



# Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

July 20, 2018

## CERTIFIED MAIL/RETURN RECEIPT

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Peninsula Nursing and Rehabilitation Center  
225 Crossways Park Drive  
Woodbury, New York 11797

Georgeann Caporal Papadakos, Esq.  
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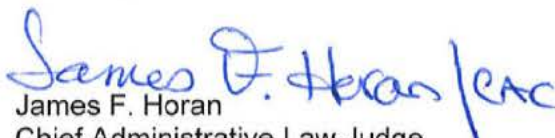
RE: In the Matter of [REDACTED] – Discharge Appeal

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to  
10 NYCRR § 415.3, by

[REDACTED]

Appellant,

from a determination by

**Peninsula Nursing and  
Rehabilitation Center**

Respondent,

to discharge him from a residential  
health care facility.

COPY

DECISION  
AND  
ORDER

Hearing Before:

Natalie J. Bordeaux  
Administrative Law Judge

Held at:

New York-Presbyterian Brooklyn Methodist Hospital  
506 6<sup>th</sup> Street  
Brooklyn, New York 11215

Hearing Date:

July 16, 2018

Parties:

Peninsula Nursing and Rehabilitation Center

By: Angela C. Bellizzi, Esq.  
General Counsel  
Cassena Care  
225 Crossways Park Drive  
Woodbury, New York 11797

[REDACTED]

By: Georgeann Caporal Papadacos, Esq.  
Mental Hygiene Legal Service  
Second Judicial Department  
One Metrotech Center, 3<sup>rd</sup> Floor  
Brooklyn, New York 11201

**JURISDICTION**

Peninsula Nursing and Rehabilitation Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

**HEARING RECORD**

Facility witnesses: Rita Okolie, LPN  
Dr. Janaki Kanumilli  
Patricia Godfrey, LPN  
Jillian Bosinius, Social Worker

Facility exhibits: 1-8

Appellant witnesses: [REDACTED] Appellant [REDACTED]  
Donna Holmes, LMSW, New York-Presbyterian  
Brooklyn Methodist Hospital (Brooklyn Methodist)  
Dr. Jessy Colah, Attending Psychiatrist, Brooklyn Methodist

Appellant exhibits: A-D

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit L. A digital recording of the hearing was made.

**ISSUES**

Has Peninsula Nursing and Rehabilitation Center established that the Appellant's discharge was necessary and the discharge plan appropriate?

**FINDINGS OF FACT**

1. The Appellant is a [REDACTED] year-old male who was admitted to Peninsula Nursing and Rehabilitation Center on [REDACTED] 2017. (Facility Exhibit 3.)
2. The Appellant's admitting diagnoses were [REDACTED] [REDACTED] (Facility Exhibit 3.)

3. On [REDACTED] 2018, Facility staff contacted the 911 emergency system to have the Appellant removed from the premises. The dispatched ambulance transported the Appellant to [REDACTED] Hospital for evaluation. (Facility Exhibit 2; Recording @ 7:57.)

4. On [REDACTED] 2018, the Facility transmitted a discharge notice to [REDACTED] Hospital by facsimile to advise that the Appellant was being discharged to [REDACTED] Hospital on [REDACTED] 2018 because "the health and/or safety of individuals in the facility would otherwise be endangered." (Facility Exhibit 2.)

5. On [REDACTED] 2018, the Appellant was transferred from [REDACTED] Hospital to Brooklyn Methodist, where he was admitted as [REDACTED] inpatient. (Facility Exhibit 1.)

6. On [REDACTED] 2018, Brooklyn Methodist Psychiatric Social Worker Donna Holmes informed the Facility that the Appellant was clinically stable and ready to be returned to the Facility. The Facility refused to allow the Appellant to return. (Recording @ 12:30: 1:07:08.)

7. The Appellant has neither a medical nor [REDACTED] need for continued hospitalization.

8. On June 7, 2018, Ms. Holmes requested this hearing on the Appellant's behalf. The Appellant has remained at Brooklyn Methodist, an acute care facility, pending the outcome of this hearing.

9. A hearing was held on July 16, 2018, during which the Facility was directed to readmit the Appellant to the next available semi-private bed. (Recording @ 1:27:35.) This written decision is the final administrative determination regarding the appeal.

**APPLICABLE LAW**

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(h)(1)(i) describe the permissible bases upon which a residential health care facility may transfer or discharge a resident. The residential health care facility must notify the resident and a designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident, 10 NYCRR §§ 415.3(h)(1)(iii)-(iv).

**DISCUSSION**

The Appellant was admitted to the Facility on [REDACTED] 2017 with diagnoses of [REDACTED]

[REDACTED] (Facility Exhibit 3.) On [REDACTED] 2018, Facility nursing staff contacted the 911 emergency system to have the Appellant taken to a local hospital for evaluation. The Appellant was transported to [REDACTED] Hospital. (Facility Exhibit 2.) That day, the Facility forwarded a discharge notice dated [REDACTED] 2018 to [REDACTED] Hospital by facsimile which advised that the Appellant was being discharged to the hospital immediately. (Facility Exhibit 2.)

On [REDACTED] 2018, the Appellant was transferred to Brooklyn Methodist, where he was admitted as a [REDACTED] inpatient. (Facility Exhibit 1.) On [REDACTED] 2018, the Appellant's attending [REDACTED] at Brooklyn Methodist determined that the Appellant was clinically stable and did not require further hospitalization. However, Ms. Holmes was advised by Facility staff that the Appellant was not permitted to return. (Recording @ 12:30:1:07:08.)

Although the Appellant is generally alert, he is [REDACTED] (Facility Exhibit 5.) The Appellant's [REDACTED] makes all healthcare-related decisions for him. (Recording @ 9:37.) The Facility was required to advise the Appellant and his [REDACTED] (the Appellant's designated

representative pursuant to 10 NYCRR § 415.2(f) in writing that the Appellant was being discharged, and the reasons why he was being discharged. 10 NYCRR § 415.3(h)(1)(iii). The facsimile transmission report included with the [REDACTED], 2018 notice shows only that the discharge notice was forwarded to [REDACTED] Hospital after the Appellant's physical removal from the Facility. (Facility Exhibit 2.)

Neither the Appellant nor his [REDACTED] received a written discharge notice before the Appellant was taken to [REDACTED] Hospital, or at any time thereafter. (Recording @ 10:53.) It is further noted that the discharge notices which were eventually produced stated that the Appellant was being discharged to [REDACTED] Hospital [REDACTED] 2018 notice) and Brooklyn Methodist Hospital [REDACTED] 2018 notice). (Facility Exhibits 1 and 2.) Discharge to an acute care hospital is not an appropriate discharge plan. The Facility's determination fails to comport with regulatory requirements and is not sustained.

#### **DECISION AND ORDER**

Peninsula Nursing and Rehabilitation Center has not established that the Appellant's discharge was necessary and the discharge plan appropriate.

1. Peninsula Nursing and Rehabilitation Center is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility, pursuant to 10 NYCRR § 415.3(h)(2)(i)(d).

Dated: July 19, 2018  
New York, New York



Natalie J. Bordeaux  
Administrative Law Judge