

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:

CCRN Operator, LLC

STIPULATION

Respondent,

AND

as operator of

ORDER

Focus Rehabilitation and Nursing Center  
at Otsego  
128 Phoenix Mills Cross Road  
Cooperstown, New York 13326

NH-16-196

arising out of alleged violations of Article 28 of the Public Health Law of the State of New York and Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR)

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WHEREAS, the New York State Department of Health ("the Department") has made findings based upon inspections of the Focus Rehabilitation and Nursing Center at Otsego ("the Facility"); and

WHEREAS, the Department completed its inspections of the Facility on December 17, 2014 and July 28, 2015; and

WHEREAS, the Department's inspection findings included alleged violations of Article 28 of the Public Health Law (PHL) and 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 December 17, 2014 and July 28, 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. The Respondent shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000.00) within thirty (30) days after the effective date of this Stipulation and Order. Ten Thousand Dollars (\$10,000) is hereby assessed pursuant to PHL § 12(1)(c), and Eight Thousand Dollars (\$8,000) is hereby assessed pursuant to PHL §§ 12(1)(a) and 206. Payment of this civil penalty shall be sent by certified mail and shall be made by certified check, 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 during the inspections referred to herein. 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.

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: ~~Copertown~~ New York  
August 24, 2016

CCRN Operator, LLC

BY: Jeffrey W. Emhof

Print Name: JEFFREY W EMMOF, LNHA  
Executive Director

AGREED AND SO ORDERED:

DATED: Albany, New York  
September 27, 2016

NEW YORK STATE DEPARTMENT OF HEALTH

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

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New York State Department of Health  
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Corning Tower, Room 2748  
Empire State Plaza  
Albany, New York 12237-0016

Mail Stipulation and Order to:

Craig W. Anderson, Senior Attorney  
New York State Department of Health  
Corning Tower Building, Room 2412  
Empire State Plaza  
Albany, New York 12237-0029

ADDENDUM

**Focus Rehabilitation and Nursing Center at Otsego**

<u>Date</u>	<u>Code Cite 10 NYCRR</u>	<u>Violation</u>	<u>Civil Penalty Provision</u>
12/17/2014	415.3(e)(2)(ii)(b)	Resident Rights Notification of Change	Public Health Law §§ 12(1)(a) and 206
7/28/2015	415.12(h)(1)	Quality of Care Accidents/ Supervision	Public Health Law §§ 12(1)(c)
	415.12(m)(2)	Quality of Care Significant Medication Errors	Public Health Law §§ 12(1)(a) and 206
	415.26	Administration	Public Health Law §§ 12(1)(a) and 206
	415.27(a-c)	Quality Assurance	Public Health Law §§ 12(1)(a) and 206