched television.

10. That Petitioner's representative interviewed on May 22, 2013 at approximately 2:10 PM the adult sibling of resident number nine (9) who indicated that the facility did not provide any activities to the residents while the former facility of resident number nine (9) did activities. The sibling believed the resident was bored at this facility due to no activities.

11. That Petitioner's representative toured the Respondent facility on May 22, 2013 from approximately 10:15 AM through 11:30 AM and noted that there was not displayed any resident activity schedule as required.

12. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk.

13. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

14. That Petitioner cited Respondent for a Class III violation.

15. That Respondent was provided a mandatory date of correction of July 6, 2013.

16. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

17. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, including the time for each activity to begin and the time that each activity was to end each day.

18. That Petitioner's representative toured the Respondent facility on July 23, 2013, commencing at approximately 10:30 a.m. and noted a posted activity calendar with activities listed twice a day for six (6) days each week, however the calendar did not have the time that the activity was to begin and how long the activity was to last.

19. That Petitioner's representative interviewed on July 23, 2013 at approximately 1:30 PM resident number two (2) who indicated that the resident was bored and all the resident did was watch television.

20. That Petitioner's representative interviewed on July 23, 2013 at approximately 1:50 PM resident number three (3) who indicated that all the resident did all day was watch television.

21. That Petitioner's representative interviewed on July 23, 2013 at approximately 2:15 PM resident number five (5) who indicated that there was nothing for the resident to do but watch television or sit outside.

22. That Petitioner's representative interviewed on July 23, 2013 at approximately 11:10 AM resident number seven (7) who indicated that facility residents had no ongoing daily activities available and that the resident would like to be able to go to church.

23. That during the survey of July 23, 2013, conducted from 10:00 AM until 4:30 PM, the facility did not offer the residents any structured activity, any activity listed on the post calendar, and the residents were observed watching television.

24. That Petitioner's representative interviewed Respondent's employee "A" on July 23, 2013, who indicated that it was not always easy to encourage the residents to get involved in activities and the residents had their own interests.

25. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk

26. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

27. That Petitioner cited Respondent for a Class III violation.

28. That the same constitutes an uncorrected Class III violation as defined by law.

29. That Florida law requires that deficient practice be corrected within thirty (30) days.

30. That on or about October 11, 2013, the Agency completed a second re-visit survey of the May 22, 2013, survey of Respondent and its facility.

31. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, including the time for each activity to begin and the time that each activity was to end each day.

32. That Petitioner's representative toured the Respondent facility on October 10, 2013, commencing at approximately 9:00 a.m. and noted a posted activity calendar with activities listed twice a day for six (6) days each week indicating the times the activities began and ended, however the calendar was for the month of September 2013 and no October 2013 calendar was posted.

33. That Petitioner's representative interviewed on October 10, 2013 at approximately 9:10 AM resident number three (3) who indicated that that resident wanted more activities and outings and said they "really didn't do much."

34. That Petitioner's representative interviewed on October 10, 2013 at approximately 10:20 AM resident number five (5) who indicated that there was no games and no outings and said the facility residents just lie in bed and watch TV.

35. That Petitioner's representative interviewed on October 10, 2013 at approximately 11:05 AM resident number six (6) who indicated the facility has some board games but staff has to help with setting up games so they aren't played very often.

36. That during the stay of Petitioner's representative on October 10, 2013, from 9:00 AM until approximately 4:30 PM, no organized activities took place and the residents were observed sleeping, watching television or going outside to smoke.

37. That Petitioner's representative interviewed on October 10, 2013 at approximately 4:45 PM Respondent's shareholder who indicated that she didn't know why there was no schedule of activities posted.

38. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk

39. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

40. That Petitioner cited Respondent for a Class III violation.

41. That the same constitutes a twice uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of one thousand dollars ($1,000.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT II[2]

42. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

43. That Florida law provides:

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[2] Paragraphs numbered forty-four (44) through fifty-eight (58) are asserted State of Florida, Agency for Health Care v. Paradise Rest, Inc. d/b/a Paradise Rest, AHCA numbers 2013010760 and 2013011244, attached hereto as Exhibit "A," in paragraphs numbered fifty-two (52) through sixty-six (66) therein.

(b) Facility Resident Elopement Response Policies and Procedures. The facility shall develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures shall include:
1. An immediate staff search of the facility and premises;
2. The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
3. The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident is not located pursuant to subparagraph (8)(b)1.; and
4. The continued care of all residents within the facility in the event of an elopement.
(c) Facility Resident Elopement Drills. The facility shall conduct resident elopement drills pursuant to Sections 429.41(1)(a)3. and 429.41(1)(l), F.S.

Rule 58A-5.0182(8)(b and c), Florida Administrative Code.

44. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

45. That based upon the review of records and interview, Respondent failed to ensure that all staff participated in biannual elopement drills as required, the same being contrary to law.

46. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013 at approximately 4:00 p.m. who indicated that:

a. She was unaware that elopement drills needed to be completed twice yearly.

b. Staff were trained in elopement response (verified) but she acknowledged that she had not had elopement drills for the staff.

47. That the above reflects respondent's failure to all staff all staff participated in biannual elopement drills as required placing residents at risk in emergent situations.

48. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

49. That Petitioner cited Respondent for a Class III violation.

50. That Respondent was provided a mandatory date of correction of July 6, 2013.

51. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

52. That based upon the review of records and interview, Respondent failed to ensure that all staff participated in biannual elopement drills as required, the same being contrary to law.

53. That Petitioner's representative interviewed Respondent's owner on July 23, 2013 at approximately 2:15 p.m. who indicated that:

a. She was unaware that elopement drills needed to be completed twice yearly.

b. Staff were trained in elopement response (verified) but she acknowledged that she had not had elopement drills for the staff.

54. That Petitioner's representative reviewed Respondent's documentation provided by Respondent and noted that the last documented elopement drill was in 2010.

55. That the above reflects respondent's failure to all staff all staff participated in biannual elopement drills as required placing residents at risk in emergent situations.

56. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

57. That Petitioner cited Respondent for a Class III violation.

58. That the same constitutes an uncorrected Class III violation as defined by law.

59. That Florida law requires that deficient practice be corrected within thirty (30) days.

60. That on or about October 11, 2013, the Agency commenced a second re-visit survey of the May 22, 2013, survey of Respondent and its facility.

61. That based upon a review of records and interview, Respondent failed to maintain and follow a written elopement policy with a detailed plan for dealing with resident elopement, including requiring a search of the premises, failed to insure one (1) of seven (7) sampled staff were trained on what actions to take in the event of a resident elopement, and failed to maintain photo identification for one (1) of nine (9) sampled residents in the facility who was identified as an elopement risk, the same being contrary to the mandates of law.

62. That Petitioner's representative reviewed Respondent's records related to resident number one (1) on October 10, 2013, and noted as follows;

a. The resident's health assessment (AHCA form 1823), dated august 4, 2013, had noted by the medical provider under "special precautions," that the resident required "close observation."
b. An updated health assessment, dated September 16, 2013 09/16/2013, had noted by the medical provider under "special precautions," "may be elopement risk."
c. Absent from the resident's record was any photograph of the resident.

63. That Petitioner's representative interviewed Respondent's employee "C" on October 10, 2013 at approximately 3:25 PM, who indicated that he had not been trained regarding elopement procedures and did not know what to do if a resident went missing from the facility.

64. That Petitioner's representative interviewed Respondent's shareholder on October 10, 2013 at approximately 4:00 PM who indicated as follows:

a. The facility had two residents with guardians who could not leave the facility

and other residents are allowed to leave the facility without supervision.

b. Resident number one (1) was not at risk of elopement.

c. When presented with the health assessment for resident number one (1) and the documentation that the resident was an elopement risk, she said she was not aware that the resident was an elopement risk.

65. That Petitioner's representative telephonically interviewed a representative of local law enforcement on October 11, 2014 at 1:09 PM who indicated as follows:

a. On September 29, 2013, at approximately 9:00 AM, resident number one (1) was found "wandering around" the parking lot of the police department and appeared disoriented.

b. Law enforcement was able to locate where the resident lived through a records search.

c. When they returned the resident to the facility, the officer stated that staff at the facility indicated no one had seen the resident since 10:00 PM the night before.

66. That Petitioner's representative reviewed Respondent's policy and procedures related to elopement on October 14, 2013, and noted as follows:

a. The written policy and procedures for elopements did not include language regarding a search of the premises.

b. The written policy stated that the facility would take photographs of residents identified as an elopement risk.

67. That the above reflects respondent's failure to maintain and implement a written elopement policy with a detailed plan for dealing with resident elopement as required by law, the

lack thereof placing residents' well-being at risk.

68. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

69. That Petitioner cited Respondent for a Class III violation.

70. That the same constitutes a twice uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of one thousand dollars ($1,000.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT III[3]

71. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

72. That Florida law provides:

> (2) DIETARY STANDARDS.
> (a) The Tenth Edition Recommended Dietary Allowances established by the Food and Nutrition Board – National Research Council, adjusted for age, sex and activity, shall be the nutritional standard used to evaluate meals. Therapeutic diets shall meet these nutritional standards to the extent possible. A summary of the Tenth Edition Recommended Dietary Allowances, interpreted by a daily food guide, is available from the DOEA Assisted Living Program.
> (b) The recommended dietary allowances shall be met by offering a variety of foods adapted to the food habits, preferences and physical abilities of the residents and prepared by the use of standardized recipes. For facilities with a licensed capacity of 16 or fewer residents, standardized recipes are not required. Unless a resident chooses to eat less, the recommended dietary allowances to be made available to each resident daily by the facility are as follows:

[3] Paragraphs numbered seventy-three (73) through ninety-eight (98) are asserted State of Florida, Agency for Health Care v. Paradise Rest, Inc. d/b/a Paradise Rest, AHCA numbers 2013010760 and 2013011244, attached hereto as Exhibit "A," in paragraphs eighty-six (86) through one hundred eleven (111) therein.

1. Protein: 6 ounces or 2 or more servings;
2. Vegetables: 3-5 servings;
3. Fruit: 2-4 or more servings;
4. Bread and starches: 6-11 or more servings;
5. Milk or milk equivalent: 2 servings;
6. Fats, oils, and sweets: use sparingly; and
7. Water.

(c) All regular and therapeutic menus to be used by the facility shall be reviewed annually by a registered dietitian, licensed dietitian/nutritionist, or by a dietetic technician supervised by a registered dietitian or licensed dietitian/nutritionist, to ensure the meals are commensurate with the nutritional standards established in this rule. Portion sizes shall be indicated on the menus or on a separate sheet. Daily food servings may be divided among three or more meals per day, including snacks, as necessary to accommodate resident needs and preferences. This review shall be documented in the facility files and include the signature of the reviewer, registration or license number, and date reviewed. Menu items may be substituted with items of comparable nutritional value based on the seasonal availability of fresh produce or the preferences of the residents.

(d) Menus to be served shall be dated and planned at least one week in advance for both regular and therapeutic diets. Residents shall be encouraged to participate in menu planning. Planned menus shall be conspicuously posted or easily available to residents. Regular and therapeutic menus as served, with substitutions noted before or when the meal is served, shall be kept on file in the facility for 6 months.

(e) Therapeutic diets shall be prepared and served as ordered by the health care provider.

1. Facilities that offer residents a variety of food choices through a select menu, buffet style dining or family style dining are not required to document what is eaten unless a health care provider's order indicates that such monitoring is necessary. However, the food items which enable residents to comply with the therapeutic diet shall be identified on the menus developed for use in the facility.
2. The facility shall document a resident's refusal to comply with a therapeutic diet and notification to the resident's health care provider of such refusal. If a resident refuses to follow a therapeutic diet after the benefits are explained, a signed statement from the resident or the resident's responsible party refusing the diet is acceptable documentation of a resident's preferences. In such instances daily documentation is not necessary.

(f) For facilities serving three or more meals a day, no more than 14 hours shall elapse between the end of an evening meal containing a protein food and the beginning of a morning meal. Intervals between meals shall be evenly distributed

throughout the day with not less than two hours nor more than six hours between the end of one meal and the beginning of the next. For residents without access to kitchen facilities, snacks shall be offered at least once per day. Snacks are not considered to be meals for the purposes of calculating the time between meals.
(g) Food shall be served attractively at safe and palatable temperatures. All residents shall be encouraged to eat at tables in the dining areas. A supply of eating ware sufficient for all residents, including adaptive equipment if needed by any resident, shall be on hand.
(h) A 3-day supply of non-perishable food, based on the number of weekly meals the facility has contracted with residents to serve, and shall be on hand at all times. The quantity shall be based on the resident census and not on licensed capacity. The supply shall consist of dry or canned foods that do not require refrigeration and shall be kept in sealed containers which are labeled and dated. The food shall be rotated in accordance with shelf life to ensure safety and palatability. Water sufficient for drinking and food preparation shall also be stored, or the facility shall have a plan for obtaining water in an emergency, with the plan coordinated with and reviewed by the local disaster preparedness authority.
Rule 58A-5.0020(2), Florida Administrative Code.

73. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

74. That based upon the review of records, observations, and interview, Respondent failed to record menu substitutions and thus the ability to evaluate the nutritional equivalency thereof, provide snacks to residents, and to maintain a required emergency food supply, the same being contrary to law.

75. That Petitioner's representative reviewed Respondent's "Week 3" lunch menu scheduled for Wednesday, May 22, 2013, and noted the following items were to be served to the residents: a tomato based ground beef sandwich on a bun, potato fries, and salad.

76. That Petitioner's representative observed the lunch served to the residents on May 22, 2013, at approximately 12:25 p.m., and noted the meal served was bologna sandwiches and vegetable soup.

77. That Petitioner's representative interviewed Respondent's staff member "B" on May 22, 2013, regarding facility dietary services and the staff member indicated as follows:

a. Staff have to notify the administrator the day before to take food out of the locked freezer because only the administrator has the key.
b. Staff have to substitute when what's scheduled on the menu is not brought out of the freezer by the administrator.
c. The only residents who get snacks are the diabetics, near bedtime.
d. Other residents purchase their own snacks

78. That Petitioner's representative reviewed Respondent's menu and substitution folder provided by the administrator during the survey and noted that the last record of a menu substitution was on October 7, 2012.

79. That Petitioner's representative noted that no snacks were observed being offered to residents during the survey of May 22, 2013, which ended at approximately 4:30 p.m.

80. That Petitioner's representative interviewed resident number four (4) on May 22, 2013, who indicated that residents are not given snacks.

81. That Petitioner's representative interviewed resident number three (3) on May 22, 2013, who indicated that they do not get snacks and some of the staff might share some of their own snacks with them.

82. That Petitioner's representative interviewed Respondent's staff member "C" on May 22, 2013, who indicated that no snacks are available for the residents and admitted that she has brought snacks for residents with her own money

83. That Petitioner's representative toured Respondent's pantry and kitchen which was shown to the representative by staff member "B" on May 22, 2013 and noted:

a. There were minimal amounts of non-perishable food for the daily use for the fifteen (15) residents who resided at the facility.

b. There were no powdered dairy products and no water or bags for water.

84. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, who indicated as follows:

a. Residents snack all day long.

b. She bought them snacks and that ice cream or something is offered at 8pm or so.

c. The emergency food supply was at her mother's house.

85. That the above reflects Respondent's failure to record menu substitutions and thus the ability to evaluate the nutritional equivalency thereof, provide snacks to residents, and to maintain a required emergency food supply.

86. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

87. That Petitioner cited Respondent for a Class III violation.

88. That Respondent was provided a mandatory date of correction of July 6, 2013.

89. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

90. That based upon the review of records, observations, and interview, Respondent failed to provide snacks to residents, the same being contrary to law.

91. That Petitioner's representative conducted the follow-up visit on July 23, 2013 beginning at 10:00 a.m. and concluding at approximately 4:00 p.m. and it was noted during that time that residents did not have free access to the facility kitchen and were not offered snacks.

92. That Petitioner's representative interviewed resident number seven (7) on July 23, 2013, who indicated that the resident was required to give the facility money to purchase diabetic snacks for self and the "house, and that the facility expected the residents to purchase their own snacks.

93. That Petitioner's representative interviewed resident number four (4) on July 23, 2013, who indicated that the facility does not provide snacks for the residents at times and the resident would purchase own snacks because if the facility did not have any, the residents would go without.

94. That Petitioner's representative interviewed Respondent's owner on July 23, 2013, who indicated that she was not at the facility to train staff to give snacks to residents separate from meals.

95. That the above reflects respondent's failure to provide snacks to residents as required by law.

96. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

97. That Petitioner cited Respondent for a Class III violation.

98. That the same constitutes an uncorrected Class III deficient practice as defined by law.

99. That Florida law requires that deficient practice be corrected within thirty (30) days.

100. That on or about October 11, 2013, the Agency commenced a second re-visit survey of the May 22, 2013, survey of Respondent and its facility.

101. That based upon the review of records, observations, and interview, Respondent failed to follow the Registered Dietician's approved menu and failed to maintain an ongoing substitution log, the same being contrary to the mandates of law.

102. That Petitioner's representative toured Respondent's kitchen on October 10, 2013, at approximately 10:15 AM, and noted as follows:

a. A menu posted to the right of the refrigerator on the wall.

b. The menu was dated and approved on April 22, 2013, by a registered dietician. The menu was a seven (7) day menu, with portion sizes on the menu.

c. A substitution log for the previous month (September) was posted next to the menu and no documented substitutions were listed for October 2013.

103. That no menus were posted outside of the locked kitchen for residents to view.

104. That the posted breakfast Menu for Thursday October 10, 2013, listed 6 oz. juice, 1/2 c pears, 1 c cereal, 2 each sausage, 1 each toast, 8 oz. milk, 8 oz. beverage.

105. That Petitioner's representative interviewed resident number three (3) on October 10, 2013, at approximately 9:10 AM, who stated the resident was served yogurt, bacon, grilled cheese and orange juice for breakfast.

106. That Petitioner's representative interviewed resident number five (5) on October 10, 2013, at approximately 10:20 AM, who stated the resident doesn't get enough food and had grilled cheese with bacon for breakfast.

107. That Petitioner's representative interviewed resident number six (6) on October 10, 2013, at approximately 11:05 AM, who stated the residents were served bacon and toast that morning with oatmeal and orange juice.

108. That Petitioner's representative interviewed resident number five (5) on October 10, 2013, at approximately 10:20 AM, who stated the facility does not serve enough food and always serves "the same thing."

109. That Petitioner's representative interviewed resident number seven (7) on October 10, 2013, at approximately 4:40 AM, who stated that the resident does not like the food and "I never want to see another baloney sandwich in my life. That's all they serve."

110. That the lunch Menu for Thursday October 10, 2013, listed: 3 c vegetable soup, 2 oz. grilled cheese sandwich, 1/2 c pudding, 2 cookies, 8 oz. beverage, and 8 oz. milk.

111. That Petitioner's representative observed lunch on October 10, 2013, at approximately 11:45 AM, and noted as follows:

a. Ten (10) residents were eating lunch.

b. The lunch served to residents was spaghetti with meat/sauce, a cheese sandwich, one (1) cup of pineapple chunks, a whole banana and lemonade.

c. The cheese sandwich consisted of two pieces of white bread with one piece of yellow American cheese.

112. That Petitioner's representative interviewed Respondent's shareholder on October 10, 2013, at approximately 4:50 PM who indicated that the staff on duty who prepared the food on the date of the survey was new and "I guess we have to teach her to follow the menu."

113. That the above reflects respondent's failure to provide to follow the Registered Dietician's approved menu and failed to maintain an ongoing substitution log.

114. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

115. That Petitioner cited Respondent for a Class III violation.

116. That the same constitutes a twice uncorrected Class III deficiency.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of seven hundred dollars ($700.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT VI

117. The Agency re-alleges and incorporates Paragraphs one (1) through two (2) and Counts I through III, and the Administrative Complaint issued in State of Florida, Agency for Health Care Administration v. Paradise Rest, Inc. d/b/a Paradise Rest, Agency Case Numbers 2013010760 and 2013011244, attached hereto as "Exhibit A" and incorporated herein by reference, as if fully set forth herein.

118. That Respondent has been cited with five (5) Class III deficient practices on a survey of May 22, 2013.

119. That Respondent has been cited with five (5) uncorrected Class III deficient practices on a survey of July 23, 2013.

120. That Respondent has been cited with three (3) twice uncorrected Class III deficient practices on a survey of October 11, 2013.

121. That Respondent has been cited with the failure to comply with the background screening standards of Chapter 429, Part I, Section 408.809(1), Florida Statutes, or chapter 435, on a

survey of May 22, 2013.

122. That Florida law provides that in addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest: (b) An intentional or negligent act materially affecting the health or safety of a client of the provider, and (c) A violation of this part, authorizing statutes, or applicable rules, and (d) A demonstrated pattern of deficient performance. Section 408.815(1)(b), (c), and (d), Florida Statutes (2013).

123. That Respondent has violated the minimum requirements of law of Chapters 429, Part II, and Chapter 58A-5, Florida Administrative Code as described with particularity within this complaint.

124. That Respondent has a duty to maintain its operations in accord with the minimum requirements of law and to provide care and services at mandated minimum standards.

125. That Respondent has demonstrated a pattern of deficient practice evidenced by, inter alia, the citation of twice uncorrected deficient practices.

126. That in addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under s. 408.809, or for the actions of any facility employee ... (e) A citation of any of the following deficiencies as specified in s. 429.19; 1. One or more cited class I deficiencies. 2. Three or more cited class II deficiencies. 3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified. (f) Failure to comply with the

background screening standards of this part, s. 408.809(1), or chapter 435... (k) Any act constituting a ground upon which application for a license may be denied. Section 429.14(1)(e, f, and k), Florida Statutes (2013).

127. That Respondent has been cited with five (5) or more uncorrected Class III deficient practices on a single survey.

128. That Respondent has been cited with the violation of the background screening requirements of law.

129. That the above reflects grounds for which the Agency may revoke Respondent's licensure to operate and assisted living facility in the State of Florida.

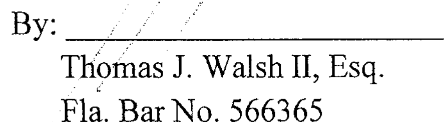
130. That based thereon, individually and collectively, the Agency seeks the revocation of the Respondent's licensure.

WHEREFORE, the Agency intends to revoke the license of the Respondent to operate an assisted living facility in the State of Florida.

Respectfully Submitted,

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION

The Sebring Building
525 Mirror Lake Dr. N., Suite 330
St. Petersburg, Florida 33701
Telephone: (727) 552-1947
Facsimile: (727) 552-1440
walsht@ahca.myflorida.com



By: ______________________
Thomas J. Walsh II, Esq.
Fla. Bar No. 566365

NOTICE

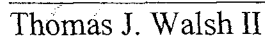
The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.

The Respondent is further notified if the Election of Rights form 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.

The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Certified Mail, Return Receipt No 7011 0470 0000 4509 4989 to Sheryl Rainey, Administrator, Paradise Rest, Inc. d/b/a Paradise Rest, 1207 30th Avenue East, Bradenton, Florida 34208, and by regular U.S. Mail to Sheryl Rainey, Registered Agent for Paradise Rest, Inc., 2416 6th Avenue Drive East, Bradenton, FL 34208, and Theodore E. Mack, Esq., Powell & Mack, 3700 Bellwood Drive, Tallahassee, Florida 32303, on this ___ day of March, 2014.



Thomas J. Walsh II

Copy furnished to:

Patricia R. Caufman
Field Office Manager

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Paradise Rest, Inc., d/b/a Paradise Rest **CASE NO. 2013012931**

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 **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 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 Chapter120, Florida Statutes (2006) 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.

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:________________

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v. AHCA Nos. 2013010760
2013011244

PARADISE REST, INC. d/b/a
PARADISE REST,

Respondent.
_______________________________/

ADMINISTRATIVE COMPLAINT

The Petitioner, State of Florida, Agency for Health Care Administration ("the Agency"), files this Administrative Complaint against the Respondent, Paradise Rest, Inc. d/b/a Paradise Rest ("the Respondent"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2013), and alleges:

NATURE OF THE ACTION

This is an action to impose an administrative fine of three thousand dollars ($3,000.00) against an assisted living facility based upon five (5) uncorrected Class III deficiencies and one (1) unclassified deficient practice.

PARTIES

1. The Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the applicable state statutes and rules governing such facilities. Ch. 408, Part II, Ch. 429, Part I, Fla. Stat. (2013); Ch. 58A-5, Fla. Admin. Code. The Agency may deny, revoke, and suspend any license issued to an assisted living facility and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing

EXHIBIT

"A"

statutes or applicable rules. §§ 408.813, 408.815, 429.14, 429.19, Fla. Stat. (2013). In addition to licensure denial, revocation or suspension, or any administrative fine imposed, the Agency may assess a survey fee against an assisted living facility. § 429.19(7), Fla. Stat. (2013).

2. The Respondent was issued a license by the Agency to operate a sixteen (16) bed assisted living facility ("the Facility"), license number 8065, at 1207 30th Avenue East, Bradenton, Florida 34208, and was at all times material required to comply with the applicable statutes and rules governing assisted living facilities. Assisted living facilities are residential care facilities that provide housing, meals, personal care and supportive services to older persons and disabled adults who are unable to live independently. These facilities are intended to be a less costly alternative to the more restrictive, institutional settings for individuals who do not require 24-hour nursing supervision. Assisted living facilities are regulated in a manner so as to encourage dignity, individuality, and choice for residents, while providing them a reasonable assurance for their health, safety and welfare. Generally, assisted living facilities provide supervision, assistance with personal care and supportive services, as well as assistance with, or administration of, medications to residents who require such services.

COUNT I
Criminal Background Screening

3. Under Florida law, the Agency shall require level 2 background screening for personnel as required in Section 408.809(1)(e) pursuant to Chapter 435 and Section 408.809. § 429.174, Fla. Stat. (2012).

4. Under Florida law, level 2 background screening pursuant to Chapter 435 must be conducted through the Agency on each of the following persons, who are considered employees for the purposes of conducting screening under Chapter 435: (a) The licensee, if an individual. (b) The administrator or a similarly titled person who is responsible for the day-to-day operation

of the provider. (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider. (d) Any person who is a controlling interest if the Agency has reason to believe that such person has been convicted of any offense prohibited by Section 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the Agency a description and explanation of the conviction at the time of license application. (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee. § 408.809(1), Fla. Stat. (2012).

5. Under Florida law, every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under Chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the Agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under Section 943.05(2)(g), the person must file a complete set of fingerprints with the Agency and the Agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

The fingerprints may be retained by the Department of Law Enforcement under Section 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person's background screening results are retained in the clearinghouse created under section 435.12, the Agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under Chapter 651, provided that: (a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in section 435.04, and this section; (b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and (c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of Chapter 435 and this section using forms provided by the Agency. § 408.809(2), Fla. Stat. (2012).

6. Under Florida law, in addition to the offenses listed in Section 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the offenses or any similar offense of another jurisdiction listed in Section 408.809(4). § 408.809(4), Fla. Stat. (2012).

7. Under Florida law, if an employer or Agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity. § 435.06(1), Fla. Stat. (2012).

8. Under Florida law, (a) an employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the Agency as provided under Section 435.07. (b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter. (c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to Section 435.07. (d) An employer may hire an employee to a

position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment. § 435.06(2)(a)-(d), Fla. Stat. (2012).

9. Under Florida law, any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed. § 435.06(3), Fla. Stat. (2012).

10. Under Florida law, all staff, who are hired on or after October 1, 1998, to provide personal services to residents, must be screened in accordance with Section 429.174, F.S. ... Rule 58A-5.019(3)(a), Florida Administrative Code.

11. Under Florida law, "Staff" means any person employed by a facility; or contracting with a facility to provide direct or indirect services to residents; or employees of firms under contract to the facility to provide direct or indirect services to residents when present in the facility. The term includes volunteers performing any service which counts toward meeting any staffing requirement of this rule chapter. Rule 58A-5.0131(34), Florida Administrative Code.

12. On or about May 22, 2013, the Agency completed a compliant survey of the Respondent.

13. Based upon record review and interview, the Respondents failed to ensure that the Facility staff had the required background screening or exemption for one (1) of seven (7) sampled staff members, the same being contrary to law.

14. That Petitioner's representative reviewed on May 22, 2013, Respondent's provided employee schedules for May and June, 2013, and noted that employee "G" was not listed on the

schedules.

15. That Petitioner's representative interviewed resident number twelve (12) on May 22, 2013, who indicated that employee "G" worked at the Respondent facility and believed employee "G" to be the individual who cleaned the facility.

16. That Petitioner's representative interviewed resident number four (4) on May 22, 2013, who indicated as follows:

a. Employee "G" was employed by the facility and did cleaning and sometimes cooked.

b. The resident did not care for employee "G" as the employee had taken light bulbs out of the lamp of the resident's room because the bulbs were needed elsewhere in the facility.

17. That Petitioner's representative interviewed resident number seven (7) on May 22, 2013, who indicated as follows:

a. The day of the interview was the "day off" for employee "G."

b. Employee "G" worked at the facility regularly.

c. Employee "G" cleaned the entire facility, including resident rooms, and sometimes helped cook.

d. Employee "G" had sometimes transported the resident to places the resident needed to go.

e. Some residents did not like employee "G" as she could be "harsh."

18. That Petitioner's representative reviewed the Florida Department of Corrections website on May 22, 2013, and noted the following related to employee "G:"

a. The employee had been convicted of possession of and manufacturing or

distributing cocaine in 2007 and sentenced to prison.

b. The employee had multiple prior offenses related to drug possession or sales ranging from 1994 through 1999.

19. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, regarding employee "G" and the administrator indicated as follows:

a. The employee helped clean the facility, including common areas and resident rooms.

b. The administrator did not maintain an employee personnel file for employee "G" and did not have a Level 2 criminal history background screening on the employee.

c. The employee did not work regularly and only did cleaning.

d. The administrator was not aware of the criminal history of the employee.

20. That the above reflects Respondent's failure to ensure, prior to hiring staff for resident services, that the staff member was free of a criminal history which would disqualify the individual from employment in an assisted living facility.

21. The Respondent's actions or inactions constituted a violation of Sections 429.174 and 408.809, Florida Statutes (2012).

22. Under Florida law, in addition to the requirements of part II of Chapter 408, the Agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in Chapter 120 against a licensee for a violation of any provision of Part I or Chapter 429, Part II of Chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under Section 408.809, Florida Statutes, or for the actions of any facility employee: . . . Failure to

comply with the background screening standards of Chapter 429, Part I, Section 408.809(1), or Chapter 435, Florida Statutes. § 429.14(1)(f), Fla. Stat. (2012).

23. Under Florida law, 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. Unless otherwise specified by law, the amount of the fine may not exceed $500 for each violation. Unclassified violations include: Violating any provision of this part, authorizing statutes, or applicable rules.

§ 408.813(3)(b), Fla. Stat. (2012).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of $500.00 against the Respondent.

COUNT II

24. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

25. That Florida law provides:

(2) SOCIAL AND LEISURE ACTIVITIES. Residents shall be encouraged to participate in social, recreational, educational and other activities within the facility and the community.
(a) The facility shall provide an ongoing activities program. The program shall provide diversified individual and group activities in keeping with each resident's needs, abilities, and interests.
(b) The facility shall consult with the residents in selecting, planning, and scheduling activities. The facility shall demonstrate residents' participation through one or more of the following methods: resident meetings, committees, a resident council, suggestion box, group discussions, questionnaires, or any other form of communication appropriate to the size of the facility.
(c) Scheduled activities shall be available at least six (6) days a week for a total of not less than twelve (12) hours per week. Watching television shall not be considered an activity for the purpose of meeting the twelve (12) hours per week of scheduled activities unless the television program is a special one-time event of special interest to residents of the facility. A facility whose residents choose to attend day programs conducted at adult day care centers, senior centers, mental health centers, or other day programs may count those attendance hours towards the required twelve (12) hours per week of scheduled activities. An activities calendar shall be posted in common areas where residents normally congregate.
(d) If residents assist in planning a special activity such as an outing, seasonal festivity, or an excursion, up to three (3) hours may be counted toward the required activity time.

Rule 58A-5.0182(2), Florida Administrative Code.

26. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

27. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law.

28. That Petitioner's representative interviewed on May 22, 2013 at approximately 10:35 AM resident number eleven (11) who indicated that the facility did not do any activities and, as the resident did not "like TV," the resident normally slept or sat out in front of the facility.

29. That Petitioner's representative interviewed on May 22, 2013 at approximately 12:40 PM resident number three (3) who indicated that the facility was "boring" and that all the residents did was "watch TV or sit out front."

30. That Petitioner's representative interviewed on May 22, 2013 at approximately 11:30 AM resident number four (4) who indicated that the facility did not have any formal activities program and that the residents mainly watched television.

31. That Petitioner's representative interviewed on May 22, 2013 at approximately 2:10 PM the adult sibling of resident number nine (9) who indicated that the facility did not provide any activities to the residents while the former facility of resident number nine (9) did activities. The sibling believed the resident was bored at this facility due to no activities.

32. That Petitioner's representative toured the Respondent facility on May 22, 2013 from approximately 10:15 AM through 11:30 AM and noted that there was not displayed any resident activity schedule as required.

33. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk.

34. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

35. That Petitioner cited Respondent for a Class III violation.

36. That Respondent was provided a mandatory date of correction of July 6, 2013.

37. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

38. That based upon the review of records, observations, and interview, Respondent failed to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, including the time for each activity to begin and the time that each activity was to end each day.

39. That Petitioner's representative toured the Respondent facility on July 23, 2013, commencing at approximately 10:30 a.m. and noted a posted activity calendar with activities listed twice a day for six (6) days each week, however the calendar did not have the time that the activity was to begin and how long the activity was to last.

40. That Petitioner's representative interviewed on July 23, 2013 at approximately 1:30 PM resident number two (2) who indicated that the resident was bored and all the resident did was watch television.

41. That Petitioner's representative interviewed on July 23, 2013 at approximately 1:50 PM resident number three (3) who indicated that all the resident did all day was watch television.

42. That Petitioner's representative interviewed on July 23, 2013 at approximately 2:15 PM resident number five (5) who indicated that there was nothing for the resident to do but watch television or sit outside.

43. That Petitioner's representative interviewed on July 23, 2013 at approximately 11:10 AM resident number seven (7) who indicated that facility residents had no ongoing daily activities available and that the resident would like to be able to go to church.

44. That during the survey of July 23, 2013, conducted from 10:00 AM until 4:30 PM, the facility did not offer the residents any structured activity, any activity listed on the post calendar, and the residents were observed watching television.

45. That Petitioner's representative interviewed Respondent's employee "A" on July 23, 2013, who indicated that it was not always easy to encourage the residents to get involved in activities and the residents had their own interests.

46. That the above reflects respondent's failure to ensure that social and leisure activities were provided for residents and a schedule thereof posted as required by law, the lack thereof placing residents' psychosocial well-being at risk

47. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

48. That Petitioner cited Respondent for a Class III violation.

49. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT III

50. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

51. That Florida law provides:

> (b) Facility Resident Elopement Response Policies and Procedures. The facility shall develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures shall include:
> 1. An immediate staff search of the facility and premises;
> 2. The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
> 3. The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident is not located pursuant to subparagraph (8)(b)1.; and
> 4. The continued care of all residents within the facility in the event of an elopement.
> (c) Facility Resident Elopement Drills. The facility shall conduct resident elopement drills pursuant to Sections 429.41(1)(a)3. and 429.41(1)(l), F.S.
>
> Rule 58A-5.0182(8)(b and c), Florida Administrative Code.

52. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

53. That based upon the review of records and interview, Respondent failed to ensure that all staff participated in biannual elopement drills as required, the same being contrary to law.

54. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013 at approximately 4:00 p.m. who indicated that:

a. She was unaware that elopement drills needed to be completed twice yearly.

b. Staff were trained in elopement response (verified) but she acknowledged that she had not had elopement drills for the staff.

55. That the above reflects respondent's failure to all staff all staff participated in biannual elopement drills as required placing residents at risk in emergent situations.

56. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

57. That Petitioner cited Respondent for a Class III violation.

58. That Respondent was provided a mandatory date of correction of July 6, 2013.

59. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

60. That based upon the review of records and interview, Respondent failed to ensure that all staff participated in biannual elopement drills as required, the same being contrary to law.

61. That Petitioner's representative interviewed Respondent's owner on July 23, 2013 at approximately 2:15 p.m. who indicated that:

a. She was unaware that elopement drills needed to be completed twice yearly.

b. Staff were trained in elopement response (verified) but she acknowledged that she had not had elopement drills for the staff.

62. That Petitioner's representative reviewed Respondent's documentation provided by Respondent and noted that the last documented elopement drill was in 2010.

63. That the above reflects respondent's failure to all staff all staff participated in biannual elopement drills as required placing residents at risk in emergent situations.

64. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

65. That Petitioner cited Respondent for a Class III violation.

66. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT IV

67. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

7. That Florida law provides:

> (a) Newly hired staff shall have 30 days to submit a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis. Freedom from tuberculosis must be documented on an annual basis. A person with a positive tuberculosis test must submit a health care provider's statement that the person does not constitute a risk of communicating tuberculosis. Newly hired staff does not include an employee transferring from one facility to another that is under the same management or ownership, without a break in service. If any staff member is later found to have, or is suspected of having, a communicable disease, he/she shall be removed from duties until the administrator determines that such condition no longer exists.
>
> Rule 58A-5.019(2)(a), Florida Administrative Code.
>
> Personnel records for each staff member shall contain, at a minimum, a copy of the original employment application with references furnished and verification of freedom from communicable disease including tuberculosis…
>
> Rule 58A-5.024(2)(a), Florida Administrative Code.

68. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

69. That based upon the review of records and interview, Respondent failed to ensure obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, for three (3) of three (3) sampled staff members, the same being contrary to law.

70. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows:

a. Staff member "B":
   i. The staff member was a direct care provider.
   ii. The staff member was hired on October 13, 2012.
   iii. Absent from the record was any health care provider's statement that the employee was signs or symptoms of a communicable disease including tuberculosis.

b. Staff member "C":
   i. The staff member was a direct care provider.
   ii. The staff member was hired on February 1, 2013.
   iii. Absent from the record was any health care provider's statement that the employee was signs or symptoms of a communicable disease.
   iv. An initial tuberculosis test was completed as completed on May 18, 2013, three (3) months after the employee began work at the facility and well beyond the required testing within thirty (30) days of hire.

c. Staff member "D":

i. The staff member was a direct care provider.

ii. The staff member was hired on January 17, 2013.

iii. Absent from the record was any health care provider's statement that the employee was signs or symptoms of a communicable disease including tuberculosis.

71. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013 at approximately 3:45 p.m. who indicated that:

a. She was not aware that a separate statement of freedom from communicable diseases was needed for all employees with direct resident contact.

b. She thought the tuberculosis test alone was what was needed.

72. That the above reflects respondent's failure to obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, said failures in violation of law and increasing the risk of the spread of communicable disease to residents who often suffer from impaired immune systems.

73. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

74. That Petitioner cited Respondent for a Class III violation.

75. That Respondent was provided a mandatory date of correction of July 6, 2013.

76. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

77. That based upon the review of records and interview, Respondent failed to obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, for one (1) of three (3) sampled staff members, the same being contrary to law.

78. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows:

a. The personnel record for staff member "E" was hired on April 11, 2013.

b. The staff member provided direct care to residents.

c. A medical statement indicating staff member "E" was free from communicable diseases had no date to determine when the statement was written by the medical provider.

79. That Petitioner's representative interviewed Respondent's owner on July 23, 2013 regarding the communicable disease statement of staff member "E" and the owner indicated as follows:

a. She acknowledged that the statement in the personnel file was not dated by the provider.

b. She would obtain a dated medical statement from the medical provider.

80. That a corrected document had not been received from the facility owner or administrator by Petitioner's representative before the completion of the written survey document on approximately June 6, 2013.

81. That the above reflects respondent's failure to obtain or maintain a statement from a health care provider, based on a examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis, said failures in violation of law and increasing the risk of the spread of communicable disease to residents who often suffer from impaired immune systems.

82. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

83. That Petitioner cited Respondent for a Class III violation.

84. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT V

85. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

7. That Florida law provides:

> (2) DIETARY STANDARDS.
> (a) The Tenth Edition Recommended Dietary Allowances established by the Food and Nutrition Board – National Research Council, adjusted for age, sex and activity, shall be the nutritional standard used to evaluate meals. Therapeutic diets shall meet these nutritional standards to the extent possible. A summary of the Tenth Edition Recommended Dietary Allowances, interpreted by a daily food guide, is available from the DOEA Assisted Living Program.
> (b) The recommended dietary allowances shall be met by offering a variety of foods adapted to the food habits, preferences and physical abilities of the residents

and prepared by the use of standardized recipes. For facilities with a licensed capacity of 16 or fewer residents, standardized recipes are not required. Unless a resident chooses to eat less, the recommended dietary allowances to be made available to each resident daily by the facility are as follows:
1. Protein: 6 ounces or 2 or more servings;
2. Vegetables: 3-5 servings;
3. Fruit: 2-4 or more servings;
4. Bread and starches: 6-11 or more servings;
5. Milk or milk equivalent: 2 servings;
6. Fats, oils, and sweets: use sparingly; and
7. Water.
(c) All regular and therapeutic menus to be used by the facility shall be reviewed annually by a registered dietitian, licensed dietitian/nutritionist, or by a dietetic technician supervised by a registered dietitian or licensed dietitian/nutritionist, to ensure the meals are commensurate with the nutritional standards established in this rule. Portion sizes shall be indicated on the menus or on a separate sheet. Daily food servings may be divided among three or more meals per day, including snacks, as necessary to accommodate resident needs and preferences. This review shall be documented in the facility files and include the signature of the reviewer, registration or license number, and date reviewed. Menu items may be substituted with items of comparable nutritional value based on the seasonal availability of fresh produce or the preferences of the residents.
(d) Menus to be served shall be dated and planned at least one week in advance for both regular and therapeutic diets. Residents shall be encouraged to participate in menu planning. Planned menus shall be conspicuously posted or easily available to residents. Regular and therapeutic menus as served, with substitutions noted before or when the meal is served, shall be kept on file in the facility for 6 months.
(e) Therapeutic diets shall be prepared and served as ordered by the health care provider.
1. Facilities that offer residents a variety of food choices through a select menu, buffet style dining or family style dining are not required to document what is eaten unless a health care provider's order indicates that such monitoring is necessary. However, the food items which enable residents to comply with the therapeutic diet shall be identified on the menus developed for use in the facility.
2. The facility shall document a resident's refusal to comply with a therapeutic diet and notification to the resident's health care provider of such refusal. If a resident refuses to follow a therapeutic diet after the benefits are explained, a signed statement from the resident or the resident's responsible party refusing the diet is acceptable documentation of a resident's preferences. In such instances

daily documentation is not necessary.

(f) For facilities serving three or more meals a day, no more than 14 hours shall elapse between the end of an evening meal containing a protein food and the beginning of a morning meal. Intervals between meals shall be evenly distributed throughout the day with not less than two hours nor more than six hours between the end of one meal and the beginning of the next. For residents without access to kitchen facilities, snacks shall be offered at least once per day. Snacks are not considered to be meals for the purposes of calculating the time between meals.

(g) Food shall be served attractively at safe and palatable temperatures. All residents shall be encouraged to eat at tables in the dining areas. A supply of eating ware sufficient for all residents, including adaptive equipment if needed by any resident, shall be on hand.

(h) A 3-day supply of non-perishable food, based on the number of weekly meals the facility has contracted with residents to serve, and shall be on hand at all times. The quantity shall be based on the resident census and not on licensed capacity. The supply shall consist of dry or canned foods that do not require refrigeration and shall be kept in sealed containers which are labeled and dated. The food shall be rotated in accordance with shelf life to ensure safety and palatability. Water sufficient for drinking and food preparation shall also be stored, or the facility shall have a plan for obtaining water in an emergency, with the plan coordinated with and reviewed by the local disaster preparedness authority.

Rule 58A-5.0020(2), Florida Administrative Code.

86. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

87. That based upon the review of records, observations, and interview, Respondent failed to record menu substitutions and thus the ability to evaluate the nutritional equivalency thereof, provide snacks to residents, and to maintain a required emergency food supply, the same being contrary to law.

88. That Petitioner's representative reviewed Respondent's "Week 3" lunch menu scheduled for Wednesday, May 22, 2013, and noted the following items were to be served to the residents: a tomato based ground beef sandwich on a bun, potato fries, and salad.

89. That Petitioner's representative observed the lunch served to the residents on May 22, 2013, at approximately 12:25 p.m., and noted the meal served was bologna sandwiches and vegetable soup.

90. That Petitioner's representative interviewed Respondent's staff member "B" on May 22, 2013, regarding facility dietary services and the staff member indicated as follows:

a. Staff have to notify the administrator the day before to take food out of the locked freezer because only the administrator has the key.

b. Staff have to substitute when what's scheduled on the menu is not brought out of the freezer by the administrator.

c. The only residents who get snacks are the diabetics, near bedtime.

d. Other residents purchase their own snacks

91. That Petitioner's representative reviewed Respondent's menu and substitution folder provided by the administrator during the survey and noted that the last record of a menu substitution was on October 7, 2012.

92. That Petitioner's representative noted that no snacks were observed being offered to residents during the survey of May 22, 2013, which ended at approximately 4:30 p.m.

93. That Petitioner's representative interviewed resident number four (4) on May 22, 2013, who indicated that residents are not given snacks.

94. That Petitioner's representative interviewed resident number three (3) on May 22, 2013, who indicated that they do not get snacks and some of the staff might share some of their own snacks with them.

95. That Petitioner's representative interviewed Respondent's staff member "C" on May 22, 2013, who indicated that no snacks are available for the residents and admitted that she has brought snacks for residents with her own money

96. That Petitioner's representative toured Respondent's pantry and kitchen which was shown to the representative by staff member "B" on May 22, 2013 and noted:

a. There were minimal amounts of non-perishable food for the daily use for the fifteen (15) residents who resided at the facility.

b. There were no powdered dairy products and no water or bags for water.

97. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, who indicated as follows:

a. Residents snack all day long.

b. She bought them snacks and that ice cream or something is offered at 8pm or so.

c. The emergency food supply was at her mother's house.

98. That the above reflects Respondent's failure to record menu substitutions and thus the ability to evaluate the nutritional equivalency thereof, provide snacks to residents, and to maintain a required emergency food supply.

99. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

100. That Petitioner cited Respondent for a Class III violation.

101. That Respondent was provided a mandatory date of correction of July 6, 2013.

102. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

103. That based upon the review of records, observations, and interview, Respondent failed to provide snacks to residents, the same being contrary to law.

104. That Petitioner's representative conducted the follow-up visit on July 23, 2013 beginning at 10:00 a.m. and concluding at approximately 4:00 p.m. and it was noted during that time that residents did not have free access to the facility kitchen and were not offered snacks.

105. That Petitioner's representative interviewed resident number seven (7) on July 23, 2013, who indicated that the resident was required to give the facility money to purchase diabetic snacks for self and the "house, and that the facility expected the residents to purchase their own snacks.

106. That Petitioner's representative interviewed resident number four (4) on July 23, 2013, who indicated that the facility does not provide snacks for the residents at times and the resident would purchase own snacks because if the facility did not have any, the residents would go without.

107. That Petitioner's representative interviewed Respondent's owner on July 23, 2013, who indicated that she was not at the facility to train staff to give snacks to residents separate from meals.

108. That the above reflects respondent's failure to provide snacks to residents as required by law.

109. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than

class I or class II violations.

110. That Petitioner cited Respondent for a Class III violation.

111. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (2013).

COUNT VI

112. The Agency re-alleges and incorporates paragraphs one (1) and two (2) as if fully set forth herein.

113. That Florida law provides:

> (a) A facility with a limited mental health license shall maintain an up-to-date admission and discharge log containing the names and dates of admission and discharge for all mental health residents. The admission and discharge log required under Rule 58A-5.024, F.A.C., shall be sufficient provided that all mental health residents are clearly identified.
> (b) Staff records shall contain documentation that designated staff have completed limited mental health training as required by Rule 58A-5.0191, F.A.C.
> (c) Resident records for mental health residents in a facility with a limited mental health license must include the following ... 3. A Community Living Support Plan.
>
> Rule 58A-5.029(2)(a through c), Florida Administrative Code.

114. That on May 22, 2013, the Agency completed a licensure survey of Respondent's facility.

115. That based upon the review of records, observations, and interview, Respondent failed to maintain an admissions and discharge log identifying limited mental health residents, and failed to ensure staff have completed required training related to limited mental health residents, the same being contrary to law.

116. That Petitioner's representative interviewed Respondent's administrator on May 22, 2013, who indicated as follows:

a. She did not keep a list of residents identified as receiving limited mental health services.

b. All but two (2) of the facility residents were receiving limited mental health services.

117. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted as follows regarding staff member "B":

a. The staff member had been hired on October 12, 2013, in excess of six (6) months prior to the survey.

b. The staff member's record See, Rule 58A-5.0191, Florida Administrative Code.

118. That the above reflects respondent's failure to maintain an admissions and discharge log identifying limited mental health residents, and failed to ensure staff have completed required training related to limited mental health residents.

119. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

120. That Petitioner cited Respondent for a Class III violation.

121. That Respondent was provided a mandatory date of correction of July 6, 2013.

122. That on or about July 23, 2013, the Agency completed a re-visit survey of the May 22, 2013, survey of Respondent and its facility.

123. That based upon the review of records, observations, and interview, Respondent failed to maintain an admissions and discharge log identifying limited mental health residents, and failed to obtain and maintain community living support plans for two (2) of three (3) sampled limited mental health residents, the same being contrary to law.

124. That Petitioner's representative reviewed Respondent's presented admission discharge records and noted that Respondent did not maintain an admission and discharge log that identified limited mental health residents.

125. That Petitioner's representative interviewed Respondent's owner on July 23, 2013, who indicated that she was unsure of which residents were considered limited mental health residents and that she was not aware of the requirements for limited mental health residents.

126. That Petitioner's representative reviewed Respondent's records related to residents numbered seven (7) and eight (8) during the survey and noted:

a. Both were limited mental health residents.

b. No community living support plan for either resident had been obtained or maintained by Respondent.

127. That the above reflects respondent's failure to maintain an admissions and discharge log identifying limited mental health residents, and failed to obtain and maintain community living support plans for limited mental health residents.

128. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which indirectly or potentially threatens the physical or emotional health, safety, or security of clients, other than class I or class II violations.

129. That Petitioner cited Respondent for a Class III violation.

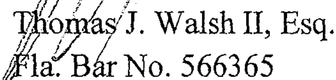
130. That the same constitutes an uncorrected Class III violation as defined by law.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars ($500.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(c), Florida Statutes (203).1

Respectfully Submitted,

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION

The Sebring Building
525 Mirror Lake Dr. N., Suite 330
St. Petersburg, Florida 33701
Telephone: (727) 552-1947
Facsimile: (727) 552-1440
walsht@ahca.myflorida.com

By: 

Thomas J. Walsh II, Esq.
Fla. Bar No. 566365

NOTICE

The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.

The Respondent is further notified if the Election of Rights form 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.

The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan

Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Certified Mail, Return Receipt No 7013 0600 0001 6664 9232 to Sheryl Rainey, Administrator, Paradise Rest, Inc. d/b/a Paradise Rest, 1207 30th Avenue East, Bradenton, Florida 34208, and by regular U.S. Mail to Sheryl Rainey, Registered Agent for Paradise Rest, Inc., 2416 6th Avenue Drive East, Bradenton, FL 34208, on this 19 day of November, 2013.

Thomas J. Walsh II

Copy furnished to:

Sheryl Rainey
Administrator
Paradise Rest, Inc. d/b/a Paradise Rest
1207 30th Avenue East
Bradenton, Florida 34208
(US Certified Mail)

Registered Agent for
Paradise Rest, Inc.
2416 6th Avenue Drive East
Bradenton, FL 34208
(US Mail)

Patricia R. Caufman
Field Office Manager

Thomas J. Walsh II
Senior Attorney
Agency for Health Care Admin.
525 Mirror Lake Drive, #330G
St. Petersburg, FL 33701
(Interoffice Mail)

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Paradise Rest d/b/a Paradise Rest **CASE NO. 2013010760**
2013011244

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 **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 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 Chapter120, Florida Statutes (2006) 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.

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 Ag y Clerk at the address above **within 2 ays** of your receipt of this proposed administrative actio. 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)______________

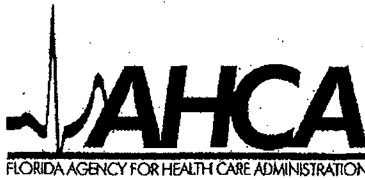
I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: ____ Date:_______________

Print Name:____ Title:_______________

Late fee/fine/AC

2013012-920



RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

1/16

December 12, 2013

SHERYL RAINEY, ADMINISTRATOR
PARADISE REST
1207 30TH AVENUE E
BRADENTON, FL 34208

RECEIVED
FACILITY INTAKE UNIT
DEC 12 2013
Agency for Health
Care Administration

Certified Article Number
7196 9008 9111 1373 3825
SENDERS RECORD

RE: Case Number: 2013012920

NOTICE OF INTENT TO DENY RENEWAL

Dear Ms. Rainey:

It is the decision of this Agency that Paradise Rest renewal application for the Assisted Living Facility license to be DENIED.

The Specific Basis for this determination is the applicant failure to meet minimum licensure standards pursuant to Sections 408.812 & 408.815 (1) (c) & (d), Florida Statutes, (F. S.).

On November 22, 2013, unlicensed activity complaint survey 2013011955 was conducted at 818 19th Street Court East in Bradenton, Florida. One unclassified deficiency was cited relating to failure to obtain a license before providing housing, meals and personal care services including assistance with medication for 4 of 5 persons. Ms. Marjorie Chatman was served a cease and desist letter for this unlicensed location. Ms. Chatman is 100% owner of Paradise Rest a licensed assisted living facility.

Based on the unlicensed activity the renewal application is denied in accordance with Chapter 408, Part II; and Sections 429.14 (1) (h), (j) & (k), F. S.

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 Hearings under Section 120.57(1), F.S., your request for an administrative hearing must conform to the requirements in Section 28-106.201, Florida Administrative Code (F.A.C), and must state the material facts you dispute.

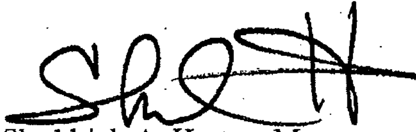
SEE ATTACHED ELECTION OF RIGHTS FORM

EXHIBIT

"1"

2727 Mahan Drive,MS#30
Tallahassee, Florida 32308

Sincerely,



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

SH/spicerp

Copy to: Saint Petersburg Field Office - 06
LTCOC District 06
Jan Mills, General Counsel Office

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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

vs. DOAH CASE NOS. 14-1042
14-1571

PARADISE REST, INC. d/b/a
PARADISE REST,
Respondent.
_______________________________/

PARADISE REST, INC. d/b/a
PARADISE REST,
Petitioner,

vs. DOAH CASE NO. 14-1082
AHCA NO. 2013012920

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,
Respondent.
_______________________________/

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Paradise Rest, Inc. d/b/a Paradise Rest (hereinafter "Paradise"), 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, Paradise is an assisted living facility licensed pursuant to Chapters 429, Part I, and 408, Part II, Florida Statutes, Section 20.42, Florida Statutes and Chapter 58A-5, Florida Administrative Code; and

EXHIBIT

"2"

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

WHEREAS, the Agency served Paradise with a Notice of Intent to Deny on or about September 16, 2013, notifying Paradise of the Agency's intent to deny Paradise's renewal application for licensure to operate an assisted living facility in the State of Florida; and

WHEREAS, the Agency served Paradise with an administrative complaint on or about November 21, 2013, notifying Paradise of the Agency's intent to impose administrative fines in the sum of three thousand dollars ($3,000.00),; and

WHEREAS, the Agency served Paradise with an administrative complaint on or about March 18, 2014, notifying Paradise of the Agency's intent to revoke Paradise's licensure to operate an assisted living facility in the State of Florida, and to impose administrative fines in the sum of two thousand seven hundred dollars ($2,700.00),; and

WHEREAS, Paradise requested formal administrative proceedings by selecting Option "3" on the Election of Rights forms or by the filing of Petitions; 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, Paradise agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, informal proceedings under Subsection 120.57(2), Florida Statutes, formal proceedings 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:

a. Paradise agrees to pay five thousand seven hundred dollars ($5,700.00) in administrative fines to the Agency within one hundred eighty (180) days of the entry of the Final Order; and

b. Count VI of the administrative complaint in Agency case number 2013012931, seeking revocation of Paradise's licensure to operate an assisted living facility in the State of Florida, shall be deemed dismissed; and

c. This Agreement shall supersede the Notice of Intent to Deny; and

d. Florida law permits Agency action to deny or revoke licensure based upon the violation of the provisions of Chapter 408, Part II, 429, Part I, and Chapter 58A-5, Florida Administrative Code. *See,* § 408.815(1), Florida Statutes (2014). Should Respondent be cited for a Class I, a Class II deficient practice, or three (3) or more uncorrected Class III or IV deficient practices on any survey or surveys for a period of two (2) years from the date of the Final Order, the Agency may utilize said deficient practice(s), if proven, to revoke Respondent's licensure in addition to and as a supplement to any provision of law authorizing an action for revocation of licensure; and

e. Paradise agrees to obtain and maintain a consultant for a period of one (1) year from the date of a Final Order adopting this Agreement or until earlier relieved of

this provision by the Agency. Paradise shall cause its consultant(s) to complete quarterly, commencing the month of August 2014, a written report of the facility's operations. Said quarterly reports shall include, but is not 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 procedure. Said quarterly reports shall be maintained by Paradise and shall be available to the Agency upon request.

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, a). Paradise denies the allegations raised in the Administrative Complaints and Notice of Intent referenced herein, and b). The Agency asserts the validity of the allegations raised in the Administrative Complaints and Notice of Intent referenced herein, as modified by paragraph four (4) herein. No agreement made herein shall preclude the Agency from imposing a penalty against Paradise for any deficiency/violation of statute or rule identified in a future survey of Paradise, which constitutes an "uncorrected" deficiency from surveys identified in the administrative complaint. In such case, Paradise retains the right to challenge in an appropriate forum the deficient practices asserted in the Administrative Complaint.

7. The Agency may use the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Paradise, including, but not limited to, licensure for limited mental health, limited nursing services, extended congregate care, or a demonstrated pattern of deficient. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Paradise 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 and notice of intent to deny as modified herein. This agreement does not prohibit the Agency from taking action regarding Paradise'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. Paradise 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 Paradise or related or resulting facilities/organizations. Nothing in this paragraph limits the parties from enforcement of this Agreement as provided in paragraph five (5) of this Agreement.

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

13. In the event that Paradise 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. Paradise agrees that if any funds to be paid under this agreement to the Agency are not paid within one hundred eighty (180) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Paradise in the Final Order, or any portion thereof, owed by Paradise to the Agency from any present or future funds owed to Paradise by the Agency, and that the Agency shall hold a lien against present and future funds owed to Paradise 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.

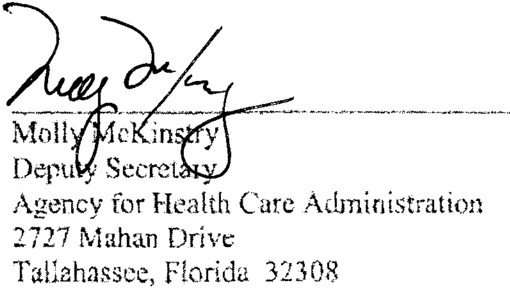
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

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.

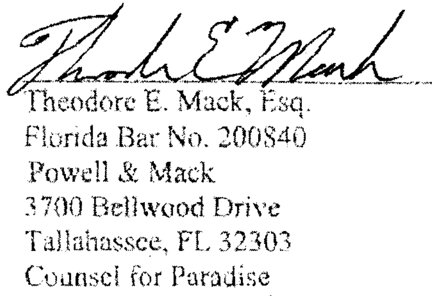
19. All parties agree that a facsimile signature suffices for an original signature.

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



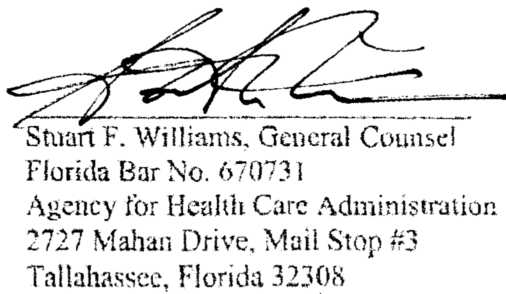
Molly McKinstry
Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

DATED: 10/10/14



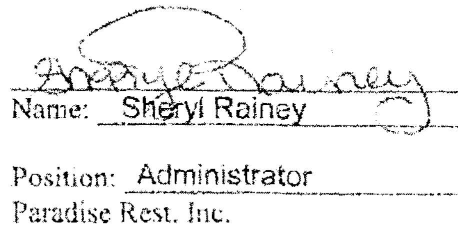
Theodore E. Mack, Esq.
Florida Bar No. 200840
Powell & Mack
3700 Bellwood Drive
Tallahassee, FL 32303
Counsel for Paradise

DATED: 8/27/14



Stuart F. Williams, General Counsel
Florida Bar No. 670731
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 9/19/14



Name: Sheryl Rainey

Position: Administrator
Paradise Rest. Inc.

DATED: 8\28\2014

Thomas J. Walsh II, Senior Attorney
Florida Bar No. 566365
Agency for Health Care Administration
525 Mirror Lake Drive, Suite 330G
St. Petersburg, Florida 33701

DATED: 7/3/14