

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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IN THE MATTER

OF

HOWARD A. ZUCKER, M.D., J.D., as Commissioner of Health  
of the State of New York, to determine the action to be taken  
with respect to:

Good Samaritan Lutheran Health Care Center, Inc.

Respondent,

as operator of

Bethlehem Commons Care Center  
125 Rockefeller Road  
Delmar, New York 12054

STIPULATION

AND

ORDER

NH-18-003

arising out of alleged violations of Article 28 of the Public Health  
Law of the State of New York and Title 10 of the Official Compilation  
of Codes, Rules and Regulations of the State of New York

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WHEREAS, the New York State Department of Health ("the Department") has made  
findings based upon inspections of the Bethlehem Commons Care Center ("the Facility"); and

WHEREAS, the Department completed its inspections of the Facility on April 20, 2017;  
and

WHEREAS, the Department's inspection findings included alleged violations of Article 28  
of the Public Health Law (PHL) and Part 415 of Title 10 of the Official Compilation of Codes, Rules  
and Regulations of the State of New York (10 NYCRR Part 415); and

WHEREAS, prior to commencement of administrative enforcement action based upon the  
alleged violations by service of a Notice of Hearing and Statement of Charges, the Department  
and the Respondent engaged in settlement discussions; and

WHEREAS, the parties wish to resolve this matter by means of a settlement instead of an  
adversarial administrative hearing.

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. This matter is settled and discontinued with prejudice. The Department shall not pursue administrative enforcement action against the Respondent pursuant to PHL Article 28 and 10 NYCRR Part 415 in connection with the findings set forth in the Statement of Deficiencies dated April 20, 2017.

2. The Respondent admits, to resolve this administrative matter, to the existence of substantial evidence of violations of 10 NYCRR §§ 415.14(h), 415.29(b), and 415.26, based upon the findings set forth in the Statement of Deficiencies dated April 20, 2017. The foregoing admission is without prejudice to the Respondent's rights, defenses, and claims in any other matter, proceeding, action, hearing, or litigation not involving the Department or any of its boards or councils authorized by the Public Health Law, including but not limited to those involving medical malpractice, personal injury, and/or negligence that may be made in a civil action for monetary damages.

3. Pursuant to PHL §§ 12(1)(a) and 206, the Respondent shall pay a civil penalty of Six Thousand Dollars (\$6,000.00) within thirty (30) days of the effective date of this Stipulation and Order. Payment of this civil penalty shall be sent by certified mail and shall be made payable to the New York State Department of Health and forwarded to the New York State Department of Health, Bureau of Accounts Management, Room 2748, Corning Tower, Empire State Plaza, Albany, New York 12237-0016. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].

4. Nothing herein contained shall be construed to preclude the Department from pursuing any and all sanctions or remedies authorized by the Public Health Law against any individual employed by or practicing in association with the Facility for any violations based upon the findings set forth in the Statement of Deficiencies dated April 20, 2017. Such sanctions and remedies may include, but are not limited to, administrative proceedings brought pursuant to PHL § 2803-d (relating to patient abuse, mistreatment, or neglect), PHL § 230 (relating to professional medical conduct), and PHL Article 28-D (relating to the practice of nursing home administration). A copy of this Stipulation and Order shall be sent to the Bureau of Nursing Home Administrator Licensure for whatever action, if any, it may deem appropriate. Nor shall this Stipulation and Order be construed to preclude the Department, the Public Health and Health Planning Council, or any other boards or councils authorized by the Public Health Law from considering the Department's findings referenced herein in any matter before it.

5. It is further stipulated and agreed by the Respondent and the Department that there exist valid and sufficient grounds, as a matter of fact and law, for the issuance of this Stipulation and Order under the Public Health Law and the Respondent consents to its issuance, accepts its terms and conditions and waives any right to challenge this Stipulation and Order in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

6. This Stipulation and Order shall be effective upon service on the Respondent or the Respondent's attorney or representative of a fully executed copy by personal service or by certified or registered mail.

DATED: JAN 22, New York, 2018 Good Samaritan Lutheran Health Care Center, Inc.

BY:

Frank Tripodi


Print Name:

FRANK TRIPODI

AGREED AND SO ORDERED:

DATED: Albany, New York  
February 1, 2018

NEW YORK STATE DEPARTMENT OF HEALTH

 FOR

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner of Health

Inquiries to: Mark Fleischer, Director  
Bureau of Administrative Hearings  
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**Mail Stipulation and Order to:**

Mark Fleischer, Esq.  
New York State Department of Health  
Corning Tower Building, Room 2412  
Empire State Plaza  
Albany, New York 12337-0029

**Mail Payment to:**

New York State Department of Health  
Bureau of Accounts Management  
Corning Tower, Room 2748  
Empire State Plaza  
Albany, New York 12337-0016

ADDENDUM

**Bethlehem Commons Care Center**

<b>Survey Date</b>	<b>Cite (10 NYCRR)</b>	<b>Violation</b>	<b>Civil Penalty Provision</b>
4/20/17	415.14 (h)	Dietary Services Food Storage	PHL §§ 12(1)(a) and 206
4/20/17	415.5(e)(1)(2)	Physical Environment Space/Equipment	PHL §§ 12(1)(a) and 206
4/20/17	415.26	Administration	PHL §§ 12(1)(a) and 206