

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
AHCA  
AGENCY CLERK

2021 JAN 27 A 8:16

SWAN AT LAKE CONWAY ASSISTED  
LIVING FACILITY, INC. d/b/a SWAN AT  
LAKE CONWAY ALF,

Petitioner,

**DOAH No.:** 20-1939

vs.

**AHCA No.:** 2020003474

**License No.:** 11542

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

**File No.:** 11967498

**Provider Type:** ALF

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

**RENDITION NO.:** AHCA-21-026-S-OLC

SWAN AT LAKE CONWAY ASSISTED  
LIVING FACILITY, INC. d/b/a SWAN AT  
LAKE CONWAY ALF,

Petitioner,

**AHCA No.:** 2019009345

vs.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

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

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

**AHCA Nos.:** 2019012164

2019012167

2019012220

Petitioner,

2019012222

2019015241

v.

2020003237

2020003246

SWAN AT LAKE CONWAY ASSISTED  
LIVING FACILITY, INC. d/b/a SWAN AT  
LAKE CONWAY ALF,

2020003249

2021000735

Respondent.<sup>1</sup>  
\_\_\_\_\_ /

<sup>1</sup> The Provider is the respondent for the regulatory fine cases.

## **FINAL ORDER**

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

1. The Agency issued the attached Notice of Intent to Deem Renewal Application Incomplete and Withdrawn from Further Consideration to Swan. (Ex. 1). The Agency subsequently issued the attached Amended Notice of Intent to Deny Renewal Application to Swan. (Ex. 2). The Parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 3)

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

2. The Provider's license, license number 11542 is deemed SURRENDERED on April 30th, 2021 unless, and only if, the Agency receives a completed Change of Ownership application ("CHOW") from a third-party applicant and issues a provisional license to such an applicant prior to April 30, 2021.

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.

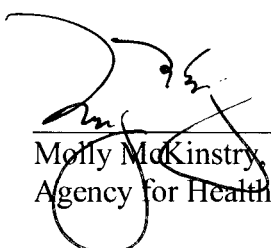
4. In accordance with Florida law, the Provider is responsible for any refunds that may have to be made to the clients.

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. The Provider and its controlling interest shall comply with the licensure terms set forth in the Settlement Agreement.

7. The administrative fines and survey fees, which total \$16,453.71, will be held in abeyance in accordance with the terms of the Settlement Agreement.

**ORDERED** in Tallahassee, Florida, on this 26 day of January, 2021.

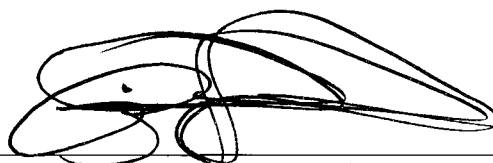
  
\_\_\_\_\_  
Molly McKinstry, Deputy Secretary  
Agency for Health Care Administration

**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 27<sup>th</sup> day of January, 2021.



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 Woods, Unit Manager Assisted Living Licensure Unit Agency for Health Care Administration (Electronic Mail)
Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail)	Theresa DeCanio, Field Office Manager Local Field Office – Area 07 Agency for Health Care Administration (Electronic Mail)
Nicholas Constantino Medicaid Contract Management Agency for Health Care Administration (Electronic Mail)	Andrew B. Thornquest, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
Aster Bati, 100% Controlling Interest Swan at Lake Conway Assisted Living Facility, Inc. d/b/a Swan at Lake Conway ALF 3714 Saint Moritz Street Orlando, Florida 32812 (U.S. Mail)	Rickey L. Strong, Esquire Jeffrey S. Howell, P.A. 2898-6 Mahan Drive Tallahassee, Florida 32308 Counsel for Provider (Electronic Mail and U.S. Mail) <a href="mailto:rick@jsh-pa.com">rick@jsh-pa.com</a>
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 license holder 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.