



pennsylvania
DEPARTMENT OF PUBLIC WELFARE

MAILING DATE: MAY 15 2013

Mr. Howard Lavin, President
Manor Personal Care, Inc.
Tabor Manor
6730 Tabor Avenue
Philadelphia, Pennsylvania 19111

Paula G. Sander, Esquire
17 North Second Street
12th Floor
Harrisburg, Pennsylvania 17101-1601

Dear Mr. Lavin and Ms. Sanders:

On May 1, 2012, the enclosed Settlement Agreement (Agreement) was signed by Manor Personal Care, Inc. and the Department of Public Welfare. In accordance with Provision #2 of the Agreement, the Department APPROVES [REDACTED] to serve as Master at the above address.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Melusky".

Ronald Melusky
Director

Enclosures:
Settlement Agreement

CC:
Patrick Marano, Office of General Counsel
Sandra Wooters, Southeast Regional Director

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF HEARINGS AND APPEALS**

**IN THE MATTER OF: Tabor Manor v. Adult Residential Licensing
BHA ID No. 9999
BHA Docket Number(s): 034-11-0046, 081-12-0015,
and 081-12-0016
Personal Care Home – Non Renewal and Fines**

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into this 1st day of May 2012, by and between the Department of Public Welfare Adult Residential Licensing (Department) and Manor Personal Care, Inc. (Appellant) for the purpose of resolving the matter set forth herein.

WHEREAS, the Department is the Commonwealth agency entrusted with the oversight and administration of the licensing of personal care homes (homes) in the Commonwealth of Pennsylvania;

WHEREAS, Tabor Manor is located at 6730 Tabor Avenue, Philadelphia, Pennsylvania, 19111 and is operated as a personal care home licensed under statutes and regulations administered by the Department;

WHEREAS, by letter of November 14, 2011, Appellant was notified of the Department's decision to not renew the personal care home license for the above home and to place a ban on new resident admissions;

WHEREAS, on November 23, 2011, the Department received Appellant's timely appeal docketed by the Department's Bureau of Hearings and Appeals (BHA) under docket number 034-11-0046;

WHEREAS, BHA conducted a pre-hearing conference on January 5, 2012 resulting in an Order to stay the appeal for a sixty (60) day period to facilitate settlement negotiations;

WHEREAS, by letters dated January 18, 2012 and February 1, 2012, Appellant was notified of the Department's intent to assess fines for uncorrected and repeated regulatory violations pursuant to 55 Pa.Code Ch. 2600;

WHEREAS, on February 29, 2012, Appellant timely requested to appeal the Department's fine assessments including the cumulative payment of \$1,000.00 necessary to perfect both appeals;

WHEREAS, BHA docketed the fine appeals under docket numbers 081-12-0015 and 081-12-0016 respectively;

WHEREAS, the Department assessed fines in relation to docket number 081-12-0015 from January 19, 2012 through February 9, 2012 totaling \$16,170.00;

WHEREAS, the Department assessed fines in relation to docket number 081-12-0016 from February 2, 2012 through March 29, 2012 totaling \$13,680.00;

WHEREAS, the Department and the Appellant both wish to resolve this matter amicably and avoid the uncertainties of further litigation of this matter;

AND,

WHEREAS, the Parties, have reached a mutually agreeable means of resolving this matter that will settle and end this appeal.

NOW, THEREFORE, the Parties, intending to be legally bound, do hereby mutually agree to the Terms of the Agreement as follows:

TERMS OF AGREEMENT

1. All terms of this Agreement shall remain in effect for three (3) years from the date of this Agreement, effective upon execution by the Parties. The execution of the documents by all Parties triggers the time period for actions in this Agreement. The Department will not unreasonably deny renegotiation of this Agreement following twelve (12) months of full compliance with all Provisions of this Agreement.
2. Within thirty (30) days of this Agreement, Appellant will identify and hire an entity (hereafter "Master") approved by the Department to manage and oversee the operations of Tabor Manor. The Department agrees to approve or deny any proposed Master within 48 business hours of submission of proposed Master to the Department by Appellant. The Master shall have the powers of a master as contemplated by 62 P.S. § 1057.1(b) and as dictated by the Department on an as-needed basis. The Master shall be employed at Appellant's expense and will be responsible for management of all day-to-day operations of the home including the establishment of policies and procedures, staff training, regulatory compliance, and the management of resident and home funds. Nothing in this Agreement shall preclude Appellant from profiting from the operation of the home provided that Appellant's compensation is managed and distributed by the Master.

3. Within thirty (30) days of the effective date of this Agreement, Appellant will employ a new administrator who will be on-site performing administrator duties at least twenty (20) hours per week at Tabor Manor. The administrator will possess a bachelor's degree from an accredited college or university or a license as a Pennsylvania registered nurse and meet all other applicable requirements of Pa.Code Ch. 2600 (relating to personal care homes). During an absence of the administrator due to training, vacation, or illness, an employee who meets the educational and training requirements for a personal care home administrator as specified at 55 Pa.Code § 2600.53 (relating to qualifications and responsibilities of administrators) and § 2600.64 (relating to administrator training and orientation) will be present to meet the on-site twenty (20) hour per week requirement. The administrator must be approved by the Department prior to hire. Prospective administrators may not be currently affiliated or associated with the Appellant or Mr. Howard Lavin. Nothing in this Agreement shall preclude the Master from serving as the Administrator
4. The Department agrees to waive the outstanding fine assessments for docket numbers 081-12-0015 and 081-12-0016 collectively totaling \$28,850.00 following deduction of the \$1,000.00 payment submitted to perfect the appeals. The Department's waiver of the outstanding fine total is intended to facilitate and offset the costs associated with the management staffing requirements of Provision #2, #3, and #7. The Department will not return the \$1,000.00 Appellant submitted to BHA on February 29, 2012 to perfect the appeals.
5. Within forty-five (45) days of the effective date of this Agreement, Appellant, by and through the Master and in conjunction with the Administrator specified at Provision #3 of this Agreement, will develop an employee oversight and disciplinary policy designed to hold employees of Tabor Manor personally responsible for violations of 55 Pa.Code Ch. 2600 (relating to personal care homes). This policy will include, at a minimum, formal documentation of employee noncompliance and corrective action taken, up to and including termination, for repeated or serious violations. The documentation must be available to the Department for review upon request.
6. Upon completion of the requirements of Provisions #2, #3, and #5 of this Agreement, the Master will meet with the Department on a monthly basis at a location specified by the Department to provide the following:
 - (a) The status of Appellant's compliance with this Agreement,
 - (b) The status of the home's progress towards full compliance with applicable requirements of personal care home operation, and
 - (c) Any other information the Department requests prior to or during the meeting.

7. Within sixty (60) days of the effective date of this Agreement, Appellant, by and through the Master, will employ a Licensed Practical Nurse or Registered Nurse who will be on-site at Tabor Manor no less than twenty (20) hours per week. This employee will manage all aspects of medication procurement, administration, documentation, and storage pursuant to 55 Pa.Code § 2600.181-191. The individual selected may not concurrently hold the position of Master or Administrator as specified in Provisions #2 and #3 of this Agreement.

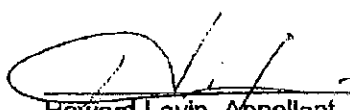
8. Within sixty (60) days of the effective date of this Agreement, Appellant, by and through the Master, will revise the admission and discharge criteria to reflect that Tabor Manor will not serve residents who require assistance with insulin administration by the home. All residents currently residing in the home when this Provision takes effect and who receive assistance with insulin administration from the home will be permitted to remain and receive insulin services. This Provision does not restrict admission of residents who self-administer insulin in accordance with 55 Pa.Code § 2600.181(relating to self-administration); however, in accordance with the revised discharge policy, residents who develop the need for assistance with insulin administration, as defined below, will be discharged pursuant to 55 Pa.Code § 2600.228(h) (relating to notification of termination). The Department will provide relocation assistance as needed and by request of the Appellant. For the purposes of this Agreement, the services that constitute "assistance with insulin administration" include: measuring blood sugar levels, drawing insulin from the container, administering insulin injections, and proper maintenance and disposal of administration supplies.

9. Mr. Howard Lavin may not be involved in the management, operation, administration, or financial management of Tabor Manor, nor will Mr. Howard Lavin have access to any records maintained at Tabor Manor that relate to resident care and services. Mr. Lavin may be involved in the business decisions and financial management of Manor Personal Care, Inc. Nothing in this Agreement prohibits Mr. Lavin from visiting with residents, delivering food, making physical site repairs, or profiting from the operation of the home. The Master will create and maintain a detailed and accurate record of when Mr. Lavin is present at the facility including the date, time, and activities performed. The record will be available for Departmental review upon request and in conjunction with Provision #6 of this Agreement copies will be provided at the monthly status meetings.

10. Appellant will not apply for a new license to operate a personal care home or an assisted living residence in the Commonwealth of Pennsylvania for the duration of this Agreement. This provision will not preclude Mr. Howard Lavin from applying for a license to operate a personal care home at 6730 Tabor Avenue, Philadelphia, Pennsylvania, 19111 as long the Provisions of this Agreement continue to be met. This Agreement shall bind, and its provisions shall be fully applicable to, any new legal entity where Mr. Howard Lavin is the owner, serves as an officer, or is otherwise involved in any capacity.
11. Upon completion of the requirements of Provisions #2, #3, and #5 of this Agreement, the Department will issue Appellant a Second Provisional license for a period of six (6) months, effective on the date the above-referenced requirements are met. Issuance of this license serves as a removal of the ban on new resident admissions to the home.
12. This Agreement shall not be construed to reduce, limit or restrict the Department's authority to enforce applicable statutes and regulations, including but not limited to 62 P.S. § 1001 et seq., 55 Pa.Code § 20.1 et seq. and 55 Pa.Code § 2600.1 et seq.
13. Any violation by Appellant of any of the terms of this Agreement or of any other applicable requirement, including but not limited to Article X of the Public Welfare Code, 62 P.S. § 1001 et seq., 55 Pa. Code § 20.1 et seq. and 55 Pa. Code § 2600.1 et seq, may be deemed a material breach of the Agreement at the sole discretion of the Department. The Department shall have the right to take any action determined to be appropriate, including the administration of monetary penalties as specified at 55 Pa.Code § 2600.262; said right is subject to the Appellant's right to hearing before the Department's Bureau of Hearing and Appeals (BHA) to determine the appropriateness of the Department's action.
14. Each Party agrees that this Agreement shall not constitute an admission of wrongdoing, liability or fault by either Party.
15. Each individual signing this Agreement on behalf of a Party represents that the individual is duly authorized to sign this Agreement on behalf of the Party. The undersigned represents that each Party has obtained all necessary approvals to bind the Party she/he represents.
16. This Agreement is based upon facts unique to this case and does not establish a precedent or otherwise bind the Department in any other action and shall not be construed as evidence of Department practice, policy or interpretation with respect to any dispute or issue.

17. The effective and execution date of this Agreement is the date set forth on page one of this Agreement, which will be completed by counsel for the Department on the date the Department's counsel signs this Agreement.
18. The Parties to this Agreement agree that they have read and fully understand this Agreement. This Agreement is entered into knowingly, voluntarily and intelligently.
19. This Agreement constitutes the entire Agreement and understanding between the Parties relating to the specific matter contained herein, and supersedes any prior Agreements, whether oral or written, with respect thereto. This Agreement may not be amended or modified in any respect whatsoever except in writing duly executed by an authorized representative of each of the Parties.
20. Once this Agreement is executed, the Department shall file this Agreement with BHA, and such filing will constitute Appellant's withdrawal of its appeal at BHA Docket Numbers 034-11-0046, 081-12-0015, and 081-12-0016.
21. This Agreement is public information in accordance with 65 P.S. § 67.101 et seq.


WHEREFORE, the Parties hereby stipulate and agree to the above conditions and terms of settlement.



 Howard Lavin, Appellant
 Tabor Manor

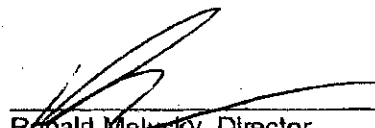
Date: 4/30/2012

And



 Paula G. Sanders, Esquire, #813/
 Counsel for Appellant

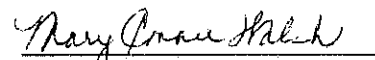
Date: 4/30/2012



 Ronald Melusky, Director
 Department of Public Welfare
 Adult Residential Licensing

Date: 5/1/12

And



 Mary Connie Waish, Esquire
 Senior Counsel
 Department of Public Welfare

Date: 5/1/12