

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DHR 05446

United Youth Care Services Inc Petitioner, v. North Carolina Department of Health and Human Services, Division of Health Service Regulation Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before the undersigned, Donald W. Overby, Administrative Law Judge, on May 28-June 3, 2020, in the Office of Administrative Hearings in Raleigh, North Carolina.

PROTECTIVE ORDER

Any information related to residents, including their names, mentioned in this proceeding shall be considered confidential and is used for the sole purpose of findings in this proceeding alone and is not properly disclosed in any other setting or hearing.

APPEARANCES

For Petitioner: Knicole Carson Emanuel, Esq.
Susan Hendrix, Esq.
Potomac Law Group, PLLC
1300 Pennsylvania Avenue, NW, STE 700
Washington, D.C. 20004

For Respondent: Erin E. Gibbs
William F. Maddrey
Assistant Attorneys General
North Carolina Department of Justice
P.O. Box 629
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ISSUES

Whether Respondent deprived Petitioner of property or otherwise substantially prejudiced Petitioner's rights *and* exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by rule or law when it, by letter dated September 12, 2019, notified Petitioner that Respondent was imposing a Suspension

of Admissions, by a second letter dated September 12, 2019, notified Petitioner that Respondent was imposing two Type A1 Administrative Penalties of \$3,000.00 each against Petitioner, by a letter dated January 15, 2020, notified Petitioner that Respondent was imposing an unabated Type A1 Administrative Penalty of \$51,500.000 against Petitioner, and by a second letter dated January 15, 2020, notified Petitioner that Respondent was revoking Petitioner's License.

APPLICABLE LAW

This Tribunal takes Official Notice of all applicable statutes and properly promulgated rules, including but not limited to N.C. Gen. Stat. §§ 122C, Art. 1, 2, 3, 3A, 10A, 10A NCAC Ch. 27C through 27G.

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits 1-11, 16-19, 22, 28, 32, 36, 54-55 (Rebuttal), 66-69, 72-76, 78-79, 109, 111, 119, 120, 122, 164, 166-167, 188 (Under Seal), 192, 193, 198, 200-203, 208, 211, 214, 215, 216 (Rebuttal), 217 (Rebuttal), 223, and 224 (Rebuttal) were tendered and admitted into the record.

Petitioner referred to pleadings that are part of the record, including the following Exhibits to Petitioner's Motion for Declaratory Judgment: Ex. 12 (CV of Michael Herring), Ex. 12 (training materials). (Herring, Vol. 2, p. 434). Respondent agreed to admit the exhibits that were already a part of the record. The acceptance and admission of matters already part of the official record in this contested case, does not in any manner address nor give credence to such exhibits' authenticity or reliability.

Respondent's Exhibits A, B, D, E, F, G, H, I, and J were tendered and admitted into the record.

BRIEFS

At the conclusion of the evidence the parties were given an opportunity to submit briefs to this Tribunal for consideration. At that point, the evidence was closed. Briefs are not evidence and although they are part of the overall record, they specifically are not entered as evidence. To the degree that the submissions within the briefs were a summary or discourse on the properly submitted and accepted evidence, then such information is considered as though a final argument which was the intent of the Tribunal in offering to allow the parties to submit briefs. To the degree that the submissions attempt to offer explanation of evidence which was admitted but not explained during the course of the hearing, then such explanations are not considered. Attempts to offer explanation or any statement of any kind by someone not testifying in this contested case hearing is not considered. To the extent that there is an attempt to offer any evidence from any source not presented during the hearing, and particularly but not limited to Petitioner's Exhibits 226 and 227, such evidence is not allowed into evidence and is not considered.

WITNESSES

For Petitioner: Sandra Grace (direct & rebuttal)
Constance Polite (direct & rebuttal)
Mistor Williams
Donald Booker
Moutia Yussif
Richard Graves
Michael Herring
Angelique Graham
Niccole Otey
Beth Gambrell
Walter Aikens
Deidre Haywood
Sharon Goins
Delores Jordan (rebuttal)

For Respondent: Scott Walton
Troy Powell
Michelle Kennedy
Z.W.
Robin Sulfridge
Michiele Elliott

BASED UPON careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. The Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

I. PARTIES/WITNESSES

1. The parties were notified of the hearing in this matter by the Second Notice of Rescheduled Hearing issued by the Honorable Donald W. Overby dated March 19, 2020, and via email dated May 7, 2020, indicating that the hearing in this matter would be conducted remotely using Microsoft Teams.

2. The Mental Health Licensure and Certification Section of the Division of Health Service Regulation (“Respondent”) inspects and licenses mental health facilities in North Carolina. Respondent conducts annual surveys of mental health facilities in the state as well as complaint investigations and follow-up surveys at mental health facilities as needed.

3. At all times relevant to this matter, Respondent licensed United Youth Care Services, Inc. (“UYCS”) to operate a mental health facility known as United Youth Care Services, Inc. (the “Facility”), license number MHL-041-1111, located at 1207 4th Street, Greensboro, North Carolina.

4. At all times relevant to this matter, the Facility was licensed to provide Psychosocial Rehabilitation pursuant to 10 NCAC 27G .1200, a Substance Abuse Intensive Outpatient Program pursuant to 10 NCAC 27G .4400, and Substance Abuse Comprehensive Outpatient Treatment pursuant to 10 NCAC 27G .4500.

5. At all times relevant to this matter, Scott Walton worked as a Facility Compliance Consultant for Respondent. Mr. Walton has a bachelor’s degree in sociology and a Master of Social Work in mental health administration. Prior to working for Respondent, Mr. Walton worked for eleven years in a 501(c)(3) nonprofit. He has been the director of psychosocial rehabilitation in a public mental health center, has worked in private psychotherapy practice, and was the director of mental health services for Family Services of the Piedmont. Mr. Walton has worked for the State of North Carolina for about ten years. His primary job responsibilities as a Facility Compliance Consultant are to visit facilities to check their compliance with Respondent’s rules. He also performs annual, complaint, and follow up surveys at the facilities, as well as writes reports and submits them to his supervisor. (T. pp. 596-597)

6. Troy Powell is the City of Greensboro co-compliance division manager. Mr. Powell is charged with supervising a division of eighteen staff that inspect and enforce the minimum housing codes among other duties. (T. pp. 783-784)

7. Michelle Kennedy is the executive director of the Interactive Resource Center. The Interactive Resource Center is a day center for people experiencing homelessness or at risk of becoming homeless. Ms. Kennedy is also an at-large representative on the Greensboro City Council. She is a certified single-family and multi-family building analyst. (T. pp. 801-802)

8. Z.W. is a former client of UYCS. She is currently an advocate and the founder of an advocacy program where she gives speeches to bring awareness about social injustice. (T. pp. 842-843)

9. Robin Sulfridge served as a Branch Manager for the Mental Health Licensure and Certification Section of the Division of Health Service Regulation. Ms. Sulfridge has approximately thirty years of experience in the field of mental health and has worked with the Division of Health Service Regulation for approximately fourteen and a half years. As a branch manager, Ms. Sulfridge coordinates with team leaders to ensure that the State mandates regarding residential annual evaluations are completed. She also ensures that complaint and other investigations are completed. (T. p. 911-912)

10. Michiele Elliott is currently the Acting Chief of the Mental Health Licensure and Certification Section of the Division of Health Service Regulation. Ms. Elliott has a bachelor’s degree in nursing and has been with the Division of Health Service Regulation since 2000, first as

a trainer, then as a branch manager, assistant chief, and now, as the acting chief. At all times relevant to this matter, Ms. Elliott was the Assistant Section Chief of the Section. (T. p. 981)

11. Sandra Grace is the Clinical Director for United Youth Care Services. Ms. Grace has a Master's Degree in Social Work and is properly licensed by the State of North Carolina as a licensed clinical social worker, a license clinical addiction specialist and a certified clinical supervisor intern with the North Carolina Substance Abuse Practice Board. Ms. Grace was admitted without objection as an expert clinician in mental health and substance abuse.

12. Constance Polite is the QA/QI director for United Youth Care Services. She continues to serve UYCS remotely while living in Arizona.

13. Mister Williams is a Licensed Clinical Addiction Specialist in North Carolina who worked for UYCS. Mr. Williams has been licensed in North Carolina since 2016. (T. p. 235)

14. Donald Booker is the owner of UYCS and the president of United Youth Care Foundation (the "Foundation"). Mr. Booker has an undergraduate degree in psychology with an additional two years of master's level training without a degree. (T. p. 272)

15. Moutia Yussif is a Licensed Clinical Mental Health Counseling Associate and a Licensed Clinical Addiction Specialist at UYCS. (T. p. 371)

16. Richard Graves has been with UYCS for more than 10 years at various positions and is now the Program Director at UYCS. (T. p. 394)

17. Michael Herring owns Herring Human Services, PA. Mr. Herring has both undergraduate and master's degrees in social work. He is a Licensed Clinical Social Worker, License Clinical Addition Specialist, a Certified Clinical Supervisor, a Certified Clinical Alcohol Tobacco and Other Drugs Social Worker. UYCS used Mr. Herring's services for training. (T. p. 435)

18. Angelique Graham works in medical records for UYCS since 2014. She creates patient files, makes sure the proper documentation is in each client chart, handles requests and sends medical records when appropriate. (T. p. 450)

19. Niccole Otey has been a Qualified Professional at UYCS since 2018. (T. p. 475)

20. Beth Gambrell is a Licensed Clinical Addiction Specialist Associate. She has worked at UYCS performing assessments and writing notes for clients. (T. p. 539)

21. Walter Aikens is a counselor and a Qualified Professional for UYCS since 2012. (T. p. 551)

22. Deidre Haywood is a UNIM for UYCS. She previously worked performing SAIOP and SACOT for UYCS. She has worked for UYCS since 2015. (T. p. 561)

23. Sharon Goins is a Licensed Practical Counselor and Licensed Clinical Addiction Specialist Associate. She is not employed by UYCS but serves as a contractor for UYCS performing therapy for the clients at the facility. (T. p. 579)

24. Delores Jordan is a housing consultant and worked as a subcontractor for UYCS. Ms. Jordan was responsible for leasing every unit except four at Georgetown Manor in August 2019; however, the leasing of units was not exclusive to UYCS. (T. pp. 1084-1087)

II. AUGUST 26, 2019 SURVEY

25. It is noted from the outset that surveyors relied on interviews of former and current staff and former and current clients. Although recited and relied upon heavily in both Statements of Deficiencies issued to Petitioner herein, only one former client testified before this Tribunal. Unless clearly stated to the contrary, all such statements by ones not testifying before this Tribunal are uncorroborated hearsay and given little to no weight.

26. In response to a Complaint, Respondent initiated a survey of UYCS. Respondent does not typically conduct annual surveys of day programs unless there has been a complaint. Annual Survey is thus a misnomer. This survey was therefore both a Complaint and Annual Survey. (T. pp. 598, 602)

27. There had been significant media attention on the program at the time of Respondent's initiation of the survey. The surveyors were aware of the news coverage. (T. pp. 601, 630)

28. The media attention was not only focused on this Petitioner but also on a completely separate entity, Ready for Change. The survey was initially begun by looking at both entities as though they were somehow joined. Very quickly it was determined that the two businesses were separate entities and needed to be audited separately.

29. Scott Walton and Kathy Young were assigned to this survey. Scott Walton was the lead in this audit. (T. pp. 621, 652)

30. The survey started on July 25, 2019 and lasted until August 26, 2019. According to Mr. Walton, the surveyors were on site at this facility longer than the typical survey due to the complexity of the investigation. (T. p. 600)

31. According to UYCS, it had served up to 200 clients at a time. (T. p. 64) According to Mr. Walton it is unusual for outpatient programs to have hundreds of clients. (T. pp. 628-629) There is no evidence that having a large number of clients such as at this facility is illegal or improper; just that it is not the usual in Mr. Walton's experience.

32. On September 12, 2019, DHSR provided UYCS with its survey findings in a Statement of Deficiencies ("SOD 1"). (P. Ex. 8). The survey contained several allegations that UYCS had violated statutory and regulatory requirements for facilities licensed for Psychosocial Rehabilitation, SAIOP and SACOT services. (*See generally* P. Ex. 8).

33. Based on interviews, record review, and observation conducted by the surveyors, Respondent cited UYCS for nine violations of the laws and rules governing the operation of mental health facilities. (Rspt. Ex. A)

34. As a result of the survey findings, on September 12, 2019, DHSR provided notice to UYCS that it was issuing two Type A1 monetary penalties of \$3,000 each, one based on a violation of 10A NCAC 27D .0304 Protection from Harm, Abuse, Neglect or Exploitation (V512) and one based on a violation of 10A NCAC 27G .0201 Governing Body Policies (V105). DHSR also provided UYCS notice that it was suspending new admissions to UYCS; and providing notice that it intended to revoke UYCS's license. (P. Exs. 10, 9, and 7). (Resp't's Ex. D)

35. UYCS submitted a Plan of Correction ("POC") to DHSR on September 30, 2019. (P. Ex. 11; Grace, Vol. 1, p. 32).

36. UYCS timely filed a Petition for Contested Case Hearing on October 2, 2019.

III. SUSPENSION OF ADMISSIONS

37. By certified letter dated September 12, 2019, Respondent ordered Petitioner to suspend all admissions to the Facility effective immediately. That action was based on Respondent's finding that UYCS was operating in violation of North Carolina General Statute and those violations indicated that conditions in the Facility were found to be detrimental to the health and safety of the clients. These violations included: 10A NCAC 27D .0304 Protection from Harm, Abuse, Neglect or Exploitation, 10A NCAC 27G .0201 Governing Body Policies, 10A NCAC 27G .0203 Competencies of Qualified Professionals and Associate Professionals, 10A NCAC 27G .0205 Assessment and Treatment/Habilitation or Service Plan, 10A NCAC 27G .4402 Staff, 10A NCAC 27G .4403 Operations, 10A NCAC 27G .4502 Staff, and 10A NCAC 27G .4503 Operations. (Pt'r. Ex. 9)

38. Respondent may suspend the admission of any new clients to a licensed mental health facility where the conditions of the facility are detrimental to the health or safety of the clients. Respondent must consider "(1) [t]he degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and (2) [t]he character and degree of impact of the conditions at the facility on the health or safety of its clients." N.C. Gen. Stat. § 122C-23(g).

39. The same violations that form the basis for suspending admissions are the bases for which the penalties discussed below are issued.

IV. TYPE A1 PENALTY BASED ON GOVERNING BODY POLICIES

40. In the SOD 1, DHSR concluded that UYCS violated 10A NCAC 27G .0201 Governing Body Policies and found that it rose to a level of a Type A1 penalty for serious neglect of client's treatment needs by cross-referencing several cited deficiencies under various other administrative rules. (P. Ex. 8 at 000001-7; Sulfridge, Vol. 5, p. 919-920).

41. Rather than issue separate penalties for each alleged violation, Respondent decided to lump the violations together under the general heading and assess one Type A1 penalty. Respondent lumped the myriad of violations under one heading because it viewed Petitioner as having systemic failures in many areas.

42. 10A NCAC 27G .0201 requires UYCS to have and implement governing body policies that include the “adoption of standards that assure operational and programmatic performance meeting the applicable standards of practice.” In this context, applicable standards of practice mean “a level of competence established with reference to the prevailing and accepted methods and the degree of knowledge, skills, and care exercised by a practitioner in the field.” (T. pp. 919–20).

43. In the SOD 1, DHSR summarized its findings as: (1) “The Clinical Director failed to insure staff were properly trained to meet the clinical needs of the clients in the SAIOP and SACOT treatment programs”; (2) The Clinical Director and the Program Director encouraged various staff to “maximize billing on clients who had been authorized for payments by creating notes on clients that were sometimes not in groups, to create notes even though they did not provide the service, to sign notes that were written by other staff, and to falsify diagnostic assessments”; (3) “Clients were discharged from the program without referrals, and billing continued for services after discharge dates”; and (4) “Former staff were directed by the Clinical Director to document in treatment plans, substance use that clients denied they had.” (P. Ex. 8 at 000007). These will be addressed in order.

44. It is noted that much of the findings in both SOD 1 and SOD 2 are based upon reports and interviews from former clients and staff and to a lesser degree from current clients and staff. Uniformly, the surveyors did not interview the current staff to corroborate or deny the assertions of those reporting, but merely took the reporters at their word giving credibility to the reporters without in anyway testing their veracity.

A. Training

45. Respondent cited a violation of 10A NCAC 27G .0203, which requires qualified professionals and associate professionals “to demonstrate the knowledge, skills and abilities required by the population served.”

46. Based on the interviews conducted, record review, and observation conducted by the surveyors, Respondent found that five of nine qualified professionals and two of eleven former staff members failed to demonstrate the knowledge, skills, and abilities required by the population served. (Resp’t’s Ex. A p. 3)

47. Sandra Grace was the Clinical Director of UYCS and was ultimately “responsible for clinical oversight of all facility programs.” (Resp’t’s Ex. A p. 9)

48. As Clinical Director, Ms. Grace was ultimately responsible for ensuring that all staff members were appropriately trained, which it is alleged she did not do.

49. Respondent contends that Ms. Grace and several other staff and former staff of UYCS failed to demonstrate the knowledge, skills, and abilities required by UYCS's client population.

50. Much of the concern over both Ms. Grace's abilities and competence as well as staff centers on the training provided to staff. Ms. Grace's education, professional licenses and certifications certainly establish *prima facie* evidence that she is qualified and has the requisite knowledge and training. There was no objection to Ms. Grace testifying as an expert.

51. Respondent cited UYCS for violations of 10A NCAC 27G .4402 and 10A NCAC 27G .4502, which pertain to direct care staffing for SAIOP and SACOT programs, respectively. (Resp't's Ex. A, pp. 27–28; 35–36)

52. 10A NCAC 27G .4402(d) requires SAIOP programs to ensure that there is “at least one direct care staff present in the program who is trained in . . . (1) alcohol and other drug withdrawal symptoms; and (2) symptoms of secondary complications due to alcoholism and drug addiction.”

53. 10A NCAC 27G .4402(e) requires all direct care staff for SAIOP programs to receive continuing education on “(1) understanding of the nature of addiction; (2) the withdrawal syndrome; (3) group therapy; (4) family therapy; (5) relapse prevention; and (6) other treatment methodologies.”

54. 10A NCAC 27G .4502(d) requires SACOT programs to ensure that there is “at least one direct care staff present in the program who is trained in . . . (1) alcohol and other drug withdrawal symptoms; and (2) symptoms of secondary complications due to alcoholism and drug addiction.”

55. 10A NCAC 27G .4502(e) requires all direct care staff for SACOT programs to receive continuing education on “(1) understanding of the nature of addiction; (2) the withdrawal syndrome; (3) group therapy; (4) family therapy; (5) relapse prevention; and (6) other treatment methodologies.”

56. Based on interview and record review, Respondent found that UYCS failed to ensure that at least one direct care staff was present in both the SAIOP and SACOT programs who had training in alcohol and other drug withdrawal symptoms as well as symptoms of secondary complications due to alcoholism and drug addiction, and that UYCS failed to ensure that all direct care staff for both the SAIOP and SACOT programs received continuing education on “(1) understanding of the nature of addiction; (2) the withdrawal syndrome; (3) group therapy; (4) family therapy; (5) relapse prevention; and (6) other treatment methodologies” for fourteen of seventeen current staff and nine of eleven former staff. (Resp't's Ex. A, pp. 28–29; 35–36).

57. It is clear that the records reviewed show lack of training. Even the clinical director's own personnel file showed a lack of training in six specified areas. (Resp't's Ex. A, pp. 28). While it may reasonably be assumed that the professional staff had maintained training in order to maintain professional licenses and certifications, this Tribunal cannot speculate. During the survey, records were either not existent or not produced to the surveyors.

58. No competent evidence refuted the lack of training as demonstrated in the records. Efforts to remedy the training issue are discussed below.

59. These failures to ensure direct care staff received appropriate training contribute to UYCS's failure to adopt standards assuring that the standards of practice are being met. The violations of 10A NCAC 27 G .4402 and .4502 were thus both cross-referenced under the violation of 10A NCAC 27G .0201 for governing bodies.

B. Creating and Falsifying Notes

60. As set forth above, DHSR summarized its four findings in SOD 1 as to how Petitioner violated 10A NCAC 27G .0201, Governing Body Policies, and found that it rose to the level of a Type A1 penalty for serious neglect of client's treatment needs. The second of the four findings was that various staff members were encouraged to create and falsify notes in order to maximize billing. (P. Ex. 8 at 000007).

61. Principally, the allegations within the SOD are based on purported statements and assertions by several former staff members. However, not a single former staff member testified for Respondent in this contested case hearing. In the SOD, Mr. Walton notes that "Former staff identifiers purposely withheld." (Resp't's Ex. A p. 13) That may be understandable for purposes of the SOD, but our system of laws is built upon the premise that individuals have a right to confront their accusers. One cannot simply hide in the weeds and lob bombs which are severe enough to cause the closure of a business and not expect to have to defend those accusations.

62. Unidentified former staff reported the following to Mr. Walton, none of which was corroborated by competent testimony:

- a. That Ms. Grace asked staff members to create notes for clients who had not attended group classes. (Resp't's Ex. A p. 14)
- b. That Ms. Grace requested that the staff member create individual client treatment notes for several clients well after the date services had been provided (Resp't's Ex. A p. 15)
- c. That Ms. Grace requested that they write individual client treatment notes for clients who had not attended their group classes. (Resp't's Ex. A p. 16)
- d. That staff members were behind on writing notes because they were continually asked to write individual health notes for clients whom UYCS had billed Medicaid for receiving services for on dates on which those clients had not actually attended group therapy. (Resp't's Ex. A p. 16)

63. Ms. Polite explained that problems were manifesting themselves in what may have appeared to be improper creation of notes in that UYCS's computer system was replete with problems. Staff would enter their notes but somehow those notes would not be saved, creating the need for that staff member to recreate the notes. (T. p. 518) Ms. Polite explained that staff were indeed required to write notes for clients who did not attend group, but they were entered as "non-

billable”. (T. p. 512; See also, Grace, Vol. 1, pp. 63-64; Graves, Vol. 2, p. 425-426; Polite, Vol. 3, p. 512-515; P. Ex. 208; Gambrell, Vol. 3, p. 539-540; Grace, Vol. 5, pp. 1026-1027, 1033).

64. Ms. Polite explained that certain staff members were behind on writing notes. One particular staff member was consistently having difficulty getting her notes into the files accurately and promptly. (T. p. 519) Part of Ms. Polite’s job was to monitor the notes and contact the staff to ensure that the notes were completed. Ms. Polite had considerable documentation in emails to substantiate her testimony concerning the notes.

65. Clients and former clients also reported to surveyors that UYCS staff members encouraged them to lie about their substance use to obtain certain services. Only one former client, Z.W., testified. She reported that UYCS staff falsified her records to indicate that she was an active drug user, which she contends was not true. (Resp’t’s Ex. A. p. 16; T. pp. 844-847)

66. Z.W. was a difficult witness at times. Her testimony concerning her drug usage and that staff falsified her records was not credible.

67. Credible and sworn evidence demonstrates that UYCS did not ask staff to backdate notes or inappropriately re-create notes. (Grace, Vol. 1, p. 62; Polite, Vol. 1, p. 222; Gambrell, Vol. 3, p. 548; Grace, Vol. 5, 1045).

68. There is no credible evidence to support the contentions that the Clinical Director or the Program Director directed improper billing practices.

69. UYCS staff credibly denied that UYCS encouraged staff to maximize billing, write notes on people who were not there, and falsify diagnoses. (Yussif, Vol. 2, p. 380; Graves, Vol. 2, p. 427-428; Haywood, Vol. 3, p. 574; Grace, Vol. 5, p. 1026-1027).

70. Staff credibly denied the allegations of a former staff member that UYCS would forge signatures and write therapy notes without seeing clients.

71. Following the August 2019 survey and SOD1, UYCS modified the billing procedure to require that a “superbill” be turned in along with the notes and sign-in sheet, at which point everything is sent to an outside consultant for review. The idea of the superbill is to ensure as much as possible against billing error. (Graves, Vol. 2, p. 425).

C. Discharge Plans

72. As set forth in Finding of Fact 40 above, DHSR summarized its four findings in SOD 1 as to how Petitioner violated 10A NCAC 27G .0201, Governing Body Policies, and found that it rose to the level of a Type A1 penalty for serious neglect of client’s treatment needs. The third finding was that clients were discharged without referrals and billings continued for clients after they had been discharged. (P. Ex. 8 at 000007).

73. Respondent cited UYCS for violations of 10A NCAC 27G .4403(g) and .4503(h), which require the discharge plans for each client prior to their discharge, which include referrals

for the level of treatment specified in the treatment plan, for SAIOP and SACOT programs respectively. (Resp't's Ex. A, pp. 32; 40)

74. A discharge plan should indicate whether the client completed treatment and was referred to an appropriate level of care or whether the client left treatment abruptly. (T. p. 615) Referrals in discharge plans are especially important in the context of SAIOP and SACOT programs, outpatient programs, as the next level of care typically involves inpatient treatment. (T. pp. 615–16) Discharge plans are required even when clients are not cooperative. (T. p. 616)

75. Respondent found that UYCS failed to “complete a discharge plan and refer each client who has completed services to the level of treatment or rehabilitation as specified in the treatment plan,” as required by 10A NCAC 27G .4403(g), for three of seven former SAIOP clients. (Resp't's Ex. A, p. 32–33)

76. Mr. Walton interviewed former clients. Even though those interviews are hearsay, they corroborated what Mr. Walton found in the record reviews.

77. The SAIOP record reviews revealed that former client #9 had no discharge plan, no follow up, no referral; and that former client #10 had no discharge plan, no discharge date, no referral. Records also show that former client #13 had a discharge summary dated January 2, 2019 with a client signature dated January 18, 2019 but the client disputes that she had a discharge plan at all. There was no referral for former client #13. (Resp't's Ex. A, p. 33–34)

78. Respondent found that UYCS failed to “complete a discharge plan and refer each client who has completed services to the level of treatment or rehabilitation as specified in the treatment plan”, 10A NCAC 27G .4503(h), for four of eight former SACOT clients. (Resp't's Ex. A, p. 40–41)

79. As with SAIOP clients, Mr. Walton interviewed former SACOT clients. Even though those interviews are hearsay, they too corroborated what Mr. Walton found in the record reviews.

80. The SACOT record reviews revealed that former client #11 had a discharge summary but no referral; former client #12 had no discharge plan and no referral; former client #14 had no discharge plan; and former client #15 had no discharge plan.

81. The Clinical Director is responsible for clinical oversight. She told Mr. Walton in the SOD that Ms. Polite was the Quality Assurance and Quality Improvement person to review and assure accuracy of the records. There was no explanation of why the records were missing.

82. There is no competent evidence to support the contention that billing continued for services after clients' discharge dates.

D. Assessments and Treatment Plans

83. Respondent cited UYCS for a violation of 10A NCAC 27G .0205(a)–(b), which requires either an initial assessment of a client prior to the client receiving services or, if services

are provided prior to the initial assessment, documentation of strategies to address the client's presenting problem.

84. Based on interviews, record review, and observation conducted by the surveyors, Respondent found the facility staff failed to complete assessments prior to the delivery of services for two of eight current clients and two of eight former clients. (Resp't's Ex. A, p. 18)

85. Some clients disagreed with assessments or diagnoses within the files. (Resp't's Ex. A, p. 18-21)

86. Initial assessments lay the foundation for developing treatment goals for the client. (T. p. 611) An initial assessment would include diagnoses and information relevant to the development of a treatment plan (or "service plan" or "person-centered plan"). *Id.*

87. No former client or current client testified in this contested case hearing concerning assessments. However, the lack of proper documentation was substantiated in the record reviews and observations.

88. Failure to ensure that clients were receiving accurate initial assessments, which would guide their treatment goals, contributed to UYCS's failure to adopt standards assuring that it was meeting the applicable standards of practice. This violation of 10A NCAC 27G .0205(a)–(b) was therefore cross-referenced under the citation for violation of 10A NCAC 27G .0201 for governing bodies.

89. Respondent also cited UYCS for a violation of 10A NCAC 27G .0205(c)–(d), which requires a treatment plan to be developed based on the assessment, and in partnership with the client, legally responsible person or both, within thirty days of a client's admission. (Resp't's Ex. A, p. 22)

90. Based on the interviews, record review, and observation conducted by the surveyors, Respondent found that UYCS failed to ensure treatment plans were created within thirty days of admission, based on the assessment and in partnership with the client, for two of eight current clients and three of eight former clients. (Resp't's Ex. A, p. 22)

91. The failure to ensure treatment plans were created within thirty days of admission was consistent with what was reported by others and confirmed by record review.

92. According to Niccole Otey, she wrote person-centered plans as part of her job duties. Ms. Otey testified that that as a general rule she does not look at initial assessments before creating person-centered plans. (T. pp. 499–500)

93. Assessments are important in order to obtain a proper diagnosis and the necessary clinical information in order to devise treatment goals that will serve clients' needs. (T. p. 612) In fact, 10A NCAC 27G .0205(c) states that "[t]he plan *shall* be developed based on the assessment . . ." (emphasis added). UYCS therefore failed to comply with the rule's requirement to base treatment plans on client assessments.

94. This violation of 10A NCAC 27G .0205(c)–(d) was cross-referenced under the violation 10A NCAC 27G .0201 for governing bodies.

E. Falsely Documenting Substance Abuse

95. DHSR summarized its four findings in SOD 1 as to how Petitioner violated 10A NCAC 27G .0201, Governing Body Policies, and found that it rose to the level of a Type A1 penalty for serious neglect of client’s treatment needs. The fourth finding was that former staff were directed to document substance use that clients denied they had. (P. Ex. 8 at 000007).

96. Competent evidence contradicts the allegation that a staff member was instructed by an employee of UYCS to falsify diagnoses on assessments in order for them to qualify for substance abuse programs. (P. Ex. 17 at 000021; Williams, Vol. 2, p. 237; Gambrell, Vol. 3, p. 539).

97. As stated above, competent evidence contradicted former client Z.W.’s (FC #11) claims that her assessment was falsified. (Williams, Vol. 2, p. 255; Yussif, Vol. 2, 390; Graves, Vol. 2, 407; Otey, Vol. 2, p. 483-490, 497). Further, DHSR did not verify Z.W.’s allegation that the assessment was falsified as the surveyor based this finding on her interview alone. (Walton, Vol. 4, p. 728). Mr. Walton testified he does not remember asking the QP who did the assessment whether or not it was accurate. (Walton, Vol. 4, 731; Walton, Vol. 4, p. 772-773).

98. Competent testimony contradicted the allegation that staff members (QSAP #2 and LCAS #1) never provided services to client Z.W. (FC #11). (Williams, Vol. 2, p. 238). Z.W. confirmed that her diagnoses of Ehlers-Danlos Syndrome and microcephaly were correct on the assessment form. (Z.W., Vol. 4, p.862; P. Ex. 188). Z.W. had claimed the assessment was false but stated: “It’s my testimony that those things happened when I was underage.” (Z.W. Vol. 4, p. 874). Therefore, she confirms at least in part that entries in the assessment were true.

V. TYPE A1 PENALTY FOR PROTECTION FROM NEGLECT AND EXPLOITATION

99. In the SOD 1, DHSR concluded that UYCS violated 10A NCAC 27G 27D .0304 Protection from Harm, Abuse, Neglect or Exploitation (V512). SOD 1 found that the violations rose to a level of a Type A1 penalty for serious neglect and exploitation by cross-referencing several cited deficiencies under various other administrative rules. (P. Ex. 8 at 000001-7; Sulfridge, Vol. 5, p. 919-920).

A. Falsifying Urine Testing

100. In the SOD 1, DHSR based in part its finding of a violation of 10A NCAC 27D .0304 Protection from Neglect or Exploitation on allegations from clients or former clients that UYCS misused or tampered with urine testing. (P. Ex. 8 at 000044-53).

101. UYCS operates its own laboratory, United Diagnostic Laboratories, which is properly certified to perform urine toxicology services. (Grace, Vol. 1, p. 54; Graves, Vol. 2, p. 396).

102. Properly trained lab technicians are involved in collection of urine samples. (Grace, Vol. 1, p. 196; P. Ex. 211 at 000004; Graves, Vol. 2, p. 401).

103. UYCS uses strict protocols for urine collection and testing, including sealed collection tubes and other procedures to ensure accuracy and protect against tampering. (Grace, Vol. 1, p. 55; P. Ex. 211; Graves, Vol. 2, p. 397-399, 400, 402).

104. Sworn testimony showed that the allegations that UYCS arranged for false positive urine screening in order to keep clients in the program were not substantiated. (Grace, Vol. 1, p. 51; Graves, Vol. 2, pp. 403, 420) No former staff or client testified in this contested case hearing regarding urine screens.

105. Competent testimony showed that UYCS would receive payment for urine screening regardless of whether the test was positive or negative for the drugs screened. (Grace, Vol. 1, pp. 51-52; Graves, Vol. 2, pp. 402, 419). Therefore, there was no financial inducement for falsifying the urine test results.

106. There is no competent evidence to support that UYCS asks clients to lie about using drugs or to falsify urine tests to ensure a positive test. (Graves, Vol. 2, pp. 403, 405, 416; Otey, Vol. 2, p. 482).

B. Exploitation: Housing

107. Respondent cited UYCS for a violation of 10A NCAC 27D .0304 for linking clients' housing to their receiving outpatient substance abuse treatment, amounting to serious exploitation and requiring the imposition of a Type A1 violation and penalty. (Resp't's Ex. A, pp. 43-44)

108. Respondent based this conclusion on the interviews, record review, and observations conducted by the surveyors. Respondent found that UYCS was conditioning housing on treatment. (T. pp. 618-620, 648-649, 682, 684-685, 706-707, 754, 786, 802-803, 809, 811-812, 815, 838-839, 843-847, 870-871, 1090-1190; Pet'r's Ex. 223).

109. The surveyor testified that he obtained former client and former staff names to begin the investigation of UYCS from newspaper articles. (Walton, Vol. 4, 703).

110. According to the surveyors, clients and former clients of UYCS reported to surveyors that they were offered housing in exchange for UYCS billing Medicaid for the client receiving services. (T. pp. 754, 786, 802-803, 809, 811-812, 815, 838-839, 843-847, 870-871)

111. Surveyor Scott Walton said that he interviewed dozens of clients (Walton, Vol. 4, p. 659). Of all the clients and former clients interviewed, only one testified in this contested case hearing, that being Z.W. All other reports are hearsay, and although accepted into evidence by being included in SOD 1, such hearsay statements are given the appropriate weight. The credibility of some of those reporting was questionable which is indicative of the necessity for subjecting such reporters to examination and cross-examination.

112. At the time of the August 26, 2019 survey, Mr. Booker was the President and CEO of United Youth Care Foundation as well as Petitioner United Youth Care Services. Mr. Booker testified that the Foundation provided housing and was not connected to UYCS. (T. pp. 272, 276)

113. Petitioner took great pains to differentiate the United Youth Care Foundation from UYCS, petitioner herein, to drive home the point that the Foundation and Petitioner UYCS are two separate and distinct entities and that the Foundation was responsible for all things housing.

114. It was principally Mr. Booker's testimony which unraveled and discredited that theory. (T. pp. 331-352).

115. According to Mr. Booker, UYCS was formed in 2003 as a non-profit. From his testimony, he believed that all he had to do was simply call it a non-profit and so state in filings with the Secretary of State for North Carolina and that made it so. This was ill-advised reliance on advice from his numerous professional business advisors. (T. p. 327)

116. At some point, he became convinced that UYCS was not a non-profit and that he needed to form the Foundation as a legal non-profit as a federally tax-exempt 501(c)(3) organization. The Foundation was formed in 2009. (T. p. 337). At times, according to Mr. Booker, he thought both companies were non-profit, which was not true. (T. p. 334, 338-339).

117. Relying on his host of business advisers, Mr. Booker was having difficulty getting his story straight about the non-profit versus for-profit and when UYCS's status changed. (T. p. 327). Mr. Booker stated that there was a "lot of confusion about for-profit, non-profit" for the two companies. (T. p. 361). Never were truer words spoken.

118. As of August 26, 2019, the Foundation's physical address was listed with the Secretary of State's office as 1207 Fourth Street in Greensboro, the same address as United Youth Care Services. On September 16, 2019, after the date of the exit interview for the survey, Mr. Booker updated the physical address of the Foundation with the Secretary of State (T. pp. 320-24)

119. The move of the Foundation to a separate address was at the suggestion of the surveyor, Scott Walton. (T. p. 325). Mr. Booker stated that the Foundation never had a separate physical address before. (T. p. 320). Mr. Booker stated that the Foundation was not operational but then changed to say that it would "just meet at places." (T. p. 320). That begs the question of where any staff involved in housing and other issues for the Foundation would be housed, for example the purported housing director.

120. Finally, Mr. Booker clarifies and states that he saw no need for a separate location for the Foundation because they were not doing anything with it anyway. He said the Foundation was "just an entity sitting there . . . doing nothing . . . no life . . . dormant . . . nothing to separate." (T. p. 345).

121. With this clarity, Mr. Booker has definitively stated that the Foundation could not and did not engage in any activity pertaining to housing, or anything else, until after Mr. Walton suggested the two entities be split.

122. Until 2017, the Foundation was totally a shell and its purpose for existence was to obtain grants to assist not only in housing, but also domestic violence, transportation, and feeding the needy. (T. p. 346). The first time there were separate bank accounts for UYCS and the Foundation was 2017. (T. p. 345).

123. The Foundation has never obtained any money by grants. All money in the Foundation came from UYCS. Stated differently, the Foundation was totally funded by UYCS. (T. p. 347).

124. Despite claiming that the finances for the Foundation and UYCS were kept separate, Mr. Booker paid for clients' housing using checks from United Youth Care Services' bank account. (Resp't's Ex B, T2 pp 326–28)

125. Mr. Booker had difficulty getting his story straight on the bank accounts as well; however, he was very clear on how he used the money. (T. p. 325)

126. Mr. Booker stated that his name was on both accounts, so he had free access to both accounts to spend in any manner he wished. (T. p. 328, 332). He described the money as money that did NOT belong to UYCS because it was "profit." Mr. Booker referred to the money in both bank accounts as "my profit." (T. p. 328). That money was like finding loose change on the sidewalk and had lost its distinction as belonging to the corporation. (T. p. 333).

127. He stated that the Board of Directors knew that he viewed the money as a discretionary fund. (T. p. 334).

128. Despite Mr. Booker's missteps with finances and non-profit status and the general run of this business, the ultimate question for the allegation of exploitation centers on the solicitation and/or recruitment of clients in order to bill Medicaid, and whether attending classes was required in order to remain in housing.

129. Delores Jordan was a subcontractor who managed some of the property utilized by clients of UYCS. Ms. Jordan describes herself as a "housing consultant."

130. It is somewhat puzzling to this Tribunal as to why Mr. Booker called Ms. Jordan prior to his attorney talking to her. Ms. Jordan had never been employed by Mr. Booker. She did not need his permission to talk with the attorney and he had no authority to allow or deny her the ability to talk to the attorneys on either side.

131. In August of 2019, she was the member manager of Daily Living Source, LLC, which leased two properties and worked with UYCS. According to Ms. Jordan, UYCS would contract for beds within the property that she managed. She said she did not care if the clients were in treatment or not because UYCS was contracting for the bed space. (T. pp. 1090, 1094)

132. Ms. Jordan switches back and forth between UYCS and the Foundation as to who she was providing the space allocation. She also vacillates as with whom she contracted to provide housing for attendees of classes at United Youth Care Services.

133. Ms. Jordan made a valiant effort to try to put the housing within the clutches of the Foundation; however, other credible evidence does not support that position. According to Ms. Jordan, she had a service agreement with the Foundation. (T. p. 1095) However, Petitioner presented a contract dated January 2, 2016 between Ms. Jordan and United Youth Care Services, the Petitioner not the Foundation. (Pt'r. Ex. 223) According to Mr. Booker the Foundation was a dormant shell of a corporation in 2016 when the contract was entered.

134. Ms. Jordan stated that United Youth Care Foundation would pay her rent for UYCS clients and would notify her when the clients were no longer in compliance, at which point, the Foundation ceased paying for housing. (T p. 1095) The credible evidence in this contested case is that UYCS was paying the rent for the clients, and not the Foundation. It is not known how UYCS would notify the Foundation when services ceased for a client in Ms. Jordan's scenario.

135. A sign was posted inside one of the residences that read, "Attention: if you're not attending class daily, rent is \$350, no exceptions, per Ms. Delores." (Resp't's Ex. B) Ms. Jordan stated that one of her employees created and posted this sign without her knowledge. (T. p. 109) It is difficult to believe an employee would undertake of his or her own volition to post such a notice attributing such demands to his or her employer without the employer's specific knowledge and/or consent.

136. Michelle Kennedy became aware of United Youth Care Services when clients of the Interactive Resource Center were experiencing a housing issue. The clients were also receiving services from United Youth Care Services. (T. p. 802).

137. The clients described substandard housing issues, reported that they were sharing their unit with people they did not know, and stated that they did not have a key to their own unit, among other concerns. (T. p. 802-03)

138. Ms. Kennedy visited the housing units about which her clients had complained. She confirmed that the housing was substandard in her opinion. (T. p. 809)

139. The clients reported to Ms. Kennedy that they had secured their housing through UYCS. (T. p. 802) Ms. Kennedy was able to confirm the relationship between UYCS and the substandard housing. (T. p. 809). By viewing documentation from some residents, Ms. Kennedy also confirmed that UYCS was providing services to other residents of the substandard housing.

140. Ms. Kennedy observed first-hand and confirmed that homeless people were being solicited for housing and inquiries were made if the person was receiving Medicaid. (T. p. 810, 819)

141. Ms. Kennedy saw the sign attributable to Ms. Jordan. The plain meaning of the sign is consistent with what Ms. Kennedy was being told that housing was contingent on attending classes. Failure to attend classes with UYCS meant the rent would not be paid by UYCS and the resident was on his or her own to secure housing. Housing was conditioned on continuing in the programs offered by UYCS.

142. Although former client Z.W. was at times difficult, her testimony was not completely incredible. Her testimony concerning being solicited for housing and use of her Medicaid benefits was consistent with what was reported by others, including Ms. Kennedy. She was credible in stating that UYCS's name appeared on the paperwork with which she dealt and not the Foundation. (T. pp 845-847).

143. DHSR has no legal authority over The Foundation. (Walton, Vol. 4, p. 679). However, it is clear that there is no credible evidence that the Foundation was responsible for any housing provided to clients of UYCS until after the completion of the survey.

VI. PROCESS

144. During the course of a survey, if the surveyors believe they have discovered a violation that may rise above the level of a standard deficiency, they contact their immediate supervisor, the team leader, to discuss. If it appears that there is something more than a standard deficiency, the team leader then contacts the branch manager. The team leader and branch manager confer with the survey staff and determine whether the violation rises to the level of a Type A or a Type B violation based on its scope and severity. (T. pp. 914.)

145. In this contested case, the surveyors, Scott Walton and Kathy Young, contacted their Team Leader, Barbara Perdue, who then contacted Robin Sulfridge, and it was ultimately decided that UYCS should be cited for two Type A1 violations. (T. p. 914)

146. Once the survey is complete, a Type A or B violation then goes through Respondent's Quality Assurance Committee to ensure the citations are consistent with Respondent's actions, that the citation is in the proper rule area, and that the violation warrants the level of violation being cited. (T. p 982)

147. The Quality Assurance team consists of the Section's Team Leaders and Branch Managers, who meet twice weekly to review Type A and B penalties and licensure actions the Section is taking. (T. p. 982)

148. The Quality Assurance team uses a penalty matrix to determine the penalty amount to accompany a Type A or B violation. The penalty matrix takes factors listed in N.C. Gen. Stat. § 122C-24.1 and assigns them point values. (T. p. 985) Use of a penalty matrix ensures consistency in meting out penalties.

149. The penalty matrices in this case determined that the appropriate penalty amounts for Petitioner's Type A1 violation of 10A NCAC 27G .0201 and 10A NCAC .27D .0304 were \$3,000.00 each. (T. p. 986; Resp't's Ex. D)

150. Respondent determined that a Suspension of Admissions was necessary, based on evidence that UYCS's clients were not receiving appropriate assessments and treatment, in order to prevent further neglect of clients' treatment needs and exploitation. (T. p. 987, Resp't's Ex. D)

151. Respondent also sent Petitioner a letter dated September 12, 2019, indicating that it planned to revoke UYCS's license. (Resp't's Ex. E) According to Ms. Elliott, the decision to issue an Intent to Revoke was based on the scope and severity of violations from the August 26, 2019, Statement of Deficiencies and Petitioner's response in their Plan of Protection that they had not done anything to merit Type A1 violations. (T. p. 988)

152. To base a revocation on the fact that someone disagrees with the agency's determinations and conclusions is unjustified and unwarranted. This Tribunal is the final arbiter of the veracity of the allegations against the Petitioner. One has a right to remonstrate and disagree with an accuser.

VII. SOD 2

153. Following the first survey, UYCS implemented a number of corrective actions to address deficiencies cited in SOD 1.

154. Surveyors returned to UYCS upon Petitioner's request for a follow-up survey to demonstrate compliance with the applicable laws and rules. (T. 921–22) That survey began on December 10, 2019 and ended on December 31, 2019. (Resp't's Ex. H, p. 948) Respondent provided UYCS with its survey findings in a second Statement of Deficiencies ("SOD 2"). (P. Exs. 16 and 17).

155. In the December 31, 2019, follow-up survey, certain deficiencies cited in the August 26, 2019, survey were not re-cited. The citations for violations of 10A NCAC .0205, relating to initial assessments, 10A NCAC .4403 and .4503, relating to discharge plans, were not re-cited in the follow-up survey. (Resp't's Ex. A; G)

156. In addition, the citation for violation of 10A NCAC 27D .0304(a) for protection of clients from exploitation was not re-cited in the follow-up survey. (Resp't's Ex. A; G)

157. The fact that a cited violation is not re-cited does not negate that the violation was properly cited to begin with, but merely that there is not evidence to demonstrate the existence of the same violation on the return survey.

158. The SOD 2 concluded that UYCS was still in violation of 10A NCAC 27G .0201 Governing Body Policies (V105), cross-referencing 10A NCAC 27G .0203 Competencies of Qualified Professionals and Associate Professionals (V109); 10A NCAC 27G .0205 Assessment and Treatment/Habilitation or Service Plan (V112); 10A NCAC .4402 Staff (V267); and 10A NCAC 27G .4502 Staff (V281).

159. On January 15, 2020 DHSR gave notice to UYCS that it was upholding the two Type A1 administrative penalties of \$3,000.00 each, upholding the Suspension of Admissions, upholding the Intent to Revoke License and revoking UYCS's license. Respondent was also issuing a Type A1 administrative penalty of \$51,500.00 for remaining out of compliance with 10A NCAC 27G .0201 Governing Body Policies (V105); (P. Exs. 19, R. Ex. I, Exhibits to Petitioner's

Amended Petition for Contested Case Hearing: Ex. 3 (January 15, 2020, Notice of Revocation of License), P. Ex. 4 (January 15, 2020, Type A1 Penalty)).

160. The December 31, 2019, Statement of Deficiencies re-cited a violation of 10A NCAC 27G .0201 for failure to have and implement governing body policies that include the “adoption of standards that assure operational and programmatic performance meeting the applicable standards of practice,” and this time, made additional findings under this rule area that were not cited in the August 26, 2019 Survey.

161. Mr. Walton and Ms. Young had asked for a complete client census at the beginning of their survey, which is routine, but they never received a complete and accurate client census from Petitioner. (T. p. 629)

162. During the course of the December 2019 survey, Mr. Walton and Ms. Young discovered that UYCS had failed to report a number of its former clients to them during the August 2019 survey. (Resp’t’s Ex. G, pp. 917–18)

163. Likewise, the surveyors did not receive complete and accurate staff lists. During the course of the December 2019 Survey, Mr. Walton and Ms. Young also discovered that UYCS had failed to report a number of its former staff to them during the August 2019 Survey, as well. (Resp’t’s Ex. G, pp. 918–19)

164. The December 31, 2019 Statement of Deficiencies also included re-cited citations for four of the violations cross-referenced under the citation for violation of 10A NCAC 27G .0201, relating to governing body policies.

165. The violation of 10A NCAC 27G .0203 in the SOD 2 is the deficiency cited under ID Prefix (V109) which was cross-referenced under (V105). The three findings on which the citation was based: (1) The Clinical Director “was responsible for ensuring all counseling staff and contract staff were trained before the correction date of 9/18/19 at 5:00 pm. The required training was completed on 9/26/19 and did not include all contract staff.” (P. Ex. 17 at 000012; (2) The Clinical Director “failed to ensure the required training, ‘Utilizing CBT (Cognitive Behavioral Therapy, designated as ‘other treatment methodologies’ by the rule) with Family and Group Therapy with Substance Abuse Using Population’ held on 9/26/19 was applicable and relevant enough for the staff to remember and relate the title or content of the training” (P. Ex. 17 at 000013); and (3) the Clinical Director “failed to provide supervision and oversight of QP’s and LCAS’s carrying out goals and interventions in clients’ treatment plans, including case management, referrals and coordinating care with other community providers, in order to meet clients’ treatment needs.” (P. Ex. 17 at 000014). (Resp’t’s Ex. G, pp. 924).

A. Training

166. The Clinical Director was responsible for ensuring that staff received required training before the correction date. According to Respondent, the 23-day correction period from the first survey expired on September 18, 2019. There is no question that UYCS staff did not complete their required training until September 26, 2019. Further, Respondent contends that

UYCS erred by failing to include contract staff in their training. (Resp't's Ex. G, pp. 924) Respondent further cite as grounds that several UYCS staff were unable to recall the title or content of the training they had received in interviews with Mr. Walton and Ms. Young. (Resp't's Ex. G, pp. 925)

167. Based on the feedback from the surveyors from the first survey, the Clinical Director arranged for a 2-day training for its staff completed by certified instructor Michael Herring on September 12 and 13, 2019, which covered: (1) alcohol and other drugs withdrawal symptoms; (2) symptoms of secondary complications due to alcoholism and drug addiction; (3) the nature of addiction; (4) the withdrawal syndrome; and (5) relapse prevention. On September 26, 2019, Mr. Herring conducted another training covering: (1) group therapy; (2) family therapy; and (3) other treatment modalities. These were the specific subject areas cited by Respondent. (Williams, Vol. 2, p. 242; Herring, Vol. 2, p. 435-436; Petitioner's Motion for Declaratory Judgment, Exs. 12, 13)

168. Mr. Herring provided additional training for UYCS staff in January 2020 as well as the earlier training. (Herring, Vol. 2, p. 445).

169. UYCS's Clinical Director submitted a request to the North Carolina Substance Abuse Professional Practice Board for In-Person Training which was approved for credit hours for training on 9/12-13/2019 and 9/26/2019. (Grace, Vol. 5, p. 1059-1060; Motion for Declaratory Judgment, Ex. 12).

170. Included in the Plan of Protection ("POP") prior to the August 26, 2019 exit interview was a provision that all training that DHSR identified as deficient in the July/August survey would be completed by October 15, 2019. (Grace, Vol. 5, 1010; Grace, Vol. 5, p. 1058; P. Ex. 224).

171. Mr. Walton reviewed the proposed POP and made edits to the plan but did not indicate that UYCS would be out of compliance if it completed training after a 23-day period ending September 18, 2019. (Grace, Vol. 5, pp. 1010, 1013-1014; P. Ex. 224). While it might have been reasonable for UYCS to believe they had until October 15, 2019 to complete the training, Mr. Walton was certain that during the exit interview he discussed the twenty-three day time limit in which Petitioner was to have made corrections, including the training.

172. UYCS direct care staff identified in the SOD 1 received training in all the areas required but not before September 18, 2019 (Williams, Vol. 2, 242; Yussif, Vol. 2, p. 384-385; Otey, Vol. 2, p. 492; Gambrell, Vol. 3, p. 546-547; Goins, Vol. 3, p. 580).

173. Other staff had trainings that were conducted at other locations, such as Sandhills. (Otey, Vol. 2, p. 492-493; Goins, Vol. 3, p. 581). Mr. Walton confirmed that staff does not have to be trained at UYCS but can receive training elsewhere. (Walton, Vol. 4, 764).

174. The surveyors found that there were staff who had not been reported to Respondent and that were not recorded as having attended training but who were writing and signing treatment notes. (Resp't's Ex. G, pp. 941) A recurring problem is the absence of records within the personnel

files or otherwise provided to the surveyors, a problem that is not limited to the personnel files. Records of training should be in staff members' personnel files and readily available to the surveyors.

175. Surveyors had access to the appropriate records for review. There is no obligation for the surveyor to go on a treasure hunt to find documents which should be in the official files. They do have an obligation to see what is to be seen. If the information is not where it is supposed to be there is no obligation for the surveyors to ask someone to see if it exists elsewhere.

176. Violations of 10A NCAC 27G .0201 Governing Body Policies included not only the essence of the violation that the training was not timely but also that staff could not recall the names of the subjects nor content of the training modules.

177. The regulations cited by DHSR do not require that the staff remember the name of the training module, or even recite the content of the training, as were in part the bases of these violations set forth in the SOD 2. (P. Ex. 17 at 000027-35).

178. The surveyors' complaints that staff was not able to recall the training title or describe sufficiently in the surveyors' opinions the content cannot constitute the basis of a violation of either 10A NCAC 27G .4402 or 10A NCAC 27G .4502 warranting a Type A1 violation. Staff is not tested after complying with attending training. There is no oral or written exam. To base punitive sanctions on a body because one cannot recall the name or specific content of training held months before is a very poor, ill-conceived, and arbitrary standard in order to determine if someone has the knowledge, skill, and abilities to perform his or her chosen profession. It is quite possible that the attendees found the subject matter mundane and repetitious of training and practical experience for many years.

179. Both 10A NCAC 27G .4402 and 10A NCAC 27G .4502 require that each direct care staff receive continuing education that includes understanding the nature of addiction, the withdrawal syndrome, group therapy, family therapy, relapse prevention and other treatment methodologies. All staff received the training.

180. Sharon Goins is an independent contractor as a mental health care worker, providing therapy to UYCS clients. Ms. Goins received her required training elsewhere but completed the training with UYCS anyway in January 2020. Nicole Smith was not a direct care provider but nevertheless received training as well.

B. Case Management, Referrals and Coordinating Care

181. As set forth above, the third finding in the violation of 10A NCAC 27G .0203 in SOD 2 is the deficiency cited under ID Prefix (V109) cross-referenced under 10A NCAC 27G .0201, tag (V105), is based upon finding on review of client records that lacked documentation of case management, referrals, and coordinating care with other community providers. (Resp't's Ex. G, pp. 925-26)

182. Respondent also re-cited UYCS for a violation of 10A NCAC 27G .0205(c)–(d), which requires the development of treatment plans based on an assessment and created in partnership with the client within thirty days of admission. (Resp’t’s Ex. G, pp. 931–32)

183. Based on interviews and record reviews conducted by the surveyors, Respondent found that the facility “failed to develop and implement the services or strategies to achieve identified client outcomes from their treatment plans” for six of six current clients and one of seven former clients. (Resp’t’s Ex. G, p. 932)

184. In particular, the surveyors found UYCS’s treatment plans lacked referrals to outside support and services. (Resp’t’s Ex. G, p. 932)

185. While the surveyors conducted interviews, the convincing plain evidence is the dearth of information contained within the files which confirms the otherwise uncorroborated interviews. For the Petitioner to contend that it had the information or could have gotten the information if the surveyors had only asked completely misses the point. The information should have been in the files to make sure the treatment would occur in an appropriate and timely manner without the surveyors having to ask if such information exists.

C. Continuing Penalty

186. At the conclusion of the first survey, on August 26, 2019, Mr. Walton and Ms. Young conducted an exit conference at UYCS with Donald Booker, Sandra Grace, Richard Graves, and others. (T3 p. 624) During that meeting, Mr. Walton and Ms. Young went through every violation cited with the representatives of UYCS. (T. pp. 624–25) Because it had been cited with two Type A1 violations, UYCS was required to complete a Plan of Protection during the survey exit to immediately address the cited issues. (T. pp. 624–25) Petitioner has been cited for Type A1 violations in the past. (T. p. 982)

187. Mr. Walton and Ms. Young also explained that UYCS had twenty-three days from that date, the exit date of the survey, to correct the A1 violations. (T. p 624) However, in the Plan of Protection, which was completed the same day, Petitioner asked to have until October 15, 2019 to complete all of the required training. Mr. Walton requested several changes in the POP but did not mention the suggested date for training.

188. According to Ms. Elliott, the twenty-three-day correction period for Type A and B violations has been Respondent’s longtime policy and is borrowed from federal nursing home standards. (T. pp 983–84) According to Ms. Elliott, there is no “wiggle room” to the twenty-three-day correction period. (T. p. 957)

189. The twenty-three-day policy having been explained to Petitioner at the exit conference, the fact that the October 15, 2019 date was written into the POP is not controlling. The October 15, 2019 date was requested only for the training. It must be noted that the violations cross-referenced and collected under 10A NCAC .0201 are the totality of all those cross-references which remained unabated, not just the training. The Agency did not acquiesce in accepting the date of October 15, 2019.

190. Because of the re-cited deficiencies cross-referenced under the governing body policies rule area, in SOD 2 Respondent cited an unabated Type A1 penalty for violation of 10A NCAC .0201, resulting in the serious neglect of client treatment needs.

191. N.C. Gen. Stat. § 122C-24.1(a)(1) states:

Where a facility has failed to correct a Type A1 Violation, the Department shall access the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the violation continues beyond the time specified for correction. The Department or its authorized representative shall determine whether the violation has been corrected.

N.C. Gen. Stat. § 122C-24.1(a)(1) (emphasis added).

192. Based on the plain language of the statute, the Respondent has the authority to set the penalty of up to one thousand dollars per day for so long as the violation continues beyond the specified time for correcting the violation. In this contested case, although there were several violations of 10A NCAC .0201 that were not re-cited and the training was completed, although late, the overall violation of the rule continued. The Department determines when or if the violation has been corrected and in this case it was not.

193. Ms. Elliott explained that the penalty matrix does provide a fine of \$200 per day for smaller facilities. (Elliott, Vol. 5, p. 1002). At the time of the January 15, 2020 letter, UYCS had approximately 20 clients and therefore, Petitioner contends the penalty should have been reduced according to the penalty matrix. (Grace, Vol. 1, pp. 66 and 183).

194. The language of N.C. Gen. Stat. § 122C-24.1(a)(1) gives an indication of what are considered small facilities in assessing the initial penalty. It states that for each Type A1 violation, facilities that serve seven or more persons would be assessed a civil penalty not less than one thousand dollars.

195. It is recognized that the population of the facility had dwindled to approximately 20 clients; however, it is also noted that Petitioner touted that it had served upwards of 200 clients. The diminution of the population was most likely in large part due to the suspension of admissions and the notice of intention to revoke. There is no indication that it was a voluntary reduction in size.

196. Respondent set the rate for the continuing violations at \$500.00 per day which is well within the parameters of the statute and is reasonable under the circumstances and considering the size of the facility.

197. The penalty for an unabated Type A1 penalty is calculated from the twenty-fourth day after the exit of the survey and accrues at a rate of \$500 per day until the violation is corrected or the exit date of a survey resulting in a Notice of Revocation. (Resp't's Ex. I; T. p. 1000)

198. In this case, the twenty-three day correction period ended on September 18, 2019. Therefore, the unabated A1 penalty was correctly calculated from September 19, 2019 until

December 31, 2019, or 103 days, which resulted in a penalty of \$51,500. (Resp't's Ex. I; T. p. 1000)

199. As a result of UYCS's continuing and substantial noncompliance with the rules and laws governing the operation of mental health and substance abuse facilities, Respondent also issued a Notice of Revocation on January 15, 2020. (Resp't's Ex. J)

CONCLUSIONS OF LAW

1. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated here in as Conclusions of Law. Based upon the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

2. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.

3. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

4. In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency. N.C. Gen. Stat. § 150B-25.1(b).

5. Petitioner has the burden of proving, by a preponderance of the evidence, that Respondent has substantially prejudiced Petitioner's rights and has exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. N.C. Gen. Stat. § 150B-25.1(a).

6. N.C. Gen. Stat. § 122C-1 *et seq.* authorizes Respondent to license, inspect, and regulate mental health facilities in the State of North Carolina.

7. Pursuant to N.C. Gen. Stat. § 122C-24.1, Respondent is authorized to assess administrative penalties against mental health facilities for violations of relevant federal and State laws, rules, and regulations of adult care homes.

8. An Administrative Law Judge need not make findings as to every fact which arises from the evidence and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

A. Suspension of Admissions

9. Respondent may suspend the admission of any new clients to a licensed mental health facility where the conditions of the facility are detrimental to the health or safety of the clients. Respondent must consider "(1) [t]he degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and (2) [t]he character and degree

of impact of the conditions at the facility on the health or safety of its clients.” N.C. Gen. Stat. § 122C-23(g).

10. By certified letter dated September 12, 2019, Respondent ordered Petitioner to suspend all admissions to the Facility effective immediately. That action was based on Respondent’s finding that UYCS was operating in violation of North Carolina General Statute and those violations indicated that conditions in the Facility were found to be detrimental to the health and safety of the clients. These violations included: 10A NCAC 27D .0304 Protection from Harm, Abuse, Neglect or Exploitation, 10A NCAC 27G .0201 Governing Body Policies, 10A NCAC 27G .0203 Competencies of Qualified Professionals and Associate Professionals, 10A NCAC 27G .0205 Assessment and Treatment/Habilitation or Service Plan, 10A NCAC 27G .4402 Staff, 10A NCAC 27G .4403 Operations, 10A NCAC 27G .4502 Staff, and 10A NCAC 27G .4503 Operations. (Pt’r. Ex. 9)

11. Based on the violations and deficiencies identified during the survey, and as specifically found in the foregoing Findings of Fact, the undersigned concludes that Petitioner’s failure to comply with the licensure statutes and rules were detrimental to the health and safety of the residents.

12. The preponderance of the credible and admissible evidence supports Respondent’s decision to suspend all new admissions to the Facility pursuant to N.C. Gen. Stat. § 122C-23(g).

13. Therefore, Respondent did not deprive Petitioner of property; otherwise substantially prejudice Petitioner’s rights; exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act arbitrarily or capriciously; or fail to act as required by rule or law by issuing the suspension of admissions on September 12, 2019.

B. Type A1 Administrative Penalties

(1) 10A NCAC 27D .0304 Protection from Harm, Abuse, Neglect or Exploitation

14. A “Type A1 Violation” is defined as “a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, abuse, neglect, or exploitation.” N.C. Gen. Stat. § 122C-24.1(a)(1) (emphasis added).

15. A “Type A2 Violation” is defined as one “which results in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur.” N.C. Gen. Stat. § 122C-24.1(a)(1a) (emphasis added).

16. There has not been any allegation by Respondent of death or serious physical harm.

17. “‘Neglect’ means the failure to provide care or services necessary to maintain the mental or physical health and well-being of the client.” 10A NCAC 27C .0102(b)(17).

18. “‘Exploitation’ means the use of a client's person or property for another's profit or advantage or breach of a fiduciary relationship through improper use of a client's person or property including situations where an individual obtains money, property or services from a client from undue influence, harassment, deception or fraud.” 10A NCAC 27C .0102(b)(9).

19. Petitioner subjected clients to exploitation. Petitioner exercised dominion over all things housing for clients of UYCS. At most, the non-profit Foundation was not active until after the first survey. The CEO/President was responsible for and paid for substandard housing in various locations. Clients with Medicaid were recruited and promised free housing on the condition their Medicaid could be billed. The UYCS used clients with mental health and substance abuse diagnoses to make their housing contingent on the facility obtaining Medicaid reimbursements for services provided by UYCS. There was a threat of losing housing if not in treatment. (Resp’t. Ex. B p. 44)

20. As found in the first Statement of Deficiencies, the failure of Petitioner to comply with 10A NCAC 27D .0304 was cited appropriately as a Type A1 violation due to these failures resulting in serious exploitation. This violation was not re-cited in the second Statement of Deficiencies.

21. Respondent’s citation of a Type A1 violation of 10 NCAC 27D .0304 is supported by both a preponderance of the evidence and clear and convincing evidence. Respondent did not exceed its authority or jurisdiction, act erroneously, did not fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule when citing the Type A1 violation.

22. Respondent is required to assess a penalty for Type A or B violations. The amount to be assessed for a Type A1 violation shall be no less than five hundred dollars and no more than ten thousand dollars for facilities or programs that serve six or fewer persons. For facilities serving seven or more persons, the penalty shall be not less than one thousand dollars nor more than twenty thousand dollars for each Type A1 violation. N.C. Gen. Stat. § 122C-24.1

23. N.C. Gen. Stat. § 122C-24.1(f) requires the Undersigned to address two issues in administrative appeals of penalties: (1) the reasonableness of the amount of the penalty, and (2) the degree to which each factor listed in N.C. Gen. Stat. § 122C-24.1(c) was evaluated.

24. Respondent uses a penalty matrix for determining the financial amount of that penalty. The penalty matrix takes into account the factors from the statute. Points are assigned based on those factors, and then, based on the points and the size of the facility, there is a monetary amount determined for the penalty. (T. p. 985) This point system and rubric satisfy the requirements of N.C. Gen. Stat. § 122C-24.1(c) & (f).

25. In the September 12, 2019 notice, Respondent assessed a penalty of Three Thousand Dollars (\$3,000.00) for violation of 10A NCAC 27D .0304. (R. Ex. A) This violation was appropriately cited as a Type A1 violation because the failures identified resulted in serious exploitation of clients.

26. Respondent did not exceed its authority or jurisdiction, act erroneously, did not fail to use proper procedure, act arbitrarily or capriciously, and fail to act as required by law or rule when citing the Type A1 violation and assessing an administrative penalty.

27. The associated Three Thousand Dollars (\$3,000.00) penalty for violation of 10A NCAC 27D .0304 was reasonable.

(2) *10A NCAC 27G .0201 Governing Body Policies*

28. Petitioner failed to implement standards that assure operational and programmatic performance that met applicable standards of practice. The failure of Petitioner to comply with 10A NCAC 27G .0201 was cited appropriately as a Type A1 violation due to these failures resulting in serious neglect of clients' treatment needs. (Resp't. Ex. B p. 4)

29. Competent evidence proved that Petitioner failed to implement these standards when the Clinical Director failed to insure staff were properly trained to meet the clinical needs of the clients in the SAIOP and SACOT treatment programs and when clients were discharged from the program without referrals. (Resp't. Ex. B p. 7)

30. Allegations that the Clinical Director and Program Director encouraged Licensed Clinical Addictions Specialists staff to maximize billing on clients who had been authorized for payments by creating notes on clients that were sometimes not in groups, to create notes even though they did not provide the service, to sign notes that were written by other staff, and to falsify diagnostic assessments were not supported by competent evidence. The only evidence concerning those allegations was uncorroborated hearsay. Likewise, allegations that former staff were directed by the Clinical Director to document substance use that clients denied that they had in the client's treatment plans were not supported by competent evidence. These allegations alone would have been enough to revoke the facility's license if they had been supported by competent evidence.

31. Respondent's citation of a Type A1 violation of 10 NCAC 27G .0201 is supported by both a preponderance of the evidence and clear and convincing evidence. Respondent did not exceed its authority or jurisdiction, act erroneously, did not fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule when citing the Type A1 violation.

32. Assessing a Type A1 violation requires this Tribunal to find that a violation has resulted in death or serious physical harm, abuse, neglect, or exploitation. N.C. Gen. Stat. § 122C-24.1(a)(1). The allegations concerning the training of staff does not satisfy this requirement but rather establishes substantial risk for abuse or neglect as required for a Type A2 violation.

33. The allegations that clients were discharged from the program without referrals constitutes neglect that would justify a Type A1 violation.

34. The findings within 10A NCAC 27G .0201 encompass numerous findings which were cross-referenced under the one heading. Therefore, there must be a combining of the potential penalties and a determination of what is reasonable under the facts and circumstances of this contested case.

35. Applying the requirements of N.C. Gen. Stat. § 122C-24.1(f) by assessing the reasonableness of the amount of the penalty and the factors listed in N.C. Gen. Stat. § 122C-24.1(c), assessing a combined Type A1 penalty of One Thousand Five Hundred Dollars (\$1,500) is reasonable and appropriate.

36. Respondent did not exceed its authority or jurisdiction, act erroneously, did not fail to use proper procedure, act arbitrarily or capriciously, and fail to act as required by law or rule when citing the Type A1 violation and assessing an administrative penalty.

37. Respondent's assessment of an A1 penalty in the September 12, 2019 notice in the amount of Three Thousand Dollars (\$3,000.00) for violation of 10A NCAC 27G .0201 was reasonable based upon the findings of the Agency at that time in the first Statement of Deficiencies. (Resp't. Ex. A) Based on the evidence before this Tribunal, a penalty of One Thousand Five Hundred Dollars (\$1,500) is assessed.

C. Continuing Penalty

38. On January 15, 2020, Respondent assessed a penalty of Fifty-One Thousand Five Hundred Dollars (\$51,500.00) for continued violation of 10A NCAC 27G .0201.

39. "Where a facility has failed to correct a Type A1 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the violation continues beyond the time specified for correction. The Department or its authorized representative shall determine whether the violation has been corrected." N.C. Gen. Stat. § 122C-24.1(a)(1).

40. Respondent imposed a penalty of \$500.00 against Petitioner for each day the deficiency remained out of compliance beyond the 23rd day of the survey. The facility was to have the deficient practices corrected by September 18, 2019.

41. The administrative penalty stopped accruing with the exit date of the follow-up survey, which was performed on December 31, 2019. Respondent determined that the Facility was out of compliance with the deficiency for a total of 103 days for a total penalty amount of Fifty-One Thousand Five Hundred Dollars (\$51,500.00).

42. Respondent did not exceed its authority or jurisdiction, act erroneously, did not fail to use proper procedure, act arbitrarily or capriciously, and did not fail to act as required by law or rule when citing the continuing Type A1 violation and assessing an administrative penalty.

43. The associated Fifty-One Thousand Five Hundred Dollar (\$51,500.00) penalty for violation of 10A NCAC 27G .0201 was reasonable and appropriate.

D. The Revocation of Petitioner's License

44. Respondent may revoke a license to operate a mental health facility where "the Secretary finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes." N.C. Gen. Stat. § 122C-24(a). Respondent shall revoke a license to operate a mental health facility where

“(1) there has been failure to comply with G.S. 122C; (2) there has been failure to comply with rules promulgated under G.S. 122C; and (3) such failure to comply endangers the health, safety or welfare of the individuals in the facility.” 10A NCAC 27G .0405(d).

45. Respondent is required to give written notice to the licensee of the revocation of its license. The licensee shall then have sixty (60) days to appeal the revocation by filing a Petition for Contested Case Hearing with OAH. If the notice of revocation is appealed within that timeframe, the revocation is automatically suspended until a decision on the revocation is made by OAH. 10A NCAC 27G .0405(d)

46. By certified letter dated January 15, 2020, Respondent notified Petitioner that it was revoking its license to operate the Facility. That action was based on Respondent’s finding that Petitioner had “failed to comply with the provisions of North Carolina General Statute” specifically, Articles 2 and 3 of Chapter 122C of the North Carolina General Statutes. Respondent’s decision was based upon the findings from the August 26, 2019 and December 31, 2019 Surveys by Respondent.

47. On February 6, 2020, Petitioner filed an amended Petition for Contested Case Hearing appealing the notice of revocation. This appeal suspended the revocation of Petitioner’s license pursuant to 10A NCAC 27G .0405(d).

48. As concluded above and with the exceptions noted, the violations and deficiencies identified in the August 26, 2019, and December 31, 2019, Surveys by Respondent are supported by a preponderance of the evidence. Therefore, Respondent correctly determined that Petitioner has substantially failed to comply with the provisions of Articles 2 and 3 of Chapter 122C of the North Carolina General Statutes.

49. Based on the violations and deficiencies identified during the survey, the undersigned concludes that Petitioner’s failure to comply with the licensure statutes and rules endangered the health, safety, and welfare of the residents in the Facility.

50. The preponderance of the evidence supports Respondent's decision to revoke Petitioner’s license to operate the Facility pursuant to N.C. Gen. Stat. § 122C-24(a) and Petitioner has failed to meet its burden. Therefore, Respondent did not deprive Petitioner of property; otherwise substantially prejudice Petitioner’s rights; exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act arbitrarily or capriciously; or fail to act as required by rule or law by issuing the notice of revocation on January 15, 2020.

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

FINAL DECISION

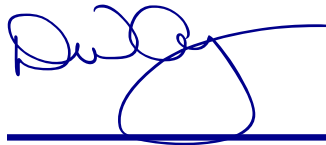
Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent’s September 12, 2019, decision to suspend Petitioner’s admissions on September 12, 2019, and impose two Type A1 penalties as modified, and its January 15, 2020, decision to impose an unabated Type A1 penalty and to revoke Petitioner’s license to operate the Facility should be **UPHELD**.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

SO ORDERED, this the 2nd day of September, 2020.



Donald W Overby
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 2nd day of September, 2020.



Jerrod Godwin
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