

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
FACILITY LICENSING AND INVESTIGATIONS SECTION**

IN RE: Orchard Grove Specialty Care Center  
d/b/a Apple Rehab Uncasville (CCNH 2306)  
5 Richard Brown Drive  
Uncasville, CT 06382

CONSENT ORDER

WHEREAS, Orchard Grove Specialty Care Center (“Licensee”), has been issued License No. 2306 to operate a chronic and convalescent nursing home known as Apple Rehab Uncasville, (“Facility”) under Connecticut General Statutes section 19a-490 by the Connecticut Department of Public Health (“Department”); and,

WHEREAS the Facility Licensing and Investigations Section (“FLIS”) of the Department conducted unannounced inspections on various dates between June 16, 2022 and August 08, 2023; and,

WHEREAS on or about August 8, 2023, the Department alleges that the Facility failed to ensure adequate staffing levels to protect the residents’ right to be free from neglect specifically for residents who required assistance with turning, repositioning, transfers and incontinence care. The Department further alleges that the Facility failed to meet the 3.0 hours per resident per day staffing requirement set forth in the Connecticut Public Health Code.

WHEREAS on or about May 4, 2023, the Department alleges that the Facility failed to ensure that an allegation of abuse was reported to the Administrator and Director of Nursing at the time the allegation of abuse was identified.

WHEREAS, on September 2, 2022, the Department determined that Immediate Jeopardy, as such term is defined by the Centers for Medicare & Medicaid Services in the State Operation Manual, existed because of a failure to ensure a resident, who had a history of wandering, was free from resident-to-resident abuse. The Department also determined that Immediate Jeopardy existed because of lack of supervision. The Facility failed to supervise a resident, who had a history of wandering, and on multiple occasions, said resident was assaulted by other residents when the resident wandered into their rooms. The Facility further failed to provide adequate supervision for residents who were assessed as a danger to others.

WHEREAS, on September 2, 2022, the Department alleges that the Facility further failed to ensure that residents were free from neglect by failing to provide incontinence care to 36 residents on the secured dementia unit in accordance with Facility policy;

WHEREAS, on May 26, 2022, the Department determined that Immediate Jeopardy, as such term is defined by the Centers for Medicare & Medicaid Services in the State Operation Manual,

existed because of a failure to provide adequate supervision, assess for elopement risk, maintain a secure environment to prevent elopement and monitor the wander guard system in accordance with the Facility policy.

WHEREAS, the Department, during the course of the aforementioned inspections, identified violations of the Connecticut General Statutes and/or Regulations of Connecticut State Agencies in violation letters dated June 29, 2022, September 23, 2022, May 8, 2023 and September 18 2023; and

WHEREAS the Licensee is entering into this Consent Order and agrees to the conditions set forth herein.

NOW THEREFORE, the FLIS of the Department acting herein and through Jennifer Olsen-Armstrong, its Section Chief, and the Licensee, acting herein and through Brian J. Foley its Owner, hereby stipulate and agree as follows:

1. The terms of this Consent Order shall remain in effect for a period of one (1) year from the effective date of this Consent Order unless otherwise specified in this Consent Order.
2. The Licensee shall execute a contract with an Independent Nurse Consultant ("INC"), pre-approved in writing by the Department, within one (1) week of the effective date of this Consent Order. The INC's duties shall be performed by a single individual unless otherwise approved by the Department. The Licensee shall incur the cost of the INC and any other costs associated with compliance with this Consent Order. Failure to pay the INC in a timely basis and in accordance with the contract, as determined by the Department in its sole and absolute discretion, shall constitute a violation of this Consent Order. Failure to pay the costs associated with the INC's duties may result in a civil penalty not to exceed one thousand (\$1000.00) dollars per day until such costs are paid.
3. The INC shall function in accordance with the FLIS's INC Guidelines (Exhibit A). The INC shall be a registered nurse who holds a current and unrestricted license in Connecticut. The registered nurse assuming the functions of the INC shall not be included in meeting the nurse staffing requirements of the Regulations of Connecticut State Agencies. The INC shall provide consulting services for twelve (12) months at the Facility unless the Department identifies through inspections, or any other information that the Department deems relevant, that a longer time period is necessary to ensure substantial compliance with applicable federal and state statutes and regulations.
4. The INC shall be present in the Facility for a minimum of sixteen (16) hours per week. The INC shall be at the Facility and arrange his/her schedule to be present at the Facility at various times on all three shifts including weekends. The Department will evaluate the number of hours of the INC three months after the effective date of this Consent Order and may, in its sole and absolute discretion, reduce or increase the hours of the INC and/or responsibilities, if the Department determines, based upon any information it deems relevant, that the reduction or increase is warranted. The terms of the contract executed with the INC shall include all pertinent provisions contained in this Consent Order. The Department shall base any decision regarding a reduction

in the hours of services of the INC upon onsite inspections conducted by the Department and based on all other information the Department deems relevant.

5. The INC shall act and perform the duties assigned herein at all times to serve the interest of the Department in assuring the safety, welfare and well-being of the patients and to secure compliance with applicable federal and state law and shall not accept any direction or suggestion from the Licensee or its employees that will deter or interfere in fulfilling this obligation.
6. The INC shall confer with the Licensee's Administrator, Director of Nursing Services, Medical Director, and other staff determined by the INC to be necessary to the assessment of nursing services and the Licensee's compliance with federal and state statutes and regulations.
7. The INC shall make recommendations to the Licensee's Administrator, Director of Nursing Services and Medical Director for improvement in the delivery of direct patient care in the Facility. If the INC and the Licensee are unable to reach an agreement regarding the INC's recommendation(s), the Department, after meeting with the Licensee and the INC shall make a final determination, which shall be binding on the Licensee.
8. The INC shall have the responsibility for:
  - a. Assessment of the Facility's staffing plan for compliance with local, state and federal laws and regulations;
  - b. Assessing, monitoring, and evaluating the sufficiency of staffing and delivery of direct patient care by registered nurses, licensed practical nurses, and nurse aides;
  - c. Assessing, monitoring and evaluating the Facility's compliance with State and Federal Requirements, specifically those related to Quality of Care and Resident Rights.
  - d. Recommending to the Department an increase in the INC's contract hours if the INC is unable to fulfill the responsibilities within the stipulated hours per week; and
  - e. Monitoring the Facility's actions to maintain compliance with this Consent Order;
9. The INC shall submit a written report every month to the Department documenting:
  - a. Facility Compliance with applicable federal and state staffing statutes and regulations;
  - b. The INC's assessment of the care and services provided to residents;
  - c. The Facility's compliance with the requirement set forth in this Consent Order; and

- d. Any recommendations made by the INC and the Facility's response and implementation of the recommendations.
  - e. Copies of all INC reports shall be simultaneously provided to the Director of Nurses, Administrator, Medical Director, and the Department.
10. The INC, the Licensee's Administrator, and the Director of Nursing Services shall meet with the Department every four (4) weeks for the first three (3) months after the effective date of this Consent Order and thereafter at twelve (12) week intervals throughout the tenure of the INC. The meetings shall include discussions of issues related to staffing, care and services provided by the Licensee and the Licensee's compliance with this Order, and applicable federal and state statutes and regulations.
  11. Any records maintained in accordance with any state or federal law or regulation or as required by this Consent Order shall be made available to the INC and the Department, upon request.
  12. If the Department determines that the Licensee is not able to maintain substantial compliance with federal and state laws and regulations, the Department, in its absolute and sole discretion, shall retain the authority to extend the period the INC functions are required. Determination of substantial compliance with federal and state laws and regulations will be based upon findings generated as the result of onsite inspections conducted by the Department and any other information the Department deems relevant.
  13. Effective upon the execution of this Consent Order, the Licensee shall appoint a free-floating registered nurse supervisor on the first and second shift whose primary responsibility is the assessment of patients and the care provided by nursing staff. The Assistant Director of Nursing Services can serve in this capacity when in the building. A nurse supervisor shall maintain a record of any patient related issue(s) or problem(s) identified on his or her shift and a notation as to the subsequent action taken to resolve the problem(s). Such records shall be made available to the INC and to the Department upon request and shall be retained for a five (5) year period.
  14. Individuals appointed as Nurse Supervisor shall be employed by the Facility (unless otherwise approved by the Department) and shall not carry a patient assignment. A Nurse Supervisor shall have previous experience in a supervisory role.
  15. Nurse Supervisors shall be provided with the following:
    - a. A job description which clearly identifies the supervisor's day-to-day duties and responsibilities;
    - b. A training program which clearly delineates each Nurse Supervisor's responsibilities and duties with respect to patient and staff observations, interventions and staff remediation.
  16. Nurse Supervisors shall be supervised and monitored by a representative of the Licensee's Administrative Staff, (e.g., Director of Nursing Service or Assistant

Director of Nursing Service) to ensure the Nurse Supervisors are functioning in accordance with this Consent Order and state and federal requirements. Said administrative supervising and oversight shall be provided on a rotating schedule which includes all three (3) shifts and weekends. Records of such administrative visits and supervision shall be provided to the INC and to the Department upon request and shall be retained for a five (5) year period.

17. Nurse Supervisors shall be responsible for ensuring that all care, provided to patients, by all caregivers, is in accordance with individual comprehensive care plans.
18. Effective immediately upon execution of this Order, daily rounds shall be conducted by the Director of Nursing and Free-Floating Supervisor, at which time all patients shall be observed for appropriate grooming, hygiene, positioning, and care needs. Documentation shall be maintained of any problems identified along with interventions instituted to correct said problems, provided to the INC, and available for review by the Department. Documentation of all such rounds shall be maintained at the Facility for a minimum period of five (5) years.
19. Effective immediately upon execution of this Order, the Administrator, or in the Administrator's absence, his/her designee, shall conduct a daily round on all patient units and provide patients and families with the opportunity to discuss concerns relative to the nursing home and the provision of care/service. Documentation shall be maintained of any problems identified along with interventions instituted to correct said problems, provided to the INC, and available for review by the Department. Documentation of all such rounds shall be maintained at the Facility for a minimum period of five (5) years.
20. The Administrator, Director of Nursing, Staff Development Coordinator, Medical Director, under the direction of a qualified social worker, shall, within 30 days of execution of this Consent Order review, meet and revise, as needed, the current training program concerning patient rights: including abuse and neglect. Within seven (7) days of the implementation of any revisions the Facility shall provide an inservice training to all Facility staff.
21. The Licensee, within two (2) days of the execution of this Consent Order, shall designate an individual within the Facility to monitor the requirements of this Consent Order. The name of the designated individual shall be provided to the Department within said timeframe.
22. Any reports required by this Consent Order shall be directed to:

Margaret McKinney, RN  
Supervising Nurse Consultant  
Facility Licensing and Investigations Section  
Department of Public Health  
410 Capitol Avenue, P.O. Box 340308 MS #12HSR  
Hartford, CT 06134-0308

23. At the time of the signing of the Consent Order, the Licensee shall pay a civil penalty in the amount of twenty thousand dollars (\$20,000) payable to "Treasurer, State of

Connecticut". Such payment shall be sent, with the signed Consent Order, to Margaret McKinney, RN at the address printed above.

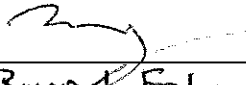
24. All parties agree that this Consent Order is an Order of the Department with all of the rights and obligations pertaining thereto and attendant thereon. Nothing herein shall be construed as limiting the Department's available legal remedies against the Licensee for violations of the Consent Order or of any other statutory or regulatory requirements, which may be sought in lieu of or in addition to the methods of relief listed above, including all options for the issuance of citations, the imposition of civil penalties calculated and assessed in accordance with Section 19a-524 et seq. of the General Statutes, or any other administrative and judicial relief provided by law. This Consent Order may be admitted by the Department as evidence in any proceeding between the Department and the Licensee in which compliance with its terms is at issue. The Licensee retains its rights under applicable law. The allegations and findings contained in Exhibits B through Exhibit E shall be deemed true in any subsequent proceeding in which the licensee's compliance with the Consent Order is at issue or the licensee's compliance with Connecticut statutes and regulations and/or with federal statutes and regulations is at issue.
25. The Licensee agrees that this Consent Order will be reported consistent with federal and state law and regulations and consistent with Department policy. In addition, the Licensee agrees that this Consent Order will be posted on the Department's website.
26. The Licensee agrees that this Consent Order does not affect any action that any federal, other state or municipal agency may take.
27. The Licensee waives its right to a hearing regarding any penalty imposed pursuant to this Consent Order, however, the Licensee shall be allowed to present documentary evidence to the Department prior to the imposition of a penalty. Upon written notice of the imposition of a penalty under this Consent Order, the Licensee shall pay the penalty to the Department within fifteen days of said notice. If the penalty is not paid within said time, in addition to other remedies permitted by law, Licensee hereby authorizes the Commissioner of Social Services to immediately withhold from any payment due to the Licensee an amount equal to any penalty imposed under this Consent Order upon written notice of the Department.
28. The execution of this Consent Order has no bearing on any criminal liability without the written consent of the Director of the MFCU or the Bureau Chief of the Department of Criminal Justice's Statewide Prosecution Bureau.
29. The Licensee agrees that this Consent Order and the terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum including any right to review under the Uniform Administrative Procedure Act, Chapter 368a of the Statutes, Regulations that exists at the time the agreement is executed or may become available in the future, provided that this stipulation shall not deprive the Licensee of any other rights that it may have under the laws of the State of Connecticut or of the United States.
30. Should the Licensee not be able to maintain substantial compliance with the requirements of the Consent Order, the Department retains the right to issue charges

including those identified in the June 29, 2022, September 23, 2022, May 8, 2023, and September 18, 2023 violation letters referenced in this Consent Order.

31. The Licensee has had the opportunity to consult with an attorney prior to the execution of this Consent Order.

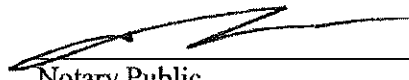
\*

WITNESS WHEREOF, the parties hereto have caused this Consent Order to be executed by their respective officers and officials, which Consent Order is to be effective as of the later of the two dates noted below.

  
NAME: Brian D. Foley, Owner

On this 16<sup>th</sup> day of October before me, personally appeared Brian D. Foley who acknowledged himself to be the Owner of Apple Rehab Uncasville and that he, as such, executed the foregoing instrument for the purposes therein contained, by signing the name of the Licensee by himself as Owner.

My Commission Expires: \_\_\_\_\_  
(If Notary Public)

  
Notary Public   
Commissioner of the Superior Court

STATE OF CONNECTICUT,  
DEPARTMENT OF PUBLIC HEALTH

By: Jennifer Olsen Armstrong  
Jennifer Olsen Armstrong, Section Chief  
Facility Licensing and Investigations Section  
Healthcare Quality and Safety Branch

October 16, 2023



## Exhibit A

### Facility Licensing and Investigations Section (FLIS) Independent Nurse Consultant Guidelines

#### Relationship between Independent Nurse Consultant (INC) and DPH includes:

- An INC is utilized as a component of DPH's regulatory remedy process. An INC may be agreed upon as a part of a Consent Order between the institution and the Department when significant care and service issues are identified.
- The INC has a fiduciary or special relationship of trust, confidence and responsibility with the Department.
- The INC's responsibilities include:
  - Reporting to the Department issues and concerns regarding quality of care and services being provided by the institution.
  - Monitoring the institution's plan of correction to rectify deficiencies and violations of federal/state laws and regulations. Reports to Department positive and negative issues related to said oversight.
  - Assessing administration's ability to manage and the care/services being provided by staff.
  - Reporting in accordance with the Consent Agreement/Order to the Department of issues identified, plans to address noncompliance and remediation efforts of the institution.

#### Relationship between INC and the Institution:

- The INC maintains a professional and objective relationship with the institutional staff. The INC is a consultant, not an employee of the institution. The INC exercises independent judgment and initiative to determine how to fully address and complete her/his responsibilities. The institution does not direct or supervise the INC but must cooperate with and respond to requests of the INC related to her fulfilling her/his duties.
- The INC's responsibilities include, but are not limited to:
  - Assessment of staff in carrying out their roles of administration, supervision and education.
  - Assessment of institution's compliance with federal/state laws and regulations.
  - Recommendations to institutional administration regarding staff performance.
  - Monitoring of care/services being provided.

- Assists staff with plans of action to enhance care and services within the institution.
- Recommendation of staff changes based on observations and regulatory issues.
- Reports in accordance with the Consent Agreement/Order to the institution re: assessments, issues identified, and monitoring of plans of correction.
- Promotes staff growth and accountability.
- May present some in-services but primary function is to develop facility resources to function independently.
- Educates staff regarding federal/state laws and regulations.