

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

REHABILITATION CENTER AT
HOLLYWOOD HILLS, LLC,

Plaintiff,

CASE NO. 2017 CA 001941

v.

STATE OF FLORIDA, AGENCY FOR HEALTH
CARE ADMINISTRATION,

Defendant.

PLAINTIFF HOLLYWOOD HILLS'
VERIFIED COMPLAINT FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF

Plaintiff, Rehabilitation Center at Hollywood Hills, LLC ("Hollywood Hills"), files this complaint for injunctive relief against Defendant, State of Florida, Agency for Health Care Administration ("Agency" or "AHCA") and alleges as follows:

NATURE OF CASE

1. This Circuit Court has authority to issue injunctive relief pursuant to sections 26.012(3), 120.569(n)(2), and 120.60(6)(c), Florida Statutes, as well as Florida Rule of Civil Procedure 1.610 (Injunctions). AHCA is a state agency that exceeded its statutory authority by issuing immediate emergency orders that are devoid of required specific factual allegations setting forth any emergency threat to public health, safety or welfare that is continuing and ongoing.

2. Hollywood Hills brings this action against AHCA seeking entry of temporary and permanent injunctions to prevent and prohibit the enforcement of two inter-related Administrative Orders that were improperly issued (on September 13 and 14, 2017) by AHCA in violation of Plaintiff's clear legal rights. The actions by AHCA have caused and will continue to cause

immediate and irreparable harm to Hollywood Hills, in violation of clear legal rights, for which there is no adequate remedy at law. The interests of the public will be served by entry of an injunction preventing enforcement of the illegal and improper Administrative Orders. A true and correct copy of the Administrative Orders at issue are attached hereto as *Exhibit A* (Immediate Moratorium on Admissions, Sept. 13, 2017), and *Exhibit B* (Immediate [Medicaid] Suspension Final Order, Sept. 14, 2017). The Administrative Orders may sometimes be referred to as Orders.

3. This case arises from events related to the historic and unprecedented catastrophic damage wrought by Hurricane Irma on the State of Florida and its residents. The fury of this storm left over six Million Florida residents without electrical power for days after the initial effects of the storm were first felt. As of this filing, many residents of the state remain without electrical power.

4. Plaintiff, Hollywood Hills, is a licensed nursing home provider in Florida operating as a 152-bed skilled nursing facility located in Broward County, Florida.

5. Hollywood Hills is devastated by the lives lost during this unparalleled Florida hurricane and has sent its thoughts and prayers to the families who have suffered and its staff who did their best to provide care to its residents.

6. Through the two Administrative Orders at issue, AHCA seeks to essentially shut down Hollywood Hills' nursing home operations by (a) immediately suspending Hollywood Hills' participation in the state Medicaid program which provides reimbursement for nursing home services to qualified low income residents, and (b) imposing an immediate moratorium on admissions to the nursing home.

7. These actions by AHCA do not meet the essential requirements of law for entry of immediate emergency orders by a state agency because the Administrative Orders are completely devoid of any factual allegations, and as stated, lack the required specificity and particularity, as to any improper conduct or wrongdoing on the part of Hollywood Hills. Instead, the Administrative Orders rely upon innuendo, implied speculation and conjecture to conclude that the deaths of eight residents of the nursing home must have been caused by some unstated improper care or inappropriate action by the nursing home operator. The Administrative Orders do not provide any factual basis whatsoever or cite to even a single alleged deficiency or violation of any rule, regulation or requirement of nursing home providers as to hurricane preparedness, hurricane evacuations or response actions, or standard of care for residents.

8. The Administrative Orders recite nothing more than Hollywood Hills, like most residents of Florida, lost electrical power for air conditioning to the building (but, otherwise maintained all other electrical power) during a severe natural disaster and that eight (8) nursing home residents “ultimately expired.” The Administrative Orders do not state that the resident deaths were caused by the loss of central air conditioning (since the nursing home at all times utilized portable spot air conditioners) or by any other improper conduct within the control of Hollywood Hills; the Administrative Orders do not state where the residents “ultimately expired” (under care of the nursing home or elsewhere after evacuation¹); and the Administrative Orders do not provide any further specific factual information to justify the actions taken by AHCA in

¹See, e.g., attached *Exhibit C*, Affidavit of Dr. David Goldberg, indicating that for example, “the trauma of transferring residents, including leaving residents outdoors for extended periods of time, can cause or contribute to the residents’ worsening of medical conditions and death.”

immediately suspending Hollywood Hills from the Medicaid program and imposing the immediate moratorium on current and future admissions.

9. AHCA imposed these actions immediately without advance notice or opportunity for Hollywood Hills to be heard, notwithstanding that severe and potentially devastating sanctions are imposed.

10. There is no longer any emergency condition at the nursing home specifically or in the state of Florida generally. The Hurricane has passed, and all electrical power for central air conditioning to Hollywood Hills was fully restored prior to entry of the Administrative Orders at issue. Thus, the administrative actions are not seeking to prevent future harm, but rather are being used as a means to impose sanctions for perceived (and unstated) past violations without affording Hollywood Hills the right to a fair hearing before such sanctions are imposed.

11. For the reasons set forth in this Complaint, an injunction should be issued to preclude enforcement of the two improperly issued Administrative Orders. AHCA has pointed to the tragedy of eight (8) resident deaths to justify its actions. The loss of life during a natural disaster is certainly a tragic occurrence. However, such tragedy does not relieve AHCA from its duty to comply with essential requirements of law.

SUMMARY OF LAW AS TO IMMEDIATE FINAL ORDERS

12. Issuance of emergency final orders by state agencies is generally governed by section 120.569(2)(n) Florida Statutes, which provides:

If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoined from the date rendered.

(Emphasis added.)

13. Additionally, as to actions taken in relation to a state licensee, including health facility licenses, section 120.60, provides:

(6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:

(a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and

(c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

(Emphasis added.)

14. The applicable standard of review for immediate emergency orders is whether, *on its face*, the order sufficiently states particularized facts showing an immediate danger to the public welfare." Robin Hood Group, Inc. v. Florida Office of Insurance Regulation, 885 So. 2d 393, 396 (Fla. 4th DCA 2004). See also Broyles v. Department of Health, 776 So. 2d 340 (Fla. 1st DCA 2001).

15. Florida courts have kept agencies from abusing the imposition of emergency moratoriums where immediacy of public harm is lacking. See, e.g., Henson v. Department of Health, 922 So. 2d 376 (Fla. 1st DCA 2006) (department's emergency order suspending doctor's license to practice osteopathic medicine quashed as broader than necessary to protect the public

and order could have been narrowly tailored to prevent narcotics prescriptions until administrative proceeding had been completed); Cunningham v. AHCA, 677 So. 2d 61 (Fla. 1st DCA 1996) (emergency suspension of psychiatrist's license was too broad in that it could be more narrowly tailored to the specific treatment of prescribing narcotics and treating only the three patients allegedly harmed by doctor's actions); Duabe v. Department of Health, 897 So. 2d 493, 495 (Fla. 1st DCA 2005) (emergency order to suspend petitioner's license before administrative complaint was issued was unnecessary where petitioner stopped using the unapproved product on patients and destroyed his remaining supply before the emergency order was issued).

16. In this case, AHCA offers no explanation for the blanket "shut down" of operations, and why a less drastic measure would be insufficient to protect the public, if any measure is needed at all, other than a routine investigation to determine what measures, if any, could have been taken under the unprecedented environmental conditions which occurred state-wide post Hurricane Irma.

17. AHCA's required recitation of the specific particularized facts and reasons for finding immediate serious harm to the public, and the consequent necessity for the Emergency Orders, are totally lacking. The stated facts must be more than a general, conclusory prediction of harm. White Construction Co., Inc. v. State, Department of Transportation, 651 So. 2d 1302 (Fla. 1st DCA 1995). The existence of a genuine emergency must be made within the four corners of the agency's order. Id. Furthermore, even a showing of a licensee's propensity to commit future violations (not present here) is not enough. Witmer v. Department of Business and Professional Regulation, 631 So. 2d 338 (Fla. 4th DCA 1994). There must be sufficient specific and particularized facts stated that demonstrate an immediate ongoing danger to the public. Id. at 341.

18. In St. Michael's Academy, Inc. v. State, Department of Children and Families, 965 So. 2d 169 (Fla. 3rd DCA 2007), the court rejected the necessity of a moratorium issued by the Department of Children and Families because the facts alleged in the emergency order did not establish an immediate serious danger to the public health, safety or welfare. Id. at 170. The department alleged four separate incidents to support its moratorium: first, a child walked away from the facility, into a street, unsupervised; second, the facility did not have adequate personnel records; third, a child was bitten and injured by another child; and fourth, the facility failed to have a credentialed director on site. Id. at 171. In its analysis, the court ruled that the moratorium must present facts that the complained of conduct was likely to continue, the order was necessary to stop the emergency, and the order was sufficiently narrowly tailored to be fair. Id. at 172, citing Bio-Med Plus, Inc. v. Department of Health, 915 So. 2d 669 (Fla. 1st DCA 2005). The court concluded that the facts alleged by the department did not identify particularized facts demonstrating an immediate danger and are merely speculative as to general future harm to the children at St. Michael's. Id. at 172-173.

19. As to the Medicaid suspension Order, section 409.913(15)(p), Florida Statutes provides for specific standards for Medicaid immediate suspension actions and provides that such action can be taken if "*The agency has received reliable information of patient abuse or neglect or of any act prohibited by section 409.920.*" Moreover, section 409.913(16), Florida Statutes further specifies that any such immediate suspension must be followed by an emergency final order that is issued in accordance with the requirements of section 120.569(2)(n), Florida Statutes discussed above, which mandates that the agency order recite with particularity the facts upon which the need for an immediate emergency order is based.

20. Each emergency order must demonstrate or explain why the complained-of conduct is likely to continue. Such emergency orders cannot be used to punish past behavior. Unless the harmful conduct in question is likely to continue, an agency must forego an emergency order and initiate a Chapter 120 administrative proceeding. See, e.g., Daube, 897 So. 2d at 495; Bio-Med, 915 So. 2d at 673; and Crudele v. Nelson, 698 So. 2d 879, 880 (Fla. 1st DCA 1997).

**THE ORDERS ARE INVALID DUE TO LACK OF REQUIRED
SPECIFICITY AND PARTICULARITY AND LACK OF ANY IDENTIFIED
IMMEDIATE AND CONTINUING THREAT TO PUBLIC SAFETY**

21. The Administrative Orders at issue lack any specificity or particularity as to the alleged emergency condition purportedly being addressed by entry of the orders. These Orders are remarkable in the lack of any specific factual information to support the existence of any emergency situation or ongoing threat to public health safety or welfare or any facts to support entry of an immediate order without opportunity for a normal administrative hearing process prior to entering the order. Notably, the Administrative Orders do not state:

- a. any specific rule, regulation or policy with regard to hurricane preparedness, hurricane or disaster planning, or evacuation protocols that were violated by Hollywood Hills;
- b. any specific act of patient “abuse or neglect” that is alleged to have occurred to justify the immediate suspension of Medicaid participation;
- c. whether Hollywood Hills had in place a hurricane preparedness and comprehensive emergency management plan that was reviewed and approved by AHCA and Department of Health, County Emergency Management officials.
- d. whether Hollywood Hills took timely and appropriate actions to notify all appropriate agencies of the loss of power for the air conditioning system at the facility;
- e. whether there was any evidence of excessive heat or high temperature in the Hollywood Hills building at any time;

f. whether the medical conditions of any resident that suffered cardiac or respiratory conditions had any causal relationship or nexus to temperature in the building or instead was unrelated to the temperature in the building²;

g. whether any resident deaths that occurred would have occurred even in the absence of any hurricane or loss of power—such as terminally ill hospice patients or patients who had signed authorization for a “Do Not Resuscitate” order due to the patient’s existing medical conditions and the desire that the patient not be resuscitated in the event of cardiac or respiratory distress.

h. whether any resident deaths may have resulted from “transfer trauma” which is a well-documented and recognized medical condition for elderly patients who are abruptly transferred to a new medical facility³;

i. whether the actions of EMS or the hospital caused or contributed to the death of any of the residents who “ultimately expired;”

j. whether residents identified in the Orders as having “ultimately expired” were located at Hollywood Hills or at another facility at the time that they suffered distress and expired;

k. whether actions of Hollywood Hills caused or contributed in any way to the death of the residents at issue;

l. whether it was reasonably foreseeable that any act or failure to act by Hollywood Hills would cause the deaths at issue;

m. whether power for air conditioning had already been restored at the Hollywood Hills facility at the time the two Administrative Orders were entered;

n. the existence of any continuing emergency conditions at the Hollywood Hills facility at the time the Administrative Orders were entered.

²See footnote 1, *supra*, and Dr. Goldberg’s Affidavit, *Exhibit C* attached.

³See footnote 1, *supra*.

22. The Administrative Orders are so lacking in detail or specificity that it is impossible to determine what alleged conduct of Hollywood Hills is alleged to have created an immediate and imminent threat to public safety and what the current conditions are at Hollywood Hills that warrant the immediate actions being taken.

23. Although no specific or particular facts are offered, the emergency Orders appear to be premised upon the implied notion or innuendo that an immediate threat to public safety and welfare exists because: a) Hollywood Hills does not have an emergency generator capable of providing alternate air conditioning (“AC”) power in the event of a hurricane, and/or; b) Hollywood Hills has an inadequate hurricane preparedness plan because it did not require immediate evacuation of patients to the nearby hospital (Memorial Regional) upon the loss of electrical power for the AC unit. Neither of these innuendos are sufficient to support entry of an emergency order which effectively shuts down the operation of the nursing home (even if such facts had been clearly stated in the Administrative Orders).

24. As to lack of generator backup to run an AC, it is beyond reasonable dispute that such backup is not presently a requirement for any nursing home in Florida. In fact, such requirement was considered but rejected by the Legislature in the past. In the wake of Hurricane Irma it has now been proposed by Governor Scott and AHCA and DOH that emergency generator power should be a state policy and such is being implemented in a general emergency rule to apply to all nursing homes in the state. However, Hollywood Hills is currently in no different position than any other nursing home in the state with respect to the requirement of emergency generator power for central AC units. Put simply, the lack of an emergency generator backup is the current norm in nursing homes throughout the state and does not constitute an emergency crisis for

Hollywood Hills that differs from any other nursing home in Florida that is compliant with current statutes and rules.

25. As to evacuation of residents to a nearby hospital in the event of the loss of AC power, there is no such requirement in any rule, regulation or policy and in fact such evacuation of nursing home residents would be contrary to the approved Hollywood Hills hurricane preparedness plan, and contrary to the general requirement that hospitals be available in a reserve capacity in a natural disaster for those patients who have acute and critical care medical needs. At all times, Hollywood Hills acted in accordance with its emergency preparedness plan approved by AHCA and DOH, and in accordance with the multiple assurances to its staff from FPL, AHCA and the Governor's Office that power for the AC unit would be timely restored.

26. As of the time the Administrative Orders were issued, there is no dispute that all electrical power, including power for AC, had been already restored to the building. The issuance of the Administrative Orders therefore cannot be justified by the lack of AC during the hurricane disaster, as that emergency had passed prior to entry of the Administrative Orders.

ADDITIONAL FACT ALLEGATIONS SUPPORTING INJUNCTIVE RELIEF

27. Hollywood Hills is licensed by AHCA to operate a 152-bed skilled nursing facility located at 1200 North 35th Avenue, Hollywood, Broward County, Florida.

28. In accordance with state licensure rules, Hollywood Hills has developed a written comprehensive emergency management plan with protocols to be implemented during natural disasters such as hurricanes.

29. Hollywood Hills Emergency Management Plan is reviewed and approved by the local Emergency Management Division in Broward County and is annually tested in accordance with the requirements of Rule 59A-4.126, Florida Administrative Code. Hollywood Hills

Emergency Management Plan in use during the subject hurricane was reviewed, approved, and compliant.

30. At all times during the approach of the storm and throughout the impact of Hurricane Irma, Hollywood Hills acted in accordance with its approved comprehensive emergency management plan. The following is a time-line summary of events and actions taken by Hollywood Hills to protect the safety of its residents.

September 5-9, 2017 (The Storm's Approach)

a. At least as of September 5, 2017, Miami Dade and Broward Counties were shown by National Hurricane Forecasts to be within the cone of potential landfall impact of the approaching hurricane. Hollywood Hills made arrangements per its comprehensive management plan for potential evacuation of all residents and monitored the approaching storm continuously. No mandatory evacuation was ever issued for the area where the facility is located.

b. On or about Wednesday September 6, 2017, the National Hurricane Center moved the projected landfall of the eye of Hurricane Irma further west with a projected landfall to occur along the southwest Florida coast. Hollywood Hills continued to monitor the storm closely and followed the directives of state and local officials as to hurricane preparation.

c. On Saturday, September 9, 2017, Miami Dade and Broward Counties began to feel the effects of the approaching storm

Sunday, September 10, 2017

d. On Sunday, September 10, 2017, the facility experienced some power outages. The building has two Florida Power and Light ("FPL") transformers that provide the building with electrical power. One transformer, with a dedicated power line, powers the life safety systems and all of the electricity, except for the central air conditioning ("AC") chiller ("Power Only Line"). The second transformer, with its own dedicated power line, only powers the AC chiller ("AC Only Line"). At approximately 3:00 pm the Power Only Line flickered but immediately came back online. The AC Only Line went down and did not return, leaving the facility with power, but no central air conditioning.

e. At 3:49 pm on Sunday September 10, 2017, Hollywood Hills' administrator placed an online work order to FPL. A ticket number was created by FPL to track the progress of the request to restore power for the air conditioning system. The emergency protocol for loss of power to the air conditioning unit was put in place and followed by

Hollywood Hills administration and staff. To augment the emergency preparedness plan previously approved by AHCA, the facility put in place eight “spot coolers” that were distributed evenly on the first and second floors of the building. Additionally, fans were purchased and placed throughout the facility.

Monday, September 11, 2017

f. In the afternoon of Monday, September 11, 2017, FPL had not showed up to resolve the issue. The facility had staff shift changes and residents were constantly monitored on the 11:00 am and 3:00 pm shifts.

g. On Monday at 5:34 pm, Natasha Anderson, a representative of the facility, contacted Governor Scott’s cell phone number 239-451-0450 that was provided by Governor Scott during the Emergency Hurricane daily calls that he facilitated for Hospitals, Nursing Homes and ALFs. Ms. Anderson left a message informing she was calling on behalf of Hollywood Hills. In the message to the Governor she stated that the AC transformer located on the FPL pole for the facility was tripped during the Hurricane and the facility needed immediate assistance to reset it. Ms. Anderson also contacted the Emergency Line 1-800-342-3557 to report the problem with the air conditioning transformer being out of service. At this time, the representative gave her an emergency Tallahassee number to call to report the problem. Ms. Anderson immediately contacted the number provided -- 850-815-4925 -- and spoke to the person who answered the phone (first name Jorge). She explained the situation to Jorge and expressed that Hollywood Hills needed to be made priority as the building included a Hospital and Nursing Home with over 152 patients (elderly on oxygen, adult mental health and adolescent mental health). He informed her that this matter would be escalated as a high priority. She informed him that Hollywood Hills had already contacted FPL and that the work order number was #4301.

h. Also on Monday, September 11, 2017 at 6:57 pm, Ms. Anderson called Jorge back at 850-815-4925 to see if he had any new updates. He informed her that there were no new updates but reassured her that this matter had been reported and was escalated as a high priority and that he would continue to follow up on it. Hollywood Hills representatives also had earlier contacted FPL and were again told electrical power would be restored by FPL on this afternoon. FPL never showed to restore power that day.

i. After FPL failed to come on site to restore power on Monday (September 11), Natasha Anderson received a call at 7:29 p.m. from the emergency center in Tallahassee 850-245-4444 assuring and informing her that they were working on the emergency. At this time, she provided more information on the census in the building and was informed that she would be provided with another update shortly. At 9:24 pm Natasha Anderson contacted the emergency line 850-245-4882 again, to inform that the facility had not yet received any update. At 9:57 pm Ms. Anderson received a call from the emergency line 850-544-1457 informing that they were still working on the

request for restoration of power but had no new updates to provide. She expressed once again the urgency of getting FPL to come reset the AC Chiller transformer.

j. Throughout the time of seeking assistance from the Governor's Office, the Emergency Response Center, and FPL, Hollywood Hills used the spot coolers and fans to help ensure the building was still cool and to maintain appropriate temperatures, so that at no point were patients at risk.

Tuesday, September 12, 2017

k. At 9:58 am, Natasha Anderson again contacted the Tallahassee Emergency number 850-245-4882 to inquire if there were any updates as the problem had not been resolved. She was informed that there were many hospitals and healthcare facilities with FPL problems due to the hurricane such as Broward Health System and Memorial Healthcare and that all were waiting to get issues resolved. She stated that she understood but really just wanted to make sure that Hollywood Hills was also made a priority since it provided care to frail elderly patients. Ms. Anderson, immediately after the above call, contacted Governor Scott's cell phone contact number -- 239-451-0450 -- and left a message informing that this was her second time calling his cell number to

report an emergency because the issue still had not been resolved. She left the facility information and populations served on the voicemail. At 12:41 pm Ms. Anderson again called Governor Scott's cell number-- 239-451-0450-- to inform that the facility had yet to receive help from FPL.

l. At 12:53 pm on Tuesday (September 12), Hollywood Hills contacted Memorial Regional Hospital's Engineering Administrator in charge and inquired whether the hospital had any additional spot coolers that Hollywood Hills could borrow

to help keep the facility temperature maintained. These spot coolers were received at 3:15 pm and went to the behavioral hospital within the Hollywood Hills building since that was identified as the area most in need. At 1:18 pm Hollywood Hills administration contacted the Broward Coalition for assistance and the coalition offered to send a mass email to all members to see if there were additional coolers that could be provided. An email was sent at 1:21 pm. This was done to secure back up coolers in case the existing ones failed, since FPL still was not fixing the problem.

m. At 4:41 pm on Tuesday Natasha Anderson received a call from "Susan" from AHCA on behalf of the emergency operation center to get update information on facilities for the Florida Health System. She informed Susan that the psychiatric hospital located in the same building as the nursing home has stopped receiving patients as of September 12 at 10:00 am due to the one AC transformer being out of service for so long. She informed Susan of all efforts and everyone that had been contacted to have the AC transformer repaired for the building. Susan requested the FPL account number for the facility. She conferenced into the call James Williams, Director of Engineering and he provided Susan with ALL account numbers for the facility and also

the FPL work orders. Susan informed Ms. Anderson that she would note same and inform that Hollywood Hills still needed assistance.

n. During the above time-period, there were at least documented 13 documented calls to FPL. These do not include other multiple additional calls to FPL from family members of patients at the nursing home.

o. During this Monday and Tuesday time-period there were 4 calls to Governor Scott's cell phone number.

p. Throughout the time-period following the storm, Hollywood Hills staff took all reasonable steps to have the AC transformer repaired and the facility was assured multiple times by FPL, by AHCA, and by the Governor's Office that the matter was a high priority and would be resolved.

q. According to an article published on September 15 in the *New York Times*, and unbeknownst to Hollywood Hills throughout the efforts to restore AC power to its facility, FPL did not consider nursing homes to be among the highest priority list for restoring power and that its decision to treat nursing homes as "less than critical" was made in coordination with county officials and a "guidance document." Broward County claims that it had asked the power company to escalate Hollywood Hills on its priority list after the county's emergency operations center received a call from the nursing home on Tuesday morning. The Broward mayor, Barbara Sharief, asked executives from the power company to consider all the nursing homes and senior communities in the "critical" category, but was told there were too many to do so.

r. On Tuesday evening (September 12) Jorge Carballo, the facility Administrator, rounded on all patients at the nursing home between 7:00 pm and 11:00 pm. All seemed comfortable and no issues were identified. Dr. Brian Abraham's physician assistant, Brian James, also made rounds in the evening from 6:00 to 9:30 pm. Dr. Evancho had earlier made rounds in the mid-morning and Dr. Cadogan from Humana Health Plan rounded from 3:00 to 4:00 pm. None of these health care professionals reported any patients or residents being in distress or having any significant problems.

Wednesday, September 13, 2017

s. On Wednesday (September 13), at approximately 2:55 am, patient #1 expired while on hospice crisis care. At approximately 3:00 am, 911 rescue was called for a patient #2 that had tachycardia. The patient was stabilized by nursing staff and was transferred by EMS to the hospital for further evaluation. At approximately 4:00 am, 911 was called for a third patient #3 for respiratory distress. The patient was stabilized in the facility and transferred to the hospital by 911 rescue. At approximately 4:20 am, 911 rescue was again called for a patient #4 for cardiac arrest. Resuscitative measures were provided by the staff, but were not successful and the patient was pronounced dead at the nursing home by 911 rescue. [REDACTED] response team was still in the building a fifth patient #5 had a cardiac arrest; however, since the patient

had a DNR (Do not Resuscitate) order on file, the 911 response team did not resuscitate and the patient was pronounced dead. While the 911 response team was still in the building another patient #6 had a cardiac arrest, and the 911 resuscitated the patient but the patient died. Patient #7 was transferred to the hospital via 911 due to respiratory distress. Patient #8, heart disease, was also transferred to the hospital.

t. At approximately 6:00 am, a Nursing assistant called Maria Castro, Director of Nurses, and informed her of the incidents. Maria Castro recommended to move patients from the second floor to the first floor after staff members informed her that the first floor was cooler. Maria Castro immediately called Jorge Carballo, facility administrator, and informed him of the incidents. He responded that he will immediately go the facility to determine what next steps to take for the protection of the residents. Mr. Carballo then received a call from Sargent Hubert from the Hollywood police advising him to come in to the facility. At 6:30 to 6:45 am Maria Castro arrived at the facility and observed that an evacuation was taking place by the chief of the fire department. He told her they were evacuating all patients to the hospital.

u. All patients were evacuated from the facility to multiple hospitals on Wednesday morning. Hollywood Hills followed its approved emergency plan and evacuation protocols and fully cooperated in the evacuation.

v. The evacuation was conducted by EMS and Memorial Hospital and was not under the direction of Hollywood Hills. Upon information and belief, some patients may have been left outside, including in the sun, for close to an hour.

w. Shortly after the evacuation, FPL finally showed up and reset the switch for the AC Only Line in a fifteen-minute procedure and air conditioning was restored to the Hollywood Hills building. After the switch was reset by FPL, the AC for the building was fully restored and in full working order.

x. Thus, prior to entry of the Administrative Orders at issue, all power was restored and AC was fully operational at the facility.

y. After the above events, an Agency representative was quoted as stating that “. . . this facility is located across the street from one of Florida’s largest hospitals, which never lost power and had fully operating facilities.” However, evacuation to that hospital was not appropriate including for the following reasons. Hollywood Hills has an emergency plan as approved by Broward County under which there is a mutual aid agreement with Marrinson Senior Care Residence. A hospital is not a designated receiving facility under the emergency plan/agreement, and the hospital’s responsibility and mission is to save its beds for critical acute care patients. Evacuating to the nearby hospital (Memorial) would have been contrary to this emergency plan and agreement as approved. So instead, Hollywood Hills continued operational under its emergency preparedness plan. Personnel properly called 911 when a patient exhibited symptoms that required a higher level of care, and not before. Hollywood

Hills staff were continuously told to keep residents in place and that help was on the way and they were told to call 911 if anyone became distressed.

COUNT I of I – INJUNCTIVE RELIEF

31. Plaintiff Hollywood Hills repeats and realleges the facts and allegations above as if fully set forth herein.

32. As detailed above, the Administrative Orders in question are illegal and improper including due to the lack of required particularity and specificity, and the wholesale failure to identify an immediate continuing threat to the public safety or welfare.

33. In essence, AHCA is seeking to punish Hollywood Hills for perceived and unarticulated deficiencies or failures during the Hurricane Irma disaster. Yet AHCA's Administrative Orders identify no specific violation of a rule, regulation, policy or procedure, nor any specific ongoing threat. The Agency's actions are strictly punitive actions for unstated past perceived violations while foregoing required due process protection. The sanctions are effective immediately and unless enjoined are ongoing and continuing.

The Elements for A Temporary Injunction Order Are Met

34. The purpose of a temporary injunction is to maintain the "status quo" pending the determination of a case on the merits. Smith v. Housing Authority, 2 So. 2d 880, 881 (Fla. 1941) (en banc). The test in determining whether a Plaintiff is entitled to a temporary injunction under Florida law is as follows: (1) a substantial likelihood of success on the merits; (2) lack of an adequate remedy at law; (3) irreparable harm absent the entry of an injunction; and (4) the injunctive relief will serve the public interest. Liberty Counsel v. Fla. Bar Bd. of Governors, 12 So. 3d 183, 186 n.7 (Fla. 2009) (quoting Reform Party of Fla. v. Black, 885 So. 2d 303, 305 (Fla. 2004)); see also St. John's Inv. Mgmt. Co. v. Albaneze, 22 So. 3d 728, 731 (Fla. 1st DCA 2009).

Substantial Likelihood of Success on the Merits

35. AHCA's Administrative Orders are improper because they are totally lacking in specificity, fail to identify any immediate threat of harm, and do not begin to meet the requirements for such orders including the requirements of sections 120.569(2)(n) and 120.60(6), Florida Statutes and underlying case law requirements.

36. There simply is no emergency condition identified in the Administrative Orders. The hurricane emergency has passed. The loss of electrical power for the central air conditioning system is over and power to it has been restored.

37. In sum, the Administrative Orders are illegal, improper, and in clear violation of the requirements and Plaintiff's due process rights. Hollywood Hills thus has a clear legal right to injunctive relief and a strong likelihood of success on the merits of the issues raised in this Complaint. The Agency has acted without the required specificity and so must be enjoined in order to maintain the status quo and allow Hollywood Hills to continue operating at least until the Agency has provided Hollywood Hills due process, a point of entry, and a full and fair opportunity to challenge the Agency's intended actions in a formal administrative evidentiary proceeding.

Lack of Adequate Remedy at Law

38. The actions of the Agency have illegally and improperly immediately prohibited the admission of any existing residents or future residents to the facility, and if allowed to continue will in effect result in the closure of the facility -- all without any opportunity to investigate the true facts and have a fair hearing prior to these punitive sanctions being imposed.

39. There is simply no adequate remedy at law available to Hollywood Hills other than injunctive relief. There is no action or remedy at law that would remedy the situation or compensate Hollywood Hills for its ongoing damages (financial, reputation and otherwise) due to

these wrongful and immediate Administrative Orders. Nor is there any action at law that would prevent or remedy the resulting impact on the community and patients (current and future) due to any temporary or permanent closure of Hollywood Hills.

40. Thus, the only recourse for Hollywood Hills is to seek injunctive relief from the circuit court to enjoin the Administrative Orders until AHCA provides Hollywood Hills its due process and the required formal administrative proceedings in challenging AHCA's actions and the Administrative Orders.

41. Courts are provided broad discretion in granting injunctions where there is evidence that potential business loss is of a "continuing nature." U.S. 1 Office Corp. v. Falls Home Furnishings, Inc., 655 So. 2d 209 (Fla. 3rd DCA 1995), quoting Fontainebleau Hotel Corp. v. Kaplan, 108 So. 2d 503, 505 (Fla. 3^d DCA 1959) (continued destruction of business would be difficult to calculate as harm was ongoing and, therefore, temporary injunction is proper).

Irreparable Harm

42. Without temporary injunctive relief, Hollywood Hills will be irreparably harmed by the improper Administrative Orders. Both Administrative Orders -- the moratorium on admissions and the Medicaid suspension -- have and will continue to cause a severe and material financial injury to Hollywood Hills as well as increase the difficulty and expense of ensuring quality care for patients and important services to the community. Time is of the essence and without a prompt injunctive order, Hollywood Hills will be forced to close.

43. With the stroke of a pen, AHCA has effectively shut down Hollywood Hills as a nursing home provider in Broward County. These illegal and improper Administrative Orders took effect immediately and without any opportunity for the facility to defend itself against

unfounded allegations. These unauthorized actions will effectively deny Hollywood Hills its due process rights to challenge AHCA in the appropriate forum on the merits.

44. The ongoing harm to Hollywood Hills includes: (1) economic harm due to the moratorium on patient admissions and due to the Medicaid suspension, both of which severely impact Hollywood Hills and its ability to care for patients in the community; (2) inability to maintain and hire qualified key staff; (3) a resultant decrease in the quality of care and services based on the foregoing; and (4) prevents those residents who desire to do so, from returning to the facility.

45. When business harm and other types of harm are of a continuing nature, as is the case here, the indicia of irreparable harm is satisfied. See, e.g., U.S. 1 Office Corp. v. Falls Home Furnishings, Inc., 655 So. 2d 209 (Fla. 3rd DCA 1995); Fontainebleau Hotel Corp. V. Kaplan, 108 So. 2d 503, 505 (Fla. 3d DCA 1959).

Temporary Injunctive Relief Will Serve the Public Interest

46. Granting an injunction in this matter will also serve the public interest in at least two ways.

47. First, the injunction will preserve the defined judicial process set forth pursuant to the Administrative Procedures Act in in Chapter 120, Florida Statutes, which require fairness, due process, specific charges, and opportunity for formal administrative evidentiary hearings prior to any final agency action.

48. Second, the injunction will preserve the ability of Hollywood Hills to serve and provide needed quality nursing home care to the community and including to elderly low-income patients, as well as to the many residents who wish to return to the facility now that Hurricane Irma has passed.

RELIEF REQUESTED

49. For all of the foregoing reasons, Plaintiff Hollywood Hills requests this Court to enter appropriate orders:

- a. Granting a temporary injunction enjoining the Agency from enforcing the Administrative Orders attached hereto as Exhibits A and B unless and until the Agency first provides specific notice and the opportunity for a fair hearing on all facts.
- b. After an evidentiary hearing, granting a similar permanent injunction; and
- c. Granting such other relief as the Court deems just and proper.

Dated this 19th day of September 2017.

Respectfully submitted,

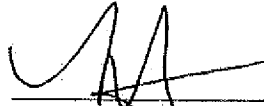
/S/ GEOFFREY D. SMITH

GEOFFREY D. SMITH
Florida Bar Number: 499250
TIMOTHY B. ELLIOTT
Florida Bar Number: 210536
SMITH & ASSOCIATES
3301 Thomasville Road, Suite 201
Tallahassee, Florida 32308
850-297-2006 (O); 850-297-2009 (Fax)
geoff@smithlawtlh.com
tim@smithlawtlh.com

Counsel for Plaintiff, Hollywood Hills

AFFIDAVIT AND VERIFICATION (BY NATASHA ANDERSON)

I, Natasha Anderson, CEO of Larkin Behavioral Health Services, LLC, hereby swear and affirm that the factual representations set forth in the attached Complaint for Temporary and Permanent Injunctive Relief are true and accurate based upon my personal knowledge and to the best of my knowledge and believe.

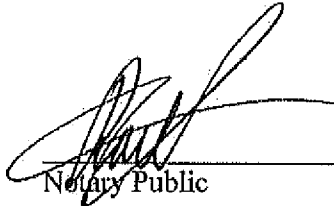


NATASHA ANDERSON

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, the undersigned authority, personally appeared Natasha Anderson, CEO of Larkin Behavioral Health Services, LLC, who is [] personally known to me, or [x] who has produced Driver License as identification, and who after being duly sworn, deposed and states that he is an authorized representative of said corporation and states that the information in the foregoing document is true and correct to the best of his knowledge.

Sworn to and subscribed before me this 19 day of September, 2017.



Notary Public

Raul Romero
Commission # GG055340
Expires: December 15, 2020
Bonded thru Aaron Notary

EXHIBIT A

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2017 SEP 13 P 6:51

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

REHABILITATION CENTER AT HOLLYWOOD
HILLS, LLC,

AHCA NO. 2017010404
License No. 1238096
File No. 100611
Provider Type: Nursing Home

Respondent.

IMMEDIATE MORATORIUM ON ADMISSIONS

THIS CAUSE came before the Secretary of the Agency for Health Care Administration, or his duly appointed designee, who after careful review of the record and being otherwise fully advised, finds and concludes as follows:

THE PARTIES

1. The Agency for Health Care Administration (hereinafter "the Agency"), is the licensure and regulatory authority that oversees nursing homes in Florida and enforces the applicable state statutes and rules governing nursing homes. Chs. 408, Part II, and 400, Part II, Fla. Stat. (2017), Ch. 59A-4, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including a limitation of license, a moratorium on admissions and an emergency suspension order, when circumstances dictate such action. §§ 120.60(6), 408.814, Fla. Stat. (2017).

2. The Respondent, Rehabilitation Center at Hollywood Hills, LLC (hereinafter "the Respondent"), was issued a license by the Agency (License Number 1238096) to operate a nursing home (hereinafter "the Facility") located at 1200 North 35th Avenue, Hollywood, Florida

33021. The licensed capacity of the Facility is one hundred fifty-two (152) residents.

3. As the holder of such a license, the Respondent is a licensee. "Licensee" means "an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2017). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2017). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2017). § 408.803(11), Fla. Stat. (2017). Nursing homes are regulated by the Agency under Chapter 400, Part II, Florida Statutes (2017), and listed in Section 408.802, Florida Statutes (2017). § 408.802(12), Fla. Stat. (2017). Nursing home residents are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2017). The Respondent holds itself out to the public as a nursing home that fully complies with state laws governing such providers.

4. The current census of the Respondent as of this date is zero (0) residents.

THE AGENCY'S MORATORIUM ON ADMISSIONS AUTHORITY

5. Under Florida law, the Agency may impose an emergency suspension order or immediate moratorium on admissions as defined in section 120.60, Florida Statutes (2017), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2017).

6. Under Florida law, if the Agency finds that an immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the Agency may take such action by any procedure that is fair under the circumstances. § 120.60(6), Fla. Stat. (2017).

LEGAL DUTIES OF A NURSING HOME

7. Under Florida law: "Every licensed facility shall comply with all applicable standards and rules of the agency and shall ... Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner." § 400.141(1)(h), Fla. Stat. (2017).

8. Under Florida law: "In addition to the grounds listed in part II of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee ... (1) An intentional or negligent act materially affecting the health or safety of residents of the facility." § 400.102(1), Fla. Stat. (2017).

FACTS JUSTIFYING AN IMMEDIATE MORATORIUM ON ADMISSIONS

9. On September 13, 2017, the Agency commenced a survey of the Respondent and its Facility.

10. Based upon the above survey, the Agency makes the following findings:

- a. On September 10, 2017, Respondent became aware that its air conditioning equipment had ceased to operate effectively.
- b. In addition to contacting the local electrical power provider, Respondent situated eight (8) portable air coolers throughout the facility and equipped the halls with fans.
- c. Between 1:30 AM and 5:00 AM on September 13, 2017, several residents suffered respiratory or cardiac distress. Eight (8) of those residents ultimately expired.
- d. Emergency personnel and law enforcement responding to these multiple emergency medical events directed Respondent, as a result of the heat in the building, to evacuate the second floor of the Facility.
- e. Respondent ultimately evacuated the entire building.

11. In this instance, after careful and due consideration, the Agency determines that the practices and conditions at the Respondent's Facility, as set forth more specifically above, present (1) a threat to the health, safety or welfare of residents of the Facility, (2) a threat to the health, safety or welfare of a client, (3) an immediate serious danger to the public health, safety or welfare, and (4) an immediate or direct threat to the health, safety, or welfare of the residents

that constitutes sufficient factual and legal grounds justifying the imposition of an Immediate Moratorium on Admissions to this nursing home.

NECESSITY FOR AN IMMEDIATE MORATORIUM ON ADMISSIONS

12. The Agency is charged with the responsibility of enforcing the laws enacted to protect the health, safety and welfare of residents and clients in Florida's nursing homes. Ch. 400, Part II, Fla. Stat. (2017), Ch. 408, Part II, Fla. Stat. (2017); Ch. 59A-4, Fla. Admin. Code. In those instances where the health, safety or welfare of a nursing home resident is at risk, the Agency will take prompt and appropriate action.

13. A nursing home must ensure it maintains facility premises and equipment and conduct its operations in a safe and sanitary manner." § 400.141(1)(h), Fla. Stat. (2017). Residents of nursing homes suffer from disease or disability, are frail, elderly, or vulnerable. By law, the Respondent has been licensed and entrusted to provide care and services to this special class of people, and as such, must comply with the regulations, statutes and rules that have been enacted for the special needs of these residents.

14. Based upon the foregoing, (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate moratorium on admissions, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate moratorium on admissions.

15. The Respondent's deficient conduct is widespread and places all future residents at immediate threat to their health, safety and welfare. The Respondent has demonstrated that its physical plant cannot currently provide an environment where residents can be provided care and services in a safe and sanitary manner.

16. The above-stated conditions present an immediate serious danger to public health, safety, or welfare and constitute a direct threat to the health, safety or welfare of residents and/or potential residents of the Facility. No resident of a nursing home should be placed in a hazardous environment.

17. The Respondent's deficient practice exist presently; have existed in the past, and more likely than not will continue to exist if the Agency does not act promptly.

18. An Immediate Moratorium on Admissions to this nursing home is necessary to protect the residents from (1) the unsafe conditions and deficient practices that currently exist in the facility, (2) being placed at risk of living in an environment ill-equipped to provide for resident health, safety and welfare, and (3) being placed in a nursing home where the statutory and regulatory mechanisms enacted for their protection have been breached.

CONCLUSIONS OF LAW

19. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 400, Part II, Florida Statutes, and Chapter 59A-4, Florida Administrative Code.

20. Based upon the above stated provisions of law and findings of fact, the Agency concludes that: (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate moratorium on admissions to Respondent Facility, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate moratorium on admissions to the Facility.

21. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Immediate Moratorium on Admissions is necessary in order to protect the residents from (1) the unsafe conditions and deficient practices that currently exist, (2) being

placed at risk of living in an environment ill-equipped to provide a safe and sanitary living environment, and (3) being placed in a nursing home where the regulatory mechanisms enacted for residents protection have been overlooked.

22. The Respondent's deficient practices exist presently and will more likely than not continue to exist if the Agency does not act promptly. Such deficient practices and conditions justify the imposition of an Immediate Moratorium on Admissions. Less restrictive actions, such as the assessment of administrative fines, will not ensure that future residents receive the appropriate care, services, and environment dictated by Florida law.

23. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. This remedy is narrowly tailored to address the specific harm in this instance.

IT IS THEREFORE ORDERED THAT:

1. An Immediate Moratorium on Admissions is placed on Respondent's nursing home based upon the above-referenced provisions of law. The Respondent shall not admit for services any individual until such time as this Immediate Moratorium on Admissions is lifted by the Agency in writing.

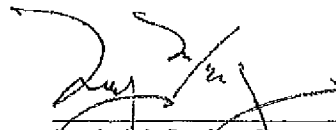
2. This Immediate Moratorium on Admissions shall be posted and visible to the public at the Respondent's nursing home until the moratorium is lifted. § 408.41(4), Fla. Sta. (2017).

3. During the Immediate Moratorium on Admissions, the Agency may regularly monitor the Respondent's Facility.

4. The Agency shall promptly proceed with the filing of an administrative action

against the Respondent based upon the facts set out within this Order and any other facts that may be discovered during the Agency's continuing investigation. The Agency shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2017), when the administrative action is brought.

ORDERED in Tallahassee, Florida, this 13 day of September, 2017.



Justin M. Senior, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

This emergency order is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b) and (c). See Fla. R. App. P. 9.190(b)(2). In order to be timely, the petition for review must be filed within thirty (30) days of the rendition of this non-final emergency order.



RICK SCOTT
GOVERNOR

JUSTIN M. SENIOR
SECRETARY

**DELEGATION OF AUTHORITY
To Execute
Immediate Orders of Moratorium**

I specifically delegate the authority to execute Immediate Orders of Moratorium to Molly McKinstry, Deputy Secretary, Health Quality Assurance or her delegate.

This delegation of authority shall be valid from the date of October 4, 2016 until revoked by the Secretary.


Justin M. Senior, Secretary

2/24/17
Date



EXHIBIT B

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

REHABILITATION CENTER AT
HOLLYWOOD HILLS, LLC,

Respondent.

MPI Case No.: 2017-0007728

Provider No.: 015452500

License No.: 1238096

NPI No.: 1487039392

2017 SEP 14 P 4:42

IMMEDIATE SUSPENSION FINAL ORDER

THIS CAUSE is before me for issuance of an Immediate Final Order. Pursuant to Sections 409.913(15)(p) and 409.913(16)(d), Florida Statutes (F.S.), and Rule 59G-9.070(7)(p), Florida Administrative Code (F.A.C.), the Agency shall impose a sanction of Immediate suspension from participation in the Florida Medicaid program on a provider if the Agency has received reliable information of patient abuse or neglect.

The Agency for Health Care Administration (Agency), Office of Medicaid Program Integrity (MPI) has received information of patient abuse or neglect. Specifically, Rehabilitation Center at Hollywood Hills, LLC's (Respondent's) facility presents a threat to the health, safety, or welfare of clients, as is further described in an Immediate Moratorium on Admissions (moratorium) dated September 13, 2017 (Ex.1).

FINDINGS OF FACTS

1. The Respondent is a nursing home, which practices in the State of Florida under license number 1238096.
2. The Respondent is an enrolled Medicaid provider in the State of Florida under provider number 015452500.
3. Between 1:30 a.m. and 5:00 a.m., on September 13, 2017, several residents suffered respiratory or cardiac distress. Eight (8) of those residents ultimately expired.
4. Shortly after 4:00 a.m. on September 13, 2017, the City of Hollywood Police Department and Hollywood Fire Rescue responded to a call for service at the Respondent's facility. Several patients were found in varying degrees of medical distress, three patients were found deceased, and others were in need of immediate transport.
5. Due to the conditions of the facility, Hollywood Police Department and Hollywood Fire Rescue mobilized nine (9) rescue units to evacuate all of the remaining patients.
6. Respondent's address is 1200 North 35th Avenue, Hollywood, Florida 33021. The facility is located directly across the street from a hospital, located at 3501 Johnson Street, Hollywood, Florida 33021.
7. The hospital located at 3501 Johnson Street, Hollywood, Florida 33021, was operational and able to receive patients.
8. On September 13, 2017, the Agency commenced a survey of the Respondent's facility.
9. The Agency determined that the practices and conditions at the Respondent's facility present (1) a threat to the health, safety, or welfare of residents of the facility, (2) a threat to the health safety, or welfare of a client, (3) an immediate serious danger to the public health, safety, or welfare, and (4) an immediate or direct threat to the health, safety, or welfare of the residents.
10. The Agency's findings of facts as set forth in the moratorium are hereby attached and incorporated by reference herein; they are deemed adopted by the Agency and form the factual basis for the determination of there being patient abuse or neglect.
11. The matter remains under active criminal investigation.

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

CONCLUSIONS OF LAW

1. The Medicaid Act, Title XIX of the Social Security Act, 42 U.S.C. § 1396, is a cooperative federal-state program designed to allow states to receive matching funds from the federal government to finance necessary services to qualified low-income individuals.
2. In each state, a "single state agency" is responsible for administering the Medicaid program. 42 C.F.R. § 431.10.
3. In Florida, the Agency for Health Care Administration (AHCA) is designated as the single state agency.
4. The Agency shall impose a sanction of immediate suspension from participation in the Florida Medicaid program pursuant to Section 409.913, F.S., and Rule 59G-9.070, F.A.C.
5. The Agency has authority to issue an immediate final order pursuant to Section 409.913, F.S., in accordance with Section 120.569(2)(n), F.S.
6. The sanction as set forth in this Final Order is final.

ORDER

BASED on the foregoing, it is **ORDERED** and **ADJUDGED** that the Respondent is **IMMEDIATELY SUSPENDED** from participation in the Florida Medicaid program pursuant to Section 409.913, F.S., and Rule 59G-9.070, F.A.C. The respondent is prohibited from performing any action that results in a claim for payment to the Medicaid program as a result of furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

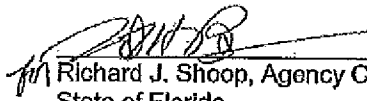
DONE AND ORDERED this 14th day of September, 2017, in Tallahassee, Florida.



Justin M. Senior, Secretary
Agency for Health Care Administration

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the above-named persons by U.S. Mail or interoffice mail as indicated on this the 14th day of September, 2017.


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

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A 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 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.

Copies furnished to:

Rehabilitation Center at Hollywood Hills, LLC
1200 N 35th Ave
Hollywood, Florida 33021
(U.S. mail)

Kelly Bennett, Chief
Medicaid Program Integrity
(Interoffice mail)

Bureau of Financial Services
(Interoffice mail)

Division of Health Quality Assurance
(E-mail)

Shawn McCauley
Medicaid Fiscal Agent Operations
(E-mail)

Warren Moore
Medicaid Plan Management Operations
(E-mail)

Tracy Jeter-Cummings
Medicaid Plan Management Operations
(E-mail)

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2017 SEP 13 P 6:51

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

REHABILITATION CENTER AT HOLLYWOOD
HILLS, LLC,

AHCA NO. 2017010404
License No. 1238096
File No. 100611
Provider Type: Nursing Home

Respondent.

IMMEDIATE MORATORIUM ON ADMISSIONS

THIS CAUSE came before the Secretary of the Agency for Health Care Administration, or his duly appointed designee, who after careful review of the record and being otherwise fully advised, finds and concludes as follows:

THE PARTIES

1. The Agency for Health Care Administration (hereinafter "the Agency"), is the licensure and regulatory authority that oversees nursing homes in Florida and enforces the applicable state statutes and rules governing nursing homes. Chs. 408, Part II, and 400, Part II, Fla. Stat. (2017), Ch. 59A-4, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including a limitation of license, a moratorium on admissions and an emergency suspension order, when circumstances dictate such action. §§ 120.60(6), 408.814, Fla. Stat. (2017).

2. The Respondent, Rehabilitation Center at Hollywood Hills, LLC (hereinafter "the Respondent"), was issued a license by the Agency (License Number 1238096) to operate a nursing home (hereinafter "the Facility") located at 1200 North 35th Avenue, Hollywood, Florida

EX-1

33021. The licensed capacity of the Facility is one hundred fifty-two (152) residents.

3. As the holder of such a license, the Respondent is a licensee. "Licensee" means "an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency." § 408.803(9), Fla. Stat. (2017). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2017). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2017). § 408.803(11), Fla. Stat. (2017). Nursing homes are regulated by the Agency under Chapter 400, Part II, Florida Statutes (2017), and listed in Section 408.802, Florida Statutes (2017), § 408.802(12), Fla. Stat. (2017). Nursing home residents are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2017). The Respondent holds itself out to the public as a nursing home that fully complies with state laws governing such providers.

4. The current census of the Respondent as of this date is zero (0) residents.

THE AGENCY'S MORATORIUM ON ADMISSIONS AUTHORITY

5. Under Florida law, the Agency may impose an emergency suspension order or immediate moratorium on admissions as defined in section 120.60, Florida Statutes (2017), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2017).

6. Under Florida law, if the Agency finds that an immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the Agency may take such action by any procedure that is fair under the circumstances. § 120.60(6), Fla. Stat. (2017).

LEGAL DUTIES OF A NURSING HOME

7. Under Florida law: "Every licensed facility shall comply with all applicable standards and rules of the agency and shall ... Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner." § 400.141(1)(h), Fla. Stat. (2017).

8. Under Florida law: "In addition to the grounds listed in part II of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee ... (1) An intentional or negligent act materially affecting the health or safety of residents of the facility." § 400.102(1), Fla. Stat. (2017).

FACTS JUSTIFYING AN IMMEDIATE MORATORIUM ON ADMISSIONS

9. On September 13, 2017, the Agency commenced a survey of the Respondent and its Facility.

10. Based upon the above survey, the Agency makes the following findings:

a. On September 10, 2017, Respondent became aware that its air conditioning equipment had ceased to operate effectively.

b. In addition to contacting the local electrical power provider, Respondent situated eight (8) portable air coolers throughout the facility and equipped the halls with fans.

c. Between 1:30 AM and 5:00 AM on September 13, 2017, several residents suffered respiratory or cardiac distress. Eight (8) of those residents ultimately expired.

d. Emergency personnel and law enforcement responding to these multiple emergency medical events directed Respondent, as a result of the heat in the building, to evacuate the second floor of the Facility.

e. Respondent ultimately evacuated the entire building.

11. In this instance, after careful and due consideration, the Agency determines that the practices and conditions at the Respondent's Facility, as set forth more specifically above, present (1) a threat to the health, safety or welfare of residents of the Facility, (2) a threat to the health, safety or welfare of a client, (3) an immediate serious danger to the public health, safety or welfare, and (4) an immediate or direct threat to the health, safety, or welfare of the residents

that constitutes sufficient factual and legal grounds justifying the imposition of an Immediate Moratorium on Admissions to this nursing home.

NECESSITY FOR AN IMMEDIATE MORATORIUM ON ADMISSIONS

12. The Agency is charged with the responsibility of enforcing the laws enacted to protect the health, safety and welfare of residents and clients in Florida's nursing homes. Ch. 400, Part II, Fla. Stat. (2017), Ch. 408, Part II, Fla. Stat. (2017); Ch. 59A-4, Fla. Admin. Code. In those instances where the health, safety or welfare of a nursing home resident is at risk, the Agency will take prompt and appropriate action.

13. . A nursing home must ensure it maintains facility premises and equipment and conduct its operations in a safe and sanitary manner." § 400.141(1)(h), Fla. Stat. (2017). Residents of nursing homes suffer from disease or disability, are frail, elderly, or vulnerable. By law, the Respondent has been licensed and entrusted to provide care and services to this special class of people, and as such, must comply with the regulations, statutes and rules that have been enacted for the special needs of these residents.

14. Based upon the foregoing, (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate moratorium on admissions, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate moratorium on admissions.

15. The Respondent's deficient conduct is widespread and places all future residents at immediate threat to their health, safety and welfare. The Respondent has demonstrated that its physical plant cannot currently provide an environment where residents can be provided care and services in a safe and sanitary manner.

16. The above-stated conditions present an immediate serious danger to public health, safety, or welfare and constitute a direct threat to the health, safety or welfare of residents and/or potential residents of the Facility. No resident of a nursing home should be placed in a hazardous environment.

17. The Respondent's deficient practice exist presently; have existed in the past, and more likely than not will continue to exist if the Agency does not act promptly.

18. An Immediate Moratorium on Admissions to this nursing home is necessary to protect the residents from (1) the unsafe conditions and deficient practices that currently exist in the facility, (2) being placed at risk of living in an environment ill-equipped to provide for resident health, safety and welfare, and (3) being placed in a nursing home where the statutory and regulatory mechanisms enacted for their protection have been breached.

CONCLUSIONS OF LAW

19. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 400, Part II, Florida Statutes, and Chapter 59A-4, Florida Administrative Code.

20. Based upon the above stated provisions of law and findings of fact, the Agency concludes that: (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's Facility which justifies an immediate moratorium on admissions to Respondent Facility, and (2) the present conditions related to the Respondent and its Facility present a threat to the health, safety, or welfare of a resident, which requires an immediate moratorium on admissions to the Facility.

21. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Immediate Moratorium on Admissions is necessary in order to protect the residents from (1) the unsafe conditions and deficient practices that currently exist, (2) being

placed at risk of living in an environment ill-equipped to provide a safe and sanitary living environment, and (3) being placed in a nursing home where the regulatory mechanisms enacted for residents protection have been overlooked.

22. The Respondent's deficient practices exist presently and will more likely than not continue to exist if the Agency does not act promptly. Such deficient practices and conditions justify the imposition of an Immediate Moratorium on Admissions. Less restrictive actions, such as the assessment of administrative fines, will not ensure that future residents receive the appropriate care, services, and environment dictated by Florida law.

23. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. This remedy is narrowly tailored to address the specific harm in this instance.

IT IS THEREFORE ORDERED THAT:

1. An Immediate Moratorium on Admissions is placed on Respondent's nursing home based upon the above-referenced provisions of law. The Respondent shall not admit for services any individual until such time as this Immediate Moratorium on Admissions is lifted by the Agency in writing.

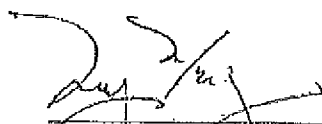
2. This Immediate Moratorium on Admissions shall be posted and visible to the public at the Respondent's nursing home until the moratorium is lifted. § 408.41(4), Fla. Sta. (2017).

3. During the Immediate Moratorium on Admissions, the Agency may regularly monitor the Respondent's Facility.

4. The Agency shall promptly proceed with the filing of an administrative action

against the Respondent based upon the facts set out within this Order and any other facts that may be discovered during the Agency's continuing investigation. The Agency shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2017), when the administrative action is brought.

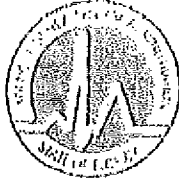
ORDERED in Tallahassee, Florida, this 13 day of September, 2017.



Justin M. Sedor, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

This emergency order is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b) and (c). See Fla. R. App. P. 9.190(b)(2). In order to be timely, the petition for review must be filed within thirty (30) days of the rendition of this non-final emergency order.



RICK SCOTT
GOVERNOR

JUSTIN M. SENIOR
SECRETARY

**DELEGATION OF AUTHORITY
To Execute
Immediate Orders of Moratorium**

I specifically delegate the authority to execute Immediate Orders of Moratorium to Molly McKinstry, Deputy Secretary, Health Quality Assurance or her delegate.

This delegation of authority shall be valid from the date of October 4, 2016 until revoked by the Secretary.


Justin M. Senior, Secretary

2/24/17
Date



EXHIBIT C

Affidavit of David Goldberg

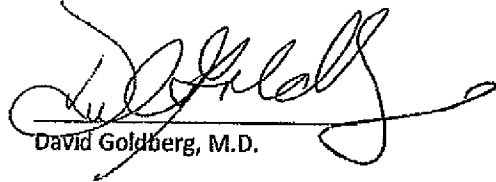
The undersigned, after first being duly sworn, deposes and states as follows:

My name is David Goldberg, M.D. I am Board Certified in Internal Medicine. My curriculum vitae is attached.

I have provided care and treatment to the geriatric population for decades. I have been the Medical Director at skilled nursing facilities, including Gramercy Park Nursing and Rehabilitation Center. The trauma of transferring residents, including leaving residents outdoors for extended periods of time, can cause or contribute to the residents' worsening of medical conditions and death.

In August of 1992, several of the residents at Gramercy Park Nursing and Rehabilitation Center passed away during transfer from one facility to another during hurricane Andrew.

David Goldberg, personally known to me or having presented identification, was duly sworn and witnessed to have executed the foregoing.


David Goldberg, M.D.

Notarized for
David Goldberg
on September 18th 2017.
Kylie Raddburn
Kylie Raddburn

