

BEFORE THE OKLAHOMA STATE DEPARTMENT OF HEALTH

PROTECTIVE HEALTH SERVICES )  
OF THE OKLAHOMA STATE )  
DEPARTMENT OF HEALTH, )

PETITIONER. )

v. )

The Rest Haven Management )  
Company, Inc.<sup>1</sup>, D/B/A New )  
Beginnings; and D/B/A Living )  
Waters, )

RESPONDENT. )

CASE NO. : LTC-2019-491

Filed

NOV 15 2019

Office of  
Administrative Hearings

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

Based upon the representations of Protective Health Services of the Oklahoma State Department of Health (“OSDH”), the Commissioner of Health (“Commissioner”) finds The Rest Haven Management Company, d/b/a New Beginnings, and d/b/a Living Waters (“Respondent”) owns and operates unlicensed residential care homes located in Boley, Oklahoma. New Beginnings is at 419 Pecan Street and Living Waters is at 320 Pecan Street.

The Respondent operates these facilities in violation of the Residential Care Act (“RC Act”), 63 O.S. §§ 1-819 *et seq.* and the rules promulgated by the State Board of Health pursuant to the RC Act, Oklahoma Administrative Code (“OAC”) 310:680-1-1 *et seq.* (“Rules”). Accordingly this Cease and Desist Order (“Order”) is hereby entered, pursuant to 63 O.S. § 1-1701.1A, 63 O.S. § 1-828.1, and 75 O.S. §§ 308a *et seq.*

<sup>1</sup> The Oklahoma Secretary of State’s web site lists The Rest Haven Management Company as its own service agent.

### **Findings of Fact**

1. 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.*

2. The State Board of Health has adopted rules to implement the provisions of the RC Act pursuant to 63 O.S. § 1-821.

3. Respondent owns and operates two residential properties located in Boley, Oklahoma: **New Beginnings**, located at 419 Pecan Street, and **Living Waters**, located at 320 Pecan Street. New Beginnings is believed to house eight residents. Living Waters is believed to house seven residents.

Services and care provided to these residents constitutes operating an unlicensed residential care facility, as generally detailed in this pleading. OSDH will reveal specific facts and evidence about the allegations during a show-cause hearing.

### **Facts Applicable to Both Facilities**

4. Respondent owns, operates and provides care and services to residents in violation of the RC Act and Rules. This is evidenced by, but not limited to the following observations:

A. The Certified Medication Aide (“CMA”) from Four See<sup>2</sup> administers medications to the residents of Living Waters and New Beginnings. The CMA keeps the resident medication for residents of Living Waters locked at Four See, with residents lacking access to their own medications. The CMA keeps the resident medication for residents of New Beginnings locked on site, with residents lacking access to their own medications.

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<sup>2</sup> A licensed entity controlled by the Respondent.

B. The use of a document titled "Residents' Rights," which included sections titled "Patients' Rights Includes," "Housing," "Your Rights," "Your Rights in Licensed Care Facilities," and "To report abuse you can call;" "Medical..Privacy..Council," as well as mentioning various rights retained by residents;

C. The use of a document titled "Living Waters/New Beginnings Shared Waters Client Contracting Housing and Service Agreement." This document contains sections covering responsibilities of the facility and the residents and suggests a level of control over the residents exceeding any type of typical group living arrangement;

D. Respondent apparently did not disclose to residents and/or the responsible parties of the residents that the facility was not licensed by the OSDH nor authorized to operate by the OSDH; and

E. It does not appear either facility has any person working in the capacity of "Administrator."

### New Beginnings

5. On **October 30, 2019**, representatives of the OSDH concluded an on-site survey at New Beginnings and determined the following:

A. Continued operation of a residential care facility by the Respondent presents a serious risk for harm for the residents currently residing in New Beginnings. The harms include, but are not limited to:

- a. lack of food in the facility;
- b. only tap water available for consumption, no other drink

options;

- c. malfunctioning cooking equipment;
- d. bed bug infestation;
- e. lack of climate control in the facility;
- f. residential reliance on third party food delivery (which is sporadically being done), due to the resident's lacking the ability to care for themselves;
- g. unpredictable availability of hot water.

### Living Waters

6. On **October 30, 2019**, representatives of the OSDH concluded an on-site survey at Living Waters and determined the following:

A. Continued operation of a residential care facility by the Respondent presents a serious risk for harm for the residents currently residing in Living Waters. The harms include, but are not limited to:

- a. doors locked on the refrigerator and freezer, with a tiny amount of food in the cabinets;
- b. sporadic food delivery;
- c. roach infestation;
- d. a resident residing in the laundry room;
- e. seizure of resident personal belongings, including diabetic supplies, food stamp cards, driver licenses, debit cards and Social Security cards;
- f. only tap water available for consumption, no other drink options;

g. insufficient medical care provided to residents.

7. Pursuant to and due to the serious violation and continued operation of an unlicensed residential care facility, this Order is being issued with the directive to relocate all residents to licensed facilities within ten (10) days of receipt of this Order.

### **Conclusions of Law**

8. Entry of this Order is proper and authorized by 63 O.S. § 1-1701.1A.

9. The Commissioner has jurisdiction of this matter pursuant to 63 O.S. §§ 1-106, 1-819 *et seq.* and 1-1701.1A.

10. The items listed in the Findings of Fact as set forth above are violations of the RC Act and Rules as adopted by the State Board of Health. The Respondent operates in violation of the RC Act and Rules. The salient statutes and regulations are:

<b><u>Statutes<sup>3</sup></u></b>	<b><u>Gist of statute</u></b>
Section 1-821(B)(13)	Transfer of residents
Section 1-821(B)(14)	All incidental powers as necessary for the administration of the Residential Care Act
Section 1-825(2),(4),(5)	Transfer of residents; injunctive proceedings; civil fines
Section 1-830	Notice to Correct and Answer Complaints; Emergency
Section 1-832(7)	Owning or operating a home without a license
Section 1-833	Penalties for violations

<sup>3</sup> All statutes in the table are in Title 63 of the Oklahoma Statutes. All regulations are in Title 310, Section 680 of the Oklahoma Administrative Code, unless otherwise noted.

<u>Regulations</u>	<u>Gist of regulation</u>
Section 3-1	License required for operation
Section 3-5(c),(e)	Emergency resident transfer; civil penalty
Section 5-3	HVAC systems
Section 5-6	Safe building elements
Section 5-7	Resident rooms
Section 7-3	Vermin control
Section 9-1	Food Service
Section 11-1	Staffing requirements, including an Administrator
Section 13-1	Medications
Section 15-2	Protection of residents' funds

**ORDER**

11. **IT IS THEREFORE ORDERED** that Respondent cease and desist operation of unlicensed residential care homes located at 419 Pecan Street and 320 Pecan Street, in Boley, Oklahoma within ten days (10) of receipt of this Order or immediately become licensed as a residential care facility.

**IT IS ALSO ORDERED** by the Commissioner if the Respondent fail to become properly licensed, all residents living at both facilities are to be relocated to licensed facilities that can appropriately address the physical and medical needs of the residents within ten (10) days of 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 operates in violation of this Administrative Compliance Order to Cease and Desist Operation of Unlicensed Residential Care Home and Directing Relocation of All Residents to Licensed Facilities.

## GENERAL PROVISIONS

12. This Compliance Order will become a Final Agency 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 10 St., Suite 503  
Oklahoma City, Oklahoma 73117

oah@health.ok.gov  
405-271-9444, ext. 56212

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

13. 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.<sup>4</sup> 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

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<sup>4</sup> Massongill v. McDevitt, 1989 OK CIV APP 2, holding that a corporation cannot represent itself. See also Title 310, Section 2-21-7, Paragraph A of the Oklahoma Administrative Code.

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

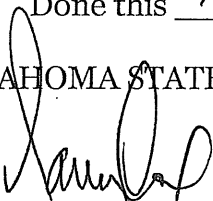
14. Pursuant to Title 310, Section 2-21-7, Paragraph A, OSDH will seek a default judgment should the Respondent fail to appear with counsel at a scheduled hearing or otherwise not file a responsive pleading when necessary.

A final 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.

15. The OSDH is directed to serve a copy of this Order upon the Respondent by certified mail or by personal service. Pursuant to Title 310, Section 2-21-4, the Commissioner designates any person employed by the OSDH to accomplish service of process for OSDH. This designation shall continue for the duration of this litigation and apply to any pleading filed by the Petitioner.

Done this 14<sup>th</sup> day of November, 2019.

OKLAHOMA STATE DEPARTMENT OF HEALTH:



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GARY COX, J.D.  
COMMISSIONER OF HEALTH

Robert Noll, OBA # 18974  
Office of General Counsel  
1000 NE 10<sup>th</sup> Street, Room 503  
Oklahoma City, OK 73117 - 1299

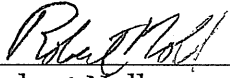


Phone: (405) 271-6017      Fax: (405) 271-3431  
RobertN@health.ok.gov

**CERTIFICATE OF SERVICE**

This is to certify that on this 15 day of November, 2019, a copy of this *Administrative Compliance Order to Cease and Desist Operation of Unlicensed Residential Care Home and Directing Relocation of All Residents to Licensed Facilities* was sent by certified mail/restricted delivery/return receipt requested and/or hand delivered to:

The Rest Haven Management Co., Inc.  
368015 Old Highway 62  
Boley, OK 74829

  
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Robert Noll