

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
AHCA  
AGENCY CLERK

GARDEN OF ROSES ASSISTED LIVING, LLC,

2014 OCT 10 P 2: 16

Petitioner,

v.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

AHCA No. 2014006024  
RENDITION NO.: AHCA- 14 -0844 -S-OLC

Respondent.  
\_\_\_\_\_ /

**FINAL ORDER**

THIS CAUSE came on for consideration before the Agency for Health Care Administration (“the Agency”), which finds and concludes as follows:

1. The Agency issued the Petitioner the attached Notice of Intent to Deem Application Incomplete and Withdrawn from Further Review (Ex. 1). The parties entered into the attached Settlement Agreement (Ex. 2), which is adopted and incorporated by reference.

2. The parties shall comply with the terms of the Settlement Agreement. The Notice of Intent to Deem Application Incomplete and Withdrawn from Further Review is rescinded and the Agency shall resume the review of the application if it has not already done so.

**ORDERED** in Tallahassee, Florida, on this 9 day of October, 2014.



\_\_\_\_\_  
Elizabeth Dudek, Secretary  
Agency for Health Care Administration

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party that is adversely affected by this Final Order is entitled to seek 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 HEREBY CERTIFY that a true and correct copy of this Final Order was served on the below-named persons/entities by the method designated on this 10<sup>th</sup> day of October, 2014.

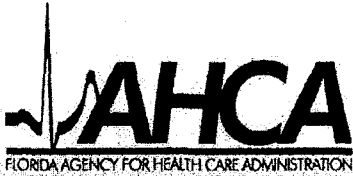


Richard Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308-5403  
Telephone (850) 412-3630

John E. Bradley, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Rose Wong, Owner Garden of Roses Assisted Living 3629 SE 2 <sup>nd</sup> Street Boynton Beach, Florida 33435 (U.S. Mail)
Catherine Avery Assisted Living Unit Manager (Electronic Mail)	Theodor Mack Powell & Mack 3700 Bellwood Drive Tallahassee, Florida 32303 (U.S. Mail)
Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	

2014006024

7/21



RICK SCOTT  
GOVERNOR

ELIZABETH DUDEK  
SECRETARY

Certified Article Number

9414 7266 9904 2006 7817 04

SENDERS RECORD

CERTIFIED MAIL

June 19, 2014

ROSE MARIE WONG, ADMINISTRATOR  
GARDEN OF ROSES  
3629 SE 2ND ST  
BOYNTON BEACH, FL 33435

License Number: 12067

Case Number: 2014006024

RECEIVED  
FACILITY INTAKE UNIT

JUN 19 2014

Agency for Health  
Administration

**NOTICE OF INTENT TO DEEM APPLICATION INCOMPLETE AND  
WITHDRAWN FROM FURTHER REVIEW**

Dear Administrator:

Your application for license is deemed incomplete and withdrawn from further consideration pursuant to Section 408.806(3)(b), Florida Statutes (F.S.), which states that "Requested information omitted from an application for licensure, license renewal, or change of ownership, other than an inspection, must be filed with the agency within a specified time period after the agency's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited".

Your assisted living facility license has a status of "In Review". We are reviewing the license to determine if it will be approved. The Agency was notified on April 14, 2014 that the facility had to evacuate 6 residents due to a court order issued by Palm Beach County Sheriff's Office because the mortgage had not been paid. The Agency received a temporary lease agreement on April 17, 2014 which expired 05/15/2014. The Agency requested proof of financial ability to operate due to the facility's apparent financial distress on April 21, 2014. The facility's financial records were reviewed on June 2, 2014 and had deficiencies.

You were notified by correspondence dated June 4, 2014 to provide further information addressing identified apparent errors or omissions within ten days from the receipt of the Agency's correspondence. Our records indicate you received this correspondence by certified mail on June 7, 2014. As this requested information was not timely received by the Agency, your application is deemed incomplete and withdrawn from further consideration. The outstanding issues remaining for licensure are:

**Proof of Financial Ability To Operate**

**EXHIBIT**

**OMISSIONS:**

**"1"**

**Notification of Financial Distress by Landlord**

The ALF's lease agreement contains a provision that the landlord notify the lessee of any certain or potential situation of any kind that may have an effect on the lease agreement. Please explain and provide any available supporting documentation by the lessor regarding how the lessor notified the ALF of the events affecting property and the risk that the tenants may be evicted. In addition, explain how the ALF management responded to such notification in the best interest of the patients and the ALF as a going concern:



**Purchase of Property—General Omissions**

As noted below, the agency is attempting to purchase the property it is currently housed in. Staff notes the following:

1. The projections do not indicate a purchase price for the facility, nor did the facility provide proof of the purchase price or ability to fund the purchase (discussed below).
2. The projections also do not reflect the result of any financing on the balance sheet, income statement, or cash flow statement.

Please explain or correct the above.

**Purchase Price and Proof of Funding**

Documentation provided indicates the ALF will be purchasing the facility; however, the ALF did not provide documentation of the purchase (purchase agreement, bill of sale, etc.) and did not provide proof of available funding to complete the purchase transaction. Please provide supporting documentation indicating the availability of funds to complete the purchase. Proof may include account statements of the purchaser prior to purchase. If the purchase has already been completed (an executed bill of sale exists) please provide documentation of the transfer of funds including canceled checks, and or electronic funds transfer receipts. If the applicant borrowed any of the funds for the purchase from an institution or individual, please disclose the amount borrowed, the identity of the lender, and documentation supporting the loan.

This is a review of financial stability. As such, in addition to the above, provide copies of the operating account:

1. Bank statements,
2. Bank statement reconciliations, and
3. Check register, and
4. A copy of the detailed profit and loss statement

for the first quarter (January through March), 2014.

**Failure to provide proof of ability to fund the minimum funding requirement will result in denial of the application.**

Pursuant to Schedule 1 instructions, please provide independent, certifiable documentation of the existence and availability of these funds. Examples of documents that support funding include:

- copies of current bank statements for accounts owned by the proposed agency,
- letters of commitment from a bank or other independent lending source,
- or a copy of a line of credit agreement indicating credit line and available credit and any restrictions,
- parent company audited financial statements (Note: unaudited financial statements will not be considered as proof of funding ability).

Also, if submitting more than one document as support for funding, **attach a separate schedule** that clearly lists each item, including:

- Name of the financial institution
- Cutoff (balance) date
- Last four digits of the account/identification number
- Ending balance
- For a line of credit, along with the above, provide total credit line and available credit

Staff will not attempt to analyze and recap multiple funding documents and statements in order to reconcile to funding claimed on Schedule 1. As a result, in if multiple supporting documents are submitted without a lead recap schedule listing each item of funding and reconciling to Schedule 1, staff will consider the funding claimed on Schedule 1 unsupported, resulting in denial of the application.

**Note: any parent company or personal funds pledged to the applicant must meet the above criteria and the owner of the funds must provide a binding letter of financial commitment pledging the funds to the applicant, along with the above documentation of existence and availability of the funds.**

**All proof of funding documentation must be dated no later than ten (10) days prior to the date the application is received by AHCA. All proof of funding should be as of the same date.**

**All proof of funding must be as of the same cutoff date.**

**Please note, response to the below questions and omissions may change the amount of start-up cost, working capital, and contingency funding requirement on Schedule 1. The applicant must provide sufficient supporting documentation for any additional funding required.**

**Other:**

**Explain Changes to Projections**

When financial statements are reviewed for an application, staff assumes that a great deal of time and effort have been expended to produce the most accurate projections possible. Revised financial statements containing significant changes, other than correcting the errors identified in the omissions noted above, require detailed explanations of the changes. Failure to fully explain these changes may result in denial of the application.

**CPA**

While this application is not required to be prepared by a CPA, staff notes the schedules are complex and require detailed knowledge of accounting methods. Staff highly recommends the applicant retain the services of a CPA in preparing the forms.

**IMPORTANT NOTE**

Please note that Section 408.8065(3) states in part "...any person who knowingly files a false or misleading license or license renewal application or who submits false or misleading information related to such application, and any person who violates or conspires to violate this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

**Please remember to revise any schedules that may be affected by changes to schedules associated with responses to the above questions and omissions, particularly any changes that may be made to Schedules 2, 3, and 4 since these schedules are the basis for expense, revenue, and cash flow projections on Schedules 5, 6, and 7. Any changes that affect cash flow may change the amount of funding needed for contingency and working capital. (Note: any additional funding needed must be supported).**

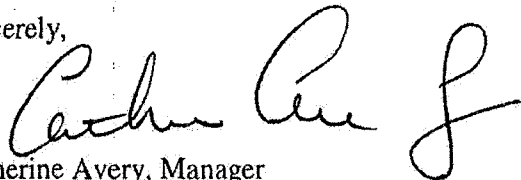
Ms. Wong  
GARDEN OF ROSES  
Page 4  
06/19/2014

**EXPLANATION OF RIGHTS**

Pursuant to Section 120.569, 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 AND EXPLANATION OF RIGHTS FORMS.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Avery".

Catherine Avery, Manager  
Assisted Living Unit

SH/Pottere

cc: Agency Clerk, Mail Stop 3  
Legal Intake Unit, Mail Stop 3

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

GARDEN OF ROSES ASSISTED LIVING, LLC,

Petitioner,

v.

DOAH No. 14-3724  
AHCA No.: 2014006024

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

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**SETTLEMENT AGREEMENT**

The Petitioner ("the Applicant") and the Respondent ("the Agency") voluntarily enter into this Settlement Agreement ("Agreement") and agree as follows:

1. **Parties/Background.** The Applicant filed an application seeking licensure within the jurisdiction of the Agency. After initial review, the Agency issued the Applicant an omissions letter and thereafter a Notice of Intent to Deem Renewal Application Incomplete and Withdrawn From Further Review ("NOI"). The Applicant has since tendered to the Agency additional information and/or documentation in support of the application, which the Agency is willing to review.

2. **Purpose and Effect of Settlement.** Both parties wish to resolve this case without further litigation and recognize that by entering into this Agreement, both are expressly waiving their right to any legal proceeding they are entitled, including, but not limited to, formal and informal proceedings under Section 120.57, Florida Statutes, and appellate review. Both parties consent to the withdrawal of any request for formal or informal hearing if such a request has been made, as well as the relinquishment of jurisdiction of the informal hearing officer or administrative law judge.

3. **Resumption of Application Review.** The parties agree that this Agreement shall supersede the NOI and that the application will no longer be deemed to be incomplete and withdrawn from further review. If the Agency has not already completed its review of the application, it shall resume its review of the application upon entry of the Final Order adopting this Agreement. Nothing in this Agreement, however, shall prohibit the Agency from denying the application based upon any statute, rule, or regulation, and, if applicable, an unsatisfactory licensure survey.

4. **Administrative Action.** The Agency agrees to rescind the NOI

5. **Release.** The Applicant releases and forever discharges the Agency, its employees and agents, both past and current, from any and all claims, including, but not limited to, damages, attorney's fees and costs, arising from or relating to the issuance or litigation of this NOI.

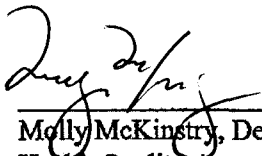
6. **Costs and Attorney's Fees.** Each party shall bear their own costs and attorney's fees.

7. **Right to Counsel.** The Applicant acknowledges the right to retain independent counsel and has either obtained its own counsel or voluntarily waived the right to counsel. The Applicant further acknowledges that Agency counsel represents solely the Agency and that Agency counsel has not provided any legal advice to, or influenced, the Applicant in the voluntary decision to enter into this Agreement.

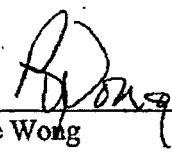
8. **Entire Agreement.** This Agreement contains the entire understandings of both parties. This Agreement supersedes any prior oral or written agreements that may have existed between the parties. This Agreement may not be amended by either party except in writing.

9. **Execution of Agreement.** Both parties agree that an electronic signature suffices for an original signature, that an electronic or facsimile copy suffices for an original document, and that this Agreement may be executed in counterparts. This Agreement shall be effective upon full execution by all parties and adoption into a Final Order. After full execution of this Agreement, the Agency will enter a Final Order adopting this Agreement and closing the case.

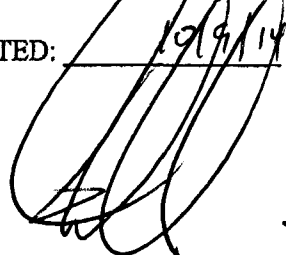
The following representatives have read and understand this Agreement, are signing it freely and voluntarily, and acknowledge that they are authorized to enter into this Agreement.

  
\_\_\_\_\_  
Molly McKinstry, Deputy Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Bldg. #3  
Tallahassee, Florida 32308

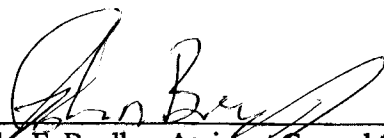
DATED: 10/9/14

  
\_\_\_\_\_  
Rose Wong  
Owner  
Gardens of Roses Assisted Living Facility  
3629 SE 2<sup>nd</sup> Street  
Boynton Beach, Florida 33435

DATED: 10-1-2014

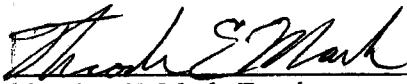
  
\_\_\_\_\_  
Stuart F. Williams, General Counsel  
Office of the General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308

DATED: 10/6/2014

  
\_\_\_\_\_  
John E. Bradley, Assistant General Counsel  
Office of the General Counsel  
Agency for Health Care Administration  
525 Mirror Lake Drive  
St. Petersburg, Florida 33701

DATED: 10-1-2014





Theodore E. Mack, Esquire  
Counsel for Petitioner  
Powell & Mack  
3700 Bellwood Drive  
Tallahassee, Florida 32303

DATED: 10/1/14