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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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FILED

AUG 25 2009

Division of Consumer Affairs

By: Cathleen O'Donnell
Deputy Attorney General
(973) 648-4584

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

VIAQUEST HOME HEALTH, LLC
d/b/a AT HOME SENIOR CARE

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the Private Employment Agency Act, N.J.S.A. 34:8-43 et seq., (“Private Employment Agency Act”), the Regulations Governing Health Care Service Firms, N.J.A.C. 13:45B-13.1 et seq. (“Health Care Firm Regulations”), the Regulations Governing Placement of Health Care Practitioners, N.J.A.C. 13:45B-14.1 et seq. (“Practitioner Regulations”), the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”), have been or are being committed by ViaQuest Home Health, LLC d/b/a At Home Senior Care (“ViaQuest”), with a corporate address of 525 Metro Place North, Dublin, Ohio 43017-5321 and a main business address in the State of New Jersey (“State or “New Jersey”) of 26 Main Street, Suite 104, Toms River, New Jersey 08753, as

well as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns (collectively, "Respondent") (hereinafter referred to as the "Investigation");

WHEREAS the Respondent denies that it has committed any violations of the Private Employment Agency Act, the Health Care Firm Regulations, the Practitioner Regulations, the CFA and the Advertising Regulations;

WHEREAS the Respondent has undertaken efforts to ensure compliance with the Private Employment Agency Act, the Health Care Firm Regulations, the Practitioner Regulations, the CFA and the Advertising Regulations including, but not limited to, implementation of a compliance action plan, updating of its computer system, adjustment of staffing and review of client files; and

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding this Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order (hereinafter "Consent Order") without having admitted any fact or violation of law, and for good cause shown:

IT IS on this 25th day of Aug., 2009 **ORDERED** and **AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Advertise,” “Advertisement” or “Advertising” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium. For purposes of the Advertising Regulations, “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-9.1.

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “Employment Application” shall refer to the form that each Person who applies for placement by or employment in the State with Respondent is required to complete pursuant to N.J.A.C. 13:45B-14.2.

2.4 “Health Care Practitioner(s)” shall be defined in accordance with N.J.A.C. 13:45B-14.1 and shall refer to any individual placed or employed in the State by the Respondent for the purpose of rendering Health Care Services.

2.5 “Health Care Services” shall be defined in accordance with N.J.A.C. 13:45B-13.2.

2.6 “Person[s]” shall refer to any natural person, individual, any business entity (whether partnership, trust, estate, incorporated or unincorporated association, cooperation or corporation), any governmental agency or entity and any other legal or commercial entity, however organized. For purposes of the CFA, “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the Private Employment Agency Act, the Health Care Firm Regulations, the Practitioner Regulations, the CFA and the Advertising Regulations.

3.2 Respondent shall not provide Health Care Services without first obtaining a registration in accordance with N.J.S.A. 34:8-52(a).

3.3 Respondent shall comply with all requirements of the Health Care Firm Regulations.

3.4 Respondent shall provide each patient/employer with a copy of the Consumer Guide to Homemaker-Home Health Aides published by the New Jersey Board of Nursing, as required by N.J.A.C. 13:45B-13.7.

3.5 If Respondent sends an individual who is not a certified homemaker-home health aide to a patient/employer's home to provide home-based services, Respondent shall provide written notification to the patient/employer that the individual is not certified or licensed by the Division, as required by N.J.A.C. 13:45B-13.8.(a)(1).

3.6 Respondent shall create an Employment Application for each Health Care Practitioner seeking employment with Respondent in accordance with N.J.A.C. 13:45B-14.2(a).

3.7 Respondent shall include the information required by N.J.A.C. 13:45B-14.2 in each Employment Application used for Health Care Practitioners.

3.8 Respondent shall require that each Health Care Practitioner provide the type of license held, as required by N.J.A.C. 13:454B-14.2(a)(3).

3.9 Respondent shall require that each Health Care Practitioner provide the license-issuing authority or board of the license held, as required by N.J.A.C. 13:45B-14.2(a)(4).

3.10 Respondent shall require each Health Care Practitioner to provide his/her license number, as required by N.J.A.C. 13:45B-14.2(a)(5).

3.11 Respondent shall require each Health Care Practitioner to provide his/her license expiration date, as required by N.J.A.C. 13:45B-14.2(a)(6).

3.12 Respondent shall require each Health Care Practitioner to provide the name and address of all institutions, patients and agencies he/she worked for within a one (1) year period preceding the date of application, as well as a statement of reason for leaving each employer and the names of all supervisors having knowledge of his/her performance at each location, as required by N.J.A.C. 13:45B-14.2(a)(7).

3.13 Respondent shall require each Health Care Practitioner to provide his/her areas of actual working experience and the period of time during which this experience was acquired, as required by N.J.A.C. 13:45B-14.2(a)(8).

3.14 Respondent shall require each Health Care Practitioner to provide his/her education including degrees/diplomas held, as required by N.J.A.C. 13:45B-14.2(a)(9).

3.15 Respondent shall require each Health Care Practitioner to provide his/her malpractice insurance carrier's name and address, as required by N.J.A.C. 13:45B-14.2(a)(10).

3.16 Respondent shall require that each Health Care Practitioner to provide his/her malpractice insurance policy number, as required by N.J.A.C. 13:45B-14.2(a)(11).

3.17 Respondent shall maintain all records concerning Health Care Practitioners and their placements or referrals with patients/employers, in accordance with N.J.A.C. 13:45B-14.3(g).

3.18 Respondent shall not place uncertified homemaker-home health aides with patients/employers who have contracted for and/or require the assistance of a certified homemaker-home health aide, in accordance with N.J.A.C. 13:45B-14.4(a).

3.19 Prior to placement or referral, Respondent shall verify the license status of each Health Care Practitioner, as required by N.J.A.C. 13:45-14.4(c).

3.20 Respondent shall maintain a copy of each Health Care Practitioner's license or registration with the notation required by N.J.A.C. 13:45B-14.4(d).

3.21 Respondent shall maintain a record of licensure verifications for each Health Care Practitioner which includes the information required by N.J.A.C. 13:45B-14.4(e).

3.22 Respondent shall terminate the employment of any Health Care Practitioner whose license has been suspended, revoked or otherwise limited or restricted in accordance with N.J.A.C. 13:45B-14.4(f).

3.23 Prior to placement or referral, Respondent shall fulfill its duty to match credentials to need by making diligent inquiry of employers and Health Care Practitioners in order to ascertain the relevant needs of the place of employment and the Health Care Practitioner's qualifications. Respondent shall not place or refer a Health Care Practitioner whose qualifications do not reasonably match the needs and requirements of a patient/employer, in accordance with N.J.A.C. 13:45B-14.5(a).

3.24 Prior to placement or referral, Respondent shall create a separate job order for every position, or type of position within a single institution, as required by N.J.A.C. 13:45B-14.5(b).

3.25 Each job order created by Respondent, at a minimum, shall include the information required by N.J.A.C. 13:45B-14.5(b).

3.26 Prior to placement or referral, Respondent shall verify the Health Care Practitioner's work history by confirming employment at all disclosed locations for the one (1) year period prior to the date of application, as required by N.J.A.C. 13:45B-14.6(a)(1). Respondent shall make a written record of such verification with the name and title of the individual providing the information, as required by N.J.A.C. 13:45B-14.6(b).

3.27 Prior to placement or referral, Respondent shall inquire of all employers disclosed on the Employment Application the reason for any termination, resignation or cessation of employment of a Health Care Practitioner, as required by N.J.A.C. 13:45B-14.6(a)(2). Respondent shall make a written record with the name and title of the individual providing the information, as required by N.J.A.C. 13:45B-14.6(b).

3.28 Prior to placement or referral of a health Care Practitioner, Respondent shall assure that an appropriately licensed Person evaluates the needs of the patient/employer and establishes a written plan of care, as required by N.J.A.C. 13:45B-14.9(a).

3.29 Once a placement or referral of a health Care Practitioner has been made, Respondent shall inquire, at a minimum of once every thirty (30) days, whether the plan of care is adequate to meet the needs of the patient/employer and whether the plan of care is being discharged appropriately, as required by N.J.A.C. 13:45B-14.9(c).

3.30 Once a placement or referral of a Health Care Practitioner has been made, Respondent shall conduct, at a minimum of once every sixty (60) days, an on-site, in home evaluation of the plan of care, as required by N.J.A.C. 13:45B-14.9(g)

3.31 Respondent shall conduct all criminal background/history checks as Advertised in accordance with N.J.S.A. 56:8-2 and N.J.A.C. 13:45A-9.2(a)(9).

3.32 If after the Effective Date, the Division notifies Respondent that an employee previously identified as a certified Health Care Practitioner is not certified or that the certification was obtained under fraudulent circumstances, Respondent will immediately cease placing the employee with a patient/employer who requires a certified Health Care Practitioner.

4. SETTLEMENT PAYMENT

4.1 Respondent agrees to pay the amount of Five hundred and Fifty Thousand Dollars and 00/100 (\$550,000.00) to the Division ("Settlement Payment"). The Settlement Payment shall be comprised of civil penalties, pursuant to N.J.S.A. 34:8-61 and N.J.S.A. 56:8-13, reimbursement of attorneys' fees, pursuant to N.J.S.A. 34:8-62 and N.J.S.A. 56:8-19, and reimbursement of investigative costs, pursuant to N.J.S.A. 34:8-62 and N.J.S.A. 56:8-11.

4.2 Based upon Respondent's prior representations as to its financial status, the Division agrees to suspend the Settlement Payment subject to the conditions set for in Sections 4.3 through 4.7.

4.3 For a period of three (3) years following the Effective Date, Respondent shall send to the Division updated financial information quarterly, beginning in January 2010. Such financial information shall be regularly kept by the company, with a certification from an appropriate official of the company that the information is accurate and complete. The Division reserves the right to request such reasonable additional material as may be required to establish the financial status of the company.

4.4 It is the intent of the Parties that any of the updated financial information that is supplied by Respondent in response to a request by the Division pursuant to Section 4.3 is and will

remain confidential and will only be reviewed by the Division's attorneys, Division employees and/or third party accountants, as necessary.

4.5 It is also the intent of the Parties that any of the updated financial information supplied by Respondent to the Division pursuant to Section 4.3 cannot be shared with, communicated to, and/or otherwise disseminated to any other governmental unit, including, but not limited to, other units of the State and the United States or any private entity and cannot and will not be used in any civil matter, criminal matter or any other proceeding other than the enforcement of this Consent Order.

4.6 If after submission and review of the updated financial information furnished pursuant to section 4.3, the Division determines that Respondent has demonstrated a financial ability to pay all or a part of the Settlement Payment, the Division shall provide notice to Respondent c/o Joseph M. Gorrell, Esq., Brach Eichler, L.L.C., 101 Eisenhower Parkway, Roseland, New Jersey 07068. Within fifteen (15) days of such notice, Respondent shall make the requested payment, or provide further proof of a financial inability to make the payment.

4.7 If the Division finds that Respondent failed to disclose any material asset or source of income or materially misrepresented the value of any asset or source of income or made any other material misrepresentation in or omission from the financial information that is supplied in response to the requests by the Division, the suspension of the Settlement Payment to be lifted and the entire Settlement Payment shall become immediately due and payable upon notice by the Division to Respondent c/o Joseph M. Gorrell, Esq., Brach Eichler, L.L.C., 101 Eisenhower Parkway, Roseland, New Jersey 07068.

4.8 The Settlement Payment shall be automatically vacated at the end of the three (3) year period, provided:

- (a) Respondent complies with the restraints and conditions set forth in this Consent Order; and
- (b) Respondent does not engage in any acts or practices in violation of the CFA, the Advertising Regulations, the Private Employment Agency Act, the Health Care Firm Regulations and/or the Practitioner Regulations.

4.9 In the event Respondent fails to comply with Section 4.7, the Settlement Payment shall be immediately due and payable upon written notice by the Division (the "Notice of Noncompliance") to Respondent c/o Joseph M. Gorrell, Esq. Brach Eichler, L.L.C., 101 Eisenhower Parkway, Roseland, New Jersey 07068. The Notice of Noncompliance shall provide Respondent with the specific details of the alleged noncompliance with Section 4.7. Respondent shall be afforded a fifteen (15) day period from its receipt of the Notice of Noncompliance within which to cure the Noncompliance ("Cure Period"). In the event the Respondent cures the Noncompliance within the Cure Period, the Settlement Payment shall return to its suspended status and the Division shall withdraw the Notice of Noncompliance. In the event the Respondent fails to cure the Noncompliance within the Cure Period, the suspension of the Settlement Payment shall be lifted and the entire Settlement Payment shall become immediately due and payable.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent as well as its principals, officers, directors, agents, employees, successors and assigns, and any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an

approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the Private Employment Agency Act, the Health Care Firm Regulations, the Practitioner Regulations, the CFA and/or the Advertising Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6. REPRESENTATIONS AND WARRANTIES

6.1 Respondent Represents and warrants that every employee file has been reviewed to ensure that all necessary documentation is included in the file and that a checklist is utilized to ensure such necessary documentation is included in the file.

6.2 Respondent Represents and warrants that all employees presently providing care to its patients/employers are current in their documentation.

6.3 Respondent Represents and warrants that all placements that require a certified Health Care Practitioner are only staffed with certified Health Care Practitioners.

6.4 Respondent Represents and warrants that from the Effective Date, it will only hire certified Health Care Practitioners except in those cases where only transportation and/or homemaker duties are required.

6.5 Respondent Represents and warrants that its computer system has been and will continue to be updated to ensure that each employee to be placed has the appropriate certification and that all paperwork is updated.

6.6 Respondent Represents and warrants that its Employment Application has been revised to conform with N.J.A.C. 13:45B-14.1 et seq. and that the hiring process is managed by one individual with a Human Resources background.

6.7 Respondent Represents and warrants that all client files have been reviewed for compliance with the Private Employment Agency Act, and the Health Care Firm Regulations.

6.8 Respondent Represents and warrants that weekly staff meetings, chaired by the Administrator of the Toms River office, will be held to address ongoing issues.

6.9 Respondent Represents and warrants that quarterly clinical audits reviews of patient/employer charts will be conducted by a registered nurse from outside the Toms River office.

6.10 Respondent Represents and warrants that quarterly in-service sessions will be conducted for all employees. The annual in-service session has been scheduled for May 28, 2009 and covered topics will include ethics, procedures to follow in the home and universal precautions.

6.11 Respondent Represents and warrants that the above-described compliance action plan has been provided to the staff and that all staff have acknowledged in writing receipt of the plan.

7. RELEASE

7.1 In consideration of the injunctive relief, Settlement Payment, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondent from any and all civil claims or consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the Private Employment Agency Act, the Health Care Firm Regulations, the Practitioner Regulations, the CFA and/or the Advertising Regulations arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order as well as the Private Employment Agency Act, the Health Care Firm Regulations, the Practitioner Regulations, the CFA and/or the Advertising Regulations shall constitute a second or succeeding violation under N.J.S.A. 34:8-61 and N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

9. COMPLIANCE WITH ALL LAWS

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
 - b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

- 10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that

provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Cathleen O'Donnell
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Joseph M. Gorrell, Esq.
Brach Eichler L.L.C.
101 Eisenhower Parkway
Roseland, New Jersey 07068

IT IS ON THE 25th DAY OF August, 2009 SO ORDERED.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: David M. Szuchman

DAVID M. SZUCHMAN, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Cathleen O'Donnell
Cathleen O'Donnell
Deputy Attorney General

Dated: 8/21, 2009

Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-4584

FOR THE RESPONDENT:

JOSEPH M. GORRELL, ESQ.

By: Joseph M. Gorrell
Joseph M. Gorrell, Esq.
Brach Eichler L.L.C.
101 Eisenhower Parkway
Roseland, New Jersey 07068

Dated: August 21, 2009

VIAQUEST HOME HEALTH, LLC d/b/a AT HOME SENIOR CARE

By: Richard Jankusoff
Name: RICHARD JANKUSOFF
Title: PRESIDENT
525 Metro Place North
Dublin, Ohio 43017-5321

Dated: 8/21/09
_____, 2009