

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-18-048

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 Wesley Gardens Corporation ("the Facility"); and

WHEREAS, the Department completed its inspections of the Facility on May 21, 2018,  
March 1, 2017 and January 20, 2016; and

WHEREAS, the Department's inspection findings included an alleged violation 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 violation 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 May 21, 2018, March 1, 2017 and January 20, 2016.

2. The Respondent admits, to resolve this administrative matter, to the existence of substantial evidence of a violation of 10 NYCRR § 415.19, based upon the findings set forth in the Statement of Deficiencies dated May 21, 2018, March 1, 2017 and January 20, 2016. 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 Two Thousand Dollars (\$2000) 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 May 21, 2018, March 1, 2017 and January 20, 2016. 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.

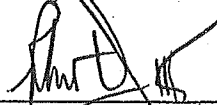
5. It is further stipulated and agreed by the Respondent and the Department that there exist valid and sufficient grounds, as a matter of fact and law, for the issuance of this Stipulation and Order under the Public Health Law and the Respondent consents to its issuance, accepts its terms and conditions 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: Nov. 8, New York  
2018

Wesley Gardens Corporation

BY:




Print Name:

Robert W Jones III  
President + CEO

AGREED AND SO ORDERED:

DATED: Albany, New York  
Nov 29, 2018

NEW YORK STATE DEPARTMENT OF HEALTH

 For

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

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Albany, New York 12237-0029

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