

TAGLaw International Lawyers

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February 18, 2022

VIA E-MAIL: DHAMail@wisconsin.gov

Division of Hearings and Appeals
P.O. Box 7875
Madison, WI 53707-7875

Re: ProHealth Care Regency Senior Community New Berlin – Notice of Appeal

Dear Sir/Madam:

Attached for filing please find a Notice of Appeal regarding ProHealth Care Regency Senior Community New Berlin and the Declaration of Elizabeth Brzeski addressing the timeliness of this appeal.

Thank you for your attention to this matter.

Very truly yours,

von BRIESEN & ROPER, s.c.



Stacy C. Gerber Ward

SGW:tmb

Enclosures

cc: Elizabeth Brzeski
Ralph Topinka

37686575_1.DOCX

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

IN THE MATTER OF _____ :

PROHEALTH CARE REGENCY
SENIOR COMMUNITY NEW BERLIN : DHA Case No. _____

NOTICE OF APPEAL

Notice is hereby given that ProHealth Care Regency Senior Community New Berlin, located at 13750 W. National Ave., New Berlin, Wisconsin, by its attorneys, von Briesen & Roper, s.c., hereby appeals the Notice of Violation related to Statements of Deficiency for Event No. KY9P11 dated February 1, 2022. The Notice of Violation and Statement of Deficiency are attached. ProHealth Care Regency Senior Community New Berlin respectfully requests a hearing in this matter. The basis for the appeal is that the deficiencies were incorrectly cited. ProHealth Care Regency Senior Community New Berlin further submits that this appeal is timely filed and submits the Declaration of Elizabeth Brzeski in support of the timeliness of this appeal.

Dated this 18th day of February, 2022.

By: s/ Stacy C. Gerber Ward
Stacy C. Gerber Ward
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Wisconsin Department of Health Services

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 0010354	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 11/08/2021
NAME OF PROVIDER OR SUPPLIER PRO HEALTH CARE REGENCY SENIOR COM NEW BE		STREET ADDRESS, CITY, STATE, ZIP CODE 13750 WEST NATIONAL AVENUE NEW BERLIN, WI 53151		
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U 000	INITIAL COMMENTS On 11/08/2021, Surveyor conducted a complaint investigation at Pro Health Care Regency Senior Community New Berlin. Two deficiencies were identified. The complaint was substantiated. Census: 37	U 000		
U 169	89.26(3)(c)1. PARTICIPATION IN THE ASSESSMENT A comprehensive assessment shall be performed or arranged for by: 1. The residential care apartment complex for tenants whose bills are paid for from private resources or by third party payers. This Rule is not met as evidenced by: Based on record review and interviews the provider did not complete a comprehensive assessment prior to readmission to the provider with the active participation of the tenant and the tenants legal representative. Tenant 1 required a rehabilitative stay for 2 weeks following a fall at the RCAC. The provider did not conduct an assessment with the active participation of the tenant and the tenants legal representative. Findings include: On 11/08/2021, the department conducted a complaint investigation related to Tenant 1 being served a discharge notice from the RCAC. The complaint alleged Regency Senior Community	U 169		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Wisconsin Department of Health Services

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U 169	<p>Continued From page 1</p> <p>was discharging the tenant from the community as they felt the tenants needs could not be met as the tenant now required over 28 hours of the nursing services.</p> <p>Surveyor reviewed Tenant 1's record. Tenant 1's diagnoses included dementia. The record also noted Tenant 1's power of attorney was activated.</p> <p>According to the nursing progress notes, Tenant 1 sustained a fall on 09/12/2021. Tenant 1 was alert and oriented to self. Was incontinent and refusing to be changed. The note documented the CNA did convince Tenant 1 to be cleaned up. Tenant 1 was noted to be weak and required 2 staff assistance to transfer. Tenant 1 was taken to the hospital for evaluation. Tenant 1 returned the same day.</p> <p>10/03/2021- Notes indicated staff talked to Tenant 1's family member about a change in condition that the tenant was having. Tenant 1 went from 1 assist to 2 assistance with transfers. Increased incontinence noted. The notes indicated that administration would follow up with Tenant 1's family.</p> <p>10/11/2021- 7:00 AM- Tenant 1 was found on the floor by first shift and sent out for increased pain. The note stated Tenant 1 had a fracture.</p> <p>On 11/08/2021, at 8:25 AM, Surveyor interviewed Administrator A regarding Tenant 1's change of condition as documented in the progress notes 10/03/2021. Administrator A stated they did set up a meeting with Tenant 1's Responsible Party B for 10/12/2021 to discuss Tenant 1's increased needs. Administrator A stated the meeting was canceled as Tenant 1 was at the hospital due to the fall on 10/11/2021.</p>	U 169		

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U 169	<p>Continued From page 2</p> <p>Administrator A stated that on 10/27/2021, LPN C went to the rehabilitation facility to assess Tenant 1 for readmission to the provider. LPN C informed Administrator A that Tenant 1 would exceed 28 hours per week of nursing services. Administrator A stated at that time, they did give verbal notice to Responsible Party B that Tenant 1 exceeded 28 hours per week.</p> <p>On 11/02/2021, a written notice was provided to Tenant 1's legal representative which stated "Generally a 30 day advanced notice of termination of the resident's contract is required. However no notice is required in the event of an emergency, meaning an immediate documented threat to the health and safety of the resident or others. [Tenant 1] requires total lift support and two persons transfers. [S/he] is incontinent and unable to verbalize those needs. Dementia related care needs cannot be safely met under the Regency assisted living licensure. Nursing staff have concern that a return to Regency does pose an immediate threat to [his/her] health and safety." The notice stated Tenant 1 could return if s/he had 24 hour per day care, and a service agreement and risk agreement in place signed by Responsible Party B.</p> <p>On 11/08/2021, at 10:01 AM, Surveyor interviewed Director of Health Services D. Surveyor asked how Tenant 1 was assessed at the rehabilitation facility. Director of Health Services D stated LPN C went to the rehabilitation facility to assess and informed Administrator A that Tenant 1's needs exceeded 28 hours per week of services.</p> <p>On 11/08/2021 at approximately 10:15 AM, Surveyor interviewed LPN C. LPN C stated the</p>	U 169		

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U 169	<p>Continued From page 3</p> <p>rehabilitation facility contacted LPN C to state Tenant 1 was ready for discharge to return to the Regency community. LPN C then went to the facility to conduct an assessment. LPN C stated the only information provided to Regency was the progress notes from therapy which indicated [Tenant 1] was not receiving therapy. LPN C stated no other information was provided by the rehabilitation facility but that LPN C requested the discharge summary and did not receive this from the rehabilitation facility.</p> <p>LPN C stated s/he arrived at the rehabilitation facility on 10/27/2021. Due to the facility being on Covid 19 lockdown, LPN C observed Tenant 1 behind a glass window, seated in a wheelchair. LPN C stated Tenant 1 did not recognize LPN C. Surveyor asked if LPN C was wearing a mask, LPN C stated yes but that s/he wears a mask at Regency. LPN C stated s/he asked the 2 CNA's about mobility. Both CNA's stated Tenant 1 required assist of 2 staff for transfers. LPN C asked about Tenant 1's continence status. Both CNA's stated Tenant 1 was incontinent. LPN C stated s/he then documented this on the assessment form completed by LPN C and LPN C left the rehabilitation facility. When LPN C returned to Regency, LPN C informed Administrator A that Tenant 1's needs exceeded 28 hours of nursing.</p> <p>Surveyor asked LPN C about the other areas on the assessment. LPN C knew about those areas identified on the assessment from the prior fall on 10/12/2021 so did not need to interview anyone else. Surveyor asked if LPN C talked to any other staff at the rehabilitation facility. LPN C stated they would not return calls. Surveyor asked if the record was reviewed at the rehabilitation facility. LPN C stated no. Surveyor</p>	U 169		

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U 169	<p>Continued From page 4</p> <p>asked how the decision was made to not permit Tenant 1 to return, LPN C stated both LPN C and Administrator A made the decision not to admit/readmit Tenant 1 based on the CNA's comment about Tenant 1's ability to transfer and incontinence. LPN C stated Tenant 1 was declining prior to the 10/11/2021 fall and they planned to talk to the family at that time.</p> <p>Surveyor asked if the responsible party for Tenant 1 was notified of the assessment and provided any information related to the assessment. LPN C stated they felt the denial for admission/readmission was in Tenant 1's best interest due to needs changing. LPN C stated after the assessment, the responsible party was called by phone and told Tenant 1 required a higher level of care, possibly a CBRF or memory care facility.</p> <p>Surveyor reviewed the assessment completed by LPN C dated 10/27/2021. The form noted: "No Admission/Readmission recommended" - "Reason for not recommending admission:" was not completed.</p> <p>On 11/08/2021, at 11:01 AM, Surveyor interviewed Responsible Party B regarding the assessment and notification. Responsible Party B stated s/he was not told about any purpose for the 10/12/2021 meeting and had no idea about Tenant 1's needs changing. Responsible Party B stated the rehabilitation facility was ready to discharge Tenant 1 on 10/28/2021 but that they had to pay privately to keep Tenant 1 at that provider since they were not given any notice of discharge from Pro Health Care Regency New Berlin.</p> <p>Cross Reference</p>	U 169			

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U 169	Continued From page 5 NO232 DHS 89.29(3)(a)5. Admission and Retention of Tenants	U 169		
U 232	89.29(3)(a)5. ADMISSION & RETENTION OF TENANTS (3) TERMINATION OF CONTRACT. (a) Reasons. A residential care apartment complex may terminate its contract with a tenant when any of the following conditions apply: 5. The tenant's behavior or condition poses an immediate threat to the health or safety of self or others. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to constitute a threat to self or others. This Rule is not met as evidenced by: Based on record review and staff interview, the provider discharged Tenant 1 emergently stating Tenant 1's condition posed an immediate threat to self without providing documented evidence of this threat or significant change in condition. Prior to Tenant 1's hospitalization on 10/11/2021, the provider was aware and able to meet the needs of Tenant 1's change in care needs to include a fall risk, increased incontinence and the need for assistance from 2 caregivers for safe transfers. Prior to 10/11/2021, Tenant 1's power of attorney for health care had been activated. On 10/27/2021, LPN C went to the rehabilitation facility and assessed Tenant 1's needs to include 2 assist for transfers and incontinence cares. LPN C informed Surveyor that Tenant 1's needs	U 232		

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U 232	<p>Continued From page 6</p> <p>for assistance with transfers and incontinence care, as well as other needs remained the same prior to the fall on 10/11/2021.</p> <p>On 11/02/2021, the provider issued a notice of termination to Tenant 1's legal representative indicating a 30 day advanced notice of termination was not required due to an immediate documented threat to the health and safety of the tenant or others. The immediate threat was noted to be that Tenant 1 required total lift support and two persons for transfers, incontinence cares and was unable to verbalize those needs. The care needs the provider used as evidence of an emergency termination were the same care needs Tenant 1 required prior to a temporary transfer for rehabilitation.</p> <p>Findings include:</p> <p>On 11/08/2021, the Department conducted a complaint investigation related to Tenant 1 being served a discharge notice from the RCAC. The complaint alleged Regency Senior Community was discharging the tenant from the community as they felt the tenant's needs could not be met as the tenant now required over 28 hours of the nursing services.</p> <p>Surveyor reviewed Tenant 1's record. Tenant 1 had previously resided in the independent apartments and was transferred to the RCAC on 02/28/2020. Tenant 1's diagnoses included dementia. According to the most recent service plan, dated 07/03/2021, Tenant 1 required blood pressure checks one time per week. Assistance with walking 3 times per day. Staff assistance with putting in and removing hearing aid once per day. Assistance with applying Ted hose in the morning and evening. Medication administration</p>	U 232			

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U 232	<p>Continued From page 7</p> <p>in the morning. Assistance making bed one time per day. Laundry service one time per week. Trash removal daily. Meals three times per day. Two hour checks 4 times per day and a shower one time per week.</p> <p>According to the nursing progress notes: 09/12/2021-Tenant 1 sustained a fall. Tenant 1 was alert and oriented to self. Was incontinent and refused to be changed. The note documented the CNA did convince Tenant 1 to be cleaned up. Tenant 1 was noted to be weak and required 2 staff assistance to transfer. Tenant 1 was taken to the hospital for evaluation and returned with a recommendation to follow up with a physician as Tenant 1 recently had a pacemaker change.</p> <p>10/03/2021- Staff talked to Tenant 1's family member about a change in condition that the tenant was having. Tenant 1 went from 1 person assist to 2 person assistance with transfers. Increased incontinence noted. The note further indicated that administration would follow up with the family. A review of the individual service plan noted no changes to the plan were made. The risk agreement, dated 2/28/2020, was not updated and did note Tenant 1 was unsteady while ambulating and was a fall risk.</p> <p>10/11/2021- 7:00 AM- Tenant 1 was found on the floor by first shift and sent out for increased pain. The note stated Tenant 1 had a fracture. Tenant 1 was hospitalized on 10/11/2021 related to the injury.</p> <p>On 11/08/2021, at 8:25 AM, Surveyor interviewed Administrator A regarding Tenant 1's change of condition as documented in the progress notes 10/03/2021. Administrator A stated they did set</p>	U 232		

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U 232	<p>Continued From page 8</p> <p>up a meeting with Responsible Party B for 10/12/2021 to discuss Tenant 1's increased needs. Administrator A stated the meeting was canceled as Tenant 1 was at the hospital due to the fall on 10/11/2021.</p> <p>Administrator A stated that on 10/27/2021, LPN C went to the rehabilitation facility to assess Tenant 1 for readmission to the provider. LPN C informed Administrator A that Tenant 1 would exceed 28 hours per week of nursing services. Administrator A stated at that time, they did give verbal notice to Responsible Party B that Tenant 1's care needs exceeded 28 hours per week.</p> <p>On 11/02/2021, a written notice was provided to Tenant 1's legal representative which stated "Generally a 30 day advanced notice of termination of the resident's contract is required. However no notice is required in the event of an emergency, meaning an immediate documented threat to the health and safety of the resident or others. [Tenant 1] requires total lift support and two persons for transfers. [S/he] is incontinent and unable to verbalize those needs. Dementia related care needs cannot be safely met under the Regency assisted living licensure. Nursing staff have concern that a return to Regency does pose an immediate threat to [his/her] health and safety." The notice stated Tenant 1 could return if s/he had 24 hour per day care from an outside provider contracted, and a service agreement and risk agreement in place signed by Responsible Party B.</p> <p>On 11/08/2021, at 10:01 AM, Surveyor interviewed Director of Health Services D. Surveyor asked how Tenant 1 was assessed at the rehabilitation facility. Director of Health Services D stated LPN C went to the</p>	U 232			

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U 232	<p>Continued From page 9</p> <p>rehabilitation facility to assess and informed Administrator A that Tenant 1's needs exceeded 28 hours per week of services.</p> <p>Surveyor asked Director of Health Services D if an RN was involved in the assessment. Director of Health Services D stated a RN was covering the facility at the time of the assessment as Director of Health Services D began employment at the provider on 11/01/2021.</p> <p>On 11/08/2021 at approximately 10:15 AM, Surveyor interviewed LPN C who stated the rehabilitation facility notified them that Tenant 1 was ready for discharge back to the Regency community. LPN C then went to the rehabilitation facility to conduct an assessment. LPN C stated the only information provided to Regency was the progress notes from therapy which indicated [Tenant 1] was not receiving therapy. LPN C stated no other information was provided by the rehabilitation facility but that LPN C requested the discharge summary and did not receive this from the rehabilitation facility.</p> <p>LPN C stated s/he arrived at the rehabilitation facility on 10/27/2021. Due to the facility being on Covid 19 lockdown, LPN C observed Tenant 1 behind a glass window seated in their wheelchair. LPN C stated Tenant 1 did not recognize them. Surveyor asked if LPN C was wearing a mask, LPN C stated yes but that s/he wears a mask at Regency too. LPN C stated s/he asked the 2 CNA's about mobility. Both CNA's stated Tenant 1 required assist of 2 staff for transfers. LPN C asked about Tenant 1's continence status. Both CNA's stated Tenant 1 was incontinent. LPN C stated s/he then documented this on the assessment form completed by LPN C and LPN C left the rehabilitation facility. When LPN C</p>	U 232			

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U 232	<p>Continued From page 10</p> <p>returned to Regency, LPN C informed Administrator A that Tenant 1's needs exceeded 28 hours of nursing. Surveyor asked about the other areas on the assessment. LPN C knew about those areas identified on the assessment from the prior fall on 10/11/2021. Surveyor asked if LPN C talked to any other staff at the rehabilitation facility. LPN C stated they would not return calls. Surveyor asked if the record was reviewed at the rehabilitation facility. LPN C stated no. Surveyor asked how the decision was made to not permit Tenant 1 to return, LPN C stated both LPN C and Administrator A made the decision not to admit/readmit Tenant 1 based on the CNA's comment about Tenant 1's ability to transfer and incontinence. LPN C stated Tenant 1 was declining prior to the 10/11/2021 fall and they planned to talk to the family at that time.</p> <p>Surveyor asked if the responsible party for Tenant 1 was notified of the assessment and provided any information related to the assessment. LPN C stated they felt the denial for admission/readmission was in Tenant 1's best interest due to needs changing.</p> <p>Surveyor reviewed the assessment completed by LPN C dated 10/27/2021. The form noted: "No Admission/Readmission recommended - Reason for not recommending admission:" was not completed. Other areas on the assessment were documented as the same as prior to 10/11/2021. LPN C informed Surveyor that [Responsible Party B] was then called and told Tenant 1 required a higher level of care, possibly a CBRF or a memory care facility.</p> <p>On 11/08/2021, at 11:01 AM, Surveyor interviewed Responsible Party B regarding the assessment and notification. Responsible Party</p>	U 232		

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U 232	<p>Continued From page 11</p> <p>B stated s/he was not told about the purpose for the 10/12/2021 meeting and had no idea that Tenant 1's needs changed. Responsible Party B stated since the rehabilitation facility was ready to discharge Tenant 1 on 10/28/2021 and the RCAC would not take Tenant 1 back they had to pay privately to keep Tenant 1 at rehabilitation facility. They were not given any notice of the impending discharge from the RCAC. Responsible Party B stated Administrator A informed them that if services were arranged for 24/7 contracted care, Tenant 1 could return.</p> <p>On 11/08/2021, at 11:30 AM, Surveyor interviewed Administrator A regarding the assessment process, verbal notice then written notice. Administrator A stated the rehabilitation facility did initially notify Tenant 1's responsible party that Tenant 1 could not return. LPN C then called [Responsible Party B]. Administrator A stated they wanted to ensure they followed DHS 89 codes on the discharge and sent the written notice on 11/02/2021. As of 11/08/2021, Tenant 1 did not return to Pro Health Regency Senior Community New Berlin. Tenant 1 remained at the rehabilitation facility with Responsible Party B awaiting admission to a different facility.</p> <p>Cross Reference NO169 DHS 89.26(3)(c)1. Participate in the Assessment</p>	U 232		

Tony Evers
Governor



Karen E. Timberlake
Secretary

**State of Wisconsin
Department of Health Services**

DIVISION OF QUALITY ASSURANCE

BUREAU OF ASSISTED LIVING
MADISON/SOUTHERN REGIONAL OFFICE
PO BOX 7940
MADISON WI 53707-7940

Telephone: 608-264-9888
Fax: 608-264-9889
TTY: 711 or 800-947-3529

February 1, 2022

ELECTRONIC MAIL
SOD # KY9P11

NOTICE and ORDER

NOTICE OF VIOLATION

ORDER TO COMPLY WITH REQUIREMENTS

NOTICE OF IMPOSED FORFEITURE

NOTICE OF RIGHT TO APPEAL

Cherie Carty
13750 W National Ave
New Berlin, WI 53130

Re: Pro Health Care Regency Senior Community New Berlin (0010354)
13750 W National Ave
New Berlin, WI 53151

Dear Cherie Carty:

This letter is a statutory NOTICE of VIOLATION and imposed ORDER on the licensee of Pro Health Care Regency Senior Community New Berlin, located at 13750, W National Ave, New Berlin, WI 53151, and sets forth appeal rights, if any. This regulatory action is taken by the Department of Health Services (Department) pursuant to Wis. Stat. § 50.034, and Wis. Admin. Code ch. DHS 89.

NOTICE OF VIOLATION

On November 8, 2021, a complaint investigation was concluded for Pro Health Care Regency Senior Community New Berlin by the Division of Quality Assurance, Bureau of Assisted Living, to determine if the above-referenced facility was in substantial compliance with Wis. Stat. ch. 50 or Wis. Admin. Code ch. DHS 89, or both, which set forth requirements for the administration and operation of a residential care apartment complex (RCAC). The Department is issuing Statement of Deficiency (SOD) #KY9P11 for violations of Wis. Stat. ch. 50 or Wis. Admin. Code ch. DHS 89, which establish the grounds for this action. SOD #KY9P11 is enclosed.

ORDER TO COMPLY WITH REQUIREMENTS

1. Pursuant to Wis. Admin. Code § DHS 89.56(3)(a), effective immediately, the operator shall comply with the requirements specified by Wis. Admin. Code ch. DHS 89 that establishes the standards for the operation of the Residential Care Apartment Complex in order to protect and promote the health, safety and welfare of the tenants.

AS SOON AS PRACTICABLE AND WITHOUT DELAY, within 45 days of receipt of this notice, the operator shall achieve and maintain substantial compliance with all requirements. All operational and tenant records required as evidence of compliance with applicable rules will be available to department representatives upon request.

*According to Wis. Admin. Code § DHS 89.56(2), you are ordered to submit a Plan of Correction via an attestation of compliance. In satisfaction of this requirement: Insert the name of the facility in the space provided on the Attestation of Correction form F-02172. Within **ten (10)** days of receipt of this NOTICE and ORDER, return the completed Attestation of Correction F-02172 to the Bureau of Assisted Living Southern Regional Office at PO Box 7940, Madison, WI 53707-7940.*

The Department may, without notice, conduct an inspection to verify the operator's corrective action at any time after the date of compliance. Pursuant to Wis. Stat. § 50.034(10), the department may impose a \$200 inspection fee for an on-site inspection to review compliance of violations resulting in enforcement action.

ADDITIONALLY:

WITHIN 10 DAYS of receipt of this notice, the operator may request an extension for the date of compliance. The request for an extension must be submitted to the Assisted Living Regional Director, Southern Regional Office, at DHSDQABALSRO@dhs.wisconsin.gov. The Regional Director will communicate to the operator a decision on the date of compliance extension.

NOTICE OF FORFEITURE*

According to Wis. Stat. § 50.034(2)(e), and Wis. Admin. Code § DHS 89.56(4), the Department of Health Services may impose a forfeiture for violations of the applicable statutory provisions or administrative rules governing RCACs. If imposed, the forfeiture amount may not be less than \$10 or more than \$1,000 per day for each violation.

The Department has determined there are violations of state statutes or administrative code provisions, or both, as identified in the enclosed SOD #KY9P11. Therefore, pursuant to Wis. Stat. § 50.034(2)(e), and Wis. Admin. Code § DHS 89.56(4), **IT IS HEREBY ORDERED** that a total **FORFEITURE OF \$1500.00 IS IMPOSED** for the following violations described in

* According to Art. X, §2 of the Wisconsin Constitution and Wis. Stat. § 50.034(8)(d), all forfeitures collected by the Department are deposited in the State's School Fund.

SOD #KY9P11. Some of the forfeitures may accrue daily until compliance is achieved and verified for that cited violation.

TAG	DHS CODE	AMOUNT(\$)
U169	89.26(3)(c)1	300.00
U232	89.29(3)(a)5	1200.00

Total Forfeiture Due: \$1500.00

You must pay the Total Forfeiture amount within ten (10) days of receipt of this NOTICE and ORDER.

REDUCED FORFEITURE OPTION

If you choose not to appeal the forfeiture, any of the violations in SOD #KY9P11, **AND** any Orders contained in this NOTICE and ORDER, then the Department will reduce the total forfeiture due by 35%.

This 35% reduced forfeiture option also applies to any accruing forfeiture. Final calculation of any accruing forfeiture due will be based on a verified date of compliance.

At this time, the reduced forfeiture amount due to the Department within ten (10) days of receipt of this NOTICE and ORDER is \$975.00.

Please make the forfeiture payment payable to “DHS 639” and send it to:

ENFORCEMENT SPECIALIST
DHS / DQA / BAL
PO BOX 2969
MADISON, WI 53701-2969

NOTICE OF RIGHT TO APPEAL

According to Wis. Stat. § 50.034(8)(c) and Wis. Admin. Code § DHS 89.59, you may request an administrative hearing of the Department’s action. To notify the Department of your request for a hearing, your written request **must be filed with the Division of Hearings and Appeals (DHA) within ten (10) days after receipt of this NOTICE**. Please note, according to Wis. Admin. Code § DHS 89.59(2), an appeal is filed on the date that it is received by the Division of Hearings and Appeals. Send your request for a hearing to:

RCAC APPEAL
DHA
PO BOX 7875
MADISON WI 53707-7875

Include in your written request for a hearing **ALL** of the following:

- ✓ The name and address of the facility;
- ✓ A description of the action being appealed (attach a copy of this NOTICE to your appeal);
- ✓ The effective date of the action;
- ✓ A concise statement of the reasons for objecting to the action;
- ✓ What type of relief you are seeking; and
- ✓ The name, address and telephone number of any person who may be expected to appear on behalf of the facility.

YOUR APPEAL MAY BE DENIED OR DISMISSED IF THE REQUEST IS INCOMPLETE OR NOT FILED WITH DHA WITHIN THE 10-DAY APPEAL TIME.

Please note that according to Wis. Stat. § 50.034(8)(d), if you file an appeal, then payment of any forfeiture is due within ten (10) days after you receive the final decision in the case after exhaustion of administrative review.

* * *

If you have questions about this letter, please contact Hillary Holman, Assisted Living Regional Director, at (608) 279-2546 .

Sincerely,

A handwritten signature in dark ink, appearing to read "D Perron", with a horizontal line extending to the right.

Daniel Perron, Assisted Living Director
Bureau of Assisted Living
Division of Quality Assurance

Enclosure
DP/MSE

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

IN THE MATTER OF _____ :

PROHEALTH CARE REGENCY
SENIOR COMMUNITY NEW BERLIN : DHA Case No. _____

DECLARATION OF ELIZABETH BRZESKI

I, Elizabeth Brzeski, declare as follows:

1. I am the Chief Operating Officer of Regency Senior Communities (hereinafter “Regency New Berlin”) and, in that role, I oversee the operations of ProHealth Care Regency Senior Community New Berlin. I make this affidavit based upon my personal knowledge.

2. Regency New Berlin submitted a Provider Agreement for Electronic Statements of Deficiency and Plans of Correction from the Department of Health Services, Division of Quality Assurance (DQA) on February 8, 2021. That Provider Agreement designated myself and the current administrator of the facility, Cherie Carty, to receive all electronic notifications.

3. Ms. Carty left the employment of Regency New Berlin in May 2021.

4. On November 8, 2021, a health services specialist from DQA, Geralyn Spitzer, conducted a survey at Regency New Berlin. At the time of the survey exit interview, Ms. Spitzer was advised that Ms. Carty was no longer employed by Regency New Berlin and that Mara Henningsen was the new administrator for the facility. Ms. Spitzer indicated that she would update the electronic notification system with the name of the new administrator.

5. Following the November 8, 2021 survey, neither I nor Ms. Henningsen received any notification from DQA regarding the results of the survey. Since a significant amount of time

had passed since the survey and we had not heard anything from DQA, I was monitoring the DQA website where notices of violation are posted for facilities.

6. On Monday, February 14, 2022, I discovered that DQA had posted a Statement of Deficiency for Regency New Berlin and that the accompanying Notice of Violation was dated February 1, 2022. A copy of the February 1, 2022 Notice and Order are attached to this affidavit as Exhibit A. To date, Regency New Berlin has not been served with the Statement of Deficiency and the Notice of Violation.

7. Upon discovery of the Statement of Deficiency and the Notice of Violation, we began to prepare to file a Notice of Appeal of the cited deficiency. Because the Notice and Order provides that any appeal must be filed with the Division of Hearings and Appeals (DHA) within ten (10) days after receipt of this Notice, we request that the administrative law judge assigned in this matter find that the accompanying notice of appeal was timely filed.

I declare under penalty of perjury that the foregoing is true and correct.

____2/17/2022____
Date



Elizabeth Brzeski

BUREAU OF ASSISTED LIVING
MADISON/SOUTHERN REGIONAL OFFICE
PO BOX 7940
MADISON WI 53707-7940

Tony Evers
Governor



Karen E. Timberlake
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* * *

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Sincerely,

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Daniel Perron, Assisted Living Director
Bureau of Assisted Living
Division of Quality Assurance

Enclosure
DP/MSE

McLaughlin, Aidan Q - DOA

From: Stacy C. Gerber Ward <Stacy.GerberWard@vonbriesen.com>
Sent: Friday, February 18, 2022 10:57 AM
To: DHA Mail
Subject: Notice of Appeal
Attachments: 2022-02-18 Ltr to DHA encl. Notice of Appeal.PDF; 2022-02-18 Regency Notice of Appeal.PDF; 2022-02-18 Declaration of Elizabeth Brzeski.PDF

Categories: ML

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Good morning.

Attached for filing please find a Notice of Appeal and Declaration of Elizabeth Brzeski related to a Notice of Violation and Statement of Deficiency issued to ProHealth Care Regency Senior Community New Berlin.

Thank you.

Stacy C. Gerber Ward | Attorney
von Briesen & Roper, s.c.
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

Direct: 414-287-1568
Mobile: 414-795-0755
Fax: 414-238-6645
sgward@vonbriesen.com | [vcard](#) | [bio](#)
vonbriesen.com

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