

2019 SEP -9 A 11: 38

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

YOLETTE ETIENNE,

Respondent.

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DOAH No: 19-1522

AHCA No.: 2018017505

Facility Type: Adult Family-Care Home

License No: 6906708

YOLETTE ETIENNE,

Petitioner,

v.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

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DOAH No.: 19-1523

AHCA No.: 2018017826

Facility Type: Adult Family-Care Home

License No: 6906708

**RENDITION NO.: AHCA-19 - 0715 -S-OLC**

**FINAL ORDER**

Having reviewed the Administrative Complaint and Notice of Intent to Deny for Renewal Adult Family-Care Home Application (hereinafter "Notice"), and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency issued the Provider, Yolette Etienne ("the Provider"), the attached Administrative Complaint and Election of Rights form and Notice of Intent to Deny Renewal Application and Election of Rights Form. (Ex. 1). The parties have since entered into the attached Settlement Agreement (Ex. 2), which is adopted and incorporated by reference.

2. The Provider's license renewal application is withdrawn and its assisted living facility license is cancelled immediately upon entry of the Final Order.

3. In accordance with Florida law, the Provider is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. The Provider is advised of Section 408.810, Florida Statutes.


4. In accordance with Florida law, the Provider is responsible for any refunds that may have to be made to the clients.

5. The Provider is given notice of Florida law regarding unlicensed activity. The Provider is advised of Section 408.804 and Section 408.812, Florida Statutes. The Provider should also consult the applicable authorizing statutes and administrative code provisions. The Provider is notified that the cancellation of an Agency license may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

6. An administrative fine \$500.00 is imposed on the Provider, but is STAYED and shall be held in abeyance in accordance with the terms of the Agreement.

7. The Parties, including Ms. Yvette Etienne, shall comply with the remaining terms of the Agreement.

**ORDERED** at Tallahassee, Florida, on this 9 day of September, 2019.

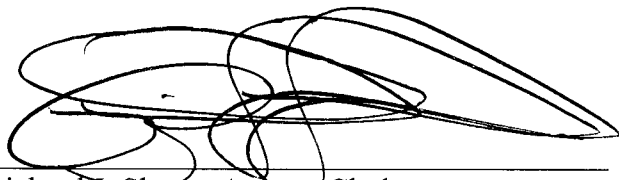
  
\_\_\_\_\_  
Mary C. Mayhew, Secretary  
Agency for Health Care Administration

**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 9<sup>th</sup> day of September, 2019.

  
\_\_\_\_\_  
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)	Keisha Wood, Unit Manager Licensure Unit Agency for Health Care Administration (Electronic Mail)
Central Intake Unit Agency for Health Care Administration (Electronic Mail)	Theresa DeCanio, Field Office Manager Local Field Office Agency for Health Care Administration (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	Nicola L. C. Brown, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
Deborah Warfel Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	John Thomas Buchan, Esq. Jeffrey S. Howell, P.A. <a href="mailto:Tom@jsh-pa.com">Tom@jsh-pa.com</a> Counsel for Yvette Etienne (Electronic Mail)
The Honorable Hetal Desai Administrative Law Judge Division of Administrative Hearings (Electronic Filing)	

### NOTICE OF FLORIDA LAW

#### **408.804 License required; display.--**

- (1) It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.
- (2) A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

#### **408.812 Unlicensed activity. --**

- (1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.
- (2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state

attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.

(4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the Agency.

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,  
v.

Case No. 2018017505  
Facility Type: Adult Family-Care Home

YOLETTE ETIENNE,

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, Yolette Etienne (“Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes (2018), and alleges:

NATURE OF THE ACTION

This is an action against an adult family-care home to impose an administrative fine in the amount of five hundred dollars (\$500.00) based upon one (1) unclassified deficient practice.

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to §§ 20.42, 120.60, and Chapters 408, Part II, and 429, Part II, Florida Statutes (2018).
2. Venue lies pursuant to Florida Administrative Code R. 28-106.207.

PARTIES

3. The Agency is the regulatory authority responsible for licensure of adult family-care homes and enforcement of all applicable regulations, state statutes and rules governing adult

family-care homes pursuant to the Chapters 408, Part II, and 429, Part II, Florida Statutes, and Chapter 58A-14, Florida Administrative Code, respectively.

4. Respondent operates a five (5) bed adult family-care home located at 3500 Plymouth Sorrento Road, Apopka, Florida 32712, and is licensed as an adult family-care home, license number 6906708.

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

6. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

7. That on July 11, 2018, the Agency completed a re-licensure survey of Respondent and its facility.

8. Under Florida law, the agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e), including the adult family-care home provider, the designated relief person, and all adult household members, pursuant to chapter 435 and s. 408.809. § 429617(4), Fla. Stat. (2018).

9. 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. (2018).

10. 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 unless the person's fingerprints are enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h), the person must submit fingerprints electronically 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 shall be retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h) and enrolled in the national retained print arrest notification program when the Department of Law Enforcement

begins participation in the program. 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 a specified agency is fully implemented in the clearinghouse created under s. 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 Families, 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 s. 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 attestation of compliance with chapter 435 and this section using forms provided by the agency. (3) All fingerprints must be provided in electronic format. Screening results shall be reviewed by the agency with respect to the offenses specified in s. 435.04 and this section, and the qualifying or disqualifying status of the person named in the request shall be maintained in a database. The qualifying or disqualifying status of the person named in the request shall be posted on a secure website for retrieval by the licensee or designated agent on the licensee's behalf. § 408.809(2), Fla. Stat. (2018).

11. 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. (2018).

12. 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. (2018).

13. 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. (2018).

14. 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. (2018).

✓15. Under Florida law, Level 2 background screening must be conducted for staff, including staff contracted by the facility to provide services to residents, pursuant to Sections 408.809 and 429.174, F.S. Rule 58A-5.019(3)(f), Florida Administrative Code.

16. Under Florida law, a person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015, in compliance with the following schedule. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from

the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person. The rescreening schedule shall be: (a) Individuals for whom the last screening was conducted on or before December 31, 2004, must be rescreened by July 31, 2013. (b) Individuals for whom the last screening conducted was between January 1, 2005, and December 31, 2008, must be rescreened by July 31, 2014. (c) Individuals for whom the last screening conducted was between January 1, 2009, through July 31, 2011, must be rescreened by July 31, 2015. § 408.809(5), Fla. Stat. (2018).

17. 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.

18. Based upon record review and interview, the Respondent failed to ensure that the facility's staff had the required background screening or exemption for one (1) of two (2) sampled employees, the same being contrary to law.

19. That Petitioner's representative arrived at Respondent's facility on July 11, 2018, at 9:15 a.m., and staff member "C" answered the door, allowing the entry of Agency personnel, who noted staff member "C" going into resident rooms.

20. That on July 11, 2018, at 11:30 a.m., staff member "C" admitted to Petitioner's representative that she provided assistance to residents.

21. That Petitioner's representative reviewed Respondent's personnel records during the survey and noted the following for staff member "C:"
- a. The file contained fingerprints and a letter from the Orange County Sheriff's Office noting the staff member did not have any arrest.
  - b. A work contract noted the staff member was hired on March 20, 2018.
  - c. Absent from the record was any Level 2 criminal background screening.
22. That Petitioner's representative reviewed the Agency's criminal background screening database and could locate no Level 2 criminal history background screening for Respondent's staff member "C."
23. That Petitioner's representative interviewed Respondent regarding staff member "C" and Respondent indicated that she thought the fingerprint result from the Orange County Sheriff showing no arrests could be used.
24. That providers are required to obtain and maintain such records as criminal history background screening for Agency review in personnel records. *See*, Rule 58A-5.024(2)(a), Florida Administrative Code.
25. That Respondent allowed individuals, in an employment or volunteer role, access to residents, their records, and property, without having obtained a criminal history background check on the individual, the same being contrary to the mandates of law.
26. The Respondent's actions or inactions constituted a violation of Sections 429.174 and 408.809, Florida Statutes (2018).
27. 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. (2018).

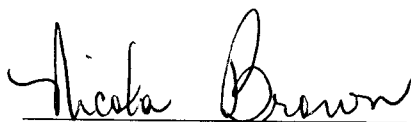
28. Under Florida law, regardless of the class of violation cited, instead of the fine amounts listed in paragraphs (a)-(d), the agency shall impose an administrative fine of \$500 if a facility is found not to be in compliance with the background screening requirements as provided in s. 408.809. § 429.19(2)(e), Fla. Stat. (2018).

29. 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. (2018).

**WHEREFORE**, the Petitioner, State of Florida, Agency for Health Care Administration, seeks to impose an administrative fine of five hundred dollars (\$500.00) against the Respondent.

Respectfully submitted this 5<sup>th</sup> day of February, 2019.

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



Nicola L. C. Brown  
Assistant General Counsel  
Fla. Bar No. 492507  
525 Mirror Lake Dr. N., Suite 330H  
St. Petersburg, Florida 33701  
Telephone: (727) 552-1946  
Fax: (727) 552-1440  
[Nicola.Brown@ahca.myflorida.com](mailto:Nicola.Brown@ahca.myflorida.com)

### **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. 7018 2290 0001 4174 1551 on February 5, 2019, to Yolette Etienne, 3500 Plymouth Sorrento Road, Apopka, Florida 32712.



Nicola L. C. Brown

Copy furnished to:  
Theresa DeCanio, RN  
Field Office Manager

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

Re: **YOLETTE ETIENNE**

**AHCA No.: 2018017505**

**ELECTION OF RIGHTS**

**This Election of Rights form is attached to an Administrative Complaint. The Election of Rights form may be returned by mail or by facsimile transmission, but must be filed with the Agency Clerk within 21 days by 5:00 p.m., Eastern Time, of the day that you received the Administrative Complaint. If your Election of Rights form with your selected option (or request for hearing) is not timely received by the Agency Clerk, the right to an administrative hearing to contest the proposed agency action will be waived and an adverse Final Order will be issued. In addition, please send a copy of this form to the attorney of record who issued the Administrative Complaint.**

(Please use this form unless you, your attorney or your qualified representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.) The address for the Agency Clerk is:

Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Building #3, Mail Stop #3  
Tallahassee, Florida 32308  
Telephone: 850-412-3630 Facsimile: 850-921-0158

**PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS**

**OPTION ONE (1) \_\_\_\_\_ I waive the right to a hearing to contest the allegations of fact and conclusions of law contained in the Administrative Complaint. 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 fine, sanction or other agency action.**

**OPTION TWO (2) \_\_\_\_\_ I admit the allegations of fact contained in the Administrative Complaint, but I wish to be heard at an informal hearing (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, sanction or other agency action should be reduced.**

**OPTION THREE (3) \_\_\_\_\_ I dispute the allegations of fact contained in the Administrative Complaint and request a formal 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 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 agency 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. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number, and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

Licensee Name: \_\_\_\_\_

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

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

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail (Optional) \_\_\_\_\_

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

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

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





22 8017826



RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
SECRETARY

**Certified Article Number**

9414 7266 9904 2134 9063 70

**SENDER'S RECORD**

December 10, 2018

**CERTIFIED**

Yollette Etienne, Administrator  
Etienne, Yollette  
3500 Plymouth Sorrento Rd  
Apopka, FL 32712-5413

File Number: 52963114  
License Number: 6906708  
Provider Type: Adult Family Care Home  
Application Number: 13264

STATE UNIT

**RE: Complaint Number 2018017826 3500 Plymouth Sorrento Rd, Apopka**

DEC 11 2018

Agency for Health  
Care Administration

**Notice Of Intent To Deny for Renewal Adult Family Care Home Application**

Dear Ms. Etienne:

It is the decision of this Agency that Yollette Etienne's renewal application for an Adult Family Care Home license be DENIED.

The Specific Basis for this determination is:

The provider failed to meet minimum licensure requirements pursuant to Sections 408.812; 408.815(1)(b)(c), Florida Statutes; and Section 429.08, Florida Statutes (F.S.).

An unlicensed activity complaint (CCR #2018009922) investigation was conducted on August 13, 2018. The administrator Yollette Etienne was found operating an unlicensed assisted living facility at 2655 Plymouth Sorrento Road, Apopka, Florida. One unclassified deficiency was cited for unlicensed activity.

Due to the provider's substantiated unlicensed activity, pursuant to Sections 408 and 429, Florida Statutes (F.S.), the renewal application for an Adult Family Care Home 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.

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



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m

Etienne, Yolette  
December 10, 2018  
Page #2

**SEE ATTACHED ELECTION AND EXPLANATION OF RIGHTS FORMS.**

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



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

cc: Legal Intake Unit, MS# 3

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Etienne, Yolette  
December 10, 2018

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Etienne, Yolette

Case Number: 2018017826

**ELECTION OF RIGHTS**

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 (2006) 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 hearing (pursuant to Section 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.



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

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,  
v.

YOLETTE ETIENNE

Respondent.

\_\_\_\_\_ /

YOLETTE ETIENNE

Petitioner,  
v.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

\_\_\_\_\_ /

DOAH No: 19-1522  
AHCA No.: 2018017505  
Facility Type: Adult Family-Care Home  
License No: 6906708

DOAH No.: 19-1523  
AHCA No.: 2018017826  
Facility Type: Adult Family-Care Home  
License No: 6906708

**SETTLEMENT AGREEMENT**

The State of Florida, Agency for Health Care Administration (“the Agency”), and Yolette Etienne (“Provider”), 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**, Provider is an adult family-care home licensed pursuant to Chapter 408, Part II, and Chapter 429, Part I, Florida Statutes, and Chapter 58A-14, Florida Administrative Code, and

**WHEREAS**, the Agency has jurisdiction by virtue of being the licensing and regulatory authority over Provider; and

**WHEREAS**, the Agency issued Provider a Notice of Intent to Deny for Renewal Adult

Family-Care Home Application, notifying Provider of the Agency's intent to deny its renewal application in Agency Case Number 2018017826; and

**WHEREAS**, the Agency issued Provider an Administrative Complaint on February 5, 2019, notifying Provider of the Agency's intent to impose an administrative fine in the amount of five hundred dollars (\$500.00) based upon one (1) unclassified deficient practice in Agency Case Number 2018017505; and

**WHEREAS**, Provider requested formal hearings by filing election of rights forms; and

**WHEREAS**, the parties have agreed that a fair, efficient, and cost-effective resolution of this dispute would avoid the expenditure of substantial sums to litigate the dispute; and

**WHEREAS**, the parties stipulate to the adequacy of considerations exchanged; and

**WHEREAS**, the parties have negotiated in good faith 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. All parties agree that the above "whereas" clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Provider agrees to a withdrawal of its request for administrative proceedings, 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 this Agreement shall not be deemed a waiver by either party of its right to judicial enforcement of this Agreement.

4. Provider stipulates and agrees that one hundred percent (100%) of the total fines assessed, or five hundred dollars (\$500.00,) in Agency Case Number 2018017505 shall be placed in abeyance and payable as provided in paragraph nine (9).

5. Provider hereby withdraws its application for licensure renewal.

6. The parties stipulate that the provision of paragraph five (5) above, is a part of the consideration for this Agreement and shall be effectuated without contingency to the adoption of this Agreement as a Final Order of the Agency.

7. Provider further stipulates and agrees that Provider and any business entity in which it holds an interest shall not apply for licensure administered by law by the Agency for Health Care Administration, nor shall Provider obtain or maintain any interest in any business entity which holds licensure administered by law by the Agency for Health Care Administration for at least five (5) years from the date of the Final Order.

8. Should Provider apply for licensure from the Agency for Health Care Administration within five (5) years from the date of the Final Order, either as a principal or as one holding an ownership interest in any business entity applying for licensure, the application shall be denied by the Agency, and Provider waives, on behalf of itself and/or any business entity in which Provider owns an interest, any and all right to seek judicial review of any such license application denial in any forum, state or federal, judicial or quasi-judicial.

9. Should Provider apply for licensure from the Agency for Health Care Administration, either as a principal or as one holding an ownership interest in any business entity applying for licensure, payment of the sum of five hundred dollars (\$500.00), assessed in Agency Case Number 2018017505, which has been placed in abeyance pursuant to the provisions of

paragraph four (4) above, shall be immediately due and payable.

10. Venue for any action brought to interpret, enforce or challenge the terms of this Agreement and its corresponding Final Order shall lie solely in the Circuit Court of Florida, in and for Leon County, Florida.

11. By executing this Agreement, Provider denies the facts and legal conclusions raised in the Administrative Complaint and Notice of Intent to Deny for Renewal Adult Family-Care Home Application referenced herein, and the Agency asserts the validity thereof. Nothing in this Agreement shall be deemed to preclude the Agency from using this assessment of fines in weighing future administrative actions regarding Provider including, but not limited to, decisions regarding the licensure of Provider, including, but not limited to, licensure for limited mental health, limited nursing services, or extended congregate care. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Provider 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 Complaints and Notice of Intent to Deny for Renewal Adult Family-Care Home Application.

12. 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.

13. Each party shall bear its own costs and attorney's fees.

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

15. Provider, for itself and for its related or resulting organizations, successors, transferees, attorneys, heirs, and executors or administrators, discharges 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 Provider or its related or resulting organizations.

16. This Agreement is binding upon all parties and those persons and entities that are identified in the above paragraph.

17. In the event that Provider was a Medicaid provider at the time of the occurrences alleged in the Administrative Complaint and the Notice of Intent to Deny for Renewal Adult Family-Care Home Application, this Agreement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any further sanctions pursuant to Rule 59G-9.070, Florida Administrative Code. This Agreement does not settle any pending or potential federal issues against Provider. This Agreement does not prohibit the Agency from taking any action regarding Provider's Medicaid provider status, conditions, requirements or contract, if applicable.

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

19. This Agreement contains the entire understandings and agreements of the parties.

20. This Agreement supersedes any prior oral or written agreements between the parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

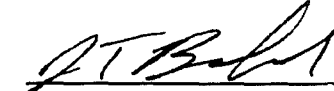
21. All parties agree that a facsimile signature suffices for an original signature.

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



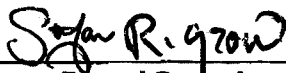
Molly McKinstry, Deputy Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Bldg. #1  
Tallahassee, Florida 32308

DATED: 9/5/19



Thomas Buchan, Esq.  
Counsel for Provider  
Jeffrey S. Howell, P.A.  
2898-6 Mahan Drive  
Tallahassee, Florida 32308

DATED: 8-15-19



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

DATED: 9-5-2019



Nicola L. C. Brown  
Assistant General Counsel  
Agency for Health Care Administration  
525 Mirror Lake Drive North, Ste. 330H  
St. Petersburg, Florida 33701

DATED: 8-16-19



Yvette Etienne  
3800 Plymouth Sorrento Road  
Apopka, Florida 32712

DATED: 8/14/19