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# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

February 27, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o Upstate University Hospital  
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Syracuse, New York 13201

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[REDACTED]

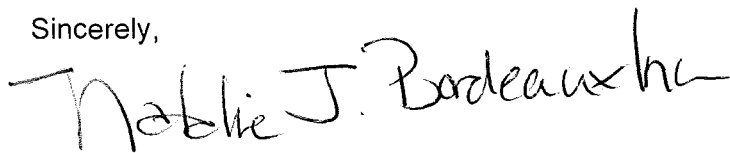
**RE: In the Matter of [REDACTED] [REDACTED] – Discharge Appeal**

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,

A handwritten signature in black ink that reads "Natalie J. Bordeaux". The signature is written in a cursive style with a long horizontal flourish at the end.

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure



### JURISDICTION

Central Park Rehabilitation & Nursing Center (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, discharged [REDACTED] [REDACTED] (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

### SUMMARY OF FACTS

1. Respondent Central Park Rehabilitation & Nursing Center is a proprietary 160 bed residential health care facility, specifically a nursing home within the meaning of PHL 2801, located in Syracuse, New York. (0h44m.)

[https://profiles.health.ny.gov/nursing\\_home/view/150497](https://profiles.health.ny.gov/nursing_home/view/150497).

2. Appellant [REDACTED] [REDACTED] age [REDACTED] was admitted as a resident in [REDACTED] 2021. (0h58m.) His diagnoses include [REDACTED], and he is cognitively impaired with a BIMS score of [REDACTED]/15. (Exhibit 3; 0h47m.)

3. On [REDACTED] 2023, the Respondent transferred the Appellant to Upstate University Hospital for evaluation after he became [REDACTED] and [REDACTED] staff. (Exhibit 1, pages 24-27; Exhibit A.)

4. Upstate University Hospital is a general hospital within the meaning of PHL 2801.10. The hospital evaluated the Appellant but did not admit him because it determined that he does not require inpatient treatment at a general hospital. The hospital advised the Respondent that it was ready to return to the Appellant to the Respondent's care. The Respondent refused to readmit him. (Exhibits A, C.)

5. On [REDACTED] 2023, the Respondent prepared a notice of discharge for the Appellant that stated the grounds for discharge as: "The safety of individuals in the facility would be endangered, as evidenced by: [REDACTED] events with staff." (Exhibit ALJ I.)

6. The notice stated that the effective date of discharge was [REDACTED], 2023, but it did not identify the location of transfer/discharge. (Exhibit ALJ I.) Written notice of discharge was not provided to the Appellant or his designated representative.

7. The Appellant is not in need of inpatient care at a general hospital. (Exhibits A, B, C, D; Exhibit 1.)

8. The Respondent did not develop, at the time of discharge or at any time thereafter, an appropriate post-discharge plan of care for the Appellant that addresses his long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi) and 415.11(d).

9. The Appellant remains at Upstate University Hospital pending the outcome of this hearing. The hospital cannot admit him because he does not require hospitalization. Because the Appellant requires residential health care and the Respondent refuses to take him back, he remains at Upstate as a "social admit." (4h0-3m; 4h22m.)

**ISSUES**

Has the Respondent established that the Appellant's discharge from Central Park Rehabilitation & Nursing Center is necessary and that the discharge plan is appropriate?

**HEARING RECORD**

Respondent witnesses:	Nichelle Titus, CNA Karissa Camerota, administrator Taylor Cooper, social worker
Respondent exhibits:	1-4
Appellant witnesses:	Stephany Hess, RN case manager Housan Hegazy, MD

Appellant exhibits: [REDACTED] [REDACTED] (unsworn by telephone)  
ALJ exhibits: A-D  
I (notice of hearing with notice of discharge)

The hearing was held and recorded by videoconference. (5h25m.)

#### APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of RHCF residents are set forth in Department regulations at 10 NYCRR 415.3(i) and in federal regulations at 42 CFR 483.15(c).

The Department regulation provides, in pertinent part, that among the permissible grounds for discharge are a determination by the interdisciplinary care team, in consultation with the resident or the resident's designated representative, that the safety of individuals in the facility is endangered. The facility must ensure complete documentation in the resident's clinical record, made by a physician, when the transfer or discharge is necessary due to the endangerment of the health or safety of other individuals in the facility. 10 NYCRR 415.3(i)(1)(i)(a)(3); 42 CFR 483.15(c)(2)(ii)(B).

Before it transfers or discharges a resident, the facility must notify the resident and designated representative or family member of the resident of the transfer or discharge and the reasons for the move in writing. The required written notice must include, among other things, the reason for transfer or discharge; the effective date of transfer or discharge; the location to which the resident will be transferred or discharged; information on appeal rights; and contact information for the state long term care ombudsman. 10 NYCRR 415.3(i)(1)(iii),(iv)&(v); 42 CFR 483.15(c)(3)&(5).

The facility must also provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to 10 NYCRR 415.11(d). 10 NYCRR 415.3(i)(1)(vi).

The Respondent facility has the burden of proving that the discharge or transfer is or was necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Appellant first came to Central Park Rehabilitation & Nursing Center in [REDACTED] 2021. He is [REDACTED] years old, with diagnoses that include [REDACTED] and uses a wheelchair. On [REDACTED] 2023, the Respondent sent the Appellant to the Upstate hospital emergency department for evaluation because he [REDACTED] staff. (0h26-30m; 1h1m.) The hospital determined that he did not require hospital care and returned him to the Respondent's facility within hours. (0h59m-1h1m; 1h56m; 3h50m.) On [REDACTED], he again [REDACTED] staff and was again sent to another hospital, [REDACTED], which also determined to return him within hours. The Respondent asked that his return be delayed until the next morning. (Exhibit 1, pages 24-25; 1h7m.) On [REDACTED], the Respondent had him transported to Upstate hospital and refused to accept him back. (Exhibit 1, pages 24-27; Exhibit A; Exhibit C; 1h7m; 3h53-58m.) The Respondent issued the discharge notice that same day. (Exhibit ALJ I.)

The Respondent's [REDACTED] discharge notice is not valid because it does not identify the discharge location as required by 10 NYCRR 415.3(i)(1)(v)(d). Nowhere



does the notice mention Upstate University Hospital or any other discharge location or plan. Nor was the notice ever provided in writing to the Appellant and his representative or family member. It is purportedly signed and dated on [REDACTED] by [REDACTED] [REDACTED] the Appellant's [REDACTED] as the resident's representative, but [REDACTED] [REDACTED] lives in [REDACTED] and did not sign it nor did she ever receive a copy. The Respondent acknowledges that its social worker signed [REDACTED] [REDACTED] name on the discharge notice (1h32m), and the Respondent did not even allege, much less present evidence to establish that a written copy was ever provided to [REDACTED] [REDACTED] as required by 10 NYCRR 415.3(i)(1)(iii),(iv)&(v). The Respondent claims it notified [REDACTED] [REDACTED] by telephone and obtained "verbal consent" (5h14m), which is not what the regulation requires, but even the Respondent's own account of that "verbal consent" does not assert that it specifically advised her, on [REDACTED], that her [REDACTED] was being discharged to Upstate hospital and would not be allowed to return to Central Park, where he had lived for two years. (Exhibit 4; 2h43-47m; 3h42m.)

When discharge is alleged to be necessary on the grounds that the safety of individuals in the facility is endangered, the nursing home is required to ensure that the resident's clinical record includes complete documentation made by a physician. 10 NYCRR 415.3(i)(1)(ii)(b); 42 CFR 483.15(c)(2)(ii)(B). The Respondent produced no documentation from any physician to meet its burden of establishing compliance with this requirement.

The only documentation made by any physician in this hearing record was from Upstate University Hospital and [REDACTED]. (Exhibit 1; Exhibits A, B, D.) That documentation does show the Appellant requires careful supervision and

management. He suffers from [REDACTED] and has a history of [REDACTED] staff for what may appear to be [REDACTED] but which the Appellant's attending physician at Upstate hospital, Dr. Hegazy, characterized as the result of [REDACTED] (4h18-19m) typical of [REDACTED] not mental illness. Dr. Hegazy and the Upstate University Hospital care team, which included a [REDACTED] who examined him (Exhibit B), are of the view, after evaluating the Appellant and his medical record, that hospitalization is not necessary or appropriate, and that a residential health care facility can and should be expected to meet his care needs and manage his level of [REDACTED]

The Respondent has failed to establish that it does not have the resources and cannot be expected to provide appropriate supervision. Patients with [REDACTED] can present [REDACTED], but the Respondent has been well aware of the Appellant's behaviors since it admitted him in 2021. (3h41m.) The Appellant may require supervision and management but he does not require hospitalization and return to a residential health care facility is appropriate. The Respondent offered no evidence from any physician to controvert this medical opinion of the physicians at two hospitals who evaluated him on several occasions.

The Respondent repeatedly offered characterizations by non-physician social workers and its administrator of "[REDACTED]" (Exhibit 1, page 26; 1h43m), "[REDACTED] [REDACTED]," and "[REDACTED]" (4h5,11,40m), which Dr. Hegazy and Upstate hospital RN case manager Hess pointed out are not medical diagnoses but simply descriptions of behaviors a patient with [REDACTED] may exhibit. (4h6-8,13m; 4h40m; 4h47-49m.)

Dr. Hegazy suggested some approaches to managing these behaviors, including medication management and behavioral techniques to acknowledge the [REDACTED] with the goal that the resident is "de-escalated and not antagonized." (4h24-28,50m). The Upstate [REDACTED] evaluation also recommends medication management and safety planning including increased supervision. (Exhibit B.) If the Appellant is [REDACTED] in his room, as the Respondent claims, room searches can be conducted. If he requires individual security oversight from staff, that can be provided. The Respondent offered little evidence of the steps it has taken to supervise and manage the Appellant's behavior before resorting to discharging him to the hospital and refusing to accept him back.

Administrator Camerota instead testified that a "true [REDACTED] evaluation" should now be done. (1h16m.) She also acknowledged, however, that [REDACTED] evaluations have been done, by Upstate hospital on [REDACTED] and by [REDACTED] on [REDACTED]. (1h56,58m.) Upstate documented yet another [REDACTED] evaluation on [REDACTED]. (Exhibit B.) The Respondent presented no evidence that it has, in the two years the Appellant has been its patient, actually made any effort to obtain a "true [REDACTED] evaluation" or, as Camerota also said, "work with a [REDACTED] in the community" (1h17m), or obtain any other evaluation by a [REDACTED] or indeed any physician, that contradicts the repeated assessments of the hospital physicians. (2h5-6m.)

The Respondent has also failed to develop a discharge plan that addresses the Appellant's care needs. The Respondent has offered no discharge plan other than to leave the Appellant at Upstate University Hospital until some other residential care placement might be found. Discharge to a general hospital does not meet the Respondent's

responsibility to provide an appropriate discharge plan. Shifting a difficult resident off to a general hospital without any discharge plan, and then refusing to take him back, is known as a "hospital dump." Department policy disseminated to nursing home administrators by "Dear Administrator Letter" is explicit:

State and Federal regulations require that nursing home residents who are temporarily hospitalized be allowed to return to the facility following hospitalization... Hospitals are not acceptable discharge locations. When sending residents with episodes of acting out behavior to hospitals for treatment, the nursing home is responsible to readmit the resident and/or develop an appropriate discharge plan. In these cases, the hospital is not considered to be the final discharge location. With imminent danger transfers, the facility is required to hold the bed for the resident. DAL 15-06, September 23, 2015. (Exhibit 2.)

The Respondent repeatedly attempted to characterize this case as about the "imminent danger" that caused it to send the Appellant to the hospital, claiming that "imminent danger" excuses it from readmitting him. (0h20-22m.) This argument fails to address either the discharge or planning issues in this hearing. As the Respondent itself points out, it can be appropriate under Mental Hygiene Law Article 9 to refer a resident to the hospital for an episode of acting out behavior and/or suspected mental illness. (1h51-52m.) Department regulations and explicit policy, however, clearly intend, even with such "imminent danger transfers," that the discharge planning burden remain on the nursing home that undertook the resident's residential health care. As of the date of this hearing, the Respondent still has produced no discharge plan nor has it prepared a discharge summary as required by 10 NYCRR 415.3(i)(1)(vi) and 415.11(d). (2h55-56m.)

All the professional medical evidence supports the view that the Appellant requires care in a residential health care facility but not inpatient care in a general hospital. The Respondent has failed to develop a discharge plan for the Appellant if he

does not return to its residential health care facility. Upstate hospital, which has been forced to retain this resident in a hospital bed he does not need, has made referrals to other nursing homes, so far without success. (4h5m.) It is the responsibility of the Respondent, not the hospital, to arrange for this care elsewhere if the Respondent is not willing to undertake it.

The care planning issues presented by this resident cannot be solved in this hearing decision, but responsibility for them can be and accordingly is reaffirmed. The Respondent may have to devote extra resources to providing the supervision the Appellant needs, but the Respondent is required to do just that unless and until it meets its obligation to develop an appropriate discharge plan that will meet his care needs. In the meantime, the discharge appeal is granted and the Respondent is directed to readmit the Appellant to the first available bed, prior to admitting any other person to the facility.

10 NYCRR 415.3(i)(2)(i)(d).

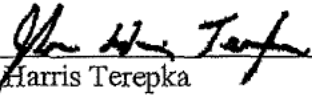
**DECISION:**

Respondent Central Park Rehabilitation & Nursing Center has failed to establish that the discharge of Appellant ██████████ ██████████ was necessary and that its discharge plan was appropriate.

The Respondent is directed to readmit the Appellant.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
February 25, 2023

  
 \_\_\_\_\_  
 John Harris Terepka  
 Administrative Law Judge  
 Bureau of Adjudication