

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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AHCA  
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2017 FEB 17 P 4: 04

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

E2 EMERSON AND EMERSON, LLC,  
d/b/a BRIGHTSTAR,

AHCA No: 2017001902

License No. 299993826

File No. 19966771

Provider Type: Home Health Agency

Respondent.

**IMMEDIATE MORATORIUM ON ADMISSIONS  
AND EMERGENCY RESTRICTION ORDER**

THIS CAUSE came on for consideration before the Secretary of the Agency for Health Care Administration, or his duly appointed designee, who after careful review of the matter at hand and being otherwise fully advised, 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 home health agencies in Florida and enforces the applicable state statutes and rules governing home health agencies. Chs. 400, Part III, and 408, Part II, Fla. Stat. (2016); Ch. 59A-8, Fla. Admin. Code. As part of its oversight responsibilities, the Agency has the authority to impose emergency orders, including an emergency suspension, restriction, limitation of license, or immediate moratorium on admissions, when circumstances dictate such action. §§ 120.60(6); 408.814; Fla. Stat. (2016).

2. The Respondent, E2 Emerson and Emerson d/b/a Brightstar (hereinafter "the Respondent"), was issued a license by the Agency to operate a home health agency located at 110 South 5<sup>th</sup> Street, Leesburg, Florida 34748. § 400.464(1), Fla. Stat. (2016). As the holder of such

licenses, 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. (2016). "The licensee is legally responsible for all aspects of the provider operation." § 408.803(9), Fla. Stat. (2016). "Provider" means "any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802," Florida Statutes (2016). § 408.803(11), Fla. Stat. (2016). Home health agencies are regulated by the Agency under Chapter 400, Part III, Florida Statutes (2016), and listed in Section 408.802, Florida Statutes (2016). § 408.802(14), Fla. Stat. (2016). Home health agency patients are thus clients. "Client" means "any person receiving services from a provider." § 408.803(6), Fla. Stat. (2016).

3. As of the date of this Emergency Order, the census at the Respondent's Agency is sixteen (16) skilled nursing patients/clients and (27) twenty-seven total patients/clients.

#### **THE AGENCY'S EMERGENCY ORDER AUTHORITY**

4. The Agency may impose an immediate moratorium or emergency suspension as defined in section 120.60, Florida Statutes (2016), 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. (2016). 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. (2016).

#### **LEGAL DUTIES OF A HOME HEALTH AGENCY**

5. Under Florida law, when required by the provisions of chapter 464; part I, part III, or part V of chapter 468; or chapter 486, the attending physician, physician assistant, or advanced registered nurse practitioner, acting within his or her respective scope of practice, shall establish treatment orders for a patient who is to receive skilled care. The treatment orders must be signed

by the physician, physician assistant, or advanced registered nurse practitioner before a claim for payment for the skilled services is submitted by the home health agency. If the claim is submitted to a managed care organization, the treatment orders must be signed within the time allowed under the provider agreement. The treatment orders shall be reviewed, as frequently as the patient's illness requires, by the physician, physician assistant, or advanced registered nurse practitioner in consultation with the home health agency. § 400.487(2), Fla. Stat. (2016).

6. Under Florida law, the skilled care services provided by a home health agency, directly or under contract, must be supervised and coordinated in accordance with the plan of care. § 400.487(6), Fla. Stat. (2016).

7. Under Florida law, a plan of care shall be established in consultation with the physician, physician assistant, or advanced registered nurse practitioner, pursuant to Section 400.487, F.S., and the home health agency staff who are involved in providing the care and services required to carry out the physician, physician assistant, or advanced registered nurse practitioner's treatment orders. The plan must be included in the clinical record and available for review by all staff involved in providing care to the patient. The plan of care shall contain a list of individualized specific goals for each skilled discipline that provides patient care, with implementation plans addressing the level of staff who will provide care, the frequency of home visits to provide direct care and case management. Fla. Admin. Code R. 59A-8.0215(1).

8. Under Florida law, home health agency staff must follow the physician, physician assistant, or advanced registered nurse practitioner's treatment orders that are contained in the plan of care. If the orders cannot be followed and must be altered in some way, the patient's physician, physician assistant, or advanced registered nurse practitioner must be notified and must approve of the change. Any verbal changes are put in writing and signed and dated with the date of receipt by the nurse or therapist who talked with the physician, physician assistant, or advanced registered

nurse practitioner's office. Fla. Admin. Code R. 59A-8.0215(2).

9. Florida law provides:

**(2) Director of Nursing.**

(a) The director of nursing of the agency shall:

1. Meet the criteria as defined in Section 400.462(10), F.S.;
2. Supervise or manage, directly or through qualified subordinates, all personnel who provide direct patient care;
3. Ensure that the professional standards of community nursing practice are maintained by all nurses providing care; and,
4. Maintain and adhere to agency procedure and patient care policy manuals.

(b) The director of nursing, the administrator, or alternate administrator shall establish policies and procedures on biomedical waste for home health agencies providing nursing and physical therapy services. The Department of Health website has information on biomedical waste handling and the requirements at [www.doh.state.fl.us/Environment/Community/biomedical](http://www.doh.state.fl.us/Environment/Community/biomedical).

(c) The director of nursing shall:

1. Establish policies and procedures that are consistent with recommended Centers for Disease Control (CDC) and Occupational Safety and Health Agency (OSHA) guidelines for safety, universal precautions and infection control procedures;
2. Employ and evaluate nursing personnel;
3. Coordinate patient care services; and,
4. Set or adopt policies for, and keep records of criteria for admission to service, case assignments and case management.

(d) Pursuant to Section 400.497(5)(a), F.S., the director of nursing shall establish a process to verify that skilled nursing and personal care services were provided. When requested by an AHCA employee, the director of nursing shall provide a certified report that lists the home health services provided by a specified direct service staff person or contracted staff person for a specified time period as permitted in Section 400.497(5)(b), F.S. A certified report shall be in the form of a written or typed document or computer printout and signed by the director of nursing. The report must be provided to the surveyor within two hours of the request, unless the time period requested is longer than one year, then the report must be provided within three hours of the request.

(e) The director of nursing shall establish and conduct an ongoing quality assurance program. The program shall include at least quarterly, documentation of the review of the care and services of a sample of both active and closed clinical records by the director of nursing or his or her delegate. The director of nursing assumes overall responsibility for the quality assurance program. The quality assurance program is to assure that:

1. The home health agency accepts patients whose home health service needs can be met by the home health agency;

2. Case assignment and management is appropriate, adequate, and consistent with the plan of care, medical regimen and patient needs. Plans of care are individualized based on the patient's needs, strengths, limitations and goals;
3. Nursing and other services provided to the patient are coordinated, appropriate, adequate, and consistent with plans of care;
4. All services and outcomes are completely and legibly documented, dated and signed in the clinical service record;
5. The home health agency's policies and procedures are followed;
6. Confidentiality of patient data is maintained; and,
7. Findings of the quality assurance program are used to improve services.

(f) In an agency with less than a total of 10 full time equivalent employees and contracted personnel, the director of nursing may also be the administrator.

Fla. Admin. Code R. 59A-8.0095(2).

10. Under Florida law, a home health agency has the following responsibility in terms of hours of operation: (a) The home health agency administrator and director of nursing, or their alternates, must be available to the public for any eight consecutive hours between 7:00 a.m. and 6:00 p.m., Monday through Friday of each week, excluding legal and religious holidays. Available to the public means being readily available on the premises or by telecommunications. (b) When the administrator and the director of nursing are not on the premises during designated business hours, a staff person must be available to answer the phone and the door and must be able to contact the administrator and the director of nursing by telecommunications. This individual can be a clerical staff person. (c) If an AHCA surveyor arrives on the premises to conduct an unannounced survey and the administrator, the director of nursing, or a person authorized to give access to patient records, are not available on the premises they, or the designated alternate, must be available on the premises within an hour of the arrival of the surveyor. A list of current patients must be provided to the surveyor within two hours of arrival if requested. (d) The home health agency shall have written policies and procedures governing 24 hour availability to licensed professional nursing staff by active patients of the home health agency receiving skilled care.

These procedures shall describe an on-call system whereby designated nursing staff will be available to directly communicate with the patient. For agencies which provide only home health aide and homemaker, companion and sitter services and who provide no skilled care, written policies and procedures shall address the availability of a supervisor during hours of patient service. Fla. Admin. Code R. 59A-8.003(10).

#### **FACTS JUSTIFYING EMERGENCY ACTION**

11. On or about February 10, 2017, the Agency completed a survey of the Respondent's Facility.

12. Based upon this investigation, the Agency makes the following findings:

- a. Seven (7) patient records were reviewed by Agency personnel.
- b. Of those seven (7) patients, skilled nursing care was provided to five (5) of the patients prior to receiving physician orders for care.
- c. Skilled nursing care was provided to all seven (7) patients without a physician's order.
- d. A plan of care was not developed for each of the seven (7) patients.
- e. As to patient number one (1):
  - i. Skilled services were commenced by the Respondent on July 6, 2016, without a physician's order for care.
  - ii. Skilled nursing services provided included tracheostomy care, gastronomy tube feedings, medication administration, assistance with activities of daily living, and range of motion therapy. There was no physician's order directing that any of these skilled services be provided.
  - iii. Records reflect that the patient's tracheostomy discharged on at least two (2) occasions discolored mucus requiring suction. There is no documentation that

the patient's physician was notified of these emergent conditions.

iv. Records reflect that prescribed medications were not administered in accord with the prescriptive frequency. Again, there is no documentation that the patient's physician was notified of these deviations from the prescribed medication regimen.

f. As to patient number two (2):

i. Skilled services were commenced by the Respondent on November 23, 2016, without a physician's order for care.

ii. Continuing skilled nursing services included intravenous site flashes and administration of intravenous medications. There were no physician orders to provide these skilled nursing services.

g. As to patient number three (3):

i. Skilled services were commenced by the Respondent on January 16, 2017, without a physician's order for care.

ii. A prescription for antibiotic medication had not been administered to the patient by the Respondent.

iii. Skilled nursing provided wound care to the patient. There was no physician's order to provide wound care.

h. As to patient number four (4):

i. Skilled services were commenced by the Respondent on November 22, 2016, and a resumption of skilled services on January 18, 2017. There was no physician's order for the start of care.

ii. Skilled nursing provided intravenous medication administration. There was no physician's order to provide this care.

iii. Records reflect that on intravenous medication was not administered on two

(2) days. This medication was prescribed to prevent organ rejection after the patient had received a kidney transplant. The patient's physician was not notified of the failure to administer the medication until the second day.

i. As to patient number five (5):

i. The patient's record did not reflect when skilled nursing services were commenced.

ii. There was no physician's order to commence skilled nursing services.

j. As to patient number six (6):

i. Skilled services were commenced by the Respondent on January 30, 2017.

ii. There was no physician's order for the start of care.

k. As to patient number seven (7):

i. Skilled services were commenced by the Respondent on December 19, 2016.

ii. The patient was prescribed intravenous antibiotics.

iii. The Respondent failed to administer the prescribed intravenous antibiotic.

There is no documentation that the patient's physician was notified of these deviations from the prescribed medication regimen.

iv. Skilled nursing provided wound care to the patient. There was no physician's order to provide wound care.

v. There was an order for a home health consultation dated January 15, 2017. This consultation had not been completed by February 10, 2017.

l. The Respondent's Administrator indicated that Respondent's previous Director of Nursing had been terminated for having failed to ensure that physician's orders were obtained for the provision of home health care services.



m. The Respondent's current Director of Nursing indicated that she believed a referral form from the Respondent's corporate parent sufficed for physician's orders.

n. The Respondent's office, which must be staffed during regular working hours, see, Rule 59A-8.003(10), Florida Administrative Code, was vacant upon the Agency's arrival on February 10, 2017, at 9:00 AM. After Agency personnel called Respondent, a staff member arrived at approximately noon. No patient records were produced for inspection until 1:20 PM that date. The Respondent's Administrator asserted the licensed home health agency office was a satellite office of other operations of the Respondent.

o. The Respondent maintains policies and procedures related to patient care, physician orders, plans of care, and other related services. The above recited facts are not consistent with these policies and procedures.

#### **THE NECESSITY FOR THE MORATORIUM ON ADMISSIONS**

13. The Agency is charged with the responsibility of enforcing the laws designed to protect the health, safety and welfare of patients and clients in Florida's home health agencies. Ch. 400, Part III, Ch. 408, Part II, Fla. Stat. (2016); Ch. 59A-8, Fla. Admin. Code. Where the health, safety or welfare of a home health agency patient is at risk, the Agency will take prompt and appropriate action. Ensuring the protection of patients from abuse, neglect and exploitation is one of the Agency's essential purposes.

14. The facts are clear that the Respondent's operations have systemic deficiencies related to the provision of skilled services for patients entrusted to the Respondent's care of its patients. Significant operational omissions were readily apparent in just under one-half of the records of the Respondent's patient census.

15. These deficiencies are not mere errors in record keeping, but directly impact patient health and well-being.

16. Home health services are performed under the prescribed direction of treating physicians. Physician orders are required for the provision of home health care services. *See*, § 400.487(2), Fla. Stat. (2016). Health care providers are reliant upon caregivers to provide care as prescribed and to report deviations therefrom, and emergent conditions, to weigh and evaluate the efficacy of medical treatments prescribed and promptly alter or amend those prescriptive services to meet the patient's ongoing and changing medical requirements. Nurses act under the direction of licensed physicians in accordance with the Nurse Practice Act. *See generally*, § 464.001, Fla. Stat. (2016).

17. The Respondent has consistently provided skilled nursing services to patients without physician orders. The Respondent has repeatedly failed to administer prescribed medications. The Respondent has repeatedly failed to notify the physicians when the patient's prescribed medication is not administered or when emergent conditions related to the patient's care arise. The medications not administered include a medication to address organ transplant rejection and antibiotics.

18. Care plans in the home health agency arena include a determination of services to be performed as prescribed, the frequency of those services, and the skill levels necessary of persons who provide these services. Absent a care plan, required services could be overlooked or persons without requisite skill and education levels could be scheduled to provide patient care. Care plans also ensure that physician orders for each service are obtained and maintained.

19. The absence of care plans for patients are a serious deficient practice jeopardizing patient health and well-being.

20. It is clear that the Respondent has violated a myriad of regulatory mandates for

home health agencies. The Respondent has failed to maintain required hours of operation. Skilled services are provided without physician orders. Care plans are not developed and entered. Policy and procedure related to patient care is not implemented. Deviations from prescribed care, and development of changes in patient condition, are not reported to patient health care providers, leaving the health care provider unaware of conditions which may require further or alternate services.

21. Individually and collectively, these deficiencies are of such severity and magnitude that they constitute a direct and immediate threat to the health, safety and welfare of the Respondent's patients and any future prospective patients. The current situation deprives these patients of the appropriate health care and treatment that they require.

22. The failures identified are not isolated. The Respondent's non-compliance is evident in patient records of a number of the Respondent's patients.

#### **CONCLUSIONS OF LAW**

23. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, 400, Part III, Florida Statutes, and Chapter 58A-8, Florida Administrative Code.

24. Based upon the above stated provisions of law and findings of fact, the Agency concludes that: (1) an immediate serious danger to the public health, safety, or welfare presently exists at the Respondent's home health agency which justifies an immediate moratorium on patient admissions to Respondent's services, and (2) the present conditions related to the Respondent and its home health agency present a threat to the health, safety, or welfare of a resident, to the Respondent's patients, which requires an emergency restriction order as well as an immediate moratorium on admissions.

25. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Immediate Moratorium on Admissions and Emergency Restriction Order of the

Respondent's home health agency is necessary in order to protect patients from (1) the unsafe conditions and deficient practices that currently exist, (2) being placed at risk not receiving skilled services as prescribed, and (3) being served by a home health agency where the regulatory mechanisms enacted for patient protection have been repeatedly overlooked.

26. The Respondent's deficient practices exist presently and will more likely than not continue to exist if the Agency does not act promptly. If the Agency does not act, it is likely that the Respondent's conduct will continue. The Respondent was aware that it was failing to obtain physician orders for care, an infraction the Respondent deemed sufficient cause for the termination of its prior Director of Nursing. The Respondent nonetheless undertook no subsequent action to evaluate its patient census to ensure orders were present, or to ensure that new admissions had physician orders for services provided. The identified deficient practices and conditions justify the imposition of an Immediate Moratorium on Admissions and Emergency Restriction Order. Lesser actions, such as the assessment of administrative fines, will not ensure that current or future patients receive the appropriate care and services dictated by Florida law.

27. The emergency action taken by the Agency in this particular instance is fair under the circumstances and the least restrictive action that the Agency could take given the set of facts and circumstances of this particular matter. This remedy is narrowly tailored to address the specific harm in this instance. The Agency has the right to impose an emergency suspension order on the Respondent's license, and will promptly do so, should the circumstances change or should the Respondent not properly respond to this Emergency Order.

**IT IS THEREFORE ORDERED THAT:**

28. An **EMERGENCY RESTRICTION ORDER** is imposed on the Respondent as to its patients requiring skilled care. Upon receipt of this Emergency Order, the Respondent shall take immediate steps to safely discharge and transfer its patients requiring skilled care to other

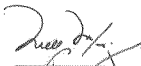
providers capable of providing the care that the patients require.

29. An **IMMEDIATE MORATORIUM ON ADMISSIONS** is imposed upon entry of this order.

30. Upon receipt of this order, the Respondent shall post this Emergency Order on its premises in a place that is conspicuous and visible to the public.

31. The Agency shall promptly file an administrative action against the Respondent based upon the facts set out in this Emergency Order and provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2016), at the time that such action is taken.

**ORDERED** in Tallahassee, Florida, this 17 day of February, 2017.



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Justin M. Senior, Secretary  
Agency for Health Care Administration

#### **NOTICE OF RIGHT TO JUDICIAL REVIEW**

This emergency order 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.



RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
INTERIM SECRETARY

**DELEGATION OF AUTHORITY  
To Execute  
Immediate Orders of Moratorium**

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

This delegation of authority shall be valid from date of October 4, 2016, until revoked by the Secretary.

A handwritten signature in black ink, appearing to read "J. M. Senior", is written over a horizontal line.

**Justin M. Senior, Interim Secretary**

12/1/16

**Date**

