

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2020 JUL -7 A 11: 02

ELITE CARE PLUS, LLC, d/b/a
ASTORIA ASSISTED LIVING FACILITY,

Petitioner,

DOAH No. 18-4705

v.

AHCA Nos. 2018009172
2018013956

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

RENDITION NO.: AHCA- 20 - 456 -S-OLC

Respondent.

FINAL ORDER

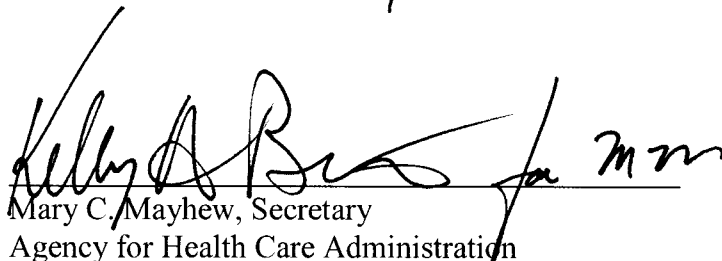
THIS CAUSE came on for consideration before the Agency for Health Care Administration (“the Agency”), which finds and concludes as follows:

1. The Agency issued the Petitioner the attached Amended Notice of Intent to Deny Renewal Assisted Living Facility Application. (Ex. 1). The parties have since 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. If the Agency has not already completed its review of the application, it shall resume its review of the application. The Applicant shall pay the Agency an administrative fee of \$ 1,000.00 within 30 days of the entry of this Final Order. A check made payable to the “Agency for Health Care Administration” containing the AHCA ten-digit case number should be sent to:

Central Intake Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 61
Tallahassee, Florida 32308

ORDERED in Tallahassee, Florida, on this 7th day of July, 2020.

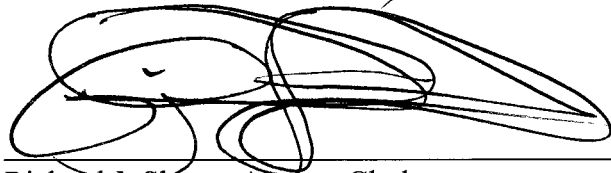

Mary C. Mayhew, Secretary
Agency for Health Care Administration

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 by the method designated on this 7th day of July, 2020.



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

Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Thomas M. Hoeler, Chief Facilities Counsel Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
Central Intake Unit Agency for Health Care Administration (Electronic Mail)	Jeanne E. Helton, Esquire Smith, Hulsey & Busey jhelton@smithhulsey.com (Electronic Mail)
Honorable James H. Peterson Administrative Law Judge Division of Administrative Hearings (Electronic Filing)	



RICK SCOTT
GOVERNOR

JUSTIN M. SENIOR
SECRETARY

July 27, 2018

CERTIFIED

Harold Joseph Mangini, Administrator
Astoria Assisted Living Facility
319 Eldridge Ave
Orange Park, FL 32073

File Number: 11968987
License Number: 12817
Provider Type: Assisted Living Facility
Application Number 68634

RE: Complaint Number 2018009172 319 Eldridge Ave, Orange Park

Amended Notice Of Intent To Deny
for Renewal Assisted Living Facility Application

Dear Mr. Mangini:

It is the decision of this Agency that Astoria Assisted Living Facility's renewal application ("the application") for an assisted living facility license be DENIED.

The Specific Basis for this determination is:

The applicant's 100 percent controlling interest was also the 100 percent controlling interest of a clinical laboratory that had its Florida clinical laboratory license revoked, and the applicant was terminated from participation in the Florida Medicaid program.

1. On February 12, 2018, the Agency received a Renewal Licensure application from Elite Care Plus, LLC d/b/a Astoria Assisted Living Facility ("the Applicant").
2. Syed S. Hussain has a 100 percent ownership interest in the applicant, Astoria Assisted Living Facility. (Exhibit A).
3. Syed S. Hussain had a 100 percent ownership interest in Total Lab Care, LLC. (Exhibit B)
4. Total Lab Care, LLC was a Florida clinical laboratory licensed under section 483 Part I, Florida Statutes (2017).
5. On April 4, 2018, the Agency by Final Order (AHCA #: 2018001424) revoked the license of Total Lab Care, LLC pursuant to section 408.815, Florida Statutes, based on Total Lab Care, LLC's exclusion from participation in the federal Medicare program. (Exhibit C).
6. Pursuant to Section 429.14(3) Florida Statutes, the agency may deny an applicant or a controlling interest as defined in part II of chapter 408 which has or had a 25 percent or greater financial or ownership interest in any other facility that is licensed under this part, or in any entity licensed by this state or another state to provide health or residential care, if that facility or entity during the 5 years prior to the application for a license closed due to financial inability to operate; had a receiver appointed or a license denied, suspended, or revoked; was subject to a moratorium; or had an injunctive proceeding initiated against it.

2727 Mahan Drive • MS#30
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Youtube.com/AHCAFlorida
Twitter.com/AHCA_FL
SlideShare.net/AHCAFlorida

Ex. 1

7. Pursuant to Section 408.810(12), Florida Statutes, "The licensee shall ensure that no person holds any ownership interest, either directly or indirectly, regardless of ownership structure, who: (a) Has a disqualifying offense pursuant to s. 408.809; or (b) Holds or has held any ownership interest, either directly or indirectly, regardless of ownership structure, in a provider that had a license revoked or an application denied pursuant to s. 408.815." (Emphasis supplied).
8. Pursuant to section 429.14(1), Florida Statutes, 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...."
9. By notification letter dated May 14, 2018, the applicant was terminated from participating in the Florida Medicaid program. (Exhibit D). The effective date of this termination was June 21, 2018. (Exhibit E).
10. Pursuant to section 408.815, Florida Statutes:

408.815 Licensure or application denial; revocation.—

(1) 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:

(c) A violation of this part, authorizing statutes, or applicable rules.

...

(e) The applicant, licensee, or controlling interest has been or is currently excluded, suspended, or terminated from participation in the state Medicaid program, the Medicaid program of any other state, or the Medicare program.

11. Accordingly, pursuant to Sections 408.810(12), 429.14(1), (3) and 408.815(1)(c), (e), Florida Statutes, the renewal application for an Assisted Living Facility license is denied.

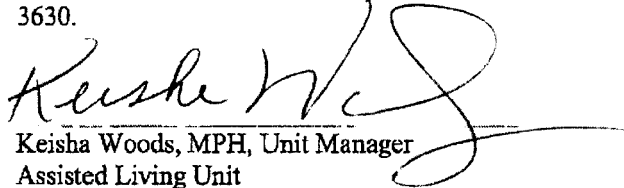
EXPLANATION OF RIGHTS

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.

Astoria Assisted Living Facility
July 27, 2018
Page #2

SEE ATTACHED ELECTION AND EXPLANATION OF RIGHTS FORMS.

If you have any questions or need further assistance, please contact our Legal Department at 850-412-3630.

A handwritten signature in black ink, appearing to read "Keisha Woods", is written over a horizontal line. The signature is fluid and cursive.

Keisha Woods, MPH, Unit Manager
Assisted Living Unit
Agency for Health Care Administration

cc: Legal Intake Unit, MS# 3

Astoria Assisted Living Facility
July 27, 2018

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Astoria Assisted Living Facility

Case Number: 2018009172

ELECTION OF RIGHTS¹

This Election of Rights form is attached to a proposed Notice of Intent to Deem Incomplete and Withdraw from Further Review of the Agency for Health Care Administration (AHCA). The title may be **Notice of Intent to Deem Incomplete and Withdraw from Further Review or some other notice of intended action by AHCA.**

An 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 Deem Incomplete and Withdraw from Further Review or any other proposed action by AHCA.

If an 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, you will have given up your right to contest the Agency's proposed action and a final order will be issued.

(Please reply using this Election of Rights form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes (2018) and Rule 28, Florida Administrative Code.)

Please return your ELECTION OF RIGHTS to:

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 Deem Incomplete and Withdraw from Further Review, or other notice of intended action by AHCA and I waive my right to object and 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 proposed penalty, fine or action.

OPTION TWO (2) _____ **I admit to the allegations of facts contained in the Notice of Intent to Deem Incomplete and Withdraw from Further Review, or other proposed action by AHCA, 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 Deem Incomplete and Withdraw from Further Review or other proposed action by AHCA, and I request a formal**

¹ Filed in response to the Agency's Amended Notice of Intent to Deny.

hearing (pursuant to Section 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 Subsection 120.57(1), Florida Statutes. It must be **received** by the Agency Clerk at the address above **within 21 days** of receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.201, Florida Administrative Code, which requires that it contain:

1. The name and address of each agency affected and each agency's file or identification number, if known;
2. Your name, address, and telephone number, and the name, address, and telephone number of your representative or lawyer, if any;
3. An explanation of how your substantial interests will be affected by the Agency's proposed action;
4. A statement of when and how you received notice of the Agency's proposed action;
5. A statement of all disputed issues of material fact. If there are none, you must state that there are none;
6. A concise statement of the ultimate facts alleged, including the specific facts you contend warrant reversal or modification of the Agency's proposed action;
7. A statement of the specific rules or statutes you claim require reversal or modification of the Agency's proposed action; and
8. A statement of the relief you are seeking, stating exactly what action you wish the Agency to take with respect to its proposed action.

(Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.)

License Type: Assisted Living Facility

License Number: 12817

Licensee Name: Astoria Assisted Living Facility

Contact Person: _____
Name Title

Address: _____
Street and number City Zip Code

Telephone Nbr.: _____ Fax Nbr.: _____

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**

ELITE CARE PLUS, LLC, d/b/a
ASTORIA ASSISTED LIVING FACILITY,

Petitioner,

DOAH No. 18-4705

v.

AHCA Nos. 2018009172
2018013956

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

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 submitted a license renewal application with the Agency. After initial review, the Agency issued the Applicant a Notice of Intent to Deny the renewal application (“NOI”), Case Number 2018009172. In addition, the Agency conducted a survey on May 1, 2018, Aspen ID SQNP12, that would authorize the Agency to impose a \$1,000.00 administrative fine, Case Number 2018013956. The Applicant has since entered into an agreement regarding a change of ownership of the assisted living facility, which the Agency is prepared to approve at this time.

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 Agency agrees to resume the review of the application. Nothing in this Agreement, however, shall prohibit the Agency from subsequently denying the application based upon violation of any statute or rule, and if applicable, an unsatisfactory licensure survey. If the Agency denies the application, the applicant shall have all rights of review permitted under Florida law.

4. **Administrative Fee.** The Applicant agrees to pay the Agency \$1,000.00 for the survey matter, Case No. 2018013956, within 30 days of the entry of the Final Order.

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.

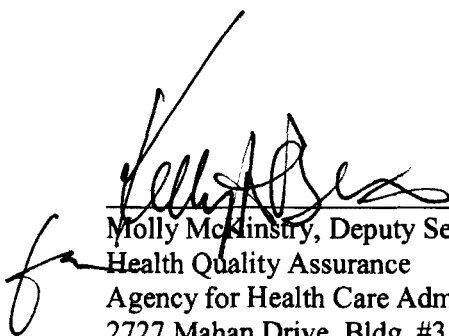
6. **Costs and Attorney's Fees.** Each party shall bear their own costs and attorney's fees.

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.

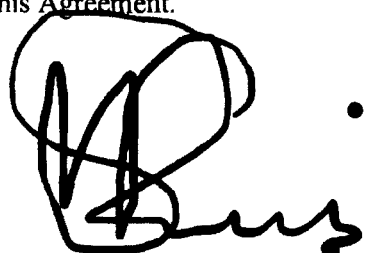
9. **Execution of Agreement.** Both parties agree that an electronic signature suffices for an original signature, that an electronic or facsimile copy suffices for an original document, and that this Agreement may be executed in counterparts. This Agreement shall be effective upon full execution by 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.



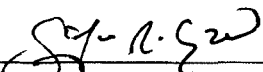
Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Bldg. #3
Tallahassee, FL 32308

DATED: 7-7-20

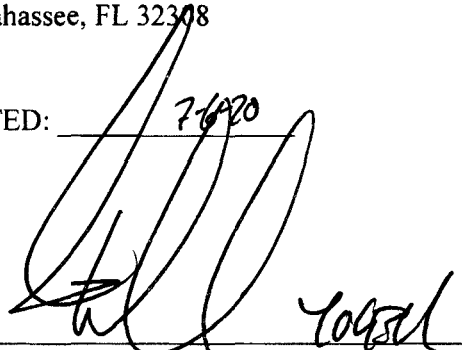


Name: _____
Elite Care Plus, LLC, d/b/a
Astoria Assisted Living Facility
319 Eldridge Avenue
Orange Park, FL 32073

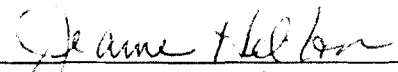
DATED: 7/2/20


Stefan R. Grow, General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, FL 32308

DATED: 7/6/20


Thomas M. Hoeler, Chief Facilities Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, FL 32308

DATED: 7/3/2020


Jeanne E. Helton, Esquire
Smith Hulsey & Busey
One Independent Drive, Suite 3300
Jacksonville, FL 32202
Counsel for Applicant

DATED: July 2, 2020