

2020 SEP 17 A 10:28

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

GV MELBOURNE, INC. d/b/a GRAND
VILLA OF MELBOURNE,

Respondent.

DOAH No. 20-1555
Case Nos. 2019015785
2020008322

License No. 11991
Facility Type: Assisted Living

RENDITION NO.: AHCA-20-659 -S-OLC

FINAL ORDER

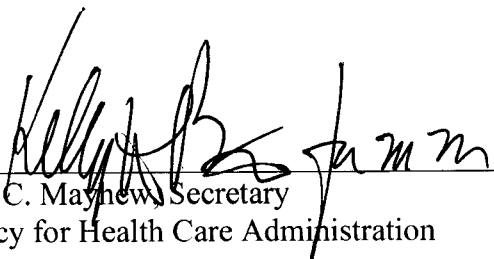
Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1). The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2).

2. The Respondent shall pay the Agency \$5,500.00. 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. A check made payable to the "Agency for Health Care Administration" and 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 at Tallahassee, Florida, on this 17th day of September, 2020.



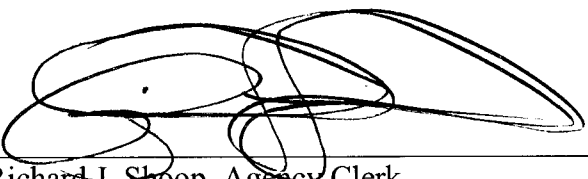
Mary C. Maynew, Secretary
Agency for Health Care Administration

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 17th day of September, 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)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Mary J. Howard, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Mia L. McKown, Esq. Counsel for Respondent 315 South Calhoun Street, Suite 600 Tallahassee, Florida 32302 (U.S. Mail)
Division of Administrative Hearings (Electronic Filing)	

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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GV MELBOURNE, INC. d/b/a GRAND
VILLA OF MELBOURNE,

Respondent.

Case No. 2019015785

License No. 11991

Facility Type: Assisted Living

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 GV Melbourne, Inc. d/b/a Grand Villa of Melbourne (“Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes (2019), and alleges:

NATURE OF THE ACTION

This is an action against an assisted living facility to impose an administrative fine in the amount of five thousand dollars (\$5,000.00) based upon one (1) Class II deficient practice.

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to §§ 20.42, 120.60, and Chapters 408, Part II, and 429, Part I, Florida Statutes (2019).
2. Venue lies pursuant to Florida Administrative Code R. 28-106.207.

PARTIES

3. The Agency is the regulatory authority responsible for licensure of assisted living facilities and enforcement of all applicable federal regulations, state statutes and rules governing assisted living facilities pursuant to the Chapters 408, Part II, and 429, Part I, Florida Statutes,

and Chapter 59A-36, Florida Administrative Code, respectively.

4. Respondent operates a one hundred fifty-five (155) bed assisted living facility located at 964 S Harbour City Blvd, Melbourne, Florida 32901, and is licensed as an assisted living facility, license number 11991.
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 Florida law provides:

An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) SUPERVISION. Facilities shall offer personal supervision, as appropriate for each resident, including the following:

(a) Monitor the quantity and quality of resident diets in accordance with Rule 59A-36.012, F.A.C.

(b) Daily observation by designated staff of the activities of the resident while on the premises, and awareness of the general health, safety, and physical and emotional well-being of the individual.

(c) General awareness of the resident's whereabouts. The resident may travel independently in the community.

(d) Contacting the resident's health care provider and other appropriate party such as the resident's family, guardian, health care surrogate, or case manager if the resident exhibits a significant change.

(e) Contacting the resident's family, guardian, health care surrogate, or case manager if the resident is discharged or moves out.

(f) Maintaining a written record, updated as needed, of any significant changes, any illnesses that resulted in medical attention, changes in the method of medication administration, or other changes which resulted in the provision of additional services.

Rule 59A-36.007(1), Florida Administrative Code.¹

8. That Florida law provides:

¹ Formerly codified at Rule 58A-5.0182(1), Florida Administrative Code.

(7) The facility must notify a licensed physician when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment. The notification must occur within 30 days after the acknowledgment of such signs by facility staff. If an underlying condition is determined to exist, the facility shall arrange, with the appropriate health care provider, the necessary care and services to treat the condition.
Section 429.26(7), Florida Statutes (2018).

9. That on March 18, 2019, the Agency completed an Assisted Living Facility (ALF) relicensure survey of Respondent's facility.

10. That based upon the review of records, observation, and interview, Respondent failed to provide care and services required to meet the needs of residents accepted for admission to the facility, including 1 of 2 sampled residents who developed an un-stageable pressure sore, the same being contrary to the requirements of law.

11. During the facility entrance on March 18, 2019, the director of nursing identified resident number eight (8) as receiving home health services for a skin tear to the heel.

12. That Petitioner's representative reviewed Respondent's records for resident number eight (8) during the survey and noted as follows:

- a. The resident's health assessment report (AHCA Form 1823) dated September 7, 2018 listed diagnoses of peripheral vascular disease, coronary artery disease, neuropathy and atrial fibrillation. The health assessment indicated a "healing" stage 2 pressure sore.
- b. The Form indicated supervision was needed with ambulation, bathing, dressing and toileting, and that the resident was independent with eating and grooming.
- c. A facility note dated March 13, 2019, indicated the resident returned to the facility after a hospital stay.

- d. The facility care plan, dated March 13, 2019, indicated there were no pressure sores and that the resident only needed physical therapy services.
- e. An undated health assessment report indicated there were no pressure sores.
- f. The home health care start of care order dated March 15, 2019, indicated skilled nursing to treat left heel un-stageable ulcer. The description of the wound was round and necrotic, (English Oxford dictionary death of tissue due to injury or failure of blood supply), measured 5 by 6 by 0.1 centimeters.
- g. A facility note dated March 26, 2019, indicated the resident had an open area on the left heel covered (no description in notes). This was the only documentation available regarding the pressure sore.
- h. Record review did not reveal any written evidence of measures the facility put in place, and instructions given to caregivers, regarding the care of the resident who was prone to the development of a pressure sore.
- i. There were no facility notes that indicated the facility was aware of the pressure sore.

13. That Petitioner's representative interviewed Respondent's home health nurse on March 18, 2019 who indicated:

- a. She saw resident number eight (8)'s wound earlier that day and it looked like a blister that never ruptured.
- b. The home health nurse was concerned about the wound because when pressed down it was "boggy (spongy)".

14. That Petitioner's representative observed resident number eight (8)'s heel and noted a round necrotic area.

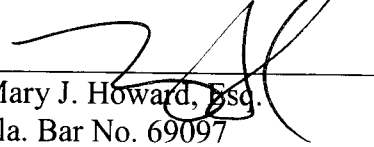
15. That Petitioner's representative interviewed Respondent's director of nursing on March 18, 2019 at 3:30 p.m. who offered no comment on resident number eight (8)'s pressure sore.
16. No other documentation was provided.
17. That the above reflects the failure of Respondent to provide care and services appropriate to resident needs.
18. The Agency determined that this deficient practice was a condition or occurrence related to the operation and maintenance of a provider or to the care of clients which directly threatens the physical or emotional health, safety, or security of the clients, other than class I violations.
19. That the same constitutes a Class II offense as defined in Florida Statute § 408.813(2)(b), Fla. Stat. (2018).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five thousand dollars (\$5,000.00) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.19(2)(b), Florida Statutes (2018).

Respectfully submitted this 31 day of October, 2019.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION

The Sebring Building
525 Mirror Lake Dr. N., Suite 330
St. Petersburg, Florida 33701
Telephone: (727) 552-1946
Fax: (727) 552-1440
Mary.Howard@ahca.myflorida.com

By: 
Mary J. Howard, Esq.
Fla. Bar No. 69097

NOTICE

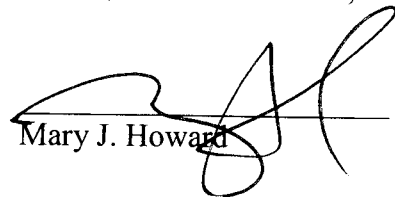
The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative 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. 7019 1120 0000 9811 4303 on October 31, 2019, to Nina Corsi, Administrator, GV Melbourne, Inc. d/b/a Grand Villa of Melbourne, 964 S Harbour City Blvd, Melbourne, Florida 32901 and by Regular U.S. Mail to Dennis Forte, Registered Agent for GV Melbourne, Inc. d/b/a Grand Villa of Melbourne, 13770 58th St N, Suite 312, Clearwater, Florida 33760.


Mary J. Howard

Copy furnished to:
Theresa DeCanio
Field Office Manager
Agency for Health Care Administration

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

Re: **GV Melbourne, Inc. d/b/a Grand Villa of Melbourne**

AHCA No. 2019015785

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 #7
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: _____

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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VILLA OF MELBOURNE,

Respondent.

DOAH No. 20-1555
Case Nos. 2019015785
2020008322
License No. 11991
Facility Type: Assisted Living

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and GV Melbourne, Inc. d/b/a Grand Villa of Melbourne (hereinafter "Respondent"), 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 licensed pursuant to Chapters 429, Part I, and 408, Part II, Florida Statutes, Section 20.42, Florida Statutes and Chapter 59A-36, Florida Administrative Code; and

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

WHEREAS, the Agency served Respondent with an Administrative Complaint on or about October 31, 2019, notifying Respondent of the Agency's intent to impose administrative fines in the sum of five thousand dollars (\$5,000.00); and

EXHIBIT 2

WHEREAS, the Agency completed surveys of Respondent on March 18, 2019 and May 13, 2019 (hereinafter “Surveys”), during which deficient practices were cited; that included Tag 78 and Tag 25 on both dates; subjected Respondent to the imposition of Class III deficient practices; and subjected Respondent to the imposition of administrative sanctions in Agency Case Number 2020008322; and

WHEREAS, Respondent has timely filed a Petition for Formal Administrative Hearing as to the Complaint; and

WHEREAS, the Agency completed a survey of Respondent and its Facility on March 18, 2019 (hereinafter “Survey A”),¹ during which deficient practices, including “A0078” and “A0025,” were cited; and

WHEREAS, the Agency completed a survey of Respondent and its Facility on May 13, 2019 (hereinafter “Survey B”),² during which deficient practices, including “A0078” and “A0025,” were cited; and

WHEREAS the citation of the above referenced deficient practice in Survey B subjects Respondent to the imposition of administrative sanctions of five hundred dollars (\$500.00); and

WHEREAS, the Parties have agreed to an amicable resolution of these cases; 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.

¹ The findings of the survey were reduced to a state form 3020.

² The findings of the survey were reduced to a state form 3020.

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, informal proceedings under Subsection 120.57(2), Florida Statutes, formal proceedings under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement. Respondent specifically waives the necessity of the drafting of or service of an Administrative Complaint for the relief stipulated to in this Agreement as the same relates to Survey A and Survey B (hereinafter “Surveys”).

4. Upon full execution of this Agreement, Respondent agrees to pay five thousand five hundred dollars (\$5,500.00) in administrative fines within thirty (30) days of the entry of the Final Order; and

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 raised in the Administrative Complaint and Surveys referenced herein, and the Agency asserts the validity of the allegations raised in the Administrative Complaint and Surveys referenced herein.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the Administrative Complaint and Surveys in any decision regarding licensure of Respondent, including, but not limited to, a demonstrated pattern of deficient performance, but the allegations will not be the sole basis for future Agency action. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of

the Agency. 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 Survey. 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 cases.

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

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

11. Respondent for itself and for its related or resulting organizations, 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 eleven (11) of this Agreement.

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 thirty-one (31) 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.

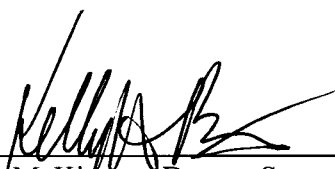
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

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

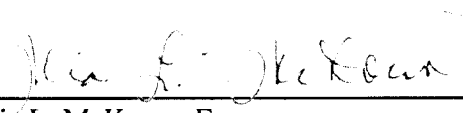
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

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

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



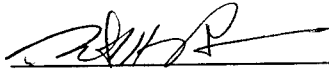
Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308



Mia L. McKown, Esq.
Counsel for Respondent
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32302
Florida Bar No. 0897140

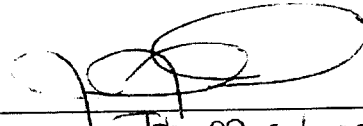
DATED: 9-17-20

DATED: 08/24/20



William H. Roberts
Acting General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

DATED: 9/15/20



Name: John Maschner
Title: Asst Secretary
GV Melbourne, Inc. d/b/a Grand Villa of
Melbourne

DATED: 8/20/20



Mary J. Howard, Senior Attorney
Agency for Health Care Administration
525 Mirror Lake Drive North, Suite 330
St. Petersburg, Florida 33701
Florida Bar No. 69097

DATED: 8/28/20