

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:

Wesley Gardens Corporation

Respondent,

as operator of

Wesley Gardens Corporation  
3 Upton Park  
Rochester, New York 14607

STIPULATION

AND

ORDER

NH-17-015

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)

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WHEREAS, the New York State Department of Health (the "Department") has  
made findings based upon inspections of the Wesley Gardens Corporation (the  
"Facility"); and

WHEREAS, the Department completed its inspections of the Facility on April 28,  
2016; 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 April 28, 2016.

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.

3. Pursuant to Public Health Law §§ 12(1)(c), the Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000) within 30 days of the effective date of this Stipulation and Order. 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,

Coming 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 § 2803-d (relating to patient abuse, mistreatment or neglect), Public Health Law § 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: ROC, New York  
January 4, 2017

Wesley Gardens Corporation

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Robert W. Jones III

AGREED AND SO ORDERED:

DATED: Albany, New York  
Feb 8, 2017

NEW YORK STATE DEPARTMENT OF HEALTH

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

Inquiries to: Mark Fleischer, Director  
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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

Wesley Gardens Corporation

<u>Date</u>	<u>Code Cite</u> <u>10 NYCRR</u>	<u>Violation</u>	<u>Civil Penalty</u> <u>Provision</u>
4/28/2016	415.12	Quality of Care Highest Practicable Potential	Public Health Law §§ 12(1)(c)

Facility Name: **Wesley Gardens Corporation**

Region: Rochester Fac. ID: 0449 Packet: 16-015

Exit Date	Violations		Max. Fine	Rec. Fine
	Citation, S/S	Summary		
4/28/16	415.12 Quality of Care-Highest practicable potential  F-Tag 309 Provide Care/Services for Highest Well Being  S/S -G	Based on interviews and record reviews conducted, it was determined that for one of three residents reviewed for Advance Directives and Cardio Pulmonary Resuscitation (CPR) quality of care, the facility did not provide the necessary care and services to attain/maintain the resident's highest level of physical functioning. The facility staff failed to provide cardiopulmonary resuscitative measures in a timely manner when unable to determine a pulseless resident's code status. This resulted in <b>serious physical harm</b> that is not immediate jeopardy.	\$10,000	\$10,000
Total			\$10,000	\$10,000