

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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:

Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC

Respondent,

as operator of

Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC
447-449 Lake Shore Drive West
Dunkirk, New York 14048

STIPULATION

AND

ORDER

NH-16-161

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

WHEREAS, the New York State Department of Health (the "Department") has made findings based upon inspections of the Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC (the "Facility"); and

WHEREAS, the Department completed its inspections of the Facility on February 4, 2015; and

WHEREAS, the Department's inspection findings included alleged violations of Article 28 of the Public Health Law and 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 Article 28 of the Public Health Law and 10 NYCRR Part 415 in connection with the Department's findings based upon the inspections completed on February 4, 2015.

2. The Respondent admits that substantial evidence of violations of 10 NYCRR Part 415 existed under the citations set forth in the attached addendum. The foregoing admission made by the Respondent is solely for the purpose of resolving the instant administrative matter and is not intended for use in any other forum, tribunal or court. Any such 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. It is agreed that the foregoing admission is not intended to be used dispositively or otherwise, regarding any allegations of medical malpractice, personal injury and/or negligence that may be made in a civil action for monetary damages. The Department acknowledges that a post-survey revisit conducted on March 31, 2015 found the Facility in substantial compliance as of March 20, 2015.

3. Pursuant to Sections 12 and 206 of the Public Health Law, the Respondent shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000) within 30 days after the effective date of this Stipulation and Order. Eight Thousand Dollars (\$8,000) is hereby

assessed pursuant to Public Health Law §§ 12(1)(a) and 206, and Ten Thousand Dollars (\$10,000) is hereby assessed pursuant to Public Health Law § 12(1)(c). 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 identified during the inspections referred to herein. Such sanctions and remedies may include, but are not limited to, administrative proceedings brought pursuant to Public Health Law Section 2803-d (relating to patient abuse, mistreatment or neglect), Public Health Law Section 230 (relating to professional medical conduct) and Public Health Law 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.

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: , New York
, 2016

Absolut Center for Nursing and Rehabilitation
at Dunkirk, LLC

CONSTANCE HARRINGTON
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01-HA6063632
QUALIFIED IN CHAUTAUQUA COUNTY
MY COMMISSION EXPIRES 09-04-2017

BY: Matthew J. Hriczko

Print Name: MATTHEW J. HRICZKO

AGREED AND SO ORDERED:

DATED: Albany, New York
May 4, 2016

NEW YORK STATE DEPARTMENT OF HEALTH

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

Inquiries to: Mark Fleischer, Director
Bureau of Administrative Hearings
Phone: (518) 473-1707
Email: mark.flesicher@health.ny.gov

Mail Payment to:

New York State Department of Health
Bureau of Accounts Management
Corning Tower, Room 2748
Empire State Plaza
Albany, New York 12237-0016

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 12237-0029

ADDENDUM

Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC

| <u>Date</u> | <u>Code Cite 10 NYCRR</u> | <u>Violation</u> | <u>Civil Penalty Provision</u> |
|------------------|-------------------------------|--|---|
| February 4, 2015 | 415.3(e)(1)(i, ii) | Resident Rights: Notice And Services | Public Health Law §§12(1)(a) and 206 |
| | 415.3(e)(2)(ii)(b) | Resident Rights: Notification of Changes | Public Health Law §§12(1)(a) and 206 |
| | 415.4(b) | Resident Behavior and Facility Practices: Staff Treatment of Residents | Public Health Law §§12(1)(a) and 206 |
| | 415.26 | Administration: | Public Health Law §§12(1)(a) and 206 |
| | 415.12 | Quality of Care: Highest: Practicable Potential | Public Health Law §12(1)(c) |