

**BEFORE THE OKLAHOMA STATE DEPARTMENT OF HEALTH
OFFICE OF ADMINISTRATIVE HEARINGS**

OKLAHOMA STATE DEPT. OF HEALTH,)
PROTECTIVE HEALTH SERVICES,)
)
Petitioner,)
)
v.)
)
REST HAVEN MANAGEMENT, INC.,)
Licensee/Operator of FOUR SEE "4C",)
a residential care home)
368015 Old Highway 62)
Boley, Oklahoma 74829)
)
Respondent.)

Case No. LTC-2019-454

Filed
NOV 18 2019
Office of
Administrative Hearings

**ADMINISTRATIVE COMPLIANCE ORDER
TO CEASE AND DESIST OPERATION OF A
RESIDENTIAL CARE HOME AND DIRECTING
RELOCATION OF ALL RESIDENTS TO LICENSED FACILITIES**

The Oklahoma State Dept. of Health ("OSDH") issues this Administrative Compliance Order – Cease and Desist pursuant to Paragraph B(10) of Title 63 O.S. § 1-106 and 63 O.S. § 1-1701.1A. This Order relates to violations of the Residential Care Act of the Oklahoma Public Health Code.

Findings of Fact

1. The Petitioner is the agency with the authority to license residential care facilities, pursuant to 63 O.S. § 1-819 et seq.
2. The State Board of Health adopted rules to implement the provisions of the Residential Care Act pursuant to 63 O.S. § 1-821. The rules are located at Oklahoma Administrative Code ("OAC") section 310:680-1-1 et seq.
3. Respondent owns and operates a residential care facility known as Four See "4C" located at 368015 Old Highway 62, in Boley, Oklahoma, which currently houses five

(5) infirm residents. The facility received a renewal license from OSDH dated December 31, 2018 for an effective period of February 8, 2018 through February 7, 2020, authorizing the operation of an eight (8) bed residential care home.

4. The OSDH received the following complaints about Four See “4C”:
 - A. October 30, 2019 – allegation of physical and psychological abuse of a resident by a facility employee;
 - B. May 22, 2019 – allegation of failing to have a qualified person designated as administrator and on duty in the home when residents were present; and
 - C. October 30, 2019 – allegation of an unlicensed driver transporting residents to and from medical treatment in a vehicle licensed by the facility.

A facility site visit was conducted on October 30, 2019.

5. OSDH personnel learned the following during the site visit:
 - A. According to a tenant at a nearby independent care home, on October 22, 2019, a resident at Four See “4C” was strangled and abused by the home’s co-owner’s brother. The resident in question confirmed that he was choked by a facility employee, and that during the attack, the resident thought he “was going to die if [the employee] had not let his neck go.” The resident was observed to have a bruise on his neck. The resident stated, “They are making me do things I don’t want to do.” Another employee stated that the resident had refused to drive other residents to day treatment because he did not have a valid driver’s license. The resident made a report with local law enforcement. OSDH has no incident report related to the attack.

B. There was no active administrator or person in the home and, in fact, resignations had been tendered by the previous administrator on December 14, 2018; April 26, 2019; June 14, 2019; and June 19, 2019.

C. Both the resident tasked with driving the van and a facility employee confirmed that residents of the facility had been transported to day treatment on multiple occasions by the resident in the facility's van.

6. Due to the serious violations and continued operation of this residential care facility, this Order is being issued with the directive to the Respondent to immediately relocate all residents to licensed facilities.

Conclusions of Law

1. Entry of this Order is proper and authorized by 63 O.S. § 1-1701.1A.
2. The Commissioner has jurisdiction of this matter pursuant to 63 O.S. § 1-106; 63 O.S. § 1-1701.1A ; 63 O.S. §§ 1-819 *et seq.* and 75 O.S. §§ 308a *et seq.*
3. The items listed in the Findings of Fact as set forth above are violations of the Residential Care Act and Rules as adopted by the State Board of Health.

<u>Violation</u>	<u>Rule Citation</u>
Failing to protect a resident's health and safety and to submit an incident report to OSDH for a resident who experienced psychological and physical abuse from an employee	OAC 310:680-3-6(d); OAC 310:680-19-2(a)(9)
Lack of an active administrator	OAC 310:680-11-1(2)(A)
History of non-compliance	OAC 310:680-3-5(a)(2)
Resident required to transport other facility residents	OAC 310:680-19-2(a)(11)

4. Continued operation of a residential care facility by the Respondent

presents a serious risk for harm for the five (5) residents currently residing in the facility.

5. The Respondent operates this facility in violation of the Residential Care Act, 63 O.S. §§ 1-819 *et seq.* and the rules promulgated by the State Board of Health pursuant to the Act, (“Rules”). Accordingly this Cease and Desist Order (“Order”) is hereby entered, pursuant to Paragraph B(10) of Title 63 O.S. § 1-106, 63 O.S. § 1-1701.1A, and 75 O.S. §§ 308a *et seq.*

6. Pursuant to 63 O.S. § 1-825, the Commissioner may order the revocation of a residential care facility license and the transfer of residents.

7. Pursuant to 63 O.S. § 1-826, the Commissioner may suspend or revoke a license of a facility which is not in compliance with the provisions of the Residential Care Act or the rules of the State Board of Health, as well as when satisfactory evidence exists that demonstrate the licensee is unlikely to manage or operate a home or to provide care or treatment to the residents of a home in a manner which warrants public trust.

ORDER TO COMPLY

IT IS THEREFORE ORDERED that the Respondent cease and desist operation of a residential care home located at 368015 Old Highway 62, in Boley, Oklahoma, within ten days (10) of receipt of this Order. This Cease and Desist Order is tantamount to license revocation.

IT IS ALSO ORDERED by the Commissioner the Respondent is to immediately start relocation of all residents living at 368015 Old Highway 62, Boley Oklahoma to licensed facilities that can appropriately address the physical and medical needs of the residents following receipt of this Order.

Failure to comply with the Rules in accordance with the terms of this Order will subject the Respondent to an administrative penalty of one hundred dollars (\$100.00)

per day for each day or part of a day that the Respondent operate in violation of this Administrative Compliance Order to Cease and Desist Operation of a Residential Care Home and Directing Relocation of All Residents to Licensed Facilities.

This Administrative Compliance Order will become a final order unless, no later than fifteen (15) days after it is received by the Respondent, the Respondent requests in writing an administrative hearing to review this Order. Such request is to be directed to:

Office of Administrative Hearings
ATTN: Marcia Johns, Administrative Hearing Clerk
Oklahoma State Department of Health
1000 Northeast Tenth, Room 503
Oklahoma City, Oklahoma 73117

The request must specify the nature of the matter or matters within this Order as to which review is sought.

If requested, the hearing will be promptly set and the Respondent will be notified of the time and place of the hearing. The scope of the hearing shall be limited to those matters raised in the request for hearing, except as otherwise permitted by the hearing officer for good cause shown. **Under Oklahoma law any party to a proceeding who is not an individual is prohibited from representing itself before the Court. Corporate entities and limited liability companies must be represented by legal counsel.** Individuals may be present and/or represented by an attorney at their expense at such hearing. The Respondent may present evidence and argument to show cause why this Order should be set aside or modified. Such hearing will be conducted in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. §§ 308a *et seq.* A request for hearing will not automatically toll the accrual of any

administrative penalty assessed hereunder. A stay may be granted upon request for good cause shown.

A Final Agency Order following a hearing may assess an administrative fine of an amount based upon consideration of the evidence but not exceeding the amount stated in this written order. If the Respondent fails to request a hearing and this Order becomes a final order by default, the actual imposition of any administrative penalty referenced herein shall be subject to hearing upon the request of the Respondent filed within seven (7) calendar days of service of notice thereof, in accordance with Rule 310:2-7-5 of the Procedures of the Oklahoma State Department of Health.

The OSDH is directed to serve a copy of this Order upon the Respondent by certified mail or by personal service. Pursuant to 310: 2-21-4, the Commissioner authorizes any person employed by the Petitioner as able to serve this pleading on the Respondent.

Done this 18th day of November, 2019.

OKLAHOMA STATE DEPARTMENT OF HEALTH:

GARY COX
COMMISSIONER OF HEALTH



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CERTIFICATE OF SERVICE

This is to certify that on this 18th day of November, 2019, a copy of the above and foregoing *Administrative Compliance Order to Cease and Desist Operation of a Residential Care Home and Directing Relocation of All Residents to Licensed Facilities* was mailed via certified mail, return receipt requested to:

Rest Haven Management, Inc.
368015 Old Highway 62
Boley, OK 74829
CERTIFIED MAIL: 7019 1120 0002 1804 9690

The Rest Haven Management Company
368015 Old Highway 62
Boley, OK 74829
CERTIFIED MAIL: 7019 1120 0002 1804 9706

Lavada Stacy Myers, Administrator
Four See "4C"
368015 Old Highway 62
Boley, OK 74829
CERTIFIED MAIL: 7019 1120 0002 1804 9713



Nancy R. Potter

E:\Protective Health Services - Rocky McElvany\Long Term Care - Michael Cook\Residential Care\Four See - 4C - Boley\DRAFT ACO with C&D relocate - Four See 4C (11-14-19).docx

As Hearing Clerk for the Administrative Court of the Oklahoma State Department of Health, I hereby certify that the foregoing is a true, correct, and complete copy of the instrument herewith set out as appears of record in the Administrative Hearing Clerk's Office of the Oklahoma State Department of Health this 18th day of November, 2019.
By Marcia Johnson
HEARING CLERK

