

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

GENTLE CARE ASSISTED LIVING, INC. 2,

CASE NO.: 18-703PH

AHCA NO.: 2018011313

RENDITION NO.: AHCA 19-0015 -S-00

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 Respondent ("the Applicant") the attached Notice of Intent to Impose Fine. Ex. 1) The parties entered into the attached Settlement Agreement (Ex. 2), which is adopted and incorporated by reference.

2. The parties shall comply with the terms of the Settlement Agreement. The Applicant shall pay the Agency an administrative fee of \$250.00 within 30 days of the entry of this Final Order. 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. 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 2 day of January, 2019.



Justin M. Senior, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party that is adversely affected by this Final Order is entitled to seek judicial review which shall be instituted by filing one copy of a notice of appeal with the agency clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the below-named persons/entities by the method designated on this 22nd day of January, 2019.



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

Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Maurice Boetger, Assistant General Counsel Office of General Counsel Agency for Health Care Administration (Electronic Mail)	Maria Posada-Ricci, Esquire America Immigration Attorneys Miami, PLLC 40 SW 13 th Street, Suite 301 Miami, Florida 33130 (U.S. Mail)



2018011313
RICK SCOTT
GOVERNOR

JUSTIN M. SENIOR
SECRETARY

Certified Article Number

9414 7266 9904 2131 3266 45

SENDER'S RECORD

August 2, 2018

CERTIFIED/READ RECEIPT

Emma Pronesti, Administrator
Gentle Care Assisted Living Inc. 2
77-A Brunswick Lane
Palm Coast, FL 32137

File Number: 11967108
License Number: 11197
Provider Type: Assisted Living Facility
RECEIVED
FACILITY INT

RE: Complaint Number 2018011313

AUG 06 2018

NOTICE OF INTENT TO IMPOSE FINE

Agency for Health
Care Administration

Pursuant to Section 408.813(3), Florida Statutes (F.S.), a fine of \$500.00 is imposed upon the licensee due to the failure to meet the requirements of Rule 58A-5.036, Florida Administrative Code (F.A.C.) regarding emergency environmental control requirements for assisted living facilities. Under Rule 58A-5.036, F.A.C., each assisted living facility licensed prior to March 26, 2018 is required to submit a detailed emergency environmental control plan to the local emergency management agency for review and approval by April 25, 2018 that detailed:

- (a) The acquisition of a sufficient alternate power source such as a generator(s), maintained at the assisted living facility, to ensure that current licensees of assisted living facilities will be equipped to ensure ambient air temperatures will be maintained at or below 81 degrees Fahrenheit for a minimum of ninety-six (96) hours in the event of the loss of primary electrical power.
- (b) The acquisition of sufficient fuel, and safe maintenance of that fuel at the facility, to ensure that in the event of the loss of primary electrical power there is sufficient fuel available for the alternate power source to maintain ambient temperatures at or below 81 degrees Fahrenheit for a minimum of ninety-six (96) hours after the loss of primary electrical power during a declared state of emergency. The plan must include information regarding fuel source and fuel storage.
- (c) The acquisition of services necessary to maintain, and test the equipment and its functions to ensure the safe and sufficient operation of the alternate power source maintained at the assisted living facility.
- (d) The acquisition and maintenance of a carbon monoxide alarm.

Furthermore, "within two (2) business days of the approval of the plan from the local emergency management agency, the assisted living facility shall submit in writing proof of the approval to the Agency for Health Care Administration. The assisted living facility shall submit a consumer-friendly summary of the emergency power plan to the Agency."

Additionally, each assisted living facility licensed prior to March 26, 2018 shall implement their plan no later than June 1, 2018.

2227 Mahan Drive • MS#30
Tallahassee, FL 32308
AHCA.MyFlorida.com



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

EXHIBIT "1"

The Agency sent a certified letter (Notice of Apparent Violation) regarding these requirements. The certified letter instructed the licensee to submit information or documentation to the Agency about its compliance with the provisions of Rule 58A-5.036, F.A.C. within five business days of receiving the letter. As of the date of this letter, the Agency has not received any information or documentation that demonstrates the facility's compliance with the provisions of Rule 58A-5.036, F.A.C. The licensee is still required to meet the emergency environmental control requirements outlined in Rule 58A-5.036, F.A.C. The licensee is cautioned that a continued violation of this requirement may result in an additional monetary sanction against the licensee or even licensure revocation or suspension.

EXPLANATION OF RIGHTS

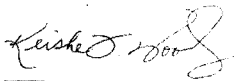
Pursuant to Section 120.569, F.S., any party has the right to request an administrative hearing by filing a request with the Agency Clerk. In order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), F.S., however, a party must file a request for an administrative hearing that complies with the requirements of Rule 28-106.2015, F.A.C. Specific options for requesting an administrative hearing are set out in the attached Election of Rights form.

The Election of Rights form or request for hearing must be filed with the Agency Clerk for the Agency for Health Care Administration within 21 days of the day that the Notice of Intent is received. If the Election of Rights form or request for hearing is not timely received by the Agency Clerk by 5:00 p.m. Eastern Time by the 21st day, the right to a hearing will be waived. The Election of Rights form shall be addressed to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630, Facsimile (850) 921-0158.

Any party who appears in an Agency proceeding has the right, at the party's own expense, to be accompanied, represented, and advised by counsel or other qualified representative. Mediation under Section 120.573, F.S., is available if the Agency agrees, and if available, the pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

PLEASE SEE THE ATTACHED ELECTION OF RIGHTS FORM.

If you have any questions or need further assistance, please contact the Agency Clerk's office at (850) 412-3630.



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

cc: Legal Intake Unit, MS# 3

Gentle Care Assisted Living Inc. 2
August 2, 2018

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: Gentle Care Assisted Living Inc. 2

Case Number: 2018011313

ELECTION OF RIGHTS

This Election of Rights form is attached to the Notice of Intent. The Election of Rights form may be returned by mail or facsimile transmission, but must be received by the Agency Clerk within 21 days, by 5:00 pm, Eastern Time, of the day you received the Notice of Intent. If your Election of Rights form or request for hearing is not received by the Agency Clerk within 21 days of the day that you received the Notice of Intent, you will have waived your right to contest the proposed agency action and a Final Order will be issued imposing the fine alleged in the Notice of Intent.

Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code. Please return your Election of Rights form to this address:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, 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 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.

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 28-106.2015, Florida Administrative Code, which requires that it contain:

- 1 The name, address, any e-mail address, telephone number, and facsimile number, if any, of the respondent, if the respondent is not represented by an attorney or qualified representative.
- 2 The name, address, e-mail 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.

License Type: Assisted Living Facility License Number: 11197

Licensee Name: Gentle Care Assisted Living Inc. 2

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**

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

Case No. 18-703PH
AHCA No. 2018011313

GENTLE CARE ASSISTED LIVING, INC. 2,

Respondent.

SETTLEMENT AGREEMENT

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

1. **Background.** The Agency issued a Notice of Intent to Impose Fine ("NOI") to the Provider based upon the Provider's alleged failure to timely meet the emergency environmental control requirements for assisted living facilities.

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 closing of any files that may be pending before an informal hearing officer or administrative law judge.

3. **Terms.** The Provider agrees to pay the Agency \$250.00 within 30 days of the Final Order approving this Agreement. The Provider shall comply with the emergency environmental control rule requirements and recognizes that this Agreement does not alleviate the Provider from complying with the rule. Should the Provider fail to comply with the rule, the Agency may take action against the Provider in the future. Should the Agency do so, the Provider shall have all rights provided under Florida law to challenge the agency action.

4. **Release.** The Provider 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.

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

6. **Right to Counsel.** The Provider acknowledges the right to retain independent counsel and has either obtained its own counsel or voluntarily waived the right to counsel. The Provider further

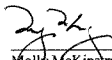
acknowledges that Agency counsel represents solely the Agency and that Agency counsel has not provided any legal advice to, or influenced, the Provider in the voluntary decision to enter into this Agreement.

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

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

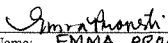
9. **Execution of Agreement.** Both parties agree that an electronic signature suffices for an original signature, that an electronic or facsimile copy suffices for an original document, and that this Agreement may be executed in counterparts. This Agreement shall be effective upon full execution by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

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



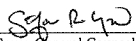
Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Bldg. #3
Tallahassee, Florida 32308

DATED: 11/2/19



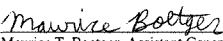
Name: EMMA PRONESTI
Gentle Care Assisted Living, Inc. 2
77-A Brunswick Lane
Palm Coast, Florida 32137

DATED: 11/30/18



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: 12/27/18



Maurice T. Boetger, Assistant General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #7
Tallahassee, Florida 32308

DATED: 11/30/18