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# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

February 4, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
C/o Stacey Rizzuto  
Director, Social Work Department  
Nassau University Medical Center  
2201 Hempstead Turnpike  
East Meadow, NY 11554

Vicky Shaw, Administrator  
Park Avenue Extended Care Facility  
425 National Boulevard  
Long Beach, NY 11561

Eve Green Koopersmith, Esq.  
Garfunkle Wild, PC  
111 Great Neck Road  
Great Neck, NY 11021

Stacey Rizzuto  
Director, Social Work Department  
Nassau University Medical Center  
2201 Hempstead Turnpike  
East Meadow, NY 11554

**RE: In the Matter of ██████████ – 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,

Dawn MacKillop-Soller  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: nm  
Enclosure

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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COPY

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

██████████

Appellant,

from a determination by

**Park Avenue Extended Care Facility,**

Respondent,

to transfer him from a residential health care facility.

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**DECISION  
AND ORDER**

**Hearing Before:**

Kimberly A. O'Brien  
Administrative Law Judge

**Hearing Date:**

January 28, 2022  
Via WebEx Videoconference

**Parties:**

Park Avenue Extended Care Facility  
By: Eve Koopersmith, Esq.

By: ██████████  
Pro se

**JURISDICTION**

Pursuant to Public Health Law §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), Park Avenue Extended Care Facility (“Respondent” or “Facility”) is a residential health care facility/ nursing home 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.

Resident rights are set forth at 10 NYCRR 415.3, *Inter alia*, it provides that before a facility discharges a resident it shall notify the resident of the transfer/discharge and its reasons in writing and in a language and manner the resident can understand and must be provided before transfer/discharge; state the reason the transfer/discharge is necessary; and have a discharge plan including identifying a discharge location that is available and appropriate to meet the resident’s needs. A resident who believes the facility has erroneously determined that the transfer/discharge is necessary has the right to an administrative hearing. The facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate.

**STATEMENT OF THE CASE**

On ██████████ 2021, Respondent transferred the Resident from care and treatment in its facility to Nassau University Medical Center (“Hospital” or “NUMC”). Respondent stated the reason for the discharge is that the “health and safety of individuals in the facility would otherwise be endangered” [ALJ Ex. 1]. The Resident appealed the discharge determination to the NYSDOH and has remained in the Hospital awaiting the hearing and the ALJ’s decision. The hearing was held on January 28, 2022 and a digital audio recording was made.

*Witnesses*

██████████ Resident/ Appellant testified on his own behalf. The following representatives testified on behalf of Respondent/ Facility: Amanda Rabinowitz, Assistant Administrator & Director of Social Work; and Dr. Guillite, NUMC/ Hospital Physician.

*Exhibits*

Documents were accepted into evidence by the Administrative Law Judge (“ALJ”): ALJ Exhibit 1: Notice of Hearing & ██████████ 2021, Notice of Transfer or Discharge. Respondent Exhibits: 1. Facility Notes; 2. Letter of Dr. Polina Khanina, Facility Medical Director; 3. Hospital Notes; 4. NYC Department of Buildings Property Profile Overview for ██████████ Building classification: “D3-Elevator Apt.” The Appellant did not offer any exhibits.

**STATEMENT OF ISSUE**

To be determined in this proceeding is whether Respondent established that the discharge is necessary, and whether it provided an appropriate discharge plan.

**FINDINGS OF FACT**

Citations in parentheses refer to testimony (“T.”) and exhibits (“Ex.”) found persuasive in arriving at a particular finding.

1. Respondent operates a residential health care facility located in Long Beach, New York. [ALJ Ex.1; Ex. 1,2].

2. The Resident, ██████ years old, was admitted to the Facility on ██████████, 2021, from ██████████ for short-term rehabilitation [Ex. 1].

3. On ██████████ 2021, Respondent called 911 after the Resident became ██████████ and ██████████ and ██████████ at a resident, resident’s family member, and at

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a staff member. The police determined that instead of charging the Resident with a crime he would be transferred to the Hospital for evaluation and treatment of his "██████████ behavior" [Ex. 1, 2; T. Rabinowitz; Dr. Guillite].

4. Respondent issued a discharge notice dated ██████████, 2021 stating that the transfer /discharge is necessary "because the health and/or safety of individuals in the facility would otherwise be endangered" [ALJ Ex. 1; Ex. 1, 2; T. Rabinowitz].

5. On ██████████ 2022, the Resident became "██████████ and ██████████ toward staff." The Hospital called a code "██████████ A ██████████", which included Security, ██████████ the Resident due to his ██████████. The Resident is not ██████████ stable and remains at the Hospital [Ex. 3; T. Dr. Guillite].

#### DISCUSSION

Ms. Rabinowitz testified that leading up to the transfer the Resident had numerous ██████████ and ██████████ and he has specifically ██████████ to harm staff members. The Resident was also ██████████ on the grounds and in his room, and he was repeatedly educated about why this is not allowed. On or about ██████████ the Facility smelled a ██████████ of ██████████ coming from the Resident's room and ██████████ were found in his bed. The Facility searched his room and confiscated ██████████ found in the Resident's dresser drawer. The Resident became ██████████ residents, staff members, and ██████████ and ██████████ [See FOF 3]. The Facility called 911 and the Resident was taken to the Hospital for treatment and evaluation. The Facility is a nursing home that treats the frail and elderly and it is not authorized to ██████████ the Resident ██████████, it does not provide intense ██████████ behavioral therapy and cannot meet the Resident's needs.

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The Resident testified that he has a "██████████" and ██████████ is the only effective way for him to get pain relief. He does not deny ██████████ in the Facility and that he was repeatedly told that he cannot do that. The Resident said the staff took ██████████ from his ██████████ not his ██████████ and he is concerned his ██████████ could have been stolen. He also does not deny ██████████. The Resident testified that he was in a common room and there was an ██████████ resident and visitor in the middle of the room, so he ██████████." He admitted that he ██████████ again when a staff member "██████████" came into the room, but he denies that it landed close to her. The Resident testified that his behavior was in response to being "disrespected" and "no one has a problem with me until they disrespect me." The Resident said he searched for another nursing home, but he was not accepted anywhere. Because the Facility is his "only option" he wants to return there. He testified that he will not tolerate being "disrespected" and the Facility can and must accommodate his ██████████.

The Hospital Physician Dr. Guillite confirmed that during the Resident's hospital stay he has become ██████████. At times it was necessary for the Resident to be given ██████████. She also confirmed that it was "██████████" what would ██████████.

### CONCLUSIONS

The record establishes that the Resident is not ██████████ stable and the health and/or safety of individuals in the Facility would be endangered if he returned, and that the Facility cannot ██████████ the Resident. The Resident was admitted to the Hospital to treat his ██████████ and for a ██████████ evaluation. A few days before the hearing and on several occasions during his stay at the Hospital it was necessary to ██████████

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██████████ the Resident to “treat” his ██████████ and ██████████.

The Resident’s behavior is ██████████ and at the hearing he showed ██████████ about the consequences of his actions. To the contrary, the Resident expressed that his behavior was an appropriate response to being “disrespected.”

**ORDER**

The Appellant is not ██████████ stable and the Respondent cannot meet the Appellant’s needs. The Appeal is denied.

Dated: Albany, New York  
February 1, 2022

*Kimberly A. O'Brien*  
Kimberly A. O'Brien  
Administrative Law Judge

To: ██████████ ██████████  
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