

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

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

Case No: 2017004227

License No. 299993826

File No. 19966771

Provider Type: Home Health Agency

Respondent.

EMERGENCY SUSPENSION 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 federal and state regulations, 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 order, 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 5th 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 Suspension Order, the census at the Respondent's home health agency is five (5) skilled nursing patients/clients and eight (8) unskilled patients for a total of thirteen (13).

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.

(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).

FACTS JUSTIFYING EMERGENCY ACTION

10. On or about February 17, 2017, the Agency issued an Immediate Moratorium on Admissions and Emergency Restriction Order (hereinafter "Restriction Order") on the Respondent in State of Florida, Agency for Health Administration vs. E2 Emerson and Emerson, LLC d/b/a Brightstar, Agency Case No. 2017001902.

11. The Restriction Order directed the Respondent to "... 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." Restriction Order, ¶ 28. The Restriction Order further placed an Immediate Moratorium on Admissions of new patients to Respondent's services. Restriction Order, ¶ 29.

12. On or about April 17, 2017, the Agency completed a monitoring survey of the Respondent.

13. Based upon this survey, the Agency makes the following findings:

- a. Five (5) patients continue to receive skilled nursing care from the Respondent.

- b. Of those five (5) patients, skilled nursing care was provided to two (2) of the patients without physician's orders from a Florida physician prescribing the skilled nursing care.
- c. Of those patients, three (3) had received infusion therapies. The Respondent's supporting documentation to validate its care for one (1) of these patients is a physician's telephone order taken by and recorded by a pharmacist located in the State of New Jersey. A second patient's supporting documentation to validate care is a referral from a pharmacy provider, however no physician's order for home health skilled care.
- d. A plan of care was not developed for four (4) of the five (5) patients.
- e. For four (4) of the remaining patients receiving skilled nursing care, the Respondent could demonstrate no effort to take immediate steps to discharge the patients to another qualified provider. The Respondent's sole demonstrated effort to obtain alternative care for these individuals was for the Respondent to contact its infusion pharmacist, which did not provide an alternative placement.
- f. There is no indication that these patients were notified of the Restriction Order. There is no indication that these patients were provided any opportunity to exercise their rights to the choice of their health care provider. As to the fifth patient, the Respondent indicated the patient's responsible party had been notified of the need to transfer the patient. The patient's responsible party indicates that the Respondent was directed by the Agency that nursing home placement for the patient was required, and did not indicate the dictates of the Restriction Order or provide an alternative that the patient receive home health care services from another qualified provider.
- g. On March 21, 2017, in excess of one (1) month of the entry of the Restriction Order,

the Respondent admitted to its census a patient receiving non-skilled care.

- h. Patient number one (1):
 - i. The patient received multiple medications.
 - ii. The Respondent had no physician orders from a Florida physician for these medications.
 - iii. The Respondent had no plan of care for the patient.
 - iv. A medication prescribed to address cardiac conditions was withheld by the Respondent due to the patient's blood pressure. The patient's physician was not contacted concerning either the patient's blood pressure level or that the medication was withheld.
 - v. The Respondent's communication with the patient's power of attorney related to the Restriction Order was to inform the power of attorney that the patient required nursing home placement and that continued home care would require correspondence from the power of attorney indicating home based care was still desired.
- i. As to patient number four (4) :
 - i. Skilled services include infusion therapy.
 - ii. The patient's plan of care was not executed by the patient's physician.
 - iii. No efforts to notify the patient of the Restriction Order or to assist in alternative placement could be demonstrated.
- j. As to patient number eight (8):
 - i. Skilled services include infusion therapy to prevent organ rejection.
 - ii. The patient's plan of care was not executed by the patient's physician.

- iii. No efforts to notify the patient of the Restriction Order or to assist in alternative placement could be demonstrated.
- k. As to patient number nine (9):
 - i. Skilled services include the administration of Octagam.
 - ii. The Respondent has no physician's order for the medication, but merely a verbal order executed by a New Jersey pharmacist.
 - iii. The patient had no plan of care signed by the patient's physician.
 - iv. The Respondent has no physician's order for the start of care.
 - v. No efforts to notify the patient of the Restriction Order or to assist in alternative placement could be demonstrated.
- l. As to patient ten (10):
 - i. The patient received infusion therapy services.
 - ii. The Respondent has no physician's order for the start of care.
 - iii. No efforts to notify the patient of the Restriction Order or to assist in alternative placement could be demonstrated.
- m. As to patient number two (2):
 - i. The patient was discharged during the Restriction Order.
 - ii. The Respondent indicated physician's orders were obtained for medications and home health skilled services after the entry of the Restriction Order, but the Respondent could not produce copies of those orders.
 - iii. The patient's record does not reflect the patient's physician was notified of the patient's discharge from skilled services, there was no physician's order related to the discharge.

- iv. When the patient contacted the Respondent, the Respondent indicated the patient's infusion services had been terminated.
- v. No physician's order discharging the patient from services were obtained.
- n. As to patient number three (3):
 - i. The patient was discharged after the Restriction Order.
 - ii. The Respondent's director of nursing indicated the patient's wound care was terminated on February 10, 2017, at the patient's request, however records do not reflect this information was communicated to the patient's physician or that orders directing the cessation of treatment were obtained.
 - iii. No physician's order discharging the patient from services were obtained.
- o. As to patient number five (5), the patient was discharged after the Restriction Order. However, there is no physician's order discharging the patient from services.
- p. The Respondent's current Director of Nursing continues to believe a referral from the Respondent's corporate parent, or a pharmacy provided prescription, sufficed for required physician's orders related to home health services and the plan of care.
- q. 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 EMERGENCY SUSPENSION ORDER

14. 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.

15. The facts are clear that the Respondent's operation continues to have systemic deficiencies related to the provision of skilled services for patients entrusted to Respondent's care.

16. As recited in the Restriction Order, 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. *See generally*, The Nurse Practice Act, § 464.001, Fla. Stat. (2016), *et seq.*

17. The Respondent continues to provide skilled nursing services to patients without physician orders despite being cited for this very deficient practice during the survey precipitating the Restriction Order and the Order itself.

18. Similarly, as clearly recited in the Restriction Order, plans of care 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 plan of care, required services could be overlooked or persons without requisite skill and education levels could be scheduled to provide patient care. Plans of care also ensure that physician orders for each service are obtained and maintained.

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

20. The Respondent, despite the directives of the Restriction Order, continues its operations in a manner not meeting minimum requirements of law. The Respondent continues to provide skilled nursing services despite a directive to discharge those patients to other qualified providers. Skilled services continue to be provided without requisite physician orders. Plans of care have not been developed, executed by a physician, or implemented for patients. Policy and procedure related to patient care has not been implemented. In addition, the Respondent has failed to notify its remaining skilled care patients that the Respondent has been restricted from performing those services, and has failed to undertake genuine efforts to identify qualified providers who can meet the patient's care needs and respect the patients' right to choose their medical care providers.

21. Individually and collectively, these deficiencies are of such severity and magnitude that they constitute a continuing 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 and include all patients receiving skilled nursing care. The failures are known to the Respondent, yet continue despite the Restriction Order. The Respondent, in violation of the Restriction Order, admitted a patient to non-skilled care.

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 the 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, which requires an immediate moratorium on admissions.

25. Based upon the above-stated provisions of law and findings of fact, the Agency concludes that an Emergency Suspension of the Respondent's license to operate this 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.

27. The Respondent was clearly aware of its identified deficient practice related to the failure to obtain physician orders for care and the failure to devise and implement patient plans of care. These deficient practices were identified at length in the Restriction Order issued by the Agency over two (2) months ago. The Respondent nonetheless has failed to evaluate its patient census to ensure orders were present, or to ensure that plans of care were developed and implemented. The deficient practices and conditions identified in this order justify the imposition of an Emergency Suspension Order. Less restrictive actions have proven fruitless.

28. 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.

IT IS THEREFORE ORDERED THAT:

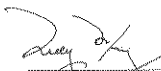
29. The Respondent's license to operate this home health agency is **SUSPENDED** effective Monday, May 1, 2017, at 5:00 p.m.

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

31. As of the effective date and time of the suspension, the Respondent shall not operate this home health agency.

32. The Agency shall promptly file an administrative action against the Respondent based upon the facts set out in this Emergency Suspension 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 19 day of April, 2017.



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
SECRETARY

**DELEGATION OF AUTHORITY
To Execute
Emergency Orders**

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

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

Justin M. Senior, Secretary

2/24/17
Date

