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:

Promesa RHCF Inc

Respondent,

as operator of:

Casa Promesa
306 East 175th Street
Bronx, NY USA 10457


WHEREAS, Promesa RHCF Inc, ("Operator") is licensed by the New York State Department of Health ("the Department") pursuant to Article 28 of Public Health Law to operate a nursing home and, as such, is required to comply with and adhere to the Public Health Law and its implementing regulations at 10 NYCRR Part 415; and

WHEREAS, on May 10, 2020, Governor Cuomo issued EO 202.30 (9 NYCRR § 8.202.30), which provided, among other things, that the operator and administrator of all nursing homes and all adult care facilities, must test or make arrangements for the testing of all personnel on the facility's premise, including all employees, contract staff, medical staff, operators and administrators, for COVID-19, twice per week. EO 202.40 (9 NYCRR § 8.202.30) extended EO 202.30 and modified it by reducing the personnel testing requirement to once per week for facilities located in regions that have reached Phase Two of reopening; and

WHEREAS, the Department, since May 2020, has been requiring all nursing home and adult home operators and administrators to complete weekly surveys through an application on
the Health Commerce System (https://apps.health.ny.gov/pubpal/builder/survey/week_nh-and-acf-staff-testing) which report whether and to what extent the facility is meeting the EO 202.30 testing requirements (hereinafter referred to as "weekly EO 202.30 staff testing compliance survey"). The Department has also required that facilities certify to the accuracy of its completed survey and to having complied with the EO; and

WHEREAS, the Department finds that the Respondent, in violation of PHL § 2803(4), and 10 NYCRR 415.19(d), failed to submit to the Department its weekly EO 202.30 staff testing compliance survey that was due on December 10, 2020 at 5:00 PM; 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 Department's findings set forth above;

2. The Respondent admits, to resolve this administrative matter, to the existence of substantial evidence that it violated PHL § 2803(4), and 10 NYCRR 415.19(d) by failing to submit to the Department the weekly EO 202.30 staff testing compliance survey that was due on December 10, 2020 at 5:00 PM. 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 ($2,000) 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 Operator for any violations based upon the findings set forth above. Such sanctions and remedies may include, but are not limited to, 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: Bronx, New York 02/02/2021, 2020

BY:

Print Name: Jose A. Rodriguez, Esq.

AGREED AND SO ORDERED:

DATED: Albany, New York 02/02/2021, 2020

NEW YORK STATE DEPARTMENT OF HEALTH

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

Mail Stipulation and Order to:
New York State Department of Health
Bureau of Administrative Hearings
Corning Tower, Room 2412
Empire State Plaza
Albany, New York 12237-0016

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