

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:

Westgate Nursing Home, Inc.

Respondent,

as operator of

Creekview Nursing and Rehab Center
525 Beahan Road
Rochester, New York 14624

STIPULATION

AND

ORDER

NH-17-040

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

WHEREAS, the New York State Department of Health (the "Department") has made
findings based upon inspections of the Creekview Nursing and Rehab Center (the "Facility"); and

WHEREAS, the Department completed its inspections of the Facility on March 9, 2017,
January 13, 2016 and May 4, 2015; 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 Department's findings based upon the inspections completed on March 9, 2017, January 13, 2016 and May 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.

3. Pursuant to PHL §§ 12(1)(a) and 206, the Respondent shall pay a civil penalty of Two Thousand Dollars (\$2,000) within thirty (30) days after 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, 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

AGREED AND SO ORDERED:

DATED: Albany, New York
July 6, 2017

NEW YORK STATE DEPARTMENT OF HEALTH



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

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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 12237-0029

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

ADDENDUM

Creekview Nursing and Rehab Center

Survey Date	Cite (10 NYCRR)	Violation	Civil Penalty Provision
3/9/17	402.6(d)	Criminal History Record Check Process	PHL §§ 12(1)(a) and 206
1/13/16	402.6(d)	Criminal History Record Check Process	PHL §§ 12(1)(a) and 206
5/4/15	402.6(d)	Criminal History Record Check Process	PHL §§ 12(1)(a) and 206