

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,

2007 APR 19 P 5:09

Petitioner,

vs.

Case No: 2007004309

OSCEOLA MENTAL HEALTH, INC.
/PPBHC SUNNY SIDE VILLAGE
(VILA 4),

Respondent.

**EMERGENCY ORDER OF IMMEDIATE
MORATORIUM ON ADMISSIONS**

THIS CAUSE came on for consideration before the Secretary of the State of Florida, Agency for Health Care Administration, or his duly appointed designee who, after a careful review of the record, and being otherwise fully advised in the premises, finds and concludes as follows:

THE PARTIES

1. The Agency for Health Care Administration (hereinafter "the Agency"), is the licensure and regulatory authority that oversees residential treatment centers in Florida and enforces the applicable federal and state regulations, statutes and rules governing such facilities. Chs. 394, Part IV, and 408, Part II, Fla. Stat. (2006); Ch. 65E-9, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including a moratorium on admissions, when circumstances dictate such action. §§ 120.60; 394.902; 408.814; Fla. Stat. (2006); Fla. Admin. Code R. 9.004(3).

2. The Respondent Osceola Mental Health, Inc./PPBHC Sunny Side Village (VILA

4) (hereinafter “the Respondent”), a residential treatment center, was issued a provisional license by the Agency (License Number 19) to operate a 12-bed residential treatment center located at 206 Park Place Boulevard, Kissimmee, Florida 34741 (hereinafter “the Facility”). § 394.878(5), Fla. Stat. (2006). As the holder of this license, the Respondent is a licensee. “Licensee” means “an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency.” § 408.803(9), Fla. Stat. (2006). “The licensee is legally responsible for all aspects of the provider operation.” § 408.803(9), Fla. Stat. (2006). “Provider” means “any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802,” Florida Statutes (2006). § 408.803(11), Fla. Stat. (2006). Residential treatment centers are regulated by the Agency under Chapter 394, Part IV, Florida Statutes (2006), and listed in Section 408.802, Florida Statutes (2006). § 408.802(7), Fla. Stat. (2006). Residential treatment center patients or residents are thus clients. “Client” means “any person receiving services from a provider.” § 408.803(6), Fla. Stat. (2006).

3. The Respondent holds itself out to the public as a residential treatment center that complies with the federal and state laws governing residential treatment centers. “The purpose of a residential treatment center is to be part of a comprehensive treatment program for mentally ill children in a community based-residential setting.” § 394.875(1)(c), Fla. Stat. (2006). The laws governing these facilities exist to protect the health, safety and welfare of the children residing within them. As the recipients of services from a residential treatment center, the children are entitled to the benefits and protections under Chapter 394, Part IV, Chapter 408, Part II, Florida Statutes (2006), as well as Chapter 65E-9, Florida Administrative Code.

4. The Agency has jurisdiction over the Respondent pursuant to the above-stated provisions of law.

5. The current census at the Respondent's Facility as of the date of this Emergency Order of Immediate Moratorium on Admissions is twelve (12).

**THE AGENCY'S IMMEDIATE MORATORIUM
ON ADMISSIONS AUTHORITY**

6. Under Florida law, the Agency may issue an emergency order suspending or revoking a license if the Agency determines that the continued operation of the licensed facility presents a clear and present danger to the public health or safety. § 394.902(1), Fla. Stat. (2006). In addition, the Agency may impose a moratorium on elective admissions to a licensee or any program or portion of a licensed facility if the Agency determines that any condition in the facility presents a threat to the public health or safety. § 394.902(2), Fla. Stat. (2006). If the Agency determines that an applicant or licensee is not in compliance with Chapter 394 or the rules adopted under this Chapter, the Agency may deny, suspend, or revoke the license or application or may suspend, revoke, or impose reasonable restrictions on any portion of the license. If a license is revoked, the licensee is barred from submitting any application for licensure to the Agency for a period of 6 months following revocation. § 394.902(3), Fla. Stat. (2006).

7. Under Florida law, the Agency may impose an emergency suspension order of immediate moratorium on admissions as defined in subsection 120.60, Florida Statutes (2006), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2006).

8. Under Florida law, if the Agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the Agency may take such action by any procedure that is fair under the circumstances. § 120.60(6), Fla. Stat. (2006).

9. Under Florida law, an immediate moratorium on admissions shall be placed on the facility when it has been determined that any condition in the facility presents an immediate or direct threat to the health, safety, and well being of children in the facility. Fla. Admin. Code R. 65E-9.004(3)(a). The following situations are examples of threats constituting grounds for a moratorium: 1. Inappropriate or excessive use of restraint and seclusion; 2. The presence of children who need more care than can be provided by the facility; 3. Food supply inadequate to provide proper nutrition to children; 4. Lack of sufficient staff who are skilled and competent to provide for or to meet the immediate needs of the children; 5. Notification by the local fire marshal's office or county health department that conditions exist which impose an immediate threat to the children; or 6. Significant or repeated staff error resulting in failure to administer medications as prescribed. Fla. Admin. Code R. 65E-9.004(3)(a).

10. In this instance, after careful and due consideration, the Agency has determined that the conditions at the Respondent's Facility, as set forth more specifically below, present (1) a threat to the health, safety or welfare of the residents of the Facility, (2) a threat to the health, safety or welfare of a client, (3) an immediate serious danger to the public health, safety or welfare, and (4) an immediate or direct threat to the health, safety, or welfare of the residents in the facility that constitutes sufficient factual and legal grounds justifying the imposition of an immediate moratorium on admissions to the Respondent's Facility and a limitation of the Respondent's license to prohibit it from accepting any admissions pending the completion of corrective action, pursuant to the above-referenced provisions of law.

11. On April 17, 2007, the Agency completed a survey of the Respondent and its Facility. During the survey, the Agency's surveyors reviewed records, observed conditions and conducted interviews. Based upon this survey, the Agency finds facts, as set forth in detail

below, that the Respondent is in substantial non-compliance with the applicable regulations, statutes and rules that govern residential treatment centers and that this substantial non-compliance with the applicable regulations, statutes and rules is of such a degree and magnitude that it justifies the imposition of an immediate moratorium on admissions on the Respondent.

OPERATING STANDARDS – ORGANIZATION - ACCURATE AND COMPLETE PERSONNEL RECORDS

12. Under Florida law, a residential treatment center provider is required to have in place written personnel policies, procedures and records. Fla. Admin. Code R. 65E-9.005(3)(h). Accurate and complete personnel records shall be maintained on each employee. Fla. Admin. Code R. 65E-9.005(3)(h)6. The content of the facility's personnel records shall include, among other things: current background information, including the application, references, proof of satisfactory background screening results as required by Section 394.4572, Florida Statutes, and documentation to justify initial and continued employment of the individual. Applicants for positions requiring licensure, certification or accreditation shall be employed only after the provider has verified the license or accreditation. Evidence of renewal of license as required by the licensing agent shall be maintained in the employee's personnel record. Fla. Admin. Code R. 65E-9.005(3)(h)6.a.

PROGRAM STANDARDS – TREATMENT AND SERVICES

13. Under Florida law, a residential treatment center is required to have procedures in place in order to provide for the proper treatment and services of a child in its care. Fla. Admin. Code R. 65E-9.006(3)(a)-(j). Treatment shall be individualized, child and family centered, culturally competent, based on the child's assessed strengths, needs, and presenting problems that precipitated admission to the program. Fla. Admin. Code R. 65E-9.006(3)(a). Treatment services shall be provided as part of an individualized written services plan that complies with

Rule 65E-9.009, F.A.C. Fla. Admin. Code R. 65E-9.006(3)(b). Treatment modalities and services shall be in accordance with the child's psychiatric, behavioral, emotional and social needs and be incorporated into their individualized treatment plan and discharge plan. Fla. Admin. Code R. 65E-9.006(3)(c). The provider shall ensure that all staff caring for or providing treatment or services for the child: 1. Have current information about the child's treatment plan and goals, including the child's permanency goals if admitted pursuant to Section 39.407, Florida Statutes; and 2. Direct all aspects of the child's treatment, services and daily activities toward meeting the child's specific treatment goals. Fla. Admin. Code R. 65E-9.006(3)(d). The provider shall ensure that all staff providing a treatment modality to the child are qualified to provide that treatment modality. Fla. Admin. Code R. 65E-9.006(3)(e). Discussions are held on an ongoing basis with the individuals involved in implementing treatment. Fla. Admin. Code R. 65E-9.006(3)(f). Treatment shall not be aversive, coercive, or experimental. Fla. Admin. Code R. 65E-9.006(3)(g). Treatment provided, including behavior analysis services, shall be consistent with nationally recognized standards. Fla. Admin. Code R. 65E-9.006(3)(h). When multiple modalities of treatment are provided, such as psychotherapy, behavior management, and medication, the treatment shall be coordinated among the treatment professionals. Fla. Admin. Code R. 65E-9.006(3)(i). Treatment progress shall be monitored on a continuous basis and the treatment adjusted as needed to meet the child's individual treatment goals. Fla. Admin. Code R. 65E-9.006(3)(j).

PROGRAM STANDARDS – HEALTH, MEDICAL, AND EMERGENCY MEDICAL AND PSYCHIATRIC SERVICES

14. Under Florida law, a residential treatment center is required to have in place written procedures for health, medical, emergency and psychiatric services. Fla. Admin. Code R. 65E-9.006(7)(a)-(b), (j)-(n). The provider shall develop and implement on an ongoing basis

written procedures for health, medical, and emergency medical and psychiatric services describing how the provider obtains or provides general and specialized medical, psychiatric, nursing, pharmaceutical and dental services. Fla. Admin. Code R. 65E-9.006(7)(a)-(b). The procedures shall clearly specify which staff are available and authorized to provide necessary emergency psychiatric or medical care, or to arrange for referral or transfer to another facility including ambulance arrangements, when necessary. Fla. Admin. Code R. 65E-9.006(7)(b). All staff shall have training in the handling of emergency medical situations. Fla. Admin. Code R. 65E-9.006(7)(j). Emergency medical services shall be available within 45 minutes, 24 hours a day, seven days a week. Fla. Admin. Code R. 65E-9.006(7)(k). The program physician's name and telephone number shall be clearly posted in areas accessible by staff and others within the facility. Fla. Admin. Code R. 65E-9.006(7)(l). There shall be a first aid kit available to staff for each unit or building for facilities with multiple units or buildings and one per facility for single unit or building facilities. Contents of the first-aid kits shall be selected by the medical staff. Fla. Admin. Code R. 65E-9.006(7)(m). The provider shall have a written agreement with a licensed hospital verifying that routine and emergency hospitalization will be available. Fla. Admin. Code R. 65E-9.006(7)(n).

PROGRAM STANDARDS – QUALITY ASSURANCE PROGRAM

15. Under Florida law, a residential treatment center shall have a quality assurance program in place. The provider shall develop and follow a written procedure for a systematic approach to assessing, monitoring and evaluating its quality of care and treatment, improving its performance, ensuring compliance with standards, and disseminating results. Fla. Admin. Code R. 65E-9.006(13)(a)-(k). The facility's quality assurance program shall address and include:

- (a) Appropriateness of service assignment, intensity and duration, appropriateness of resources utilized, and adequacy and clinical soundness of care and

treatment given;

(b) Utilization review;

(c) Identification of current and potential problems in service delivery and strategies for addressing the problems;

(d) A written system for quality improvement, approved by the provider's governing board that includes:

1. A written delineation of responsibilities for key staff;

2. A policy for peer reviews;

3. A confidentiality policy complying with all statutory confidentiality requirements, state and federal; and

4. Written, measurable criteria and norms for assessing, evaluating, and monitoring quality of care and treatment;

(e) A description of the methods used for identifying and analyzing problems, determining priorities for investigation, resolving problems, and monitoring to assure desired results are achieved and sustained;

(f) A systematic process to collect and analyze data from reports, including, but not limited to, incident reports, grievance reports, department and agency monitoring or inspection reports and self-inspection reports;

(g) A systematic process to collect and analyze data on process outcomes, client outcomes, priority issues chosen for improvement, and satisfaction of clients;

(h) A process to establish the level of performance, priorities for improvement, and actions to improve performance;

(i) A process to incorporate quality assurance activities in existing programs, processes and procedures;

(j) A process for collecting and analyzing data on the use of restraint and seclusion to monitor and improve performance in preventing situations that involve risks to children and staff. The provider shall:

1. Collect and regularly analyze, at least quarterly, restraint and seclusion data to ascertain that restraint and seclusion are used only as emergency interventions, to identify opportunities for reducing the rate and improving the safety of restraint and seclusion use, and to identify any need to redesign procedures;

2. Aggregate quarterly restraint and seclusion data by all settings, units or locations, including:

a. Shift;

b. Staff who initiated the procedure;

c. Details of the interactions prior to the event;

- d. Details of the interactions during the event;
- e. The duration of each episode;
- f. Details of the interactions immediately following the event;
- g. Date and time each episode was initiated and concluded;
- h. Day of the week each episode was initiated;
- i. The type of restraint used;
- j. Whether injuries were sustained by the child or staff; and
- k. Age and gender of each child for which emergency safety interventions had been found necessary.

3. Prepare and submit a report quarterly to the district/region mental health program office, including the aggregate data and:

- a. Number and duration of each instance of restraint or seclusion experienced by a child within a 12 hour timeframe;
- b. The number of instances of restraint or seclusion experienced by each child; and
- c. Use of psychoactive medications as an alternative for or to enable discontinuation of restraint or seclusion.

(k) Analysis of the use of time-out shall be conducted quarterly by the treatment team and shall include:

- 1. Patterns and trends, for example, by shift, staff present, or day of the week;
- 2. Multiple instances of time-out within a 12 hour timeframe;
- 3. Number of episodes per child; and
- 4. Instances of extending time-out beyond 30 minutes.

Fla. Admin. Code R. 65E-9.006(13)(a)-(k).

MEDICATION ADMINISTRATION AND USE OF PSYCHOTROPIC MEDICATIONS

16. Under Florida law, the provider of a residential treatment facility shall develop, implement and maintain written policies and procedures governing the administration of medication and the supervision of and assistance with self-administered medication. These policies and procedures shall include, but not be limited to, management of the medication administration program, training, inventory control, accounting, and disposal of medications. In

addition, these policies and procedures shall be consistent with the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.; Chapter 893, F.S., the Drug Abuse and Prevention and Control Act; DEA compliance policy guidelines on disposal of controlled substances, C.F.R. 21, Title 21, Section 1307.21, Disposal of Controlled Substances, and related department rules and regulations. Fla. Admin. Code R. 65E-9.014(1).

THE AGENCY'S SURVEY AND FINDINGS OF FACT

17. On April 17, 2007, the Agency completed a survey of the Respondent and its Facility. Based upon this survey, the Agency finds as follows:

- a. Resident number one (1) had been involuntarily committed under the "Baker Act" six times since the Resident's admission to the Facility in November 2006.
- b. Resident number one (1) made two suicide attempts from February 2007 to April 2007.
- c. Resident number one (1) eloped from the Facility on four occasions between February 2007 and April 2007, the dates being: February 8, March 17, 18 and 25, 2007.
- d. The Respondent's Facility Program Manager identified two residents as being inappropriate for placement at the Facility. One of the two inappropriate residents was Resident number one (1).
- e. On or about March 25, 2007, Resident number one (1) attempted suicide by attempting to choke him/herself. The Resident also banged his/her head on the wall and attempted to cut his/her arm with sharp objects.
- f. On or about April 9, 2007, Resident number one (1) again attempted suicide by choking him/herself. The Resident also self-inflicted injury upon him/herself by biting him/herself and banging against objects.
- g. For each of the above-described incidents pertaining to Resident number one (1), the Respondent Facility failed to:
 - Assess the resident and document the incident;
 - Provide interventions to address the causative or resulting physical or emotional health processes effecting or effected by the suicide attempt or elopement;
 - Effectuate interventions in the resident's care plans to assure that emergent or existing needs of the resident are being met by the facility and or third parties;
 - Complete an incident report or otherwise provide for review, analysis, and action relating to the quality assurance processes required by law;

- Notify law enforcement.
- h. The Facility Program Manager indicated that it was the Facility's unwritten policy that an elopement of a resident was not to be reported to the police until the resident had been missing for more than two hours. Additionally, the Program Manager indicated that the Facility did not have adequate staff to enable the Facility to provide one-on-one supervision or to look for a resident who had eloped. The Program Manager indicated that when a resident elopes, the facility takes no action, not even attempting to have staff search for the resident, until two or more hours have passed.
- i. The Respondent's Elopement Procedures, entitled "runaway" and found on page 59 of the Facility's operations manual, reads as follows:

The Behavior Technician processes the information when a client is reported as missing or on runaway status. It is necessary that the following people are contacted: Director/Program Supervisor, Social Worker/Therapist, Parent/legal guardian, Local police department, Medical Liaison/Community Liaison (as needed), Dependency Case Worker/Case Worker/Guardian Ad Litem." Staff must contact the Program Director immediately and complete an Incident Report by the end of his or her shift when a client has run away from the program. The client is to be given a drug test upon return.

- j. The Respondent's operations manual, under the section "Crisis Prevention Intervention" and found on page 51, reads as follows:

Whenever threatening behavior occurs with a client, the staff involved is responsible to make the appropriate documentation in the client's progress note and by completion of an incident report. An incident report must be completed and forwarded to the Program Director or Director of Children's Services within twenty four hours of the incident... When staff is concerned about the potential for threatening behavior by the client or the possible need for emergency psychiatric procedures, a staff member is assigned specific supervision of the client according to the following procedures:

1. One to One supervision: This means a staff person is assigned to monitor the client. The assigned staff needs to be within arms reach of the client at all times. The assigned staff is responsible for directing the activity of the client. This is the most restrictive level of supervision to be used when there are suicidal or other dangerous precautions.
- k. The Respondent's policy and procedures on Medical Emergencies, found on page 71 of the Facility's operations manual, read as follows:

In the event of a serious medical situation any staff may contact 911 for EMS service. A nurse is contracted with the STGH for twenty hours per week. This professional may be asked to provide minor first aid or assist in determining the need for more serious medical care based on their expertise. If the client has a less than life threatening medical emergency

the staff member can contact the nurse who will advise a course of action...

l. The Facility's written policies require that when a resident has run away or eloped, an incident report must be completed and numerous individuals, including the local police department, must be notified of the elopement. The Respondent failed to comply with its own policy on numerous occasions identified above.

m. The Facility's written policies also require that when a resident behaves in a threatening manner, an incident report must be completed and one-on-one supervision of the resident must occur. The Respondent failed to comply with its own policy on numerous occasions identified above.

n. Resident number five (5), one of three residents observed receiving medications, was not given one of the Resident's prescribed medications on April 16 and 17, 2007.

o. One of the prescribed medications for Resident number five (5) is Clonidine, a medication for the treatment of high blood pressure and or attention deficit disorder.

p. The Respondent's staff administers resident medications from pre-packaged medication containers. The staff reported that the Clonidine for Resident number five (5) was not administered because the medication was not in the container used for the Resident's daily medication.

q. The Respondent's staff took no action to report, acquire, or otherwise ensure that Resident number five (5) would timely receive the prescribed medication.

r. The Respondent's medication administration policies and procedures did not address situations in which the container of daily medication did not contain all the Resident's prescribed medications for the day.

s. Six (6) of seven (7) staff employees of the Respondent, all of whom were hired within the last twelve (12) months, had not undergone timely employment background screening.

t. Staff persons B, F, and G, all of whom were hired within the last twelve (12) months, had not undergone local law enforcement employment background screening. Staff persons C, D, and E, all of whom were hired within the last twelve (12) months, had not undergone either state or federal law enforcement employment background screening.

u. Three (3) of three (3) of Respondent's staff reviewed had not received training in handling medical and psychiatric emergencies. These staff members, C, D, and E, all hired in 2006, had no documented training in handling the medical and psychiatric emergencies which may arise in the Facility.

v. The Facility's Quality Assurance Program did not include information in the following areas:

1. The appropriateness of service assignment, intensity and duration, the appropriateness of resources utilized, and adequacy and clinical soundness of care and treatment given;

2. Utilization review;

3. Identification of current and potential problems in service delivery and strategies for addressing the problems;

4. Written, measurable criteria and norms assessing, evaluating, and monitoring quality of care and treatment;

5. A description of the methods used for identifying and analyzing problems, determining priorities for investigation, resolving problems, and monitoring to assure desired results are achieved and sustained;

6. A systematic process to collect and analyze data from reports, including, but not limited to, incident reports, grievance reports, department and agency monitoring or inspection reports and self-inspection reports;

7. A systematic process to collect and analyze data on process outcomes, client outcomes, priority issues chosen for improvement, and satisfaction of clients;

8. A process to establish the level of performance, priorities for improvement, and actions to improve performance; and

9. A process to incorporate quality assurance activities in existing programs.

10. Restraint review was missing analysis of the following areas: details of the interactions prior to the event; details of the interactions during the event; duration of each episode; details of the interactions immediately following the event; the date and time each episode was initiated and concluded; and whether injuries were sustained by the child or staff.

w. In addition, as stated above, the Respondent's Quality Assurance program failed to be effectively implemented where emergency and emergent quality of care issues such as resident elopement and resident suicide attempts are not reported, analyzed, and reviewed by a quality assurance program. As such, the Respondent's quality assurance processes failed.

x. The Facility quality assurance representative was interviewed on April 17, 2007, at approximately 9:45 a.m. During this interview, she stated that two months prior (on February 12, 2007) an incident report review system was set up for the QA department. She agreed that although the Agency had identified strengths, weaknesses, opportunities and threats, that these areas had not been incorporated into a QA plan wherein they could be analyzed in relation to resident care. She also stated that the facility's accrediting organization had identified concerns with the QA program back in October 2006, but that they had given them one year to improve. She verified during the interview that the above cited areas were not included in any QA assessment process. She also verified no report had been submitted to the local state Mental Health office, as required.

y. The same or similar deficient practices and conditions have been identified in the past by the State of Florida, Department of Children and Families ("DCF"), and the Commission on Accreditation of Rehabilitation Facilities ("CARF") and the correction of such deficient practices has been mandated by those entities.

THE NECESSITY FOR THE MORATORIUM ON ADMISSIONS

18. The Agency is charged with the responsibility of enforcing the laws designed to protect the health, safety and welfare of children and clients in Florida's residential treatment centers. Ch. 394, Part IV, Fla. Stat. (2006), Ch. 408, Part II, Fla. Stat. (2006); Ch. 65E-9, Fla. Admin. Code. Where the health, safety or welfare of an individual of a residential treatment center is at risk, the Agency will take prompt and appropriate action. Ensuring the protection of children at a residential treatment center from abuse and neglect is but one of the essential purposes of the Agency.

19. The Respondent's Facility currently suffers from substandard conditions and deficient practices with respect to its operating standards and program standards that are severe enough that they pose an immediate threat to the health and safety of the Facility's children. Until the imminent threats and dangers are promptly addressed and adequately corrected by the Respondent, the children that currently reside in the Facility and children that may reside in the Facility in the future must not be subjected to such threats and dangers. Such a situation deprives these children of a safe and decent treatment environment.

20. The special needs of children suffering from mental illness may be met in a residential treatment center only where the regulatory safeguards are satisfied. In this instance, the Respondent has exhibited a failure to ensure that these safeguards are implemented. In violation Rule 65E-9.0014(1), Florida Administrative Code, the Respondent has failed to implement policies and procedures which would ensure that residents receive prescribed medications. The lack of prescribed medications may complicate a child's medical or emotional

illness and interferes with the physician's treatment plan placing a child at risk. The Respondent has failed to implement policies on the protection of children's health and well-being, ignoring its policies on elopement procedures and knowingly taking no action to locate and assure the safety of children who elope from the facility until at least two hours have passed. This reflects a conscious disregard for the safety of children entrusted to the Respondent's care. Further, where a child exhibits behaviors such as elopement or suicidal and self-injurious behaviors, the Respondent has failed to assess the child and effectuate appropriate medical or social interventions to address the causation of such behavior or to evaluate and treat any injury that may have occurred as a result of such behaviors. These omissions place children at risk and are in derogation of the very services to be provided by a provider such as Respondent. Such actions or inactions are in violation of Rules 65E-9.006(7)(a) and (b), Florida Administrative Code. As the facts clearly reflect, the intended safeguards of a meaningful and effective quality assurance program which would identify and address such failures have not been effectively promulgated or implemented by the Respondent. The lack of such systems allows such deficient practices to flourish without correction, endangering each child who may reside in the Facility, dependent upon mechanisms which will meet the child's physical and emotional needs. The lack of quality assurance systems violates Rule 65E-9.006(13), Florida Administrative Code.

21. In addition to the lack of implemented systems discussed above, the Respondent has failed to ensure the safety and well-being of its charges in its failure to conduct required criminal background screenings of staff. The care of Florida's children is a special trust which must ensure that no child is exposed to individuals who, because of their prior criminal involvement, are barred from such contact. The Respondent has failed to ensure these children of that protection. Further, the Respondent has failed to ensure that its staff is trained to

effectively deal with any medical or psychiatric emergencies which may arise in the facility. When children are placed in a facility based, at least in part, on the facility's capabilities to respond to medical or psychiatric emergencies which may befall the child, the failure to staff the facility with qualified persons places those children at immediate risk. Such omissions are in violation of Florida's regulatory scheme. Fla. Admin. Code R. 65E-9.006(j)-(n) and 65E-9.005(3)(h)(6). Individually and collectively, these failures of operating and program standards and the assurance of management to meet the special mental health needs of these children removes from the residents' care those safeguards intended to assure their continued well-being. Fla. Admin. Code R. 65E-9.005, 65E-9.006.

22. The Respondent's deficient conditions and practices with respect to the operating and program standards have existed in the recent past, exist presently and are likely to continue to exist if the Agency does not act promptly. The deficient conditions and practices are systemic and the result of mismanagement at the Facility. The DCF and the CARF have also identified and found violations at the Respondent's Facility. Given these systemic problems, and the Respondent's utter failure to take the appropriate corrective actions, it is unlikely that they will be corrected in the absence of Agency action. In short, the circumstances described above demonstrate the complained of conduct is likely to continue and that the imposition of an immediate moratorium on admissions is clearly justified.

23. A moratorium on admissions is necessary to ensure that current and prospective children are not: (1) subjected to the unsafe conditions and deficient practices that currently exist in the Facility, (2) placed at risk of living in an environment ill-equipped to provide for resident health, safety and welfare because of insufficient supervision and deficient care, and (3) placed in a residential treatment center where the statutory and regulatory mechanisms enacted for their

protections have not been satisfied.

24. The Agency has determined that the threat to the health, safety or welfare of the current residents of the Facility is sufficient to warrant action that will preclude any additional persons becoming subject to such threat. This determination does not preclude the Agency from taking any further action that it may find necessary, including but not limited to, the emergency suspension of the Respondent's licenses and emergency injunctive relief.

25. The Agency has determined that an immediate moratorium on admissions is necessary in this instance not only to protect prospective children from the current threat to their health, safety or welfare, but also to assure the prompt action of the Facility to immediately correct the deficiencies and substandard practices that currently exist and are likely to continue to exist in the future in the absence of such prompt action by the Agency. Were the Agency to idly stand by, the Respondent's deficient and substandard practices are likely to continue.

26. The Agency expressly finds that exigent circumstances exist in this instance that warrants this emergency action. At the same time, this emergency action is narrowly tailored and fair under the circumstances because it is currently restricted to a moratorium on admissions. The Agency reserves the right to impose a more severe form of emergency action such as the imposition of an emergency licensure suspension or injunctive relief. The emergency order is purposefully designed to provide that the children currently residing in the Facility will soon live in a healthier and safer environment upon corrective action by the Respondent, if effectuated expeditiously, to remedy the deficiencies and conditions at the Facility. The Agency will monitor the Respondent through its surveyors until the present, direct, and immediate threat to the health, safety and welfare of the children is corrected to the complete satisfaction of the Agency.

27. This moratorium on admissions shall remain in effect until the above-referenced deficiencies and conditions are corrected and until these corrections are verified by the Agency through a survey.

CONCLUSIONS OF LAW

28. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, and 394, Part IV, Florida Statutes (2006), and Chapter 65E-9, Florida Administrative Code.

29. Based upon the above-stated Findings of Fact, the Secretary concludes that the present conditions existing in the Respondent's Facility present a direct and immediate threat to the health, safety or welfare of the public and the children residing in the Facility and warrant an immediate Moratorium on any and all admissions to Respondent's Facility, including but not limited to, admissions to beds which have been held by Respondent for any specific resident.

IT IS THEREFORE ORDERED THAT:

30. An IMMEDIATE MORATORIUM ON ADMISSIONS is hereby placed on the Respondent and its Facility based upon the above-referenced provisions of law.

31. This moratorium shall not be lifted until the deficiencies have been corrected and the Agency has determined through an appraisal visit that there is no danger or threat to the children's health, safety, or well being. Fla. Admin. Code R 65E-9.004(3)(b).

32. During the moratorium, no new children or previously discharged children shall be admitted to the Facility. Children for whom the provider is holding a bed may return to the Facility only after the child's parent or guardian has been informed that the Facility is under a moratorium on admissions and with the prior approval of the local Agency field office, in this instance the Orlando office. Fla. Admin. Code R. 65E-9.004(3)(c).

33. This Moratorium on Admissions Order shall be posted and visible to the public at

the Facility until the moratorium is lifted. Fla. Admin. Code R. 65E-9.004(3)(d).

34. During the moratorium, the Agency shall regularly monitor the conditions at the Facility and notify the Respondent when the moratorium is lifted.

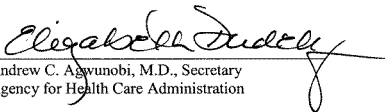
35. Within ten (10) days of the receipt of this Moratorium on Admissions Order, the Respondent shall provide to the Agency a written plan detailing the corrective action measures put in place to address the deficiencies addressed in this Order.

36. The Respondent shall thereafter promptly notify the Agency at its Orlando office when all of the deficiencies and violations have been corrected so that the Agency may inspect and survey the Facility to determine if the moratorium may be lifted.

37. The Agency shall promptly proceed with the filing of an administrative action against the Respondent based upon the facts set out within this Moratorium on Admissions Order and any other facts that may be discovered during the Agency's continuing investigation. The Agency shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2006), when the administrative action is brought.

38. The lifting of this moratorium, if applicable, shall be conveyed and confirmed by written notification. Fla. Admin. Code R 65E-9.004(3)(b).

DONE AND ORDERED in Tallahassee, Leon County, Florida, on this 19 day of April, 2007.


Andrew C. Agvunobi, M.D., Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

This emergency order of immediate moratorium on admissions is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b) and (c). See Fla. R. App. P. 9.190(b)(2). In order to be timely, the petition for review must be filed within thirty (30) days of the rendition of this non-final emergency order of immediate moratorium on admissions.

CHARLIE CRIST
GOVERNOR



ANDREW C. AGWUNOBI, M.D.
SECRETARY

DELEGATION OF AUTHORITY
To Execute
Immediate Orders of Moratorium

I specifically delegate the authority to execute Immediate Orders of Moratorium to Elizabeth Dudek, Deputy Secretary, Health Quality Assurance, or her delegate.

This delegation of authority shall be valid from date January 2, 2007 until revoked by the Secretary.

Andrew C. Agwunobi, M.D., Secretary

1/2/07

Date