

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DHR 03875, 19 DHR 03874, and
18 DHR 03382

ANDERSON BEHAVIORAL HEALTH,)
INC. d/b/a ANDERSON HEALTH)
SERVICES (MHL-090-192, MHL-090-193,)
and MHL-090-195),)
Petitioner,)
v.)
N.C. DEPARTMENT OF HEALTH AND)
HUMAN SERVICES, DIVISION OF)
HEALTH SERVICE REGULATION,)
MENTAL HEALTH LICENSURE AND)
CERTIFICATION SECTION,)
Respondent.)

SETTLEMENT AGREEMENT

NOW COMES Anderson Behavioral Health, Inc. d/b/a Anderson Health Services (MHL-090-192, MHL-090-193, and MHL-090-195) (“Petitioner”) and the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section (“Respondent”) (collectively, the “Parties”), and hereby enter into the following Settlement Agreement (“Agreement”) in order to settle and compromise all claims arising out of the above-captioned contested cases.

RECITALS

WHEREAS, Petitioner is licensed by Respondent, pursuant to N.C. Gen. Stat. § 122C-1, *et seq.*, to operate three (3) Psychiatric Residential Treatment Facilities for Children and Adolescents (“PRTF”) known as Anderson Health Services – Ashford (MHL 090-192) (“Ashford”), Anderson Health Services – Walfus (MHL 090-193) (“Walfus”), and Anderson

Health Services – Simmons (MHL 090-195) (“Simmons”) (collectively, the “Facilities”), located at 1915 Hasty Road, Marshville, North Carolina; and

WHEREAS, on April 18, 2018 and June 1, 2018, Respondent completed surveys of Ashford and cited Petitioner for operating the facility in violation of the licensure statutes and rules promulgated thereunder and issued a statement of deficiencies as to Ashford; and

WHEREAS, on June 1, 2018, Respondent completed a survey of Walfus and cited Petitioner for operating the facility in violation of the licensure statutes and rules promulgated thereunder and issued a statement of deficiencies as to Walfus; and

Ashford Facility

WHEREAS, by letter dated May 16, 2018, Respondent imposed against Ashford a Suspension of Admissions; and

WHEREAS, by separate letter dated May 16, 2018, Respondent imposed against Ashford a Type A1 Administrative Penalty in the amount of \$3,000.00 for the violation of 10A N.C.A.C. 27E .0102 (Prohibited Procedures); and

WHEREAS, by letter dated June 1, 2018, Respondent imposed against Ashford a Summary Suspension of License to Operate;

WHEREAS, on June 4, 2018, Petitioner timely appealed the Suspension of Admissions, the Type A1 Administrative Penalty of \$3,000.00, and the Summary Suspension of License to Operate by filing a Petition for a Contested Case Hearing with the Office of Administrative Hearings (“OAH”) in file numbers 18 DHR 03379, 18 DHR 03380, and 18 DHR 03381; and

WHEREAS, by letter dated June 20, 2018, Respondent imposed against Ashford a Type A1 Administrative Penalty in the amount of \$3,000.00 for the violation of 10A N.C.A.C. 27G .1901 (Scope); and

WHEREAS, by letter dated May 6, 2019, Respondent issued Ashford a Notice of Revocation of License; and

WHEREAS, on July 5, 2019, Petitioner timely appealed the Notice of Revocation of License dated May 6, 2019, with OAH by filing a Petition for a Contested Case Hearing with the OAH file number 19 DHR 03874; and

WHEREAS, on August 20, 2019, the Court issued an Order of Consolidation consolidating contested case file numbers 18 DHR 03379, 18 DHR 03380, and 18 DHR 03381 in contested file number 19 DHR 03874; and

Walfus Facility

WHEREAS, by letter dated June 1, 2018, Respondent imposed against Walfus a Summary Suspension of License to Operate; and

WHEREAS, by separate letter dated June 20, 2018, Respondent imposed against Walfus three (3) Type A1 Administrative Penalties, each in the amount of \$3,000.00, for the violation of 10A N.C.A.C. 27G. 1901 (Scope), 10A N.C.A.C. 27G .0209 (Medication Requirements), and 10A N.C.A.C. 27D .0304 (Protection from Harm, Abuse, Neglect or Exploitation); and

WHEREAS, on June 4, 2018, Petitioner timely appealed the Summary Suspension of License to Operate by filing a Petition for a Contested Case Hearing with OAH file number 18 DHR 03385; and

WHEREAS, by letter dated May 7, 2019, Respondent issued Walfus a Notice of Revocation of License; and

WHEREAS, on July 5, 2019, Petitioner timely appealed the Notice of Revocation of License with OAH file number 19 DHR 03875; and

WHEREAS, on August 20, 2019, the Court issued an Order of Consolidation consolidating contested case file numbers 18 DHR 03385 into contested case file number 19 DHR 03875; and

Simmons Facility

WHEREAS, by letter dated June 1, 2018, Respondent imposed a Suspension of Admissions against Simmons; and

WHEREAS, on June 4, 2018, Petitioner timely appealed the Suspension of Admissions by filing a Petition for a Contested Case Hearing with OAH in file number 18 DHR 03382; and

WHEREAS, on July 19, 2019, Petitioner met with Respondent informally to discuss a potential resolution of the above-contested cases; and

WHEREAS, on September 24, 2019, Petitioner submitted a Plan of Correction and additional information to Respondent for purposes of a resolution; and

WHEREAS, September 30, 2019, Petitioner and Respondent had a follow-up meeting to discuss the submitted Plan of Correction and additional information submitted by Petitioner regarding the proposed philosophy, organizational structure and strategy to prevent reoccurrence of previously cited rule violations; and

WHEREAS, Petitioner contends that it did not violate any law or rule governing the operation of the Facilities; and

WHEREAS, Respondent contends that it did not unlawfully order Petitioner to pay a fine or civil penalty; otherwise substantially prejudice Petitioners' rights; act erroneously; act arbitrarily or capriciously; or fail to act as required by law or rule when it imposed the aforementioned adverse actions against Petitioner's Facilities; and

WHEREAS, the Petitioner’s Board of Directors met, carefully considered the terms of this Agreement and consent to the execution of the Agreement by Petitioner; and

WHEREAS, pursuant to N.C. Gen. Stat. § 150B-22, it is the policy of the State of North Carolina to settle disputes between State agencies and other persons whenever possible.

NOW THEREFORE, the Parties have decided to resolve these contested cases in the manner set forth below, pursuant to N.C. Gen. Stat. §§ 150B-22 and -31(b), and subject to the approval by the Director of the Division of Health Service Regulation (“Director”).

AGREEMENT

1. Voluntary Dismissal. Within ten (10) business days after the effective date of this Agreement, Petitioner shall file a Notice of Voluntary Dismissal with Prejudice in contested case numbers 19 DHR 03875, 19 DHR 03874, and 18 DHR 03382.

2. Rescission of Adverse Actions against Petitioner’s Licenses. Respondent shall, within two (2) days after Respondent receives a file-stamped copy of the Notices of Dismissal in contested case numbers 19 DHR 03875, 19 DHR 03874, and 18 DHR 03382, rescind the Notices of Revocation, Intent to Revoke, Summary Suspension of License to Operate, and Suspension of Admissions against Ashford, Walfus, and Simmons, respectively.

3. Policies and Procedures. Petitioner shall submit to Respondent proposed policies and procedures and staffing information as required for the initial application process (including identification of all required personnel and proof of training for operation of the facility in accordance with applicable law) for the Ashford, Walfus and Simmons Facilities. Respondent shall review and approve all policies and procedures for the Simmons, Ashford and Walfus Facilities and the staffing information for the Simmons Facility prior to Petitioner admitting clients to the Simmons Facility. Respondent shall review and approve all of the staffing

information, for the Ashford Facility prior to Petitioner admitting clients to the Ashford Facility. Respondent shall review and approve all of the staffing information for the Walfus Facility prior to Petitioner admitting clients to the Walfus Facility. As per Respondent Mental Health Licensure and Certification Section licensing procedures, Petitioner has two opportunities to meet with Respondent within six months from original submission date to demonstrate compliance with Chapter 122C of the North Carolina General statutes and the rules promulgated thereunder. If the policies and procedures for the Simmons, Walfus and Ashford Facilities and the staffing information for the Simmons Facility are approved by Respondent, Respondent will take actions pursuant to paragraph (4.) of this agreement. Respondent must review and approve the staffing information for the Walfus and Ashford Facilities before Respondent takes actions pursuant to subparagraphs 4(a-d) of this agreement.

4. Operation of Facilities. Petitioner will be permitted to admit clients to the Simmons Facility only beginning on the date the policies and procedures for the Simmons, Ashford and Walfus Facilities and the staffing information for the Simmons Facility are approved by Respondent. Petitioner shall notify Respondent upon admission of six (6) clients to the Simmons Facility whereupon Respondent will conduct a compliance survey of the Simmons Facility. Respondent shall notify Petitioner by letter of the survey results for the Simmons Facility.

a. If the survey results in no administrative actions Respondent shall notify Petitioner that as of the specified date, Petitioner shall be allowed to admit clients to the Ashford and Walfus Facilities after the staffing information is approved for the Ashford and Walfus Facilities.

b. If the survey results in any administrative actions, Petitioner shall not be

permitted to admit clients to the Ashford or Walfus Facilities. Based on any potential administrative actions, Respondent will determine if Petitioners can present enough information to warrant a re-survey of the Simmons Facility.

- c. Respondent shall perform a re-survey of the Simmons Facility if Respondent determines it is warranted. Respondent will notify Petitioner by letter of the re-survey results. If Respondent determines the Simmons Facility is back into compliance, Respondent will notify Petitioner by letter that Petitioner may begin admitting clients to the Ashford and Walfus facilities.
- d. If the re-survey of Simmons referenced in subparagraph (c.) above results in any administrative actions, or if Petitioner admits any clients to the Ashford or Walfus Facilities before the approval date designated by Respondent for admission to those facilities, then in such event Respondent may, re-impose the Suspensions of Admission at all the Facilities, and the Revocation of Licenses and Summary Suspension of Licenses to operate for the, Walfus and Ashford Facilities and all administrative penalties totaling Fifteen Thousand and 00/100 dollars (\$15,000.00). For purposes of Paragraph 4.a-d, "administrative action" shall be defined to include any action taken against Petitioner's licenses, i.e., Suspension of Admission, Revocation of License, or Summary Suspension or finding of a Type A1 Violation, Type A2 Violation, Unabated Type B Violation as defined in NCGS 122C-24.1 where Respondent finds that there has been a substantial failure to comply with any applicable provisions of NCGS § 122C et seq. and the rules promulgated thereunder.

- e. Petitioner Appeal Rights. Pursuant to NCGS § 122C et seq. and 150B et seq., Petitioner shall have the right to challenge and appeal any properly noticed adverse agency administrative action taken for, among other things, violation of applicable rule or regulation.

5. Notice to Respondent of Personnel Change related to Director of Operations. The day-to-day operational and clinical decisions of the Facilities shall be managed by one or more qualified individuals. Petitioner has appointed Jesse Tall (“Tall”) to the position of Director of Operations having the duties and responsibilities set forth in Exhibit A. Petitioner agrees to employ Tall in the aforementioned capacity for a period not less than one (1) year from the date of admission of the first client to the Simmons Facility; provided, however, that Tall may be terminated for cause as such term may be defined in Tall’s employment agreement. Petitioner agrees that it will provide Respondent at least thirty (30) calendar days’ notice as to any change of personnel or duties relating to the position of Director of Operations. If Petitioner is unable to provide at least thirty (30) days’ notice to Respondent due to exigent circumstances, Petitioner shall provide notice to Respondent as practically reasonable.

6. Reduction of Administrative Penalties and Training in Lieu of Penalty. Petitioner acknowledges the five (5) Type A violations only for purposes of settlement. Respondent shall reduce the total administrative penalty amounts asserted against Petitioner’s Facilities from Fifteen Thousand and 00/100 Dollars (\$15,000.00 USD) to Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00 USD). Respondent agrees to accept training in lieu of the reduced administrative penalty of Seven Thousand Five Hundred and 00/100 (\$7,500.00 USD). Respondent agrees to reduce the penalties as follows:

- (i) The May 16, 2018 Type A1 violation and administrative penalty against Ashford from \$3,000.00 to \$1,500.00 (“Prohibited Procedures);

- (ii) The June 20, 2018 Type A1 violation and administrative penalty against Ashford from \$3,000.00 to \$1,500.00 (Scope);
- (iii) The June 20, 2018 Type A1 violation and administrative penalty against Walfus from \$3,000.00 to \$1,500.00 (Scope);
- (iv) The June 20, 2018 Type A1 violation and administrative penalty against Walfus from \$3,000.00 to \$1,500.00 (Medication Requirements); and
- (v) The June 20, 2018 Type A1 violation and administrative penalty against Walfus from \$3,000.00 to \$1,500.00 (Protection from Harm, Abuse, Neglect or Exploitation).

7. Staff Training. Petitioner shall submit a training proposal and receive written approval from Respondent prior to providing any training session. Petitioner shall submit a training proposal to Respondent within thirty (30) calendar days after the effective date of this Agreement. Petitioner shall submit the training proposal via U.S. Mail to Mental Health Licensure and Certification Section, 2718 Mail Service Center, Raleigh, NC 27699-2718, or hand-deliver to Mental Health Licensure and Certification Section, 1800 Umstead Drive, Raleigh, NC 27603. The training proposal shall include:

- (i) the name and resume of the proposed trainer;
- (ii) the specific course curriculum the trainer will use to address the training requirements above (submitting only a course outline will not satisfy this requirement); and
- (iii) any handouts that will be used during the training, including power points.

Petitioner shall have nine (9) months from the effective date of this Agreement to complete the training and provide Respondent with written verification of the completion of the training. Approval of the training will be at the reasonable discretion of Respondent.

8. Proof of Training. Following the training, Petitioner shall notify Respondent in writing that the training has been completed. Petitioner's notification shall include documents

showing the cost of the training and a copy of the training sign-in sheet.

9. Failure to Comply. If Petitioner fails to complete the training as referenced above in Paragraphs 6 and 7 of this Agreement, Petitioner shall be responsible for payment of the five (5) original administrative penalties, totaling \$15,000.00, as assessed against Petitioner. Moreover, any amount due to be paid pursuant to this Agreement will be reinstated as an administrative penalty for the purposes of N.C. Gen. Stat. § 122C-24.1(k) and subject to the provisions of N.C. Gen. Stat. § 147-86.23.

10. Licensure of New Facilities. Petitioner shall not be subject to any restrictions or prohibitions on licensure and services prescribed by N.C. Gen. Stat. § 122C-23(e1) as a result of the adverse actions previously taken against Petitioner by Respondent.

11. Obligation Conditioned on Performance. The parties agree that each will act in good faith in executing the obligations set forth in this Agreement. The Parties understand and agree that their obligations to perform under the release are conditioned upon the agreements and promises as set forth herein. In the event any party breaches any such agreement or promise, or causes any such event or promise to be breached, the non-breaching party may bring an action to seek injunctive relief to enforce the provisions of the Agreement.

12. No Admission. Except as otherwise set forth in this Agreement, neither party, by entering into this Agreement, concedes to any allegation of the other party. Further, neither party waives objection to any allegations of the other party with respect hereto, nor does either party waive its rights, whether statutory or otherwise, if any, to dispute or contest any of the facts raised herein in any other proceeding.

13. Release. Each party releases the other party, their officials, employees, and representatives, from any and all claims or liabilities that have arisen or might arise out of the

complaint surveys conducted and statement of deficiencies cited by Respondent on April 18, 2018, and June 1, 2018, or the above-captioned contested cases.

14. Effect of Approval. If approved by the Director, this Agreement shall resolve all issues in, or arising out of, the above-captioned contested cases.

15. Effect of Non-Approval of Agreement. If this Agreement is not approved by the Director, the Parties agree that this Agreement shall be null and void and that Petitioner shall be entitled to proceed with its contested cases. In addition, if this Agreement is not approved by the Director, the Parties agree that it shall be inadmissible at the contested case hearing for any purpose.

16. Full Resolution. The Parties further agree and acknowledge that this written Agreement sets forth all of the terms and conditions between them concerning the subject matter of this Agreement, superseding all prior oral and written statements and representations, and that there are no terms or conditions between the Parties except as specifically set forth in this Agreement.

17. Modification or Waiver. No modification or waiver of any provision of this Agreement shall be effective unless it is in writing. Any modification or waiver must be signed by authorized representatives of the Parties and must be adopted and approved by the Director.

18. No Strict Interpretation Against Draftsman. Each of the Parties had the opportunity to review this Agreement and consult with counsel concerning its terms. This Agreement shall not be interpreted strictly against one party on the grounds that it drafted the Agreement.

19. Expenses. The Parties agree that each party shall bear its own expenses, including attorney's fees, and that no claim for such costs or expenses shall be made by one party

against the other.

20. Authority to Settle. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own free act. Petitioner has the full legal right, corporate power and authority to enter into this Agreement and the other agreements referenced herein to which it will be a party and to carry out its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other agreements referenced herein to which Petitioner will be a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly approved by the Board of Directors of Petitioner. The Board of Directors of Petitioner has determined and declared that this Agreement is advisable and in the best interests of Petitioner and its shareholders and has adopted a resolution to the foregoing effect. This Agreement has been, and the other agreements referenced herein to which Petitioner will be a party, when executed, will be, duly and validly executed and delivered by Petitioner and, assuming due authorization, execution and delivery by Respondent, is and will be a valid and binding obligation of Petitioner enforceable against Petitioner in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles) (the "Bankruptcy and Equity Exception"). No other corporate proceedings are necessary for the execution and delivery by Petitioner of this Agreement and the other agreements referenced herein to which it will be a party, the performance by it of its obligations hereunder and thereunder or the consummation by it of the transactions contemplated hereby and thereby. Each Party further acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this


Agreement prior to its execution the undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties to this Agreement.


21. Governing Law. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall continue in full force and effect.

22. Effective Date. This Agreement shall be effective as of the day and year on which it is adopted and approved by the Director.

IN WITNESS WHEREOF, the Parties have executed one original copy of this Settlement Agreement, with the original copy being retained by Petitioner.

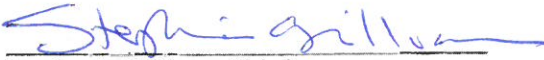
**ANDERSON BEHAVIORAL HEALTH, INC. d/b/a ANDERSON HEALTH SERVICES
(MHL-090-192, MHL-090-193, and MHL-090-195)**

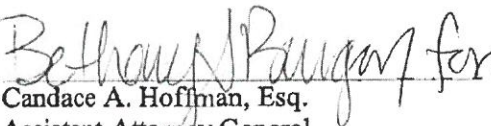
BY: 
Alfred Owens, President/Chief Executive Officer

BY:  (as to form only)
R. Jonathan Charleston, Esq.
The Charleston Group
Post Office Box 1762
Fayetteville, NC 28302
COUNSEL FOR PETITIONER


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**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DIVISION OF HEALTH SERVICE REGULATION, MENTAL HEALTH LICENSURE
AND CERTIFICATION SECTION,**

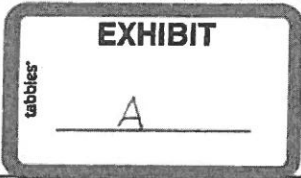
BY: 
Stephanie Gilliam, Chief
Mental Health Licensure and Certification Section
N.C. DHHS, Division of Health Service Regulation
2718 Mail Service Center, Raleigh, NC 27699-2718
Raleigh, NC 27699-2708

BY:  (as to form only)
Candace A. Hoffman, Esq.
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
COUNSEL FOR RESPONDENT

APPROVED AND ADOPTED this the 8th day of January, 2020.


S. Mark Payne, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

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**Director of Operations / Chief Operating Officer
Job Description**

Employee: Employee Name	Supervisor: Supervisor Name, CEO
Department: Administration	Revisions: 08/2019

PURPOSE:

The Director of Operations / COO serves as the lead officer of Anderson Health Services (AHS) with overall responsibility for the management and operations of the organization. The Director of Operations / COO has primary responsibility for the development, implementation, and achievement of the AHS business plan in conjunction with routine operations to include quality of care, staff development, maintenance of licensure and accreditations, financial performance, and continuous performance improvement. Manages organization operations by directing and coordinating activities consistent with established goals, objectives, and policies. Reports to the Chief Executive Officer and Board of Directors. Implements programs to ensure attainment of the business plan for growth and profit. Provides direction and structure for operating units. Will participate in developing policy and strategic plans. Assists in the development of future sites for the agency.

Essential Functions

- Establishes the agency's vision and goals;
- Partners with the AHS Executive Leadership team, and others as appropriate, to develop new programs or services;
- Plans, develops and implements strategy for operational management so as to meet agreed organizational performance plans within agreed budgets and timescales;
- Appoints, manages, and develops department heads and managers;
- Establish and maintain appropriate systems for measuring necessary aspects of operational management and development;
- Monitor, measure and report on operational issues, opportunities and development plans and achievements within agreed formats and timescales;
- Develops, manages, and controls departmental expenditure within agreed upon budgets;
- Liaise with other functional/departmental managers so as to understand all necessary aspects and needs of operational development, and to ensure they are fully informed of operational objectives, purposes and achievements;
- Maintain awareness and knowledge of contemporary operational development theory and methods and provide suitable interpretation to directors, managers and staff within the organization;
- Contribute to the evaluation and development of operational strategy and performance in cooperation with the executive team;
- Ensure activities meet and comply with organizational regulatory requirements for quality management, health and safety, legal stipulations, environmental policies and general duty of care;
- Reviews financial statements, sales and activity reports, and other performance data to measure productivity and to determine areas needing cost reduction and program improvement;
- Prepares or presents reports concerning activities, expenses, budgets, government statutes, or other items affecting businesses services;
- Ensures timely and accurate communication to funders;
- Embraces cultural diversity and models ongoing learning and positive relations with colleagues, clients, families and the broader community;
- Demonstrates professionalism and mutual respect when representing AHS in the community and on-site;
- Maintains TCI, CPR and all other required certifications and licenses;

Position Specifications and/or Education:

Master's Degree in Human Services or related field with a minimum of two years of supervisory experience and four years of experience working with youth in a residential or mental health program preferred. Bachelor's Degree in Human Services or related field with a minimum of four years of supervisory experience and six years of experience working with youth in a residential or mental health program required. Position requires driving agency vehicles as well as transporting clients. A valid NC driver's license, at least three years of driving with a driver's license and clean driving record are required. All potential job candidates must pass a drug screening test and an extensive background check.

Physical Requirements

Will frequently perform a wide variety of physical tasks such as standing, walking, running, stooping, bending, climbing stairs and lifting of individuals which requires strength, coordination, endurance and agility. In addition, there may be occasional contact with hostile individuals and incumbents may be subjected to physical and verbal abuse while restraining children and adolescents. The employee must be agile enough to control and rapidly extricate him/herself and children and adolescents from buildings in case of an emergency.

I attest that I am physically capable of sustained, intense exertion and have no physical disability or condition (i.e. recent surgery, back or joint problems, obesity, arthritis, heart condition) that would prevent me from participating in the physical requirements of this position.

Employee : _____ / _____ Date: _____
(Print First and Last Name) (Signature)

Supervisor: _____ / _____ Date: _____
(Print First and Last Name) (Signature)