

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2015 MAR 24 A 11: 27

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

GRACE MANOR AT LAKE MORTON, LLC,

Respondent.

CASE NOS. 2013013450

2014002084

DOAH NO. 14-3132

RENDITION NO.: AHCA- 15 - 0182 -S-OLC

FINAL ORDER

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

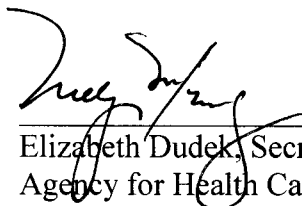
1. The Agency has jurisdiction over the above-named Respondent pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.
2. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex.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

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

1. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement.
2. The Respondent shall pay the Agency \$3,000.00. 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 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. Any 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, FL 32308

ORDERED at Tallahassee, Florida, on this 24 day of March, 2015.

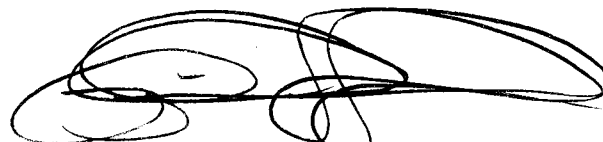

Elizabeth Dudek, Secretary
Agency for Health Care Administration

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 24~~th~~ day of March, 2015.


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

| | |
|---|--|
| Facilities Intake Unit (Electronic Mail) | Finance & Accounting Revenue Management Unit (Electronic Mail) |
| David Selby, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail) | Louis F. Gerrard, President Grace Manor at Lake Morton, LLC c/o Mainstay Financial Services 5578 Commercial Blvd. NW Winter Haven, FL 33880 (U.S. Mail) |
| J. Davis Connor, Esq. Peterson & Myers, P.A. 225 East Lemon Street Lakeland, FL 33802-4628 (U.S. Mail) | |

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION

Petitioner,

CASE NO. 2013013450
2014002084

v.

GRACE MANOR AT LAKE MORTON, LLC,
Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration ("the Agency"), by and through its undersigned counsel, and files this Administrative Complaint against the Respondent, Grace Manor at Lake Morton, LLC ("Respondent"), pursuant to Sections 120.569 and 120.57, Fla. Stat. (2013), and alleges:

NATURE OF THE ACTION

This is an action against an assisted living facility ("ALF") to impose a \$2,000 fine for one State Class II violation (Count I) and a \$1,000 fine for an uncorrected State Class III violation (Count II).

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to Sections 20.42, 120.60, and Chapters 408, Part II, and 429, Part I, Fla. Stat. (2013).
2. Venue lies pursuant to Florida Administrative Code ("F.A.C.") Rule 28-106.207.

PARTIES

3. The Agency is the regulatory authority responsible for licensure of ALFs and enforcement of all applicable State statutes and rules governing ALFs pursuant to Chapters 408, Part II, and 429, Part I, Fla. Stat., and Chapter 58A-5, F.A.C., respectively.
4. Respondent operates a 50 bed ALF at 610 East Lime St, Lakeland, FL 33801, Standard license #5217.
5. Respondent was at all times material hereto a licensed facility under the licensing authority of the Agency and was required to comply with all applicable rules and statutes.

COUNT I - \$2,000 CLASS II FINE

(Case No. 2013013450; State Tag A0030: Resident Care - Rights & Facility Procedures)

6. The Agency re-alleges and incorporates paragraphs 1 - 5 as if fully set forth herein.
7. The Agency's surveyor conducted an unannounced complaint investigation (CCR 2013008974) on 8 October, 2013.
8. The surveyor learned this information during the survey:
 - a. ~~Based on interviews and a record reviews, the facility failed to ensure that Resident #1, an 85~~
year old man, with received appropriate medical care in a timely manner which led to delayed medical care and extreme continual pain.
 - b. **Phone interview with Staff 'A', a former med tech/caregiver, on 10/9/13 at about 4:40 pm.** She stated that the last night that Resident #1 was sent to the hospital, Staff 'B' (another caregiver) and she were working. They did their final rounds. Resident #1 came out about 10:30 - 11:30 pm and complained about a burning, like a hot rod was in his eye. She called the resident care coordinator (RCC) and told her what was going on. She asked the RCC if she could give him a brand name medication for Acetaminophen that he had scheduled for later in the morning. The RCC

said Staff 'A' wasn't supposed to but she could just this one time. Staff 'A' stated Resident #1 was hurting. She could tell he was in pain by his demeanor. About 11:30 to 12:30 am he started vomiting when he was in the recliner. He was in the recliner so they could keep an eye on him. She called the RCC again and she said just keep an eye on him and she would deal with him in the morning. The RCC told Staff 'A' that she knew the family would be upset if they sent him out because he had done this thing before. At 12:30 to 1:30 am it got worse and his breathing got worse. He was breathing funny. His vitals were going crazy. His blood pressure was 200 and something over 100 and something. His pulse was fast and oxygen saturation was low. His breathing was irregular. She called the RCC again and she said to call the home health company. The guy she spoke to at home health asked why did he need to come and she explained the situation and the vitals. He stated based on Resident #1's vitals he should be sent out to the hospital. She called the RCC again and told her what home health said and the RCC said " no " , to not send him out and she would deal with him in the morning. At 1:30 to 2:30 am he was panic screaming (like yelling). He said now I know what it feels like to die alone. He already had problems with his left eye and it was white and he could not see out of it but he could see out of his right eye. However, then he complained that he could not see them and they were right in front of him. She called the RCC again and she responded again that she would deal with him in the morning. At 3:30 am he was puking but she could hear it gurgling back in his lungs. He was aspirating. She called the RCC and told her that she was sending this man out even if she had to be written up. He was throwing up and now he is aspirating. She stated OK do whatever you have to do. EMTs (emergency medical technicians) got there about 3:45 am. They started to move him onto the stretcher. He couldn't stand. He had a stroke. Emergency medical services (EMS) and the emergency room doctor asked her why the resident was not sent to the hospital earlier. A friend who worked at the facility told her the next day that Resident #1 died at 6:45 am.

c. **Phone interview with Staff 'B', a med tech/caregiver, on 10/9/13 at approximately 5:40 am.** She reported that on the night of the incident at 11:00 pm, Resident #1 complained that his eye hurt and he had a bad headache. Staff 'A' called the RCC and she said to go ahead and give the brand name medication for Acetaminophen he had scheduled at some point during the next morning. In an hour he stated it was getting worse. Staff 'A' called the RCC and she stated he did this before and to keep an eye on him. They sat with Resident #1 throughout the night in the living room in front. Resident #1 would freak out if he could not see them. He stated he could not see them and they were right in front of his face. He said to please not leave him because he did not want to die alone. Staff 'A' called again and finally got permission to call 911 from the RCC about 2:00 to 3:00 am. Paramedics asked if leaning to the side was normal for him and they told them it was not normal. They asked if his face drooping was normal and they said, " no. " They did a stress test and he was weaker on one side. He fell to the side when they stood him up and stated they thought he had a stroke when they took him out on a stretcher. Staff 'B' stated she felt like Resident #1 should have went out to the hospital the first time Staff 'A' called the RCC. Resident #1 stated he felt like a hot rod was stabbing through his eye. It was not normal for him to come out of his room and complain of pain.

d. **Interview with the RCC about Resident #1 on 10/8/13 at about 2:15 pm.** She stated that Staff 'A' called her once for Resident #1's headache and she asked Staff 'A' if he had anything she could give him for pain and Staff 'A' said a brand name medication for Acetaminophen. The RCC said, " well give him that. " Staff 'A' called back later and stated he was throwing up and she told Staff 'A' to send him to the hospital. It started about 1:00 am and she did not know how long in between before Staff 'A' called the second time. She stated she did not remember exact times because it happened almost a year ago.

e. **Review of the EMS report dated 4/30/13.** It indicated that the stroke alert was called at 3:28 am and Resident #1 arrived at the hospital at 3:43 am.

f. **Review of the hospital Emergency Department Note - Physician final report dated 4/30/13.** It noted that the physician spoke directly to the staff at the facility and was told that at 11:00 pm or so Resident #1 had severe pain behind his right eye. He walked out to the nursing station to request help. Resident #1 sat down in a chair near the nursing station and stayed there for the next few hours. Somewhere between 3:00 and 3:15 am Resident #1 became less responsive and vomited and developed slurred speech. Facility staff did not notice left sided weakness. At the hospital Resident #1 was diagnosed with intracerebral hemorrhage (a type of stroke where an artery bursts in the brain and causes bleeding in the brain).

g. **Death.** The hospital death record indicated that the resident died at 7:25 am on 4/30/13.

h. **Interview with the RCC on 10/8/13 at about 2:40 pm.** Staff let them know if residents are sick and then they contact the nurse (a home health nurse because the facility has no nurses) and she comes to evaluate. If the nurse states they need to go out to hospital then they send them. If it's night time staff call her (the RCC) and then the nurse is called and the nurse still comes to assess. They send the resident out if the nurse says so. Sometimes a consult with the nurse is done on the phone and the nurse might say to go ahead and send out.

i. **Interview with the executive director (ED).** The ED revealed that Resident #1 's family was adamant about not sending him out to the hospital (not specifically talking about this event, but previous ones).

j. **Review of the hospital Emergency Department Note - Nursing final report dated 4/30/13.** It revealed that EMS reported that the family was not thrilled with the idea of the resident being transported to the hospital.

k. **Review of the facility's medical emergencies policy.** It was located on page 93 and 94 of its Assisted Living Policy and Procedure Manual. Section 1 indicated that the administrator should be contacted immediately and section 2 indicated that the administrator makes the determination of the severity of the situation. Section 3 indicated that the community summons emergency medical services by calling 911 when the resident exhibits signs and symptoms of distress and /or emergency condition. One example included was sudden onset of severe pain. Resident #1 had indicated to staff that he felt like a hot rod was stabbing through his eye but medical care was still delayed for hours.

9. Florida's law regarding residents having the right to a safe and decent living environment free from abuse and neglect is stated as follows:

429.28 Resident bill of rights.—

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

...

Section 429.28, Fla. Stat. (2013)

10. In sum, the facility failed to ensure that Resident #1 was free from neglect, to wit, he did not receive timely and appropriate medical care which led to extreme continual pain because he first alerted staff between the 10:30 to 11:30 pm time frame on 4/29/13 that he was in extreme pain but, despite his, e. g., repeated complaints of extreme pain, panic yelling, expressing his fear of dying alone, vomiting, lack of vision, crazy vitals, aspirating, leaning to the side and drooping face, 911 was not notified until about 3:30 am the next morning, an inappropriate delay of several hours.

11. Respondent was cited for a Class II violation, defined as follows:

408.813 Administrative fines; violations.—As a penalty for any violation of this part, authorizing statutes, or applicable rules, the agency may impose an administrative fine.

...

(2) Violations of this part, authorizing statutes, or applicable rules shall be classified according to the nature of the violation and the gravity of its probable effect on clients.

... Violations shall be classified on the written notice as follows:

...
(b) Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation.

...
Section 408.813, Fla. Stat. (2013)

12. Florida law states as follows as regards the fine for an ALF for a Class II violation:

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408, the agency shall impose an administrative fine in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809, for the actions of any facility employee, or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(2) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification on the written notice of the violation as follows:

...
(b) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation.

...
(3) For purposes of this section, in determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the facility of committing or continuing the violation.

(e) The licensed capacity of the facility.

...
Section 429.19, Fla. Stat. (2013)

WHEREFORE, the Agency intends to impose a \$2,000 fine against Respondent pursuant to Sections 408.813 and 429.19, Fla. Stat. (2013).

COUNT II - \$1,000 UNCORRECTED CLASS III FINE

(Case No. 2014002084; State Tag A0010 – Admissions – Continued Residency)

13. The Agency re-alleges and incorporates paragraphs 1 - 5 as if fully set forth herein.

1st survey - 11/21/13 (paras 14 – 19)

14. A complaint investigation (CCR#2013012071) was conducted on 21 November, 2013.

15. Based upon record review the facility failed to ensure that an interdisciplinary care plan was developed and implemented for Resident #1, an 89 year old female receiving hospice care and services.

A 11/21/13 review of her records showed that although she was retained at the facility on hospice care it failed to develop and implement an interdisciplinary care plan developed by hospice in coordination with her and/or another responsible party in order to meet her needs.

16. Florida law provides as follows as regards an ALF resident receiving hospice services:

58A-5.0181 Admission Procedures, Appropriateness of Placement and Continued Residency Criteria.

...
(4) CONTINUED RESIDENCY. Except as follows in paragraphs (a) through (e) of this subsection, criteria for continued residency in any licensed facility shall be the same as the criteria for admission. As part of the continued residency criteria, a resident must have a face-to-face medical examination by a licensed health care provider at least every 3 years after the initial assessment, or after a significant change, whichever comes first. A significant change is defined in Rule 58A-5.0131, F.A.C. The results of the examination must be recorded on AHCA Form 1823, which is incorporated by reference in paragraph (2)(b) of this rule. The form must be completed in accordance with that paragraph. After the effective date of this rule, providers shall have up to 12 months to comply with this requirement.

...
(c) A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:
1. The resident qualifies for, is admitted to, and consents to the services of a licensed

hospice which coordinates and ensures the provision of any additional care and services that may be needed;

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

3. An interdisciplinary care plan is developed and implemented by a licensed hospice in consultation with the facility. Facility staff may provide any nursing service permitted under the facility's license and total help with the activities of daily living; and

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

...

Rule 58A-5.0181, F.A.C.

17. In sum, the facility failed to develop and implement Resident #1's interdisciplinary plan for hospice care and services.

18. Petitioner cited Respondent for a Class III violation, defined as follows:

408.813 Administrative fines; violations.—As a penalty for any violation of this part, authorizing statutes, or applicable rules, the agency may impose an administrative fine.

...

(2) Violations of this part, authorizing statutes, or applicable rules shall be classified according to the nature of the violation and the gravity of its probable effect on clients.

... Violations shall be classified on the written notice as follows:

...

(c) Class "III" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than class I or class II violations. The agency shall impose an administrative fine as provided in this section for a cited class III violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, a fine may not be imposed.

...

Section 408.813, Fla. Stat. (2013)

19. By letter dated 9 December, 2013, Respondent was notified of a mandatory correction date of 30 days from the letter's 9 December date, to wit, on or about 9 January, 2014.

2nd Survey - 1/31/14 (paras 20 - 25)

20. A revisit survey was conducted on 31 January, 2014, to check on the deficiencies cited during

the first survey on 21 November, 2013.

21. a. Based upon record review the facility failed to ensure that an interdisciplinary care plan was developed and implemented for resident #1, an 89 year old female receiving hospice care and services.

b. An 11/21/13 review of Resident #1's records showed that although she was retained at the facility on hospice care it failed to develop and implement an interdisciplinary care plan with hospice in coordination with her and/or another responsible party to meet her needs.

c. During the revisit survey an interdisciplinary care plan was still not available for her. The facility had a hospice 'Interdisciplinary Care Plans' form which was a blank form with the words "Interdisciplinary Care Plans" hand written at the top of the page labeled as a "HHA Plan of Care and Note". The rest of the page consisted of a check list to indicate the information for all areas pertaining to pain level, mental status, bathing, grooming, dressing, nutrition, activity tolerance and transfer . In sum, the form was empty in content and did not meet the intent of the requirement.

d. During a staff interview the surveyor determined that they did not have a good understanding of the requirement to develop and implement this type of plan. They indicated after discussion that they were going to develop their own form for this purpose.

22. In sum, the facility failed to correct the prior deficiency by still not having developed and implemented the required interdisciplinary care plan for Resident #1 who was still receiving hospice care and services.

23. Florida law regarding an ALF resident receiving hospice services is cited in paragraph 16.

24. Petitioner cited Respondent for a Class III violation, defined in paragraph 18.

25. The same constitutes an uncorrected Class III violation with the fine determined as follows:

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408, the agency shall impose an administrative fine in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules by an assisted living facility ...

(2) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification on the written notice of the violation as follows:

(c) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class III violation in an amount not less than \$500 and not exceeding \$1,000 for each violation.

...

Section 429.19, Fla. Stat. (2012)

WHEREFORE, the Agency intends to impose a \$1,000 fine against Respondent, an ALF in the State of Florida, pursuant to § 429.19 (2) (c), Fla. Stat. (2013).

Submitted this 8th day of April, 2014.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION

525 Mirror Lake Dr. N., Ste 330

St. Petersburg, FL 33701

Ph: (727) 552-1942

Fax: -1440

david.selby@ahca.myflorida.com

By: 

Edwin D. Selby

Assistant General Counsel

Fla. Bar No. 262587

NOTICE OF RIGHTS

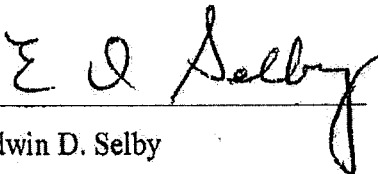
The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative 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 CERTIFY that a true and correct copy of the foregoing has been served by U.S. Certified Mail, Return Receipt No. 7012 1640 0000 0115 1193 on 8 April, 2014, to Administrator Susan Martin, Grace Manor at Lake Morton, LLC, 601 East Lime St, Lakeland, FL 33801, and by regular U.S. mail to Registered Agent Christopher Desrochers, 2504 Ave G NW, Winter Haven, FL 33880.


Edwin D. Selby

Cc: Patricia Cauffman, AHCA Area 6 Field Office Manager

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE. GRACE MANOR AT LAKE MORTON, LLC.

Case No. 2013013450
2014002084

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 Chapter 120, Florida Statutes 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; and
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 NO. 2013013450
2014002084
DOAH NO. 14-3132

GRACE MANOR AT LAKE MORTON, LLC,

Respondent.

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the “Agency”), and Respondent, Grace Manor at Lake Morton, LLC (hereinafter “Respondent”), through their respective undersigned representatives, pursuant to Section 120.57(4), Florida Statutes, each individually, a “party,” collectively as “parties,” hereby enter into this Settlement Agreement (“Agreement”) and agree as follows:

WHEREAS, Respondent is an Assisted Living Facility (“ALF”) licensed pursuant to pursuant to Chapters 408, Part II and 429, Part I, Florida Statutes, and Chapter 58A-5, Florida Administrative Code; and

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

WHEREAS, the Agency served Respondent with an administrative complaint on 8 April, 2014, notifying Respondent of its intent to impose a \$2,000 administrative fine for one Class II violation and a \$1,000 fine for one uncorrected Class III violation; and

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

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

1. All recitals herein are true and correct and are expressly incorporated herein.
2. Both parties agree that the “whereas” clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, Respondent agrees to pay the total sum of \$3,000.00 within 30 days from the date of the Final Order.
5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.
6. By executing this Agreement, Respondent denies the allegations set forth in the administrative complaint, and the Agency asserts the validity of the allegations raised in the administrative complaint referenced herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule

identified in a future survey of Respondent, which constitutes a “repeat” or “uncorrected” deficiency from surveys identified in the administrative complaint.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent, including, but not limited to, licensure for limited mental health, limited nursing services, extended congregate care, or a demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. However, if the Agency seeks to use the facts recited in the administrative complaint herein for any future administrative action, Respondent retains the right to contest those facts in any such administrative action which is based solely, or in part, on the subject events in the underlying administrative complaint. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the administrative complaint. This Agreement does not prohibit the Agency from taking action regarding Respondent’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 legal fees, if any.

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

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys

of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related facilities.

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

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

14. Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within 30 days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

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

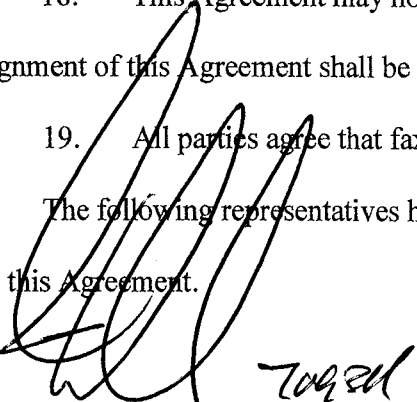
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

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

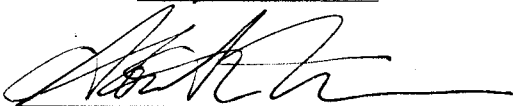
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

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

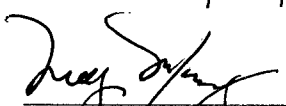
The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.


Edwin D. Selby, Assistant General Counsel
Florida Bar No. 262587
Agency for Health Care Administration
525 Mirror Lake Dr N, Suite 330
St. Petersburg, FL 33701


DATED: 3/6/2015


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

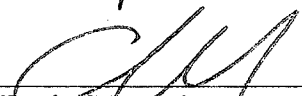
DATED: 3/19/15


Molly McKinstry
Deputy Secretary
Agency for Health Care Administration
2727 Mahan Dr
Tallahassee, FL 32308

DATED: 3/24/15


Louis F. Gerrard, President
Grace Manor at Lake Morton, LLC
c/o Mainstay Financial Services
5578 Commercial Blvd NW
Winter Haven, FL 33880

DATED: 1/29/15


J. Davis Connor, Esq
Florida Bar No. 714313
Peterson & Myers, P.A.
225 East Lemon St.
Lakeland, FL 33802-4628

DATED: 2/2/15