

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

IN THE VIGO COUNTY SUPERIOR COURT
CASE NO.: 84D01-1902-PL-001107

INDIANA STATE DEPARTMENT
OF HEALTH,

Petitioner,

v.

BETHESDA GARDENS.

Respondent.

CONSENT DECREE

Petitioner, Indiana State Department of Health, by Deputy Attorney General Parvinder K. Nijjar, and Respondent, Bethesda Gardens, by counsel, hereby agree to the entry of this Consent Decree, as follows:

In order to expedite the lawsuit, the Parties believe it is in their mutual best interests to resolve this matter. This Consent Decree does not constitute an admission by Respondent of any wrongdoing, nor shall it be construed as an abandonment by the Petitioner of any of its claims against the Respondent, as set forth in its Complaint.

The Parties recognize, and the Court by approving this Consent Decree finds, that this Consent Decree has been negotiated in good faith and is an entry of final judgment in this proceeding and on the issues resolved herein.

NOW THEREFORE, without adjudication or admission of any issue of fact or law, or liability and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

JURISDICTION AND SCOPE OF JUDGMENT

1. This Court has jurisdiction and venue over the subject matter of this action and the Parties.

2. Respondent waives any objection regarding the Court's jurisdiction or venue for enforcement of this Consent Decree and agrees to appear on proper notice of a failure to comply with any of the provisions of this Decree.
3. Any subsequent Indiana court obtaining jurisdiction over Respondent based upon a complaint alleging a violation of any Indiana law that is the subject of this Consent Decree may take judicial notice of this Decree and is deemed to be a proper venue for interpretation and enforcement of this agreement.

RELIEF ORDERED

4. Respondent, its agents, representatives, employees, subcontractors, and assigns are permanently enjoined from providing services outside the scope of practice for unlicensed assisting living facilities in violation of Indiana Code § 16-28-2-1, §16-28-2.5-3, § 16-18-2-317.7 and 410 IAC 16.2-5-0.5
5. In addition, Respondent agrees that the Petitioner will have continuing oversight of the Bethesda Gardens, Terre Haute.
6. Respondent agrees to cease operations of its Memory Care Unit by March 31, 2019.
7. Respondent agrees to provide documentation to the Petitioner of any and all training its staff have received regarding the proper scope of practice for unlicensed assisted living facilities by the time of the survey of the facility, which is to be completed sometime during the first week of April 2019.
8. Respondent agrees that the Petitioner will conduct a survey of the facility sometime during the first week of April 2019.
9. Respondent agrees that the Petitioner will conduct another unannounced survey of the facility any time between April 8, 2019 and December 31, 2019.

10. Respondent agrees to refrain from providing the following services to the residents of Bethesda Gardens, Terre Haute:
 - a. Full assist bathing;
 - b. medication administration and centralized storage; and
 - c. oxygen tank flow control.
11. Respondent agrees to refrain from reopening and operating a memory care unit for the next two years. The two years are to begin from the date of the signing of this Consent Decree. In the event respondent decides to open and operate a memory care home in the next two years, Respondent must immediately notify Petitioner so that Petitioner may conduct a survey of the facility.
12. Respondent agrees to refrain from providing services outside its legal scope as an unlicensed assisted living facility without first seeking proper licensure under Indiana law.
13. Respondent shall cooperate with the Office of the Indiana Attorney General and the Petitioner in the resolution of any future complaints against, related to, or involving Respondent received by the Petitioner. This shall include, but is not limited to, Respondent promptly resolving any valid complaints brought to the Respondent's attention by the Office of the Indiana Attorney General after the filing of this Consent Decree with the Court.

REPRESENTATIONS AND WARRANTIES

14. This Consent Decree is binding upon the Respondent Bethesda Gardens and its agents, representatives, employees, subcontractors, and assigns.
15. The Parties represent and warrant that:
 - a. They are authorized to enter into and execute this Consent Decree;
 - b. They have read this entire Consent Decree and understand the terms and conditions contained herein, as well as the consequences of entering into this Consent Decree;

- c. They have been represented by counsel throughout these proceedings;
 - d. They have knowingly and voluntarily entered into this Consent Decree;
 - e. They agree to be bound by all provisions contained herein; and
 - f. They agree that this Consent Decree is necessary to govern Respondent's future conduct regarding the provision of authorized services to residents at Bethesda Gardens, Terre Haute, an unlicensed assisted living facility.
16. Respondent represents to the Court and stipulates as a part of this Consent Decree that the individual signing this Consent Decree on behalf of Respondent is duly authorized to enter into, to execute, and to legally bind Respondent to this Consent Decree.
17. Respondent acknowledges that it understands its obligations under this Consent Decree and acknowledges and agrees that its obligations under this Consent Decree are sufficiently specific to be enforceable against it.
18. Respondent agrees that it will not challenge the Attorney General's future enforcement of this Consent Decree based upon any assertion that the Consent Decree is overbroad, vague, not sufficiently specific, or otherwise deficient.
19. Respondent expressly waives any right to contest the validity or applicability of Indiana law and this Consent Decree. Respondent expressly waives any right to trial or appeal in this matter.

ACKNOWLEDGEMENTS AND AGREEMENTS

20. Entire Agreement – The Parties acknowledge that this Consent Decree contains the entire agreement between the Parties with respect to allegations of violations of Indiana law set forth in the Petitioner's Complaint.
21. Severability – All Parties further acknowledge that this Consent Decree constitutes a single and entire agreement that is not severable or divisible. If any provision or provisions of this

Consent Decree is or are declared invalid by a court of competent jurisdiction, the rest of this Consent Decree shall remain in full force and effect and shall not be affected by such declaration.

22. Third-Party Claims or Future Claims – Execution of this Consent Decree by the Respondent and the Petitioner, and its approval by the Court, shall not be construed as a release or waiver of any claims or causes of action that may accrue to third parties having any private right of action, or of any claims or causes of action that may arise out of violation or alleged violation of any statute or rule occurring after the date this Consent Decree is approved by the Court.

23. No Endorsements – Respondent shall not represent that the Petitioner approves or endorses any of the Respondent's past or future practices, or that execution of this Consent Decree constitutes such approval or endorsement.

IN WITNESS WHEREOF, the Parties have executed this Consent Decree on the dates set forth below.

AGREED AND CONSENTED TO BY:

BETHESDA GARDENS, TERRE HAUTE

Shannon Willmore ED
Signature, Shannon Willmore
Executive Director

4/2/19
Date

INDIANA STATE DEPARTMENT OF HEALTH

Rebecca Brelage
Signature, Rebecca Brelage
Senior Counsel
Indiana State Department of Health

4/2/19
Date

Approved as to form:

By: Parvinder Nijjar
Parvinder K. Nijjar, *Counsel to Petitioner*
Deputy Attorney General
Attorney No. 33811-41
Parvinder.Nijjar@atg.in.gov

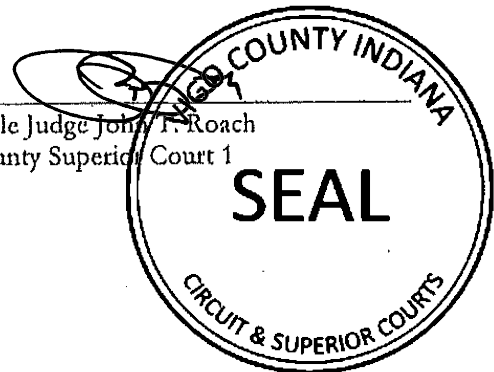
4/2/19
Date

By: Norris Cunningham
Norris Cunningham, *Counsel to Respondent*
Attorney No. 19312-49
ncunningham@kkclegal.com

4/2/19
Date

ALL OF WHICH IS APPROVED, ORDERED, ADJUDGED AND DECREED this
____ day of **April 4, 2019**, 2019.

Honorable Judge John F. Roach
Vigo County Superior Court 1



JM

Distribution:

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