



State of New Jersey
DEPARTMENT OF HEALTH

PHILIP D. MURPHY
Governor

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TRENTON, N.J. 08625-0360

www.nj.gov/health

KAITLAN BASTON, MD, MSc, DFASAM
Acting Commissioner

TAHESHA L. WAY
Lt. Governor

In Re Licensure Violation:

MIRA VIE AT TINTON FALLS

(NJ Facility ID# NJ55A000)

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NOTICE OF ASSESSMENT
OF PENALTIES

TO: Craig Sydor, Executive Director
Mira Vie at Tinton Falls
One Hartford Drive
Tinton Falls, New Jersey 07701
csydor@cslal.com

The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) (the Act) provides a statutory scheme designed to ensure that all health care facilities are of the highest quality. Pursuant to the Act and N.J.A.C. 8:43E-1.1 et seq., General Licensure Procedures and Standards Applicable to All Licensed Facilities, the Commissioner of Health (the "Department") is authorized to inspect all health care facilities and to enforce the Manual of Standards For Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs set forth at N.J.A.C. 8:36-1.1 et seq.

As set forth in N.J.S.A. 26:2H-5(e), "[a]t the request of the commissioner, health care facilities shall furnish to the [Department of Health] such reports and information as it may require to effectuate the provisions and purposes of this act, excluding confidential communications from patients."

Further, N.J.A.C. 8:36-2.4 (Surveys), which applies specifically to assisted living residences, provides in subsection (d) that, "[s]urvey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and resident records and conferences with residents." N.J.A.C. 8:36-15.2 (Record availability) provides that "[t]he records required by this subchapter shall be maintained for all residents and shall be kept available on the premises for review at any time by representatives of the Department."

Finally, N.J.A.C. 8:43E-5.2(c) (Facility Surveys) provides that "[s]urvey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients."

Although federal law provides protections against the unauthorized disclosure of protected health information, uses and disclosures for public health activities, including public health investigations, are specifically excluded from the requirement to obtain authorization or to provide an opportunity to agree or object. 45 C.F.R. §164.512(b).

The Department has full authority to conduct surveys at any time and to review facility documents and patient records, including electronic medical records. Further, all Department of Health surveyors carry identification identifying them as inspectors for the State of New Jersey, Department of Health, and indicating that they are empowered to investigate and ascertain compliance with all laws and regulations under the purview of the Department.

LICENSURE VIOLATIONS

A surveyor from the Department's Health Facility, Survey and Field Operations was on-site at Mira Vie at Tinton Falls (formerly known as The Chelsea at Tinton Falls) (hereinafter "Mira Vie" or "the facility") for a complaint survey on March 28, 2024, consisting of a tour of the facility and document review. The facility failed to provide the surveyor with access to the facility's Electronic Medical Record (EMR) system and all requested facility documents, which impeded the survey process. As a result of the surveyor's inability to review all requested documents, the surveyor was unable to conduct a thorough investigation into the complainant's allegations and to fully assess compliance or noncompliance with applicable regulations.

Based on interview and record review, it was determined that the facility failed to provide the surveyor with access to review the electronic medical records (EMRs) for four of four residents reviewed (Residents #1-#4). On March 28, 2024, during the entrance conference, the surveyor requested access to the facility's EMRs. Initially, the Executive Director stated that he would be able to provide the surveyor access. Later in the day, the Executive Director advised the surveyor that he sent a request to the facility's Information Technology Team to request access. However, subsequently, the Executive Director advised the surveyor that the facility's Regional Nurse informed him that the Department of Health surveyors were not allowed to have access to the EMRs. The Executive Director provided the surveyor with paper copies of some of the requested records but denied access to the EMRs. The facility failed to produce the following documents requested by the surveyor:

1. Resident #1: Medication Administration Records (MARs).
2. Resident #2: Universal Transfer Form, Power of Attorney documentation, Physician Order Sheet (POS), weight logs, or the incident reports following the resident's falls.
3. Resident #3: POS, weight logs, or requested MARs.
4. Resident #4: Dietician orders, weight logs, POS.

As noted above, although federal law provides protections against the unauthorized disclosure of protected health information, uses and disclosures for public health activities, including public health investigations, are specifically excluded, and surveyors have full authority to access these records regardless of whether they are paper or electronic.

The facility has submitted four plans of correction, all of which have been unacceptable because they did not grant Department surveyors access to the facility's electronic medical records.

MONETARY PENALTIES:

N.J.A.C. 8:43E-3.4(a)8 allows the Department to impose a monetary penalty "[w]here there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations

represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$ 1,000 per violation may be assessed for each day noncompliance is found." The Department is assessing a penalty because the facility violated licensure regulations that authorize the Department to survey an assisted living residence at any time and to review all facility documents and patient records. The total penalty imposed for failure to cooperate with the surveyor is **\$12,000**, consisting of 12 violations at \$1,000 each for each document category that was not provided for each resident.

The total amount of this **\$12,000** penalty is required to be paid within 30 days of receipt of this letter by certified check or money order made payable to the "Treasurer of the State of New Jersey" and forwarded to Office of Program Compliance, New Jersey Department of Health, P.O. Box 358, Trenton, New Jersey 08625-0358, Attention: Lisa King. On all future correspondence related to this Notice, please refer to Control # X24059.

INFORMAL DISPUTE RESOLUTION (IDR)

N.J.A.C. 8:43E-2.3 provides facilities the option to challenge factual survey findings set forth above by requesting Informal Dispute Resolution with Department representatives. Facilities wishing to challenge only the assessment of penalties are not entitled to IDR review, but such facilities may request a formal hearing at the Office of Administrative Law as set forth herein below. Please note that the facility's rights to IDR and administrative hearings are not mutually exclusive and both may be invoked simultaneously. IDR requests must be made in writing within ten (10) business days from receipt of this letter and must state whether the facility opts for a telephone conference, or review of facility documentation only. The request must include an original and ten (10) copies of the following:

1. The written survey findings;
2. A list of each specific deficiency the facility is contesting;
3. A specific explanation of why each contested deficiency should be removed; and
4. Any relevant supporting documentation.

Any supporting documentation or other papers submitted later than 10 business days prior to the scheduled IDR may not be considered at the discretion of the IDR panel. Send the above-referenced information to:

Nadine Jackman, Office of Program Compliance
New Jersey Department of Health
P.O. Box 358
Trenton, New Jersey 08625-0358

The IDR review will be conducted by professional Department staff who do not participate in the survey process. Requesting IDR does not delay the imposition of any enforcement remedies.

FORMAL HEARING:

Mira Vie is entitled to challenge the assessment of penalties pursuant to N.J.S.A. 26:2H-13, by requesting a formal hearing at the Office of Administrative Law (OAL). Mira Vie may request a hearing to challenge any or all of the following: the factual survey findings and/or the assessed penalties. Mira Vie must advise this Department within 30 days of the date of this letter if it requests an OAL hearing.

Please forward your OAL hearing request to:

Attention: OAL Hearing Requests

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Office of Legal and Regulatory Compliance, New Jersey Department of Health
P.O. Box 360
Trenton, New Jersey 08625-0360

Corporations are not permitted to represent themselves in OAL proceedings. Therefore, if Mira Vie is owned by a corporation, representation by counsel is required. In the event of an OAL hearing regarding the penalty, Mira Vie is further required to submit a written response to each and every charge as specified in this notice, which shall accompany its written request for a hearing.

Failure to submit a written request for a hearing within 30 days from the date of this notice will render this a final agency decision. The final agency order shall thereafter have the same effect as a judgment of the court. The Department also reserves the right to pursue all other remedies available by law.

Thank you for your attention to this important matter and for your anticipated cooperation. Should you have any questions concerning this notice, please contact Lisa King, Office of Program Compliance at Lisa.King@doh.nj.gov.

Sincerely,



Gene Rosenblum, Director
Office of Program Compliance
Division of Certificate of Need and Licensing

GR:LK:JLM:nj
DATE: October 11, 2024
E-MAIL: csydor@cslal.com
REGULAR AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED
Control#X24059

- C. Nursing Home Administrators Licensing Board
 Pamela Lebak, Health Facility Survey and Field Operations
 Kara Morris, Health Facility Survey and Field Operations
 Jacqueline Jones, Health Facility Survey and Field Operations
 Tahira Smith, Health Facility Survey and Field Operations
 Laurie Brewer, New Jersey Long-Term Care Ombudsman