

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:

WESTGATE NURSING HOME, INC.

Respondent,

as operator of

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

STIPULATION

AND

ORDER

NH-20-055

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, and Governor's Executive Order 202.18

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

WHEREAS, the Department completed its survey of the Facility on June 29, 2020; and

WHEREAS, the Department's survey 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 Governor's Executive Order 202.18; 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, 10 NYCRR Part 415, and Governor's Executive Order 202.18 in connection with the findings set forth in the Statement of Deficiencies dated June 29, 2020 and the Addendum to this Stipulation and Order.

2. The Respondent admits, to resolve this administrative matter, to the existence of substantial evidence of violations of PHL § 2803(4), 10 NYCRR §§ 415.19(a)(1), 415.19(a)(2) and Governor's Executive Order 202.18 based upon the findings set forth in the Statement of Deficiencies dated June 29, 2020, and the Addendum to this Stipulation and Order. 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, and Governor's Executive Order 202.19, the Respondent shall pay a civil penalty of Four Thousand Dollars (\$4,000) 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 June 29, 2020. 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.

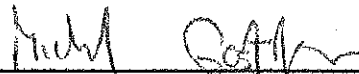
6. This Stipulation and Order shall be effective upon service on the Respondent or the Respondent's attorney or representative of a fully executed copy by personal service or by certified or registered mail.

SIGNATURE PAGE FOLLOWS

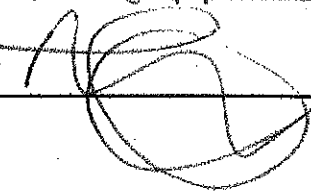
DATED: , New York
, 20__

WESTGATE NURSING HOME, INC.

BY:



Print Name:



AGREED AND SO ORDERED:

DATED: Albany, New York
Sept 27th, 20*20*

NEW YORK STATE DEPARTMENT OF HEALTH



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

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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			
Date of SOD	Violation	Description and Number of Applicable Citations	Type and amount of Fine
June 29, 2020	Governor's Executive Order 202.18	<p>Notification of family members/next of kin</p> <p>Facility shall notify family members or next of kin if any resident tests positive for COVID-19 or if any resident suffers a COVID-19 related death, within 24 hours of such positive test result or death</p> <p>Facility failed to notify residents' family members or next of kin of two COVID-19 positive tests/admissions to the facility between 5/29/20-6/19/20 within 24 hours of the admissions.</p> <p>A total of two citations.</p>	<p>PHL §§ 12(1)(a) and 206, and Executive Order 202.19</p> <p>\$2,000 per citation</p> <p>2 citations equals a total of \$4,000.</p>