

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

2020 JAN - 6 A 9:

IN RE: Woodbine Senior Living, LLC )  
 ) CIVIL DIVISION  
 ) Docket No. 6-1-20 WHOV  
 )

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General Thomas J. Donovan, Jr. (“the Attorney General”) and Woodbine Senior Living, LLC (“Respondent” or “Woodbine”), hereby enter into to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**LEGAL FRAMEWORK**

1. Pursuant to 33 V.S.A. § 7103, Vermont long-term care facilities are licensed and regulated as either: (1) “nursing homes”; (2) “residential care homes”; or (3) “assisted living residences.”

2. There are differences between the levels of care that these kinds of facilities are intended and permitted to provide.

*i. Nursing Homes*

3. “Nursing homes” are defined as facilities that are “primarily engaged” in providing residents “skilled nursing care and related services”; “rehabilitation services for the rehabilitation of person who are injured, have a disability, or are sick”; and “on a 24-hour basis, ...health-related care and services to individuals who, because of their mental or physical condition, require care and services which can be made available to them only through institutional care.” 33 V.S.A. § 7102 (7).

4. There are no state regulatory limitations on the kinds of care nursing homes may provide. *See generally State of Vermont Licensing and Operating Rules for Nursing Homes*, December 15, 2001 (“VTNH Rules”).<sup>1</sup>

5. Accordingly, nursing homes are required to maintain certain levels and ratios of nursing and non-nursing staff and a license-specific “quality of care,” among other standards. *Id.* at Rules 7, 11.

***ii. Residential Care Homes***

6. By contrast, “residential care homes” (RCHs) are intended to “provide care to persons unable to live wholly independently but *not in need of the level of care and services provided in a nursing home.*” *See State of Vermont Residential Care Home Licensing Regulations*, October 3, 2000 (“RCH Rules”), at Rule 1.1 (emphasis added).

7. Indeed, Level III RCHs are defined as “places” that “provide[] personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, *but not full-time nursing care.*” 33 V.S.A. § 7102 (10) (emphases added).

8. RCHs are generally prohibited from “accept[ing] or retain[ing] as a resident any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide.” RCH Rule 5.1.a (emphases added).

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<sup>1</sup> The VTNH Rules cited herein governed Vermont nursing homes during the Relevant Period, as defined below. They were amended in June 2018.

9. Further:

- a. “A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital shall not be admitted to or retained as a resident in a residential care home.” RCH Rule 5.1.b;
- b. RCHs are prohibited from providing the following services to residents: “intravenous therapy; ventilators or respirators; daily catheter irrigation; feeding tubes; care of stage III or IV decubitus; suctioning; [and] sterile dressings.” RCH Rule 5.9.b; and,
- c. “[RCH] residents who require more than nursing overview or medication management shall [generally] not be retained in a residential care home” unless “[t]he nursing services required are... provided fewer than [3] times per week; or... [p]rovided for up to [7] days a week for no more than 60 days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or ...provided by a Medicare-certified Hospice Program,” and, in each such case, numerous additional criteria are met. RCH Rule 5.9 (emphases added).

10. RCH rules contemplate that RCHs may be required to “involuntarily discharge” residents,<sup>2</sup> including for the reasons that:

- a. “The resident’s care needs exceed those which the home is licensed or approved through a variance to provide.” RCH Rule 5.3(a)(1)(i);

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<sup>2</sup> VTNH Rules and Assisted Living Residence Rules likewise provide for involuntary discharges under certain circumstances. *See, e.g.*, VTNH Rule 3.14 (“Transfer and Discharge”) and Assisted Living Residence Licensing Regulation 6.5 (“Involuntary Discharge of Residents”).

- b. "The home is unable to meet the resident's assessed needs." RCH Rule 5.3(a)(1)(ii); or
- c. "The discharge or transfer is ordered by a court." RCH Rule 5.3(a)(1)(iv).

11. An RCH may apply to the State of Vermont's Department of Disabilities, Aging and Independent Living ("DAIL") for a "variance" from RCH regulations in order to admit or retain a resident whose care needs exceed the RCH's license limitations. However, whether DAIL grants such a variance is: (1) exclusively within DAIL's discretion; and (2) dependent upon DAIL's determination that the proposed variance meets certain regulatory criteria. RCH Rule 3.1-3.5.

### *iii. Assisted Living Residences*

12. Assisted Living Residences (ALRs) are facilities explicitly intended to provide for "aging in place," defined as the ability for residents "to remain in a residence despite physical or mental decline that might occur with aging or with disability...." *Assisted Living Residence Licensing Regulations*, March 15, 2003 ("ALR Rules"), at Rule 3.1.

13. ALR regulations permit ALRs to accommodate residents with a broad range of care needs, from those able to undertake independent living<sup>3</sup> to those who require nursing home level care. *See* ALR Rule 6.1.

14. Accordingly:

- a. ALRs are not subject to the "Eligibility" requirements set forth in RCH Rules 5.1(a) and 5.1(b), *see* ALR Rule 2.1 ("Exceptions" regarding "Eligibility");
- and

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<sup>3</sup> As reflected in the ALR "Physical Plant" requirement that ALR resident units "shall include... a private bathroom... [and] kitchen capacity." *See* ALR Rule 11.2.

- b. ALRs are not subject to the “Level of Care and Nursing Service” restrictions as set forth in RCH Rules 5.9(a), (b) and (d), *see* ALR Rule 2.4 (“Exceptions” regarding “Level of Care and Nursing Services”); and
- c. In ALRs, “[t]he expectation is that individuals will be permitted to age in place... and not be required to leave an [ALR] involuntarily.” ALR Rule 6.5 (emphasis added).

15. DAIL’s Division of Survey & Certification enforces the aforementioned long-term care regulations.

16. The Vermont Consumer Protection Act (the “CPA”), 9 V.S.A. § 2451, *et seq.*, prohibits unfair and deceptive acts and practices in commerce. 9 V.S.A. § 2453(a).

## **BACKGROUND**

### Woodbine Senior Living LLC Managed Spring Village at Essex

17. Respondent Woodbine is a limited liability company organized under the laws of Maryland with its principal place of business located at 900 Osprey St., Venice, FL 34285.

18. From approximately December 5, 2014, to April 30, 2018, Woodbine served as manager of “Spring Village at Essex,” located at 6 Freeman Woods, Essex, Vermont, 05452 (“SVE”). SVE was licensed by the State of Vermont as a Level III Residential Care Home.

19. As manager of SVE, per written agreement with SVE’s ultimate owner, Woodbine was responsible for hiring and training SVE staff; directing SVE’s marketing efforts; overseeing SVE’s day-to-day operations, including the provision of care to SVE’s residents; and ensuring SVE’s compliance with applicable state laws and regulations.

SVE's Brochure & Website

20. Between April 1, 2016, and October 31, 2017 (the "Relevant Period"), Woodbine developed and approved for publication and circulation a brochure and website (www.springvillageessex.com) marketing SVE.

21. During the Relevant Period, SVE's brochure identified SVE as "an Assisted Living community specializing in caring for people with Alzheimer's, Dementia, and Memory Loss"; that SVE was "for those who need a high level of care"; and that SVE provided for "aging in place, including end of life care."

22. During the Relevant Period, SVE's website also stated that SVE was "for those who need a high level of care" and provided a hyperlink to a downloadable brochure that stated that SVE was a "dedicated memory care facility" whereby "Memory Care Includes... Aging in place, including end of life care."

23. For purposes of this AOD, Respondent admits the truth of all facts set forth in ¶¶ 17-23 of this Background section.

The Attorney General's Investigation

24. Upon investigation, in addition to the facts set forth above in ¶¶ 17-23, the AGO found and alleges that:

- a. During the Relevant Period, SVE admitted 48 residents ("Admitted Residents").<sup>4</sup>
- b. During the Relevant Period, SVE staff made oral representations to Admitted Residents' families that, if those families moved their loved ones to SVE, their

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<sup>4</sup> "Admitted Residents" does not include individuals admitted to SVE for "respite stay" only.

loved ones would be able to “age in place” at SVE; receive “end of life care” there; and therefore never have to move again.

- c. Families of Admitted Residents relied on the written and oral representations described above in ¶¶ 21-22 and ¶ 24(b) in deciding to admit their loved ones to SVE.
- d. On February 22, 2018, SVE issued a notice of discharge to an Admitted Resident in part upon the basis that “[SVE] is unable to meet your needs.”
- e. The company succeeding Woodbine as manager of SVE has issued three notices of discharge to Admitted Residents, to date, on the basis that “the care [these residents] require[d] exceed[ed] [that] which the home is licensed [to provide].”<sup>5</sup>
- f. As a result of the issuance of these discharge notices, as well as the potential that more notices of discharge may be issued to Admitted Residents in the future, families of Admitted Residents experienced and experience uncertainty and anxiety as to whether their loved ones will, in fact, be able to “age in place” and receive “end of life care” at the facility.

25. The Attorney General alleges that the above conduct constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

#### **ASSURANCES AND RELIEF**

26. In lieu of instituting an action or proceeding against Woodbine, the Attorney General and Woodbine are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Agreeing to the

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<sup>5</sup> The AGO does not allege that the notices of discharge referenced in ¶¶ 24(d) & (e) were improperly issued per RCH Rules. Whether and to what extent these notices were issued in conformity said rules is outside the scope of this AOD.

terms of this AOD for the purpose of settlement does not constitute an admission by Woodbine to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

Injunctive Relief

27. Henceforth, neither Respondent nor its shareholders shall conduct business in Vermont either as the owner or operator/manager of a long-term care “facility” as defined in 33 V.S.A. § 7102(2), including through any subsidiaries or affiliates.

Monetary Payments

28. Respondent shall make a monetary payment of \$120,000.00 to be allocated accordingly:

- a. By no later than February 1, 2020, Respondent Woodbine shall cause to be paid \$62,000 to the State of Vermont. Respondent shall make payment by check to the “State of Vermont” and send payment to: Jamie Renner, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
- b. Within 30 days of the later of (a) signing this AOD or (b) Woodbine receiving from the Attorney General’s Office the list of consumers referenced in ¶ 28(b)(i) below, Respondent Woodbine shall cause to be paid \$1,000 in restitution to each of the consumers identified on said list (\$48,000 in total).
  - i. The Attorney General’s Office shall provide Woodbine with a list (via electronic Excel Spreadsheet) of the 48 consumers who served as the Admitted Residents’ respective Responsible Parties (per these Admitted Residents’ SVE Residency Agreements) by first name, last name, and last known address (each in distinctive columns).

- ii. To satisfy its obligations pursuant to ¶ 28(b), Woodbine shall cause the following to occur:
  1. Issue one check for \$1,000 to each consumer identified in the ¶ 28(b)(i) list, paid to the order of each said consumer as named in said list;
  2. Each such check shall have a deposit deadline of 90 days from the date of issuance;
  3. Mail each such check, along with the explanatory letter attached hereto as Exhibit A (and only said letter), to each such consumer's last known address per the ¶ 28(b)(i) list.
- iii. Within 30 days of the later of (a) signing this AOD and (b) Woodbine receiving from the Attorney General's Office the ¶ 28(b)(i) list, Woodbine shall confirm to the Attorney General's Office that it has issued and mailed the payments per ¶ 28(b)(ii).
- iv. As soon as practicable, but no later than 180 days after the later of (a) signing this AOD and (2) Woodbine receiving from the Attorney General's Office the ¶ 28(b)(i) list, Woodbine shall mail or email to the Attorney General's Office:
  1. A single check, payable to "State of Vermont," in the total dollar amount of all outstanding amounts (checks to consumers identified in the ¶ 28(b)(i) list that were uncashed after 90 days of their issuance or returned to Woodbine); and

2. A list (in electronic Excel format) of the consumers identified in the ¶ 28(b)(i) list whose checks were not cashed or were returned to Woodbine, which list shall set out the first and last names of said consumers in distinct fields or columns.
- c. By no later than February 1, 2020, Respondent Woodbine shall cause to be paid \$10,000 on a *cy pres* basis to the Vermont Chapter of the Alzheimer's Association ("AA-VT"). Respondent shall make payment by check to "Alzheimer's Association, Vermont Chapter" and mail payment to: "Grace Gilbert-Davis, Executive Director, Alzheimer's Association - Vermont Chapter, 300 Cornerstone Drive, Suite 130, Williston, VT, 05495." Woodbine and the Attorney General intend for said funds to be utilized by AA-VT for the sole and restricted purpose of its statewide Care and Support Program initiatives for individuals impacted by Alzheimer's Disease and related dementias.

#### OTHER TERMS

29. Respondent Woodbine agrees that this AOD shall be binding on it, and its successors and assigns.

30. The Attorney General for himself and his office and the State of Vermont, for and in consideration of the sum of the payments cited above and other good and valuable consideration, the receipt, sufficiency and adequacy of which it irrevocably acknowledges, to it paid hereby remise, release and forever discharge Woodbine Senior Living, LLC and all of its respective past, present and future shareholders, directors, managers, partners, officers, members, employees, attorneys, representatives, masters, principals, owners, agents,

servants, affiliates, parents, subsidiaries, related companies and persons, insurers and all of their respective administrators, predecessors, heirs, successors and assigns (collectively the “**RELEASED PARTIES**”) from any and all manner of claim and claims, action and actions, cause and causes of action, suits, damages, judgments, executions, liabilities, losses, expenses (including legal fees), and demands whatsoever, in law or in equity, including, but not limited to, past, present and future claims, whether known or unknown, existing or inchoate, which the State of Vermont had, now has, or hereafter may have against the **RELEASED PARTIES** related to the conduct and/or omissions described in the Background section prior to the date of this AOD and the Civil Investigative Demands served on Woodbine.

31. This Release shall not be construed as an admission of liability in any manner whatsoever on the part of the **RELEASED PARTIES**.

32. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to address violations of this AOD.

33. Acceptance of this AOD by the Vermont Attorney General’s Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.

#### **NOTICE**

34. Respondent may be located at:

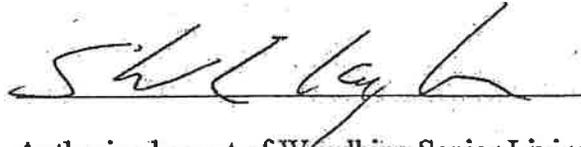
Woodbine Senior Living LLC  
900 Osprey Street  
Venice, FL 34285

35. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

**SIGNATURE**

In lieu of instituting an action or proceeding against Woodbine Senior Living, LLC, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily enters into this Assurance of Discontinuance.

DATED at Burlington, Vermont, this 31 day of December, 2019.



Authorized agent of Woodbine Senior Living, LLC

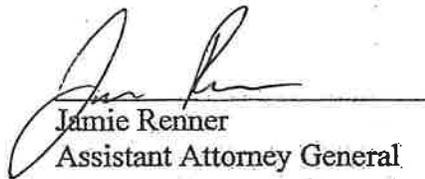
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 31 day of December, 2019.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By:



Jamie Renner  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
jamie.renner@vermont.gov  
(802) 828-5947

Exhibit A

[Miles Stockbridge Letterhead]

[Date]

**Re: Woodbine Senior Living LLC settlement**

Dear Vermont consumer:

This law firm represents Woodbine Senior Living, LLC. You have been identified as a consumer who served as the “Responsible Party” for an individual admitted to Spring Village at Essex in Essex, Vermont (“SVE”), between April 1, 2016, and October 31, 2017 (the “Relevant Period”), for other than a “respite stay.” During the Relevant Period, SVE was managed by Woodbine Senior Living LLC (“Woodbine”). As a result of a settlement with the Vermont Attorney General’s Office, Woodbine is providing the enclosed payment to you.

If you accept this payment, you will waive whatever rights, if any, that you may possess to pursue any and all claims against Woodbine and its agents, owners, and officers relating to the subject of the settlement. You may decline to accept the check by returning or mailing it to the attention of Paul D. Rose, Jr. Esq. of Miles & Stockbridge, P.C., first class postage, within 90 days of the date of this letter, at the following address:

Miles & Stockbridge P.C.  
30 West Patrick Street, Suite 600  
Frederick, MD 21701

For a copy of the settlement agreement between the Vermont Attorney General’s Office and Woodbine, please visit the Vermont Attorney General Office’s website at [www.ago.vermont.gov](http://www.ago.vermont.gov) or call the Vermont Attorney General’s Consumer Assistance Program at 800-649-2424 or 802-656-3183.

Sincerely,

Paul D. Rose, Jr. Esq.  
Legal Counsel for Woodbine  
Senior Living, LLC

Enc.