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Oregon Department of Human Services
Aging and People with Disabilities
SAFETY, OVERSIGHT & QUALITY

<p>In the Matter of</p> <p>St Jude Operating Company LLC dba Healthcare at Foster Creek,</p> <p>Respondent</p>	<p>Notice & Order Imposing License Condition & Right to Request a Hearing</p> <p>Case No. NFCD20-00224</p>
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TO: Melchor Balaz, Registered Agent
St Jude Operating Company LLC
d.b.a. Healthcare at Foster Creek
6003 SE 136th Avenue
Portland, OR 97230
Via Email: jbufford@hfostercreek.com

The Department of Human Services (DHS) is the state agency charged with licensing Nursing Facilities under ORS 441.015 *et seq.* and Oregon Administrative Rules (OAR) Chapter 411, Division 073 and 085 through 089.

St Jude Operating Company LLC (Respondent) is licensed to operate a Nursing Facility at 6003 SE 136th Avenue, Portland, OR 97230.

Respondent is responsible for the operation of the facility and the quality of care rendered in the facility. Respondent is also responsible for the supervision, training, and overall conduct of the staff when acting within the scope of their employment. OAR 411-085-0200.

Pursuant to ORS 441.736 and OAR 411-089-0050(9), DHS now orders that Respondent's license is subject to the conditions set forth below, based on the following statement of violations.

Please note that this document contains all necessary elements and serves as both the notice required under ORS 441.736(2)(d) and the order required under ORS 441.736(2)(e).

The following statement of violation(s) stem from evidence and interviews collected from preliminary information gathered in interviews, observations and record review on or about April 10, 2020 through April 12, 2020.

STATEMENT OF VIOLATIONS

Violation 1: INFECTION CONTROL AND PREVENTION OF COVID-19

Based on observations, interviews and record review it was determined Respondent failed to implement adequate infection control practices to prevent the spread of COVID-19 (Coronavirus).

On or about April 10, 2020, a site visit was conducted by the Department and the following facility observations were made:

- Facility staff were not treating every resident as potentially infected for COVID-19 per the Center for Disease Control (CDC) Long-Term Care Guidelines.
- Facility staff were observed to provide incontinent care without wearing a gown.
- Facility staff were observed to not always wash their hands after removing their gloves and subsequently retrieved items with contaminated hands.
- Facility staff were observed to not wash their hands after touching their face masks.

- Facility staff were observed wearing face masks outside of their assigned unit, and later observed wearing the same masks after re-entering the unit.
- Interview with agency staff revealed staff were only provided one face mask per shift, and there was no access to obtain a back-up mask. On one occasion, staff had a mask with a broken strap and there were no administrative staff available to provide a replacement mask.
- Facility staff were observed to work across units.
- Dietary staff were observed to assist a resident with meal tray delivery, even though no dietary or laundry staff were supposed to be in resident rooms.
- Facility staff were observed not enforcing social distancing in the smoking areas.
- Interviews with facility staff revealed there was no housekeeping being performed between 7:00 pm and 6:00 am the next day. Staff were not observed performing housekeeping or cleaning services.
- Staff were assigned to work across units and observed passing medications between the Sandy unit and the Wilson unit, even though staff were not to be working across units. Two of the three rooms assigned to one staff member on Sandy unit had confirmed COVID-19 positive residents. The other resident was not determined to have COVID-19.
- Interview with agency staff on the Sandy unit revealed the facility did not provide training regarding COVID-19 infection control.

On or about April 11, 2020, a site visit was conducted by the Department and the following facility observations were made:

- Facility staff were observed on the Sandy unit to wear the same face mask the entire shift and were observed to provide care to both COVID-19 positive and non-COVID-19 positive residents without changing face masks.
- Facility staff were observed to remove their masks when near other

staff or residents.

- Facility staff were observed to not treat all residents as potentially COVID-19 positive per the Center for Disease Control (CDC) Long-Term Care Guidelines.
- Facility staff were observed to not use gowns while caring for residents who were not confirmed as COVID-19 positive.
- Department staff were not screened when they entered the facility as required in CMS Memo QSO-20-14-NH, DHS Provider Alert NF-20-67 and in the Executive Order placed against the facility.
- Facility staff were observed to not wash hands at all between residents, or not wash their hands correctly, in accordance with the CDC guidelines on handwashing.
- Record review of three residents revealed the facility staff were not performing regular respiratory status assessments, not notifying the residents physician when residents' condition changed, did not chart the positive COVID-19 test results, and did not update the residents' care plans.
- Interview with facility staff revealed staff did not feel like they had adequate staff to meet the needs of the residents.

On or about April 12, 2020, a site visit was conducted by the Department and the following facility observations were made:

- One facility staff were observed wearing full Personal Protective Equipment (PPE) and exited one resident's room and attempted to go into another resident's room without changing PPE. Department staff intervened to ensure the resident's safety.
- Record review of two residents revealed there were no physician notes in the electronic health record and the care plans were not updated for two residents who tested positive for COVID-19. One resident tested COVID-19 positive on 4/2/20, the other resident tested positive for COVID-19 on 4/11/20.

The facility's failure is a violation of the following OARs:

OAR 411-086-0060(2)(a)

Comprehensive Assessment and Care Plan: for failing to assess respiratory changes, for failing to update COVID-19 diagnosis, and failing to update resident care plans;

OAR 411-086-0100(3)

Nursing Services: Staffing: for failing to provide sufficient staff to prevent staff from going between units in order to prevent the spread of COVID-19

OAR 411-086-0120(1)

Nursing Services: Changes of Condition: for failing to notify residents' physician(s) of change in resident condition that warranted medical or nursing intervention;

OAR 411-086-0140(1)(a)(E)

Nursing Services: Problem Resolution and Preventative Care: for failing to prevent the spread of COVID-19; and

OAR 411-086-0330(1)

Infection Control and Universal Precautions: for failing to appropriately use personal protective equipment to prevent the spread of COVID-19.

ORDER IMPOSING CONDITION

Based on the violations above, DHS concludes that Respondent's acts or omissions create a situation that necessitates DHS to issue a license condition. That is because Respondent failed to ensure appropriate measures are in place to prevent the spread of COVID-19. This failure presents an immediate risk to the health and safety of all residents in Respondent's facility.

In addition, DHS finds that the residents of the facility are at risk of immediate jeopardy. That is because the facility's failure to comply with DHS' rules has caused or is likely to cause serious injury, serious harm, serious impairment, or death to a resident or residents. DHS further concludes that this finding of immediate jeopardy is likely to present an immediate jeopardy to future residents upon admission. As a result, DHS is authorized to impose a condition restricting admissions to the facility.

Accordingly, pursuant to ORS 441.736 and OAR 411-089-0050(9), and based on the violations outlined above, DHS orders that Respondent's license is subject to the following conditions effective April 15, 2020:

TEMPORARY MANAGEMENT CONSULTANT.

The Department, with Respondent's consent, is appointing a temporary management consultant to assist, guide, and make recommendations regarding the day-to-day operations of the facility. Respondent's management structure shall remain in place to review, accept, and implement the consultant's recommendations, and work in concert with the consultant to ensure the safety and wellbeing of the residents and continued operation of the facility, consistent with OAR 411-089-0075 and ORS 441.333 to 441.341.

RESTRICTION OF ADMISSIONS.

Respondent shall not admit or readmit any residents into this nursing facility, located at 6003 SE 136th Avenue, Portland, OR 97236 without written prior approval from the Safety, Oversight and Quality Unit.

RESTRICTION OF VISITATION.

Visitors shall be restricted from entering the facility to prevent further spread of the virus and to ensure the health and safety of all residents and the broader community.

RESTRICT CONGREGATE ACTIVITIES AND EVENTS.

Respondent shall discontinue communal dining and group activities in an effort to minimize the risk of spreading the virus.

INFECTION CONTROL TRAINING.

Respondent shall immediately provide training to all staff on facility's infection control policies and procedures. Training should include, but is not limited to:

- How COVID-19 is transmitted from person to person
- Signs and symptoms of COVID-19
- Safe coughing and sneezing practices
- Proper handwashing and hand-sanitation techniques
- Cleaning and disinfecting surfaces
- Treatment when symptoms arise
- Proper use of personal protective equipment (PPE) and when staff are required to use PPE
- Respondent will ensure appropriate infection control protocols are in place and utilized
- Respondent will assess and triage all residents with COVID at least once per shift. Respondent will immediately send residents to the hospital when there are any indications of respiratory distress, a

change in condition that requires hospitalization, and as instructed by the local public health department.

RELOCATE RESIDENT(S) TO PRIVATE ROOM IF AVAILABLE.

If available the Respondent will move the resident(s) with suspected, presumptive or confirmed COVID-19 to a licensed room that lowers the risk of spread of infection (shared to private room), unless otherwise instructed by Public Health Authority. If the facility is unable to relocate residents as instructed by Public Health Authority, for any reason, Respondent will notify the Department immediately.

REPORTING REQUIREMENTS.

Respondent will notify Safety, Oversight and Quality immediately any time a resident's COVID-19 status changes from suspected to presumptive or from presumptive to confirmed. Respondent will provide Safety, Oversight and Quality a weekly summary of these changes every Friday by 5:00 pm beginning April 17, 2020.

Respondent will notify Safety, Oversight and Quality any time there is a significant change in a resident's condition as a result of COVID-19.

Respondent will immediately notify the Department of any new suspected case of COVID-19.

Respondent will report a list of all residents and staff members who have suspected or confirmed COVID-19 every day by 5:00 pm. Respondent will note which individuals have been added or removed from the list from the report submitted the prior day.

Respondent will report a list of all residents who have been admitted, readmitted or discharged each day by 5:00 pm. The list will include the

resident’s room number, name of the unit the resident is or was on, and the resident’s COVID status.

Respondent will communicate daily with the local public health department.

Respondent will send a copy of Respondent’s training checklist and a copy of training attendee sign-in sheet for all trainings related to infection control training as required above.

Internal Transfers of Residents.

Respondent will follow the state and local public health authority’s recommendations regarding movement and placement of residents who have not been confirmed COVID-19 positive and are in the same room as COVID-19 positive residents. The Respondent will send Safety, Oversight and Quality (SOQ) a list of which residents have been moved, their current wing and room numbers, new wing and room numbers, as well as the date of the move for each resident.

Staffing.

Respondent will follow the minimum staffing plan below as developed by SOQ based on a census of 61 residents:

Mt Hood Unit – ECU (Current Census = 13 Residents)

Rooms 1-7

SHIFT	CNA	LICENSED NURSE
DAY	2	1 RN
EVENING	2	1 LPN
NIGHT	2	1 LPN

Note: Note: The Mt. Hood Unit must have dedicated staff that are not shared with any other unit

Columbia Unit (Current Census = 19 Residents)

Rooms 12-18 and Rooms 19-25

SHIFT	CNA	LICENSED NURSE
DAY	3	1 LPN
EVENING	2	1 RN
NIGHT	2	1 LPN

Note: Note: The Columbia Unit must have dedicated staff that are not shared with any other unit

Sandy Unit (Current Census = 12 Residents)
Rooms 37-44

SHIFT	CNA	LICENSED NURSE
DAY	3	1 RN
EVENING	3	1 LPN
NIGHT	2	1 LPN

Note: Note: The Sandy Unit must have dedicated staff that are not shared with any other unit

Wilson Unit (Current Census = 17 Residents)
Rooms 45-54

SHIFT	CNA	LICENSED NURSE
DAY	3	1 RN
EVENING	3	1 LPN
NIGHT	2	1 LPN

Note: The Wilson Unit must have dedicated staff that are not shared with any other unit

The above minimum staffing requirement is based on Respondent's census of 61 residents. SOQ will periodically adjust these staffing levels based on an increase or decrease in Respondents census.

Respondent will have dedicated staff in all units identified above to prevent the spread of COVID-19. Facility staff, including but not limited to License

Nurse and Certified Nursing Assistants, will not provide care across units or be scheduled to work shifts in other units.

Respondent will provide daily staffing reports to SOQ. Reports are due by 5:00 pm, reporting the previous days staffing levels.

The daily staffing reports will include at a minimum the following:

- Total census at the beginning of each shift,
- Total number of CNAs on duty for each shift,
- Total number of LPNs and RNs on duty each shift,
- An explanation of any staffing levels that do not meet the minimum staffing plan outlined above and demonstrate how care was provided to all residents during the shift.

Infection Control

Respondent will implement all key recommendations provided in the document titled "Facility Infection Control Recommendations" attached to this Condition. Respondent will immediately notify SOQ if unable to implement any of these recommendations.

Further information on training and prevention can be found at the following locations:

- Center for Disease Control (CDC) website:
<https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>
- COVID-19 Implementation Guide located at the following DHS website:
<https://www.oregon.gov/DHS/PROVIDERS-PARTNERS/LICENSING/Pages/admin-alerts.aspx>
- LTC COVID-19 Response Toolkit located at the following website:
<https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/DISEASE/SAZ/Emerging%20Respiratory%20Infections/LTCF-COVID-19-Response-Toolkit.pdf>

REQUIREMENTS FOR WITHDRAWAL OF CONDITION

The conditions outlined above will be withdrawn only if all of the following requirements are met:

- Written documentation from State Public Health Authority and/or the Center for Disease Control that there are no suspected or confirmed COVID-19 cases in Respondent's facility.

Respondent must notify DHS in writing when it believes it has met all requirements for withdrawal of this Order Imposing a License Condition. Respondent must provide sufficient evidence demonstrating that it has achieved substantial compliance regarding all violations for which the license condition was imposed, and that systems are in place to ensure that similar deficiencies do not reoccur. If DHS reinspects or reevaluates the facility and concludes that Respondent has not achieved substantial compliance with all requirements necessary for withdrawal of this Order, DHS will not reinspect or reevaluate the facility again for at least 45 days following the first reinspection or reevaluation.

NOTICE OF RIGHT TO REQUEST HEARING

You are entitled to a contested case hearing as provided by ORS 183.415. You are entitled to be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. **To request a contested case hearing, your request must be in writing and must be received within twenty-one (21) days from the date this Notice was personally served or mailed to you, based on the Date of Mailing at the top of this document.** A request sent by U.S. mail is "received" on the date it is postmarked. You may also email your request for hearing. Your request should be sent to:

ATTN: Hearing Request
Oregon Department of Human Services
Aging and People with Disabilities
Safety, Oversight and Quality
PO Box 14530
Salem, OR 97309
NF.ActionRequest@dhsosha.state.or.us

If you submit a request for hearing, you will be notified of the time and place of the hearing. Information on the hearing process will be provided to you in accordance with ORS 183.413(2). A request for hearing will not delay or stay the effective date of this Order Imposing License Condition. DHS may combine the hearing on this Order with other DHS proceedings affecting Respondent's license.

If you fail to request a hearing within the time allowed, request a hearing and later withdraw the hearing request, request a hearing and fail to appear at the time and place set for the hearing, or notify DHS that you will not appear at the hearing and DHS has not rescheduled the hearing, you will be in default. If you are in default, DHS will not hold a hearing and DHS may issue a final order by default based on the record of this proceeding to date (including the information in DHS's files on this matter). In other words, DHS's records to date will automatically become part of the contested case record for the purpose of making a *prima facie* case.

Respondent may also request to hold an informal conference with DHS to discuss DHS's action. The conference will be held at a location designated by DHS. If determined to be appropriate by DHS, the conference may be held by telephone.

AGENCY CONTACT INFORMATION

Questions or requests concerning this notice should be directed to:

Aging and People with Disabilities
Safety, Oversight & Quality
PO Box 14530
Salem, OR 97309
NF.ActionRequest@dhsosha.state.or.us
Fax: 503-378-8966



Jack Honey, Administrator
Aging and People with Disabilities
Safety, Oversight & Quality



Date

NOTICE TO ACTIVE DUTY SERVICEMEMBERS. Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <https://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

cc: Local Office: Multnomah Co NF Unit
LTCO: Director