

HOME CARE AND ASSISTED LIVING PROGRAM
HEALTH REGULATION DIVISION

EMAIL: svoigt@vrb-law.com

In the Matter of Minnesota Heritage House LLC, under Elder Care of Minnesota
315-12th Street NE, Suite B
Little Falls, MN 56345
MDH HFID # 21049

Stipulation and Consent Order:

IT IS STIPULATED AND AGREED by Minnesota Heritage House, LLC, under Elder Care of Minnesota ("Heritage" or "Provider") and the Minnesota Department of Health ("Department" or "MDH"), and that without trial or adjudication of any issue of fact or law:

This Stipulation and Consent Order ("Stipulation"), survey reports, and related documents shall constitute the entire record upon which this Stipulation is based. The survey results and Office of Health Facility Complaints ("OHFC") public documents dated December 2015 through the date of this Stipulation as listed below in the Facts and Law, are incorporated by reference into this Stipulation. This Stipulation is public data pursuant to Minnesota Statutes, sec. 144.051, subd. 4 and the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

Facts and Law:

Minn. Stat., secs. 144A.43-144A.483 authorizes the Department to regulate licensed home care providers in Minnesota. This authority includes issuing a conditional license and conducting surveys to determine if the license holder is in compliance with statutory requirements of licensed home care providers.

Heritage has been licensed to provide home care services since September 2000. Under its license, Heritage operates three housing with services ("HWS") located in Pequot Lakes, Kimball, and Adrian, Minnesota.

From November 30, 2015 to December 4, 2015, the Department conducted a full initial survey of Heritage, as required by Minn. Stat. sec. 144A.473, subd. 2(b). This full survey resulted in 25 correction orders with two (2) Level 3 violations; 21 Level 2 violations; and two (2) Level 1 violations.

From February 16 to 19, 2016, the Department conducted a follow-up survey to determine if Heritage corrected the 25 licensing orders issued following the full initial survey. The follow-up survey resulted in 12 corrected orders, 13 re-issued orders, and two (2) new orders, both of which were Level 2 violations.

From May 24 to 27, 2016, the Department conducted the second follow-up survey to determine if Heritage corrected the 15 licensing orders from the February 16-19, 2016 follow-up survey. The May follow-up survey resulted in 10 corrected orders, five (5) re-issued orders, one of which was a Level 3 violation, and one (1) new order, which was a Level 2 violation.

From August 9 to 11, 2016, the Department conducted the third follow-up survey to determine if Heritage corrected the seven (7) licensing orders issued following the May 24-17, 2016 follow-up survey. The August follow-up survey resulted in three (3) corrected orders, three (3) re-issued orders, and three (3) new orders, all of which were Level 2 violations.

In the letter dated September 17, 2016, the Department informed Heritage that it demonstrated a pattern of recurring violations of Minnesota Statutes and showed conduct that was detrimental to the welfare of its clients. Pursuant to Minn. Stat. 144A.475, subd. 1 (a), the Commissioner of Health is authorized to refuse to grant a temporary license, renew a license, suspend or revoke a license, or impose a conditional license or take other enforcement action for violation of statutes relating to home care services. The Department informed Heritage that the Department is authorized to impose enforcement action against them.

From November 8 to 9, 2016, the Department conducted the fourth follow-up survey to determine if Heritage corrected the seven (7) licensing orders issued following the August 9-11, 2016 follow-up survey. The November follow-up survey resulted in four (4) corrected orders, three (3) re-issued orders, and no new orders.

From February 14 to 16, 2017, the Department conducted the fifth follow-up survey to determine if Heritage corrected the three (3) licensing orders issued following the November follow-up survey. This follow-up survey resulted in one (1) corrected order, seven (7) re-issued orders, and two (2) new orders both of which were Level 2 violations.

In a letter dated March 15, 2017, the Department again informed Heritage that it demonstrated a pattern of recurring violations of Minnesota Statutes, the conduct was detrimental to the welfare of its clients, and the Department is authorized to impose an enforcement action against Heritage.

The March 15, 2017, letter also requested that Heritage provide records documenting any action taken to comply with the correction order(s), and that the documentation of action to comply be faxed and mailed to the Department pursuant to Minn. Stat. 144A.474, subd. 8 (c).

In addition, the March 15, 2017, letter requested that Minnesota Heritage House: Administrator Mr. James Birchem, management team, and director of nursing contact the Department within three (3) business days of the receipt of the March 15, 2017, letter to schedule an informal conference call to exchange information, clarify issues, or resolve issues, in accordance with Minn. Stat. 144A.475, subd. 8.

On March 22, 2017, the Department informed Minnesota Heritage House that it could be subject to enforcement action if compliance was not achieved.

From May 9 to 11, 2017, the Department conducted a sixth follow-up survey to determine if Heritage corrected the 9 licensing orders issued following the February follow-up survey. This follow-up survey resulted in four (4) corrected orders, five (5) re-issued orders, all of which were Level 2 violations, and no new orders.

While Heritage began to make progress on correcting previous violations, the Department had renewed concerns about the health and safety of Heritage's clients related to complaint investigations.

From June 26 - 29, 2017, the Department conducted a follow up survey at Heritage regarding the uncorrected violations and issued 31 correction orders, one at a level 3.

On July 14, 2017, in an attempt to correct the outstanding violations, Heritage retained the services of Zellner Senior Health Consulting, LLC ("Zellner").

Office of Health Facility Complaints Investigation

From May 10 to 11, 2016, the Department conducted a complaint investigation. This investigation resulted in one order which was a Level 4 violation.

Office of Health Facility Complaints Investigation

From February 6 to 7, 2017, the Department conducted a complaint investigation. This investigation resulted in five (5) orders, two (2) of which were Level 4 violations, and three (3) of which were Level 2 violations.

On June 28, 2017 OHFC conducted a complaint investigation of Heritage that resulted in two level three violations.

Heritage requested reconsideration of the May 22, 2017, OHFC complaint findings, on July 17, 2017.

An informal conference call was held on July 20, 2017, including Heritage, Zellner and the Department. Zellner planned to assess the current situations in Heritage's Pequot Lakes, Kimball and Adrian locations and provide a plan to MDH by July 23, 2017. MDH reviewed the plan provided by Zellner

A letter dated July 27, 2017, from Heritage offered to transfer clients living in the Pequot location to an arranged home care provider. The Department did not agree that this was an adequate solution given the severity and widespread nature of violations of Minn. Stat., secs. 144A.43-144A.483 in all three HWS.

The Department held an informal conference call on August 3, 2017 with Heritage. During the August 3, 2017 call, the Department informed Heritage because of the long standing violations two additional enforcement actions would be offered:

- a. Immediate suspension and revocation of the Heritage license or
- b. An immediate and fast moving plan to transfer all clients served under the Heritage license to a different license holder in good standing, and that the owners of Heritage could not play any ongoing role in the delivery of home care services with the new arranged provider.

Heritage contacted the Department on August 7, 2017, to let the Department know that Heritage's owners agree to accept option number two, which allows them to transfer clients to a licensed home care provider.

On August 9, 2017, the Department received a request from Heritage for reconsideration of the June 28, 2017 OHFC complaint findings.

On August 23, 2017, Heritage contacted the Department and indicated that an arranged home care provider would provide services in the three HWS beginning October 1, 2017. Heritage further indicated that Zellner would remain on site at all three HWS until the transfer of care occurred. The Department responded they wanted the transfer of care sooner than October 1, 2017.

On August 27, 2017 Heritage contacted the Department and indicated the arranged home care provider and Heritage could not come to an agreement.

The Department held an informal conference call on August 31, 2017 with Heritage. The Department indicated an immediate suspension and revocation of the Heritage license would occur. Heritage indicated Serenity Living Solutions-Sebeka (Serenity) was interested in providing services in the three HWS. A signed agreement between Serenity and Heritage was forward to the Department later in the day indicating the transfer would occur on September 15, 2017.

On September 13, 2017, the Department responded to Heritage's July 17, 2017 reconsideration request of the May 22, 2017, OHFC complaint findings (HL21049030; HL21049031; HL21049033; HL21049034), indicating that the Department will reconsider the citations requested.

Transition Period

Heritage may continue to serve clients under their home care license until their clients are safely transferred to the care of the arranged provider, Serenity or another provider of the client's choice. Heritage must fully cooperate with the transfer process including access to the clients it is serving and their health and financial records.

The following conditions apply;

- a. **Consultant:** Heritage will continue to have Zellner on site, at Heritage's expense, to review, evaluate, and revise Heritage's practices to align them with the requirements of Minn. Stat. secs. 144A.43 – 144A.484.
- b. **No new admissions:** Heritage will not admit any new clients under its home care license. Serenity may choose to add new clients and begin to serve them on or before the date the transfer is fully completed.
- c. **Reports:** Zellner will provide the Department with regular reports at intervals specified based on progress. Reports will begin on a weekly basis until MDH notifies Heritage and Zellner about a change. Each report will be electronically submitted to Jeri Cummins, Health Resources Supervisor, HCALP, Health Regulation Division, at jeri.cummins@state.mn.us. Ms. Cummins can be reached at 218-302-6193 or 651-336-9362 with questions about reports. The reports will contain the following information: progress towards correction of licensing orders, training and supervision of staff, overall monitoring and follow up progress, forms and/or policies, concerns identified, and any other information requested by the Department.

- d. **Monitoring visits:** MDH may make monitoring visits to assess the progress of Heritage to correct the violations cited during prior surveys as well as to determine the overall practice of Heritage in meeting the needs of the people it serves.
- e. **Arm's length:** None of the current owners, administrators or managers of the Heritage license may administer or manage the care of the clients, once they have transferred to Serenity or any licensed home care provider selected by their clients.
- f. **No new application for a home care license:** The owners, administrators or managers currently listed on the most recent renewal of the Heritage license may not apply for a temporary basic or comprehensive license for a period of five years from the date the Heritage license is closed. This prohibition applies to an application for a new temporary or comprehensive license, and does not apply to the renewal of existing licenses held by the provider other than the Heritage license.
- g. **Closure of license 381451-Heritage House HFID #21049:** Heritage's license will close immediately upon the transfer of its clients to Serenity or other providers of the client's choice.

Binding Effect:

This Agreement is binding upon the Parties, their employees, agents, heirs, administrators, representatives, executors, successors and assigns, and the Parties will assure that their employees, agents, heirs, administrators, representatives, executors, successors and assigns are made aware of this agreement.

No Limited Authority:

This Stipulation does not in any way or manner limit or affect the authority of MDH to proceed against Heritage based on any act, conduct or admission of Heritage which justifies disciplinary action and occurred either before or after the date of this Stipulation and which is not directly related to the facts and circumstances covered in this Stipulation.

Procedure:

This Stipulation contains the entire agreement between the Department and the Provider, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation. Provider understands that this agreement is subject to the approval of the Assistant Division Director of the Department's Health Regulation Division.

Service of Agreement:

By this Stipulation, Heritage agrees that a copy of the signed Stipulation will be scanned and provided to Heritage via email at this email address: jimbo@eldercaremn.com. Service at this email address shall be considered to be personal service upon Heritage, at which time this Stipulation will become effective. Any appropriate federal or state court shall, upon application of the Assistant Division Director, enter an order of enforcement of any or all of the terms of this Stipulation.

Execution:

Heritage has carefully read the Stipulation, understand the contents of it and signs it under its own free will:

Print Name/Title: James Bircham, President

Minnesota Heritage House, LLC under ElderCare of MN

Dated: 15 September, 2017

[Signature]
James Bircham, Owner

Dated: September 15, 2017

[Signature]
Katherine Bircham, Owner

Upon consideration of this Stipulation, by the Assistant Division Director, it is ordered that the terms in this Stipulation are adopted on this 18th day of Sept, 2017. This executed Stipulation will be effective on the date it is electronically received by Heritage.

[Signature]
SUSAN WINKELMANN