

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HEALTH  
3 CAPTIOL HILL  
PROVIDENCE, RHODE ISLAND 02908**

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<b>IN THE MATTER OF:</b>	:	
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<b>HARBORSIDE, RHODE ISLAND L.P., d/b/a PAWTUXET VILLAGE CARE AND REHABILITATION CENTER (RI NURSING HOME LICENSE NO. 415022)</b>	:	<b>HEALTH No. 2012-001</b>
	:	
<b>RESPONDENT</b>	:	

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**NOTICE OF INTENT TO REVOKE HEALTH CARE FACILITY  
LICENSE AND NOTICE OF HEARING**

Pursuant to R.I.G.L Chapter 23-17 and §§ 23-17-8 and 23-17-8.1, and 42-35-9 and 42-35-14, the Director of the Department of Health (hereinafter “Department”) hereby issues this Notice of Intent to Revoke License and Notice of Hearing (hereinafter “Notice”) to Harborside Rhode Island LP, d/b/a Pawtuxet Village Care and Rehabilitation Center (hereinafter “Respondent”) requiring Respondent to appear before the Department and to answer and show cause why the Department as the licensing authority for the nursing facility license should not revoke its license or take any other action as circumstances require.

In issuing this Notice, the Department takes cognizance of its jurisdiction under all state laws and regulations pertaining to the licensing of nursing home facilities including the jurisdiction to assure compliance therewith.

## JURISDICTION

1. The Rhode Island Department of Health is a Department of state government established pursuant to the General Laws of the State of Rhode Island and especially Chapter 255 of the Rhode Island General Laws of 1938 and General Laws of Rhode Island 1956, as amended, 2001 re-enactment, Chapter 23-1.
2. Harborside Rhode Island, L.P., d/b/a Pawtuxet Village Care and Rehabilitation Center (“Respondent”) is a for-profit corporation owned and operated by Harborside, Rhode Island L.P. - principle member - SunHealthCare Group, Inc., Albuquerque, NM.
3. Respondent is an entity governed by and subject to the jurisdiction of the Department pursuant to Health Care Facility Licensing Act of Rhode Island, Chapter 23-17 and the Regulations promulgated pursuant thereto, and at all times herein referred to has been a health care facility and nursing home licensed by the Department pursuant to the aforesaid Chapter 23-17.
4. Further, R.I.G.L. Chapter 23-17 authorizes and requires the Department and its Director to provide for and maintain a program of licensure of health care facilities, including nursing care facilities and R.I.G.L. §23-17-8 specifically authorizes the Department as the licensing agency to deny, suspend, or revoke a license if it finds that Respondent has failed to comply with the requirements established under Chapter 23-17.

## FACTUAL BACKGROUND

1. Respondent is licensed as a one hundred and thirty-one (131) bed, Medicare and Medicaid certified nursing facility located at 270 Post Road, Warwick, Rhode Island.
2. The Department for a number of years has licensed respondent as a nursing facility.
3. SunHealthCare Group, Inc., owns respondent, and is a for-profit corporation with its principal place of business in Albuquerque, NM.
4. The Department's Office of Health Care Facilities Regulation is the Centers for Medicare and Medicaid Services ("CMS") designated agent to conduct all regular and Special Focus Facility ("SFF") inspections, complaint investigations, and follow-up surveys.
5. Respondent has a history of lapses into non-compliance with federal and state standards since 2007, with the scope and severity of the non-compliance fluctuating between and escalating from a pattern of potential risk/harm to Actual Harm and Immediate Jeopardy in July 2009, in July 2010, and again in January 2011, including repeat citations for significant quality of clinical care issues, medication errors [i.e., failure to follow physician's order, failure to administer ordered medications; and repeated failure of med-pass reviews with an error rate five percent (5%) or less.], and Quality of Life citations.
6. ***Actual Harm*** is defined in state and federal regulations as *a situation in which a nursing facility's alleged noncompliance with one or more state or federal requirements or conditions may have caused harm that negatively impacts the individual's mental, physical and/or psychosocial status; or shall be defined in accordance with 42 CFR 489 or any subsequent applicable federal regulations.*

7. ***Immediate jeopardy*** is defined as *a situation in which the nursing facility's alleged noncompliance with one or more state or federal requirements or conditions has caused, or is likely to cause serious injury, harm, impairment or death to a resident; or shall be defined in accordance with 42 CFR 489 or any subsequent applicable federal regulations. See R.I.G.L. §23-17-12.5(b)(1).*
8. In addition to enforcement sanctions by CMS, the Department has initiated progressive state enforcement sanctions against the Respondent including Orders in 2009 to contract with a clinical consultant and a Patient Safety Organization (PSO).
9. The Department imposed an additional Order on Respondent in 2010, which included a ban on new admissions; maintaining the contract with the clinical consultant and PSO; and, in addition to contract with an independent Quality Monitor to report to the Department.
10. In October 2010, based on Respondent's response and the Department's follow-up inspection indicating compliance with regulations, the Compliance Order was converted to a Consent Agreement with Respondent which included limiting new admissions to three (3) per day, and continuing the contracts for clinical and quality consultants, as well as the PSO.
11. On November 8, 2010 Respondent was notified of its designation as a Special Focus Facility (SFF) by CMS, which therein authorized federal surveys every six (6) months until full compliance, for a period of up to eighteen (18) months or termination from Medicare/Medicaid. A SFF is a nursing facility that has a history of persistent poor quality of care and, as such, is selected by CMS for more frequent inspections and monitoring to facilitate compliance and continuation in the Medicare/Medicaid certification program or termination from the program.

12. On or about January 30, 2011 the Department conducted a state and federal inspection finding **immediate jeopardy** in the following areas:

a. Medication administration and significant medication errors;

b. Med-pass reviews across shifts in 3 of 4 units – **19.5%**.

As a result, the Department issued a new Immediate Compliance Order against Respondent including banning new admissions and placing Respondent’s nursing facility license on probation.

13. On or about February 10, 2011, Department forwarded its inspection report to Respondent outlining the areas of non-compliance and especially citations indicating immediate jeopardy and substandard quality of care.

14. On or about April 6, 2011 the Department issued a notice for a Show Cause hearing on the revocation of Respondent’s health care license.

15. Respondent submitted a letter of credible allegation for removal of immediate Jeopardy and was subsequently found to be in full compliance with federal and state requirements effective with an on-site inspection dated March 23, 2011.

16. The Department continued discussions and negotiations with the Respondent agreeing to several continuances for the Show Cause hearing.

17. On or about June 17, 2011 the Department and the Respondent, at the request of SunHealthCare Group, Inc. and upon the submission of a Resource and Stabilization Plan (hereafter “PVRSP”), entered into a new Consent Agreement.

18. The new Consent Agreement required SunHealthCare Group, Inc. to abide by the existing compliance requirements and implementation of its PVRSP to stabilize the facility management and staffing, correct existing non-compliance, and establish

16. The Show Cause Hearing was officially cancelled.
17. The Department continued to monitor the Respondent's implementation of its plans of correction as set forth and required under the Consent Agreement.
18. The second unannounced Special Focus Facility (SFF) inspection was conducted and completed on July 29, 2011. The Respondent was in substantial compliance.
19. The Department completed an abbreviated complaint and substandard quality of care monitoring inspection on October 6, 2011. The Respondent was not in substantial compliance. The resulting inspection report included isolated and patterned citations of non-compliance at a scope and severity level of No Actual Harm but Potential for More than Minimal Harm that is not immediate jeopardy.
20. The Respondent was found to be in substantial compliance based on an unannounced follow-up inspection completed on November 10, 2011.
21. The Department completed an unannounced abbreviated monitoring visit on December 14, 2011 and documented no issues of non-compliance.
22. On February 19, 2012, the Department initiated the third unannounced, off-hour, federal SFF and state licensing inspection.
23. On or about February 21, 2012, preliminary information indicated the Respondent was non-compliant in several areas, including, clinical services such as, treatment of pressure ulcers, resident falls and resident weight loss, and failure to maintain resident's range of motion that minimally was of a scope and severity of Actual Harm and substandard quality of care, subsequently triggering an expanded investigation to

- review additional residents potentially related to the identified problem areas, and the Respondent's policies and procedures and systems for review of those problem areas.
24. On February 24, 2012, the inspection team completed an exit interview with the Respondent's management staff and outlined the expected areas of concern in advance of the final inspection report and following that meeting an additional exit interview was provided to residents and staff.
  25. On February 24, 2012, the Department, based on the preliminary investigation information provided by the inspection team, issued an Immediate Compliance Order to the Respondent ordering an immediate ban on admissions of new patient/residents to the facility and a requirement for the Respondent to forward a letter of notice to residents and/or the residents official guardian regarding the situation at the facility, pending further federal and state licensing actions.
  26. On March 9, 2012, the Department issued the completed inspection report and provided that report to the Respondent. The Department, in its capacity as survey agent for CMS, recommended the Respondent be terminated from the Medicare/Medicaid certification program.
  27. Respondent was notified in writing by CMS of certification termination effective April 30, 2012.

### **INVESTIGATIONS AND CONCERNS OF THE DEPARTMENT**

1. Respondent has a history of being out of regulatory compliance with both state and federal regulations and standards of care dating back to 2005.
2. In October 2010 the Centers for Medicare and Medicaid Services (CMS) designated the Respondent as Rhode Island's **Special Focus Facility** (SFF).

3. On or about November 8, 2010 and again at the start of the 1<sup>st</sup> SFF survey on January 24 2011, Respondent was informed of its SFF status.
4. Citations of non-compliance are rated on a CMS Scope and Severity scale (See exhibit 1 attached hereto and incorporated by reference).
5. The survey, completed on January 31, 2011, identified non-compliance at the Immediate Jeopardy level and included substandard quality of care and services. The Respondent submitted a plan of correction and was found to be in substantial compliance on March 23, 2011.
6. On June 17, 2011, following extensive meetings and negotiations with SunHealthCare Group, Inc. officials, Inc., the Department and the Respondent executed a consent agreement outlining the continuance of enforcement conditions previously detailed in the) compliance agreement of 10-8-10 and provisions of the Resource and Stabilization Plan (hereafter "PVRSP").
7. On July 29, 2011, the Department completed the Respondent's 2<sup>nd</sup> SFF federal and state inspection and again determined the facility was in substantial compliance with minor deficiencies that were confirmed to be corrected on September 9, 2011.
8. The Department completed an abbreviated complaint and substandard quality of care monitoring inspection on October 6, 2011. The Respondent was not in substantial compliance. The resulting inspection report included isolated and patterned citations of non-compliance at a scope and severity level of No Actual Harm but Potential for More than Minimal Harm that is not immediate jeopardy. The Respondent's deficiencies were confirmed to be not corrected on November 10, 2011, however, the scope and severity for those deficiencies was reduced to substantial compliance and confirmed to be corrected on December 20, 2011.

9. On February 24, 2012, the Department completed the Respondent's 3<sup>rd</sup> SFF federal and state inspection and determined the facility was not in compliance with the federal and state regulations. In addition to a multitude of citations between the scope and severity of "No Actual Harm with Potential for Minimal Harm" to "No Actual Harm with Potential for More than Minimal Harm that is not Immediate Jeopardy", the SFF investigation identified citations of Actual Harm and substandard quality of care in the areas of:
- a. Widespread neglect (CMS-citation tag F-224);
  - b. Widespread treatment/services to prevent/heal pressure sores (F-314);
  - c. Pattern of dignity and respect of individuality (F-241);
  - d. Pattern of decline in resident adult daily living skills (F-310);
  - e. Pattern of continence treatment (F-315);
  - f. Pattern of failure to prevent a decrease in range of motion (F-318);
  - g. Pattern of treatment/services for mental/psychosocial difficulties (F-319)
10. The following includes all relevant inspections, critical deficiencies, and the deficiencies related to a substandard level of care and Department enforcement from September 9, 2007 through February 24, 2012 (this list does not include all cited deficiencies, however, attached reports do list all deficiencies):
- A. **Annual Survey Findings September 5, 2007 and Respondent's Plan of Correction** (See Exhibit 2 attached hereto and incorporated by reference):
- a. F282 – E – Comprehensive Care Plans
  - b. F332 – D - Medication Administration (**Med/ error on med pass = 7.1%**)
  - c. F333 – E - Significant Medication Errors

- B. Abbreviated/complaint Findings June 3, 2008 and Respondent's Plan of Correction – Actual Harm – **Substandard Quality of Care**** (See Exhibit 3 attached hereto and incorporated by reference):
- a. F314 – H – Pressure Sores
- C. Annual Survey Findings August 8, 2008 and Respondent's Plan of Correction**  
(See Exhibit 4 attached hereto and incorporated by reference):
- a. F281 – E – Comprehensive Care Plans
  - b. F333 - E - Significant Medication Errors
- D. Annual Survey Findings July 27, 2009 and Respondent's Plan of Correction – **Immediate Jeopardy – Substandard Quality of Care identified**** - (See Exhibit 5 attached hereto and incorporated by reference):
- a. F281 – K – Services provided meet Professional Standards
  - b. F309 – H – Care/Services for highest Well-Being
  - c. F314 – H – Pressure Sores
  - d. F333 – K – Significant Medication Errors (>5% error on med pass)
  - e. F353 – K – Sufficient 24-Hr Nursing Staff per Care Plans
  - f. F425 – K – Pharmaceutical Services – Accurate Procedures
  - g. F428 – K – Drug Regimen Review, Act on Irregular Report
  - h. F490 – K – Effective Administration/resident Well-Being
  - i. F501 – K – Responsibilities of Medical Director
  - j. F520 – K – QAA Committee
- E. 8/6/09 State Issued Immediate Compliance Order** (See Exhibit 6 attached hereto and incorporated by reference);
- a. Contract with independent Clinical consultant;

- b. Contract with Patient Safety Organization (PSO) – tracking medication errors
- F. **Abbreviated/complaint Survey Findings April 9, 2010 and Respondent’s Plan of Correction** (See Exhibit 7 attached hereto and incorporated by reference):
- a. F333 – E – Significant Medication Errors
- G. **Annual Survey Findings July 13, 2010 and Respondent’s Plan of Correction – Immediate Jeopardy (widespread) and Substandard Quality of Care** – (See Exhibit 8 attached hereto and incorporated by reference):
- a. F224 – L Prohibit Mistreatment/neglect
  - b. F281 – H Services provided meet Professional Standards
  - c. F311 – H Treatment/services to Improve/maintain Adult Daily Living Skills
  - d. F332 – L - Medication Administration (**Med/ error on med pass = 24.59%**)
  - e. F353 – L – Sufficient 24-Hr Nursing Staff Per Care Plans
  - f. F387 – H – Frequency & Timeliness of Physician Visit
  - g. F490 – L – Effective Administration/resident Well-Being
  - h. F501 – K – Responsibilities of Medical Director
  - i. F520 – K – QAA Committee
- H. **7/13/10 State Issued Immediate Compliance Order** (See Exhibit 9 attached hereto and incorporated by reference)
- a. State ban on new admissions;
  - b. Continue contracts with Clinical Consultant & PSO;
  - c. Contract with independent Quality Monitor to report to Department

- I. **9/3/10 Respondent and Department Executed a Consent Agreement:** (See Exhibit 10 attached hereto and incorporated by reference); To remove Immediate Compliance order Respondent agrees to:
- a. Continue consultant, PSO, and Quality Monitor;
  - b. Limit admissions to 3 persons/patients per day;
  - c. Meet regularly with Department
- J. **11/8/10 – Respondent selected and officially notified they are CMS-Special Focus Facility** (See Exhibit 11 attached hereto and incorporated by reference).
- K. **1<sup>st</sup> Special Focus Facility Survey Findings January 31, 2011 and Respondent’s Plan of Correction - Immediate Jeopardy Identified – Substandard Quality of Care** (See Exhibit 12 attached hereto and incorporated by reference):
- a. F224 – L Prohibit Mistreatment/neglect
  - b. F323 – G Free of Accident Hazards/Supervision/Devices
  - c. F329 – L Drug Regimen is Free from Unnecessary Drugs
  - d. F332 – L - Medication Administration (**Med/ error on med pass = 19.5%**)
  - e. F333 – L Residents Free of Significant Med Errors
  - f. F353 – L – Sufficient 24-Hr Nursing Staff Per Care Plans
  - g. F428 – K – Drug Regimen Review, Report Irregular, Act on
  - h. F490 – L – Effective Administration/resident Well-Being
  - i. F501 – K – Responsibilities of Medical Director
  - j. F520 – K – QAA Committee

- L. **February 4, 2011, the Department issued an Immediate Compliance order** (See Exhibit 13 attached hereto and incorporated by reference). The order required an immediate ban on new admissions and the facility license was placed on probation.
- M. On or about February 18, 2011, the Respondent was notified of the Departments intent to revoke the facility license and a Show Cause hearing was scheduled for April 6, 2011.
- N. After several continuances of the Show Cause hearing, the hearing was cancelled and the Department and Respondent executed a consent agreement outlining the continuance of enforcement conditions previously detailed in the) compliance agreement of 10-8-10 and provisions of the Resource and Stabilization Plan (See Exhibit 14a attached hereto and incorporated by reference).
- O. **2<sup>nd</sup> Special Focus Facility Survey Findings July 11, 2011 and Respondent's Plan of Correction** (See Exhibit 14 attached hereto and incorporated by reference). Respondent in substantial compliance with federal regulations and one state physical environmental citation.
- M. **Abbreviated/complaint Survey Findings October 6, 2011 and Respondent's Plan of Correction** (See Exhibit 15 attached hereto and incorporated by reference). Respondent not in substantial compliance. Citations in the Scope & Severity of Potential for More than minimal harm that is not immediate jeopardy.
- N. **Follow-up Survey Findings November 10, 2011 and Respondent's Plan of Correction** (See Exhibit 16 attached hereto and incorporated by reference). Respondent in substantial compliance.

P. **3<sup>rd</sup> Special Focus Facility Survey Findings February 24, 2012 - Immediate**

**Jeopardy Identified – Substandard Quality of Care** (See Exhibit 17 attached

hereto and incorporated by reference)

- a. F224 – I Prohibit Mistreatment/neglect
- b. F241 – H Dignity and Respect of Individual
- c. F281 – H Services provided meet Professional Standards
- d. F282 – H Services by Qualified Persons/per Care Plan
- e. G309 – G Provide Care/services for Highest Well Being
- f. F310 – H Adult Daily Living Skills Do Not Decline unless Unavoidable
- g. F314 – I Treatment/svcs To Prevent/heal Pressure Sores
- h. F315 – H No Catheter, Prevent UTI, Restore Bladder
- i. F318 – H Increase/prevent Decrease in Range of Motion
- j. F319 – H Tx/svc For Mental/psychosocial Difficulties
- k. F353 – I – Sufficient 24-Hr Nursing Staff Per Care Plans
- l. F490 – I – Effective Administration/resident Well-Being
- m. F501 – I – Responsibilities of Medical Director
- n. F520 – H – QAA Committee

11. The Department's Facility Administrator History (See Exhibit 18 attached hereto and incorporated by reference). Respondent's has had ten-10 Administrators of record between April 26, 2007 and December 22, 2011 for an average of less than five months per Administrator.

**INTENT TO REVOKE RESPONDENT'S HEALTH CARE FACILITY LICENSE**

1. Due to the Respondent's history of non-compliance aforesaid and immediate jeopardy and actual harm aforesaid the Department believes that Respondent's failure to sustain compliance and permanently correct deficiencies pose a serious threat to the health, safety and welfare of the residents. Therefore the Department is seeking to revoke Respondent's healthcare nursing facility license due to the failure to comply with the requirements established under R.I. G. L Chapter 23-17 and the Regulations promulgated pursuant thereto. The basis of the revocation is pursuant to RIGL § 23-17-8 and Regulation §9.0 [R23-17-NF].
2. Pursuant to RIGL §§23-17-8, 42-35-9, 42-35-14 and the Rules and Regulation of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health [R42-35-PP], Respondent is hereby given notice to appear before a Hearing Officer on **March 23, 2012 at 2:00 p.m. in Conference Room B, 2<sup>nd</sup> Floor, Department of Administration, One Capitol Hill, Providence, RI 02908 for a Hearing** to show cause why the Department should not revoke the Respondent's license or take other appropriate action as the circumstances require.
3. The Department hereby appoints Catherine Warren as Hearing Officer for the purpose of conducting hearings and carrying out the responsibilities assigned to a hearing officer pursuant to Section 1.2 of R42-35-PP. The proceedings shall be conducted in conformity with RIGL §§42-35-1 et seq.

Dated this 13th day of March, 2012



Michael Fine, MD, Director  
Department of Health

CERTIFICATION

I hereby certify that on this 13 day of March, 2012 a copy of this Notice of Intent to Revoke Health Care Facility License and Notice of Hearing was hand-delivered to Gerald R. Goulet, Esquire, Hinckley Allen Snyder, LLP, 50 Kennedy Plaza, Suite 1500, Providence, RI 02903 and Susan Laninfa, Administrator, Pawtuxet Village and Rehabilitation Center, 270 Post Road, Warwick, RI 02888.

