



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

APPEAL OF OFELIA DANCIU

CASE NO. 3120013

[County Case No. 10323]

DATES OF HEARINGS: February 16, 2012, and April 17, 2012

APPEARANCES:

Mr. Richard Weill
Attorney for Appellant

Mr. Patrick Henry
Multnomah County Assistant Attorney for Multnomah County Adult Care Program

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The first hearing in this matter was held on February 16, 2012. Mr. Patrick Henry, Multnomah County attorney appeared on behalf of Multnomah County Adult Care Home Program (MCACH). Mr. Richard Weill, attorney, appeared and represented Appellant. Appellant appeared at the hearing, but did not testify. The Hearings Officer met with the attorneys prior to the hearing. The attorneys indicated that additional time for discussion about resolving the case would be helpful. The Hearings Officer gave Mr. Henry and Mr. Weill time to discuss resolution of the matter with their clients prior to the start of the hearing. Mr. Henry and Mr. Weill represented to the Hearings Officer, at the hearing, that they had reached an agreement and wished to enter into a Stipulated Agreement. Mr. Weill requested that the agreement be read into the record. Mr. Henry stated for the record the agreement that the parties had reached. Mr. Alan Harris, Sanction Specialist for the MCACH, indicated, at the hearing, that he was willing to accept the agreement as set out by Mr. Henry. Mr. Weill and his client, Ms. Danciu, also indicated that they were willing to accept the agreement set out by Mr. Henry. The Hearings Officer asked Mr. Henry to incorporate the parties' agreement into a Stipulated Agreement and Final Order for the parties to sign, and to submit the signed order to the Hearings Office by March 1, 2012.

On March 2, 2012, the Hearings Officer learned that a disagreement had arisen between the parties with regard to payment of a fine by Ms. Danciu. The parties submitted numerous letters to the Hearings Office, and on March 30, 2012, the Hearings Officer ordered a second hearing. The second hearing was held on April 17, 2012. Mr.

Patrick Henry, Multnomah County attorney, appeared on behalf of MCACH. Mr. Richard Weill, attorney, appeared and represented Appellant. Appellant did not appear at the hearing. Mr. Henry indicated that he was willing to proceed with the agreement stated on the record at the first hearing, but wished to offer argument regarding the amount of fine to be assessed. Mr. Weill indicated, after speaking with his client, that he wished to proceed with the agreement stated on the record at the first hearing, and that his client was willing to agree to the \$750 fine the County wished to assess. The Hearings Officer gave the parties time to add the language regarding the fine into the Stipulated Agreement and Final Order drafted by Mr. Henry prior to the hearing.

The Hearings Officer received a copy of a fully executed Stipulated Agreement and Final Order (the "Stipulated Agreement") from the parties (Exhibit 33). The Hearings Officer reviewed the Stipulated Agreement and finds the request, by Mr. Henry and Mr. Weill, to incorporate the Stipulated Agreement into and as part of this Order to be reasonable and appropriate.

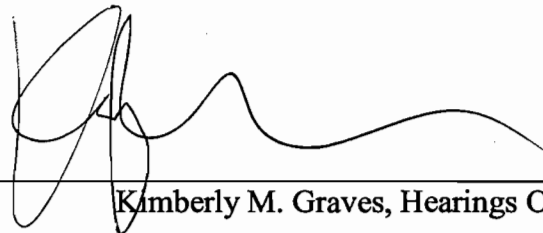
Exhibit 33 was admitted, without objection, into the evidentiary record at the hearing. Additional documents were not admitted into the record, since the arguments contained therein were moot in light of the agreement by the parties to resolve all aspects of the case without a hearing.

ORDER AND DETERMINATION:

1. The Hearings Officer incorporates the Stipulated Agreement (Exhibit 33), a copy of which is attached to this Order, into this Order and the provisions of the Stipulated Agreement shall have the same force and effect as if independently ordered by the Hearings Officer.
2. This Order has been mailed to the parties on April 17, 2012, and shall become final and effective immediately.
3. This Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 17, 2012

KMG:rs/jeg



Kimberly M. Graves, Hearings Officer

Enclosure

| Exhibit # | Description | Submitted by | Disposition |
|-----------|--|-------------------|-------------|
| 1 | 1/9/12 Letter from Patrick W. Henry | Henry, Patrick W. | Not Offered |
| 2 | Appeal Form page 1 | Henry, Patrick W. | Not Offered |
| 3 | Appeal Form page 2 | Henry, Patrick W. | Not Offered |
| 4 | 12/14/11 Letter to Ofelia Danciu from Allen Harris | Henry, Patrick W. | Not Offered |
| 5 | 11/12/11 Letter to Allen Harris from Peter and Ofelia Danciu | Henry, Patrick W. | Not Offered |
| 6 | Notice of Administrative Sanction - Pgs 1-2, 5-10 | Henry, Patrick W. | Withdrawn |
| 7 | Statement of Condition on License | Henry, Patrick W. | Not Offered |
| 8 | Adult Foster Home - Conditional License for Operation | Henry, Patrick W. | Not Offered |
| 9 | Compliance Monitoring Visit notes | Henry, Patrick W. | Not Offered |
| 10 | AFH Complaint Report | Henry, Patrick W. | Not Offered |
| 11 | AFH Complaint Form | Henry, Patrick W. | Not Offered |
| 12 | MCAR - pages 3-4 | Henry, Patrick W. | Not Offered |

| | | | |
|-----|---|-------------------|-------------|
| 13 | Mailing List | Hearings Office | Not Offered |
| 14 | Notice of Hearing | Hearings Office | Not Offered |
| 15 | 1/19/12 Letter | Henry, Patrick W. | Not Offered |
| 16 | Our Response to the Investigation | Henry, Patrick W. | Not Offered |
| 17 | Appeal form page 1 | Weill, Richard A. | Not Offered |
| 18 | Updated Mailing List | Hearings Office | Not Offered |
| 19 | 1/31/12 Letter requesting interpreter | Weill, Richard A. | Not Offered |
| 20 | 2/7/12 Request to reschedule | Weill, Richard A. | Not Offered |
| 21 | Hearing Notice | Hearings Office | Not Offered |
| 22 | Motion to Dismiss | Weill, Richard A. | Not Offered |
| 22a | Mult. County ACHP Administrative Rules | Weill, Richard A. | Not Offered |
| 23 | 3/2/12 Letter | Weill, Richard A. | Withdrawn |
| 24 | 3/2/12 Letter | Henry, Patrick W. | Withdrawn |
| 24a | 2/28/12 Letter from Richard Weill to Patrick Henry | Henry, Patrick W. | Withdrawn |
| 24b | Stipulated Settlement Agreement and Final Order, dated 2/24/12 (partially signed) | Henry, Patrick W. | Withdrawn |
| 24c | Copy Danciu check #3309 -- \$250.00 | Henry, Patrick W. | Withdrawn |
| 24d | Email string between Henry and Weill | Henry, Patrick W. | Withdrawn |
| 24e | Notification of Administrative Sanction | Henry, Patrick W. | Withdrawn |
| 25 | 5/5/12 Letter | Henry, Patrick W. | Withdrawn |
| 25a | ACHP rule sections | Henry, Patrick W. | Withdrawn |
| 26 | 3/28/12 Letter | Weill, Richard A. | Withdrawn |
| 27 | Letter to Mr. Weill and Mr. Henry | Hearings Office | Withdrawn |
| 28 | Notice of Hearing | Hearings Office | Withdrawn |
| 29 | 4/2/12 Faxed letter from Weill | Weill, Richard A. | Withdrawn |
| 30 | 4/4/12 Faxed letter | Henry, Patrick W. | Withdrawn |
| 31 | 4/4/12 letter | Henry, Patrick W. | Withdrawn |
| 32 | 4/13/12 Letter | Weill, Richard A. | Withdrawn |
| 32a | Stipulated Settlement Agreement and Final Order -- Undated (partially signed) | Weill, Richard A. | Withdrawn |
| 33 | Stipulated Agreement (modified) | Henry, Patrick W. | Received |

RECEIVED

APR 17 2012

MULTNOMAH COUNTY AGING AND DISABILITY SERVICES
ADULT CARE HOME PROGRAM

IN THE MATTER OF OFELIA DANCIU

ACHP Case No. 000827

City of Portland Hearings Office Case No.
3120013

STIPULATED SETTLEMENT
AGREEMENT AND FINAL ORDER

SETTLEMENT AGREEMENT

1.

This Stipulated Settlement Agreement and Final Order ("Agreement") is made and entered into by and between Ofelia Danciu ("Operator") and the Multnomah County Department of Aging and Disability Services, Adult Care Home Program ("ACHP"). The Agreement is binding upon the parties, their agents, servants, employees, and successors and any and all persons and entities acting in concert or participation with or for them.

2.

Operator and ACHP wish to settle all matters arising out of the November 1, 2011, Notice of Administrative Sanction ("Sanction Notice") (attached hereto as Exhibit 1) without the necessity of further administrative or civil proceedings. It is therefore hereby agreed and stipulated by and between the parties as follows:

Page 1 - STIPULATED SETTLEMENT AGREEMENT AND FINAL ORDER

Multnomah County Attorney
501 SE Hawthorne, Suite 500
Portland, Oregon 97214
(503) 988-3138

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #33
Case # 3120013
Bureau Case # 10323

- 1 a. Operator consents to the entry of this Agreement as the Final Order in this contested
2 case proceeding.
- 3 b. Operator agrees that any violation of this Agreement may be sanctioned in
4 accordance with the Multnomah County Administrative Rules in the same manner
5 and to the same extent as a violation of any provision of the Multnomah County
6 Administrative Rules.
- 7 c. The parties agree that this Agreement and the Sanction Notice may be used by ACHP
8 to determine the appropriate sanction in the event of any future violations of
9 Multnomah County Administrative Rules.
- 10 d. This Agreement relates solely to the allegations in the Sanction Notice. The parties
11 agree that this Agreement is not intended to be a compromise of any existing or
12 potential administrative, civil or criminal investigations, actions or charges which
13 have been or may be initiated by any other person, entity or agency. Operator further
14 agrees that she will not assert that such a compromise exists. However, Operator
15 maintains her right to contest any and all aspects of any such claims, and this
16 Agreement shall not be deemed a waiver on the part of Operator to assert any and all
17 defenses that exist now or may arise in the future, except that Operator agrees she will
18 not contend this Agreement in any way precludes such claims.
- 19 e. Operator and the ACHP agree that this Agreement is the product of their mutual
20 negotiation and preparation and shall not be deemed to have been prepared or drafted
21 by either party. The parties further agree that any court seeking to interpret this
22 agreement shall construe it as a product of mutual negotiations and preparation.
- 23 f. This Agreement constitutes the sole, entire and complete agreement between the
24 parties to resolve the administrative proceeding commenced by the Sanction Notice
25 and that no promises, inducements or agreements not herein expressed have been
26 made and that the terms of this agreement are contractual and not a mere recital.

STIPULATED FINAL ORDER

3.

The Adult Care Home Program hereby dismisses Violation Numbers 1, 2, 3, and 6 of the Sanction Notice (Exhibit 1).

4.

The Operator admits Violations Numbers 4 and 5 of the Sanction Notice. *The operator is hereby fined \$750 for the violations. PWA PW*

Operator agrees that her home shall be subject to the following restrictions:

- a. Teo Baias will not have unsupervised contact with any resident at any time;
- b. Teo Baias will not at any time go into or be in any bedroom or common area frequented by residents.

6.

If the Operator and any caregivers in the home have reasonable cause to believe that abuse, neglect or exploitation has taken place, the Operator and caregivers:

- a. Shall immediately contact local law enforcement if the following circumstances apply:

MCAR 023-130-105(c): The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances, etc.).

- b. Shall request medical assistance, if appropriate, in accordance with the provisions of the following rule:

MCAR 023-080-135 (in pertinent part): Operators shall immediately inform...the resident's physician or nurse...of changes in the resident's condition.

- c. Shall ensure resident safety by removing all threats as required by the following rule:

MCAR 023-120-105: Operators, Resident Managers and caregivers shall exercise all reasonable precautions against conditions that could threaten the health, safety or welfare of adult care home residents. It is prohibited for anyone who lives or works in an adult care home to abuse, neglect or exploit residents or other occupants. Abuse, neglect or

1 exploitation is a violation of ACHP rules and may subject the offender to civil and/or
2 criminal proceedings. Operators shall be responsible for preventing abusive or neglectful
treatment or exploitation of any resident by any occupant in the ACH.

- 3 d. Shall immediately notify Adult Protective Services of the alleged or suspected abuse
4 in accordance with the provisions of the following rule:

5 MCAR 023-130-105(b): Operators must immediately notify the local Adult Protective
6 Services Unit (APS), or the local ADS office of any incident of abuse or suspected abuse,
including events overheard or witnessed by observation.

- 7 e. Shall refrain from conducting an investigation regarding allegations of abuse. Abuse
8 investigations shall be conducted by Adult Protective Services:

9 MCAR 023-140-105: APS has the authority to investigate complaints made in regard to adult
10 care homes.

- 11 f. Shall not interview or otherwise question a resident or witness once reasonable cause
12 exists that abuse, neglect, or exploitation has taken place:

13 MCAR 023-130-115: Operators must ensure that any complainant, witness, or employee of
14 an ACH may not be subject to retaliation by any caregiver (including their family and friends
15 who may live in or frequent the adult care home) for making a report, being interviewed
about a complaint, or being a witness, including but not limited to restriction of access to the
home or a resident or, if an employee, dismissal or harassment.

16 7.

17 The ACHP shall issue sanctions, up to and including revocation of Operator's license, if
18 the Operator fails to comply with the obligations detailed in paragraphs 5 and 6 above.

19 8.

20 All terms of this Agreement shall continue in full force and effect unless specifically
21 changed in writing by the ACHP. ACHP agrees to review the restrictions in paragraph 5.a. and
22 5.b. above on an annual basis or in reasonable intervals upon receipt of additional information
23 from the operator.

24 ////

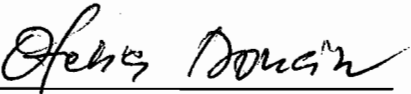
25 ////

26 ////


9.

Operator shall comply with Oregon Administrative Rules, Multnomah County Administrative Rules, Oregon Revised Statutes and Federal statutes and rules that relate to the operation of an Adult Care Home.

IT IS SO STIPULATED THIS 27 DAY OF FEBRUARY, 2012:


Ophelia Danciu

Reviewed by:

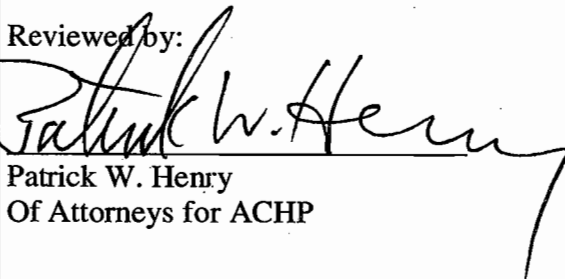

Richard Weill
Attorney for Operator

MULTNOMAH COUNTY ADULT CARE HOME PROGRAM

By:

Felicia Akubura
Director

Reviewed by:


Patrick W. Henry
Of Attorneys for ACHP

NOTIFICATION OF ADMINISTRATIVE SANCTION

Multnomah County Adult Care Home Program
421 SW Oak Street, Suite 510
Portland OR 97204-1622
503 988-3000

Sanctions

Name: **DANCIU, OFELIA**

License #: **10323**

Home Address: **5224 NE 73RD AVE**

City: **PORTLAND** State: **OR** Zip Code: **97218**

Mailing Address: **SAME AS ABOVE**

FILE COPY

Sanction is the result of: ☐ License Inspection ☐ Monitoring Visit ☒ Protective Services Investigation ☐ Other

Date of Violation(s): **7/20/2011 and 8/17/2011**

☐ Rule Violated: ☒ Multiple Rules Violated – See Below

Sanction Imposed: ☒ Fines ☒ Conditions (See Attachment) ☐ Suspension/Revocation/Denial of License ☐ Other

Total Fine(s): **\$3,250.00**

Due Date: **12/1/2011**

CP# **000827**

► The failure to pay a fine within time limits specified by the ACHP shall result in an automatic penalty of \$100.00 every 30 days, to a maximum of \$1,000.00, until the fine and penalties are paid in full. (MCAR 023-160-250)

► Past due fines and penalties must be paid in full before an existing license is renewed or any new license application can be accepted by the ACHP. (MCAR 023-040-640)

► See below and the back of this form for more information regarding your rights and responsibilities in relation to sanctions.

Statement of reasons for the sanction and circumstances surrounding the violation:

The Adult Care Home Program (ACHP) has received two reports: #BC117545 dated August 16, 2011, and #BC117790 dated August 31, 2011. Both reports are the result of independent investigations by the Multnomah County Adult Protective Services Division (APS). The reports provide evidence of several violations of the Multnomah County Administrative Rules (MCAR). The specific violations are as follows:

Violation #1: APS report #BC117545 provides evidence that a resident of your home was sexually abused by a member of your family. Specifically, the report indicates that shortly after a resident had returned to her room after bathing, your brother, Teo Balas entered the resident's bedroom and sexually molested the resident.

The resident repeatedly and consistently reported that on the morning of July 20, 2011, while in a state of undress, Teo Balas entered her bedroom and proceeded to touch her bare breasts. The resident stated that she expressed repeated verbal objections to no avail, and finally resorted to stepping on Teo's foot to get him to stop. The resident further stated that this is not the first time that Teo has entered her bedroom and sexually molested her. The resident also stated that Teo sleeps in the bedroom next door.

The report includes a statement, made by a family member of the resident, indicating that the resident is a good historian. Facility progress notes indicate that the resident has a good state of mind. The report also makes reference to an unspecified nurse's assessment of the resident, which the investigator noted specifically does not include any evidence of the resident suffering from an altered thought process. Finally, the investigator noted that during questioning the resident appeared to be alert and oriented.

Based on an independent analysis of the evidence above, the ACHP finds that the resident's statements

Distribution: Operator-original ACHP File Public file Ombudsman DD-Multnomah DD-Salem AMH

pertaining to the events of July 20, 2011, are both consistent and credible.

The report includes your statements indicating that it is not uncommon for the resident to be without clothes when in her bedroom, and further, that you witnessed Teo entering the resident's bedroom on the morning of July 20, 2011. You stated that Teo has been in the resident's bedroom on more than one occasion and that he stays in your home up to four times a month. Finally, you stated that Teo went into the resident's bedroom on the morning of July 20, 2011, to say goodbye.

A review of ACHP records confirms that Teo Baias has never been an approved caregiver in your home.

The report includes statements made by your spouse, Peter Danciu, indicating that he too knew that Teo had entered the resident's bedroom, and further, stated that Teo sleeps in the room next to the resident's bedroom when he stays in your home.

The following rules provide the criteria for evaluating the status of adult care home occupants:

MCAR 023-020-105(64): Occupant - anyone residing in or using the facilities of the adult care home including all residents, Operators, Resident Managers, caregivers, friends or family members, day care persons, and boarders.

MCAR 023-020-105(77): Reside - to make the adult care home a person's residence on a frequent or continuous basis.

The ACHP finds that Teo Baias was an occupant of your home as he resided or lived in, and used the facilities of your adult care home. The ACHP also finds that Teo Baias was residing or living in your home on the morning of July 20, 2011.

The MCAR define sexual abuse as sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act:

MCAR 023-120-115(1)(f)(A): Abuse means any of the following: (f) Sexual abuse including: (A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent.

If abuse is substantiated, the ACHP must determine who was responsible for the abuse:

MCAR 023-140-250: If the Division determines there is substantiated abuse, the Division may determine that the Operator, an individual, or both the Operator and an individual were responsible for abuse. In determining responsibility, the Division shall consider intent, knowledge and ability to control, and adherence to professional standards, as applicable.

MCAR 023-140-260: Examples of when the Division shall determine the individual is responsible shall include, but are not limited to: (a) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse.

The ACHP finds, by a preponderance of the evidence, that Teo Baias sexually abused a resident in your home on the morning of July 20, 2011, when he intentionally entered the resident's bedroom and touched the resident's bare breasts without the resident's consent.

The MCAR prohibit the abuse of residents in adult care homes:

MCAR 023-120-105(in pertinent part): It is prohibited for anyone who lives or works in an adult care home to, abuse, neglect or exploit residents or other occupants. Abuse, neglect or exploitation is a violation of ACHP rules and may subject the offender to civil and/or criminal proceedings.

MCAR 023-090-110: The ACHP may prohibit any person from working or being in an adult care home if the ACHP finds that his/her presence would jeopardize the health, safety or welfare of the resident(s) or other occupants in the home.

The ACHP finds, by a preponderance of the evidence, that Teo Baias' presence in the home jeopardizes the health, safety or welfare of the residents.

MCAR 023-160-310: The ACHP may place conditions on a license when the ACHP finds: (b) A threat or potential threat exists to the health, safety or welfare of the residents that may be remedied by placing a condition on the license.

MCAR 023-160-315: Conditions which may be imposed on a license include, but are not limited to: (g) Restricting the Operator from allowing persons on the premises who may pose a threat to resident safety or welfare.

Result: Due to the threat, posed by Teo Baias, to the health, safety and welfare of the residents, a condition is hereby placed on your license: Teo Baias is hereby prohibited from entering your home. This condition shall remain on your license until further written notice from the ACHP.

Violation #2: The resident's rights were violated when you allowed Teo Baias to enter the resident's bedroom while she was in a state of undress. As noted in Violation #1 above, the resident had just returned to her bedroom after bathing. Additionally, you stated that it is not uncommon for the resident to be without clothes when in her bedroom. You also stated that you witnessed Teo entering the resident's bedroom. ✓

The MCAR require that adult care home staff have an awareness of the residents' general whereabouts and functioning in and about the adult care home:

MCAR 023-070-810: The Operator, approved Resident Manager or approved caregiver shall provide supervision 24 hours per day, consistent with these rules, in the adult care home when one or more residents are present or are expected to be present in the home. Supervision means protective awareness of the residents' general whereabouts and functioning in and about the adult care home.

The ACHP finds it reasonable that on the morning of July 20, 2011, you should have known that the resident had just returned to her room following bathing, and further, that you knew that the resident was most likely in a state of undress at the time that you witnessed Teo entering the resident's bedroom. Further, the ACHP finds that while there is no evidence that the resident was in any distress or needed any assistance at the time Teo entered her bedroom, he is not an approved caregiver and therefore you should have known that he had no legitimate reason for entering the resident's bedroom at that time.

The ACHP finds, by a preponderance of the evidence that you failed to protect the resident's rights when you allowed Teo to enter the resident's bedroom at a time when she was in a state of undress. Your failure to protect the resident's rights is a violation of the following rule:

MCAR 023-030-105(in pertinent part): Each resident of an Adult Care Home in Multnomah County has a right to: (a) Be treated as an adult with respect and dignity. (b) Live in a safe, secure, homelike environment. (i) Be free from mental or physical abuse, neglect, abandonment, punishment, harm or sexual exploitation.

Result: Due to your failure to protect the rights of a resident in your adult care home, in violation of MCAR 023-030-105(a),(b)&(i), you are hereby fined \$500.00.

Violation #3: You failed to demonstrate good judgment when you allowed Teo Baias to sleep in the residents' area of the home, and when you allowed him to enter a resident's bedroom at a time when you knew the resident was likely to be at least partially naked. ✓

As noted in Violation #1 above, the resident had just returned to her bedroom after bathing. You stated to the investigator that it is not uncommon for the resident to be without clothes when in her bedroom, and further, that you witnessed Teo entering the resident's bedroom on the morning of July 20, 2011.

As noted above, ACHP records confirm that Teo Baias is a member of your family and is not approved to provide direct care to the residents:

The ACHP finds, by a preponderance of the evidence that you failed to demonstrate good judgment when you allowed an individual other than a caregiver to enter a resident's bedroom at a time when you knew the resident was likely to be at least partially naked.

Your failure to demonstrate good judgment is a violation of the following rule:

MCAR 023-070-140: Operators, Resident Managers and caregivers shall have good physical and mental health, good judgment, good personal character (including honesty) and the demonstrated ability to follow both verbal and written instructions. They shall also possess the ability as determined necessary by the ACHP to provide 24 hour supervision for adults who are elderly persons or persons with disabilities. Failure to meet the above standard may lead to sanctions by the ACHP, including but not limited to, fines, revocation, denial of a license, and the placement of conditions onto an existing license.

Result: Due to your failure to demonstrate good judgment, in violation of MCAR 023-070-140, you are hereby fined \$500.00.

Violation #4: You failed to immediately report an allegation of abuse to Adult Protective Services (APS). Report #1 provides evidence indicating that on July 20, 2011, a resident in your adult care home advised you that Teo Baias had entered her bedroom and touched her bare breasts. The report includes your statement acknowledging that on July 20, 2011, the resident had indeed advised you that Teo Baias had entered her bedroom and touched her bare breasts earlier that day. Additionally, the report indicates that an ACHP staff member discussed this allegation of abuse with you and your spouse on the afternoon of July 20, 2011. ✓

The ACHP finds, by a preponderance of the evidence, that on July 20, 2011, you had reasonable cause to believe that abuse had taken place in your adult care home because you were aware of the allegation of sexual abuse.

The report indicates that the allegation of sexual abuse was not reported to APS until the following day, July 21, 2011, when an ACHP staff member reported the alleged incident to APS directly.

The MCAR require that adult care home Operators with reasonable cause to believe that abuse or exploitation has taken place in an adult care home must immediately make a report to APS.

The ACHP finds, by a preponderance of the evidence, that on July 20, 2011, you failed to immediately report an allegation of sexual abuse to APS. Your failure to immediately report an allegation of sexual abuse to APS is a violation of the following rules:

MCAR 023-120-125: Operators, Resident Managers, caregivers, and any other person identified in ORS 124.050, with reasonable cause to believe that abuse, neglect or exploitation has taken place in an adult care home shall immediately make a report to Adult Protective Services or a local law enforcement agency.

MCAR 023-130-105(b): Operators must immediately notify the local Adult Protective Services Unit (APS), or the local ADS office of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

Result: Due to your failure to immediately report an allegation of sexual abuse to APS, in violation of MCAR 023-120-125, and MCAR 023-130-105(b), you are hereby fined \$1,000.00.

Violation #5: You failed to insure that a subject individual obtained ACHP approval following a background check before allowing that individual to enter your home. Specifically, as noted in violation #1 above, Teo Baias was an occupant residing in your home in July, 2011. However, a review of ACHP records confirms that Teo Baias was not approved, by the ACHP, to be in an adult care home following a background check until August 23, 2011.

The MCAR define a subject individual to include occupants who reside in adult care homes:

MCAR 023-070-415: A subject individual is any person in an adult care home who is 16 years of age or older including: (c) Occupants, excluding residents, residing in or on the premises of the proposed or currently licensed adult care home.

The ACHP finds, by a preponderance of the evidence that you failed to insure that Teo Baias had a current ACHP approved background check prior to allowing him to enter your adult care home in July, 2011. Your failure to insure that Teo Baias had a current ACHP approved background check prior to allowing him to enter your adult care home in July, 2011, is a violation of the following rule:

MCAR 023-070-445: It shall be the responsibility of the Operator to insure that all subject individuals have a current ACHP approved background check prior to entering their home. Operators must keep copies of current ACHP authorizations in the adult care home for all subject individuals who enter the home.

The MCAR require a mandatory minimum fine whenever a subject individual has been allowed into an adult care home without first obtaining approval from the ACHP:

MCAR 023-150-245: The ACHP shall impose a mandatory fine of not less than \$250.00 for the failure to submit a completed Criminal History Release Authorization form to the ACHP before allowing a subject individual as defined in MCAR 023-070-415 to reside, work, or be in the home. The same mandatory fine shall apply for allowing a subject individual to reside, work, or be in the home without prior approval from the ACHP following a criminal history check.

Result: Due to your failure to insure that Teo Baias had a current ACHP approved background check prior to allowing him to enter your adult care home in July, 2011, in violation of MCAR 023-070-445, and pursuant to the provisions of MCAR 023-150-245, you are hereby fined \$250.00.

Violation #6: APS report #BC117790 provides evidence that on August 17, 2011, you retaliated against the resident (RV) who complained about being molested by your brother, Teo Baias. Specifically, the RV reported that on the evening of August 17, 2011, she was summoned to the kitchen table where you, Peter Danciu, Anca Danciu and another unidentified staff member together confronted the RV regarding the events of July 20, 2011. The RV stated that for two hours, from about 21:00 until about 23:00, she was told by the group that she had lied about being molested by Teo Baias. The RV stated that she felt pressured to recant the allegation of abuse, and was told that if she did not recant, that she would not go to heaven. The RV stated that she began to cry when she was told that Teo Baias was not in her bedroom long enough to molest her. The RV stated that she cried for a long time while everyone sat and watched.

As noted in Violation #1, and again here, based on an independent analysis of the evidence, the ACHP finds that the resident's statements are both consistent and credible.

The report includes your statement indicating that for two hours on the evening of August 17, 2011, you, Peter Danciu, Anca Danciu and another unidentified staff member together confronted the RV at the kitchen table and told her that she was confused and had made up a story about being molested.

The report includes statements made by Peter Danciu which indicate that you, Peter, Anca and another unidentified staff member together had talked with the RV about the RV's claim that she had been molested by Teo Baias. Peter stated that the RV was shown the previous APS report (#BC117545) and was told that she had caused a lot of trouble. Peter stated that it was then that the RV broke down and started to cry. Peter stated that finally the RV admitted that it was all a dream. Peter went on to state that he asked the RV if she knew what happens to a liar. Peter then stated that he told the RV that people who make false statements will be out of heaven. Peter stated that he wrote down verses for the RV about what happens to liars who make false statements and those who are sexually immoral. Peter then stated that he told the RV that she did not tell the truth about what happened with Teo.

The report includes statements made by Anca Danciu which indicate that there was a conversation with the RV on August 17, 2011, that went on for about two hours from approximately 21:30 to 23:30. Anca stated that the conversation was about Teo Baias going into RV's room and touching the RV. Anca stated that the RV was asked to tell the truth. Anca stated that Peter made statements to the RV regarding the Bible. Anca stated that she told the RV to please tell the truth. Anca stated that she said this to the RV over and over.

The ACHP finds, by a preponderance of the evidence, that you caused the resident to feel threatened, as evidenced by her statements that she felt pressured and that she cried for a long time, when you summoned her before a group late in the evening and where for the next two hours you allowed the group to confront her and tell her that she had caused a lot of trouble. Further, the ACHP finds that you allowed the group to harass the resident by repeatedly accusing her lying, accusing her of being sexually immoral, and by insisting, through citations to Scripture, that she would not get into heaven. A reasonable person in the resident's position would conclude that she was being punished for making a report of misconduct to the ACHP. Moreover, by permitting your resident to be harassed and berated for making her report, you created an environment in which residents in your home would be hesitant to make future reports of misconduct by you and members of your family. The MCAR prohibit Operators from engaging in such conduct.

The ACHP finds, by a preponderance of the evidence, that you subjected the resident to retaliation when you and your family punished the resident by making her sit at the kitchen table for two hours late in the evening while you interrogated, belittled and berated her.

The MCAR require that licensed Operators protect residents from retaliation. Your failure to ensure that the resident was not subjected to retaliation is a violation of the following rules:

MCAR 023-030-105(j): Each resident of an adult care home in Multnomah County has a right to: (j) Be free to make suggestions or complaints without fear of retaliation.

MCAR 023-130-110(e): The Operator may not retaliate against any resident, after the resident or someone acting on the resident's behalf has filed a complaint, in any manner including but not limited to: (e) Threatening to harass or abuse a resident in any manner.

MCAR 023-130-115: Operators must ensure that any complainant, witness, or employee of an ACH may not be subject to retaliation by any caregiver (including their family and friends who may live in or frequent the adult care home) for making a report, being interviewed about a complaint, or being a witness, including but not limited to restriction of access to the home or a resident or, if an employee, dismissal or harassment.

Result: Due to your failure to ensure that the resident was not subjected to retaliation, in violation of MCAR 023-030-105(j), and, MCAR 023-130-110(e), and, MCAR 023-130-115, you are hereby fined \$1,000.00.

The MCAR provide a specific set of criteria to consider when assessing monetary fines:

MCAR 023-160-210: The ACHP shall consider the following factors in setting the fine amounts for specific rule violations:

(a) The degree of harm caused to residents, if any.

Based on the available evidence, the ACHP finds that the resident experienced considerable harm due to the abuse and subsequent retaliation perpetrated by you and your immediate family. Specifically, the evidence indicates that while being subjected to an interrogation on August 17, 2011, the resident broke down and cried for a long time while you and the members of your immediate family sat and watched. Additionally, the available evidence indicates that the resident was subsequently compelled to move from the place she considered home for the last year and a half.

(b) The immediacy and extent to which the violation threatens or threatened the health, safety or welfare of residents.

Based on the available evidence, the ACHP finds that the violations listed above immediately threatened the health, safety or welfare of the resident. Specifically, the evidence indicates that the resident was alone in her bedroom and without clothing when Teo Baias, a non-caregiver, was observed entering the resident's bedroom. There are few situations where a resident in an adult care home is more immediately vulnerable.

(c) The seriousness, frequency and duration of the rules violation.

Based on the available evidence, that ACHP finds the above violations to be of a very serious nature. Specifically, the resident suffered abuse of a very intimate nature while in your care. Additionally, the evidence indicates that you failed, and possibly continue to fail to recognize the inappropriateness and potential risks involved when allowing a non-caregiver unsupervised access to vulnerable residents in your adult care home.

- (d) Whether all feasible steps or procedures were taken to correct the violation prior to sanction.

Based on the available evidence, with the exception of violation #5, the ACHP finds no evidence that you even acknowledge that the violations described above occurred, let alone taken steps to correct or mitigate the possibility of recurrence.

- (e) Past history of violations of rules or laws, and feasibility and appropriateness of steps taken or procedures necessary to correct any violation.

The ACHP conducted a thorough review of your history of compliance with the MCAR. On November 17, 2009, you were issued a warning notice advising you of seven separate rule violations. The notice included the following warning: "The Operator is responsible for providing supervision sufficient to prevent abuse or mistreatment of a resident." Based on the available evidence, the ACHP finds that you failed to heed this warning.

- (f) The economic and financial conditions of the person incurring the fine.

Based on the available evidence, the ACHP finds nothing to indicate an economic hardship at this time.

Summary: You have received five fines totaling \$3,250.00. Additionally, a condition has been placed on your license. The total of all fines must be paid in full within 30 days from the effective date of this notice.

Enclosed you will find a Conditional License, and a Statement of Condition. You must post the Statement of Condition next to your Conditional License in a prominent place where residents and others can easily see them.

Unless specified otherwise above, you must complete all necessary corrections to bring your home into compliance with the rules listed above within 15 days of the effective date of this notice.

Please note: further violations of the MCAR may result in additional sanctions which could include fines, conditions, a reduction in capacity and/or classification, non-renewal, or revocation of your license.

Effective Date of Sanction: 11/1/2011

Timeline to Correct: 11/16/2011

☒ Via Certified Mail

☐ Hand delivered

Signature of County Staff:

Allen Haw

Date: 11-1-11

OPERATOR'S RIGHTS AND RESPONSIBILITIES

1. Administrative Conference

- a. You have the right to request an administrative conference to discuss this Notice of Administrative Sanction with the ACHP.

- b. Your request for an administrative conference does not extend the effective date of a sanction or time limit for correction of a problem unless you request and the ACHP grants a change in the date the sanction shall be effective.
- c. To request an administrative conference you must call the ACHP, at 503-988-5696, ext. 24106.
- d. **Requesting an administrative conference does not extend the deadline for requesting a hearing** (see 2.a. below).
- e. You have the right to request an exception to certain requirements of the ACHP rules (see MCAR 023-050-100 for more information).

2. Appeals

- a. You also have the right, pursuant to MCAR 023-170-200 *et seq.*, to an independent hearing if you choose to request one. To request a hearing regarding this decision you must send a written request for a hearing within twenty-one (21) days of the date of this notice to Allen Harris c/o ACHP, 421 SW Oak St., Suite 510, Portland, Oregon 97204-1817. The written request shall include the reason(s) for the hearing and the issues to be heard.
- b. If the timely request is not received, the ACHP order shall become a final order. The ACHP files automatically become part of the contested case record upon default.
- c. If a hearing is requested in the specified time, an attorney may represent you if you so choose.

INFORMATION REGARDING SANCTIONS

1. **Level of Sanction.** The ACHP may issue a sanction against an Operator who violates the Multnomah County Administrative Rules. In determining the appropriate level of sanction, the ACHP shall consider the following:
 - a. The degree of harm caused to residents, if any.
 - b. Whether the violation threatens or threatened the health, safety or welfare of residents.
 - c. The seriousness, frequency and duration of the rules violation, and the violator's intent.
 - d. Whether all feasible steps or procedures were taken to correct the violation prior to sanction.
 - e. Past history of violations of rules or laws and corrective actions taken in response to rule violations.
 - f. The economic and financial conditions of the person incurring the penalty.
2. **Fines**
 - a. The ACHP may levy fines of up to \$1,000.00 for each separate violation including multiple violations of the same rule. The ACHP may levy additional fines up to \$250.00 per day, up to \$1,000.00 per violation, for continuing violations until the violation is discontinued.
 - b. If you do not fully correct a violation that has resulted in a fine within the specified timeframe, the fines may be increased. This includes an automatic penalty of up to \$100.00 every 30 days, to a maximum of \$1,000.00, until the fine and penalties are paid in full.
 - c. Unless the fine is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the Operator.
3. **Miscellaneous**
 - a. The ACHP may impose additional sanctions, if applicable, if violations continue or reoccur.
 - b. The operator has the duty to help if any resident relocation is required as a result of this sanction. Please contact the ACHP if you require any assistance.

c. For more information regarding sanctions, please refer to the MCAR listed below:

- Administrative Sanctions - MCAR 023-160-100 *et seq.*
- Conditions - MCAR 023-160-300 *et seq.*
- Suspension - MCAR 023-160-400 *et seq.*
- Revocation/Non-Renewal/Denial - MCAR 023-160-500 *et seq.*

If you do not request a hearing within 21 days from the date of this notice the notice will become a final order and the ACHP will designate its file as the record for purposes of default.



Re: danciu

1 message

RAWPC@aol.com <RAWPC@aol.com>

Thu, Mar 1, 2012 at 7:45 PM

To: patrick.w.henry@multco.us

I think you are now "Mr. Henry". I tried to cut you a break personally on this by the \$250 check and the perfectly good rationale that went along with it. All you had to do is a soft shuffle with your client to sell it. I am afraid you are going to regret sending this email to me in which you threaten action against my client that your client cannot legally take in light of the fact that the notice of administrative sanctions was in appeal status and was the subject of an "on the record" settlement approved by a hearings officer. Such "bullying" threats will not be tolerated and I would suggest that you refrain from making such improper threats in the future. By failing to make it a part of the settlement..on the record and with no mention of a "fine" in a "final" agreement which your people "approved" after a previous draft, you made it 5x hard for me to even get that \$250. You know full well how upset and anguished the entire Danciu family has been over this matter. You should have thanked me. There better be not even a whiff of retaliation by your client against this operator.

Richard A. Weill OSB 82139
TROUTDALE LAW FIRM
102 W. Historic Columbia River Hwy.
Troutdale OR 97060
503 492-8911 Fax 492-8705

In a message dated 3/1/2012 5:38:33 P.M. Pacific Standard Time, patrick.w.henry@multco.us writes:

Richard,

I received your letter today. I don't think you'll be surprised that my clients have rejected your proposal to reopen negotiations. I'll return your client's check in the mail tomorrow.

At this point, your client has admitted liability on sanctions totaling \$1250. If your client does not pay the agreed upon amount, the following will occur:

- At the time of their license renewal, their license will not be renewed unless the fine is paid.
- Every 30 days that the fine goes unpaid, a penalty of \$100 will be assessed.
- Once the maximum penalty of \$1000 is reached, the ACHP will place a lien on the Danciu's home that includes the fine and the penalty.

You'll see the authority for each of these actions in the ACHP rules.

I want to again encourage you to have your client abide by the agreement that they made on February 16. The ACHP's is still willing to accept the agreed upon amount of \$750 as full payment of the assessed fines. If I do not hear from by noon tomorrow, I will forward your letter with a letter of my own to the Hearings Office.

On Sat, Feb 25, 2012 at 10:32 AM, <RAWPC@aol.com> wrote:

pat, I am not going to work on this over the weekend but there are cases on