

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:

104 Old Niagara Road Operating Company, LLC

Respondent,

as operator of

Elderwood at Lockport
104 Old Niagara Road
Lockport, New York 14094

STIPULATION

AND

ORDER

NH-20-010

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 Elderwood at Lockport ("the Facility"); and

WHEREAS, the Department completed its inspection of the Facility on October 28, 2019;
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 October 28, 2019.

2. The Respondent admits, to resolve this administrative matter, to the existence of substantial evidence of violation of a 10 NYCRR § 415.12(h)(1), based upon the findings set forth in the Statement of Deficiencies dated October 28, 2019. 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)(c), the Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000) 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 October 28, 2019. 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: February 10, 2020, New York

104 Old Niagara Road Operating Company, LLC

BY: Shari Hutchison

Print Name: Shari Hutchison

AGREED AND SO ORDERED:

DATED: Albany, New York
Feb. 25, 2020

NEW YORK STATE DEPARTMENT OF HEALTH

Howard A. Zucker FOR

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

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Albany, New York 12237-0029

Mail Payment to:

New York State Department of Health
Bureau of Accounts Management
Corning Tower, Room 2748
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