

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
FACILITY LICENSING AND INVESTIGATIONS SECTION**

IN RE: Intended Licensees

Health Center of Greater Waterbury
177 Whitewood Road
Waterbury, CT 06708

Clifton Healthcare Center
181 Clifton Street
New Haven, CT 06513

CONSENT AGREEMENT

WHEREAS, Marathon Healthcare Center of Waterbury, LLC shall be issued a license to operate a chronic and convalescent nursing home known as Marathon Healthcare Center of Waterbury, LLC by the Department of Public Health (hereinafter the "Department"); and Marathon Healthcare Center of New Haven, LLC shall be issued a license to operate a chronic and convalescent nursing home known as Marathon Healthcare Center of New Haven, LLC (hereinafter collectively the "Facilities"); and

WHEREAS, the Department and the Intended Licensees have agreed to Pre Licensure Consent Agreements that will become effective on the date the licenses are granted to:

Marathon Healthcare Center of Waterbury, LLC, d/b/a Health Center of Greater Waterbury
Marathon Healthcare Center of New Haven, LLC, d/b/a Clifton Healthcare Center

NOW THEREFORE, the Facility Licensing and Investigations Section of the Department acting herein and through Joan Leavitt its Section Chief, and the Licensee, acting herein and through Earle Lerner, its President, hereby stipulate and agree as follows:

1. During the term of this Consent Agreement, the Facilities shall not implement any new patient care services including, but not limited to: short term subacute, units specializing in the care of a diagnostic grouping or an age specific population without first receiving approval from the Department.

Marathon Healthcare

Page 2

2. Within two (2) weeks of the effective date of this Consent Agreement the Licensee for each facility shall execute a contract with an Independent Nurse Consultant (INC) approved by the Department. The duties of the INC at each facility shall be performed by a single individual unless otherwise approved by the Department. The Licensee shall incur the cost of the INC. Each INC shall function in accordance with the Facility Licensing and Investigation Section's INC Guidelines (Exhibit A copy attached). Each INC shall be a registered nurse who holds a current and unrestricted license in Connecticut. The Registered Nurses assuming the functions of the INC shall not be included in meeting the nurse staffing requirements of the Regulations of Connecticut State Agencies.
3. Each INC shall provide consulting services for a minimum of three months at each Facility unless the Department identifies through inspections that a longer time period is necessary to ensure substantial compliance with applicable federal and state statutes and regulations. The INC shall be at each Facility thirty (30) hours per week and arrange his/her schedule in order to be present at the Facility at various times on all three shifts including holidays and weekends. The Department will evaluate the hours of the INC at the end of the three-month period and may, in its discretion, reduce or increase the hours of the INC and/or responsibilities, if the Department determines the reduction or increase is warranted. The terms of the contract executed with the INC shall include all pertinent provisions contained in this Consent Agreement.
4. The INCs shall have a fiduciary responsibility to the Department.
5. Each INC shall conduct and submit to the Department an initial assessment of the Licensee's regulatory compliance which identifies areas requiring remediation. This assessment shall be submitted to the Department within two (2) weeks after the execution of this document.
6. The INCs shall confer with the Licensee's Administrator, Director of Nursing Services, Medical Director and other staff determined by the INC to be necessary to the assessment of nursing services and the Licensee's compliance with federal and state statutes and regulations.

Marathon Healthcare

Page 3

7. The INCs shall make recommendations to the Licensee's Administrator, Director of Nursing Services and Medical Director for improvement in the delivery of direct patient care in the Facility. If the INC and the Licensee are unable to reach an agreement regarding the INC's recommendation(s), the Department, after meeting with the Licensee and the INC shall make a final determination, which shall be binding on the Licensee.
8. The INCs shall submit weekly written reports to the Department documenting:
 - i. the INC's assessment of the care and services provided to patients;
 - ii. the Licensee's compliance with applicable federal and state statutes and regulations; and
 - iii. any recommendations made by the INC and the Licensee's response to implementation of the recommendations.
9. Copies of all INC reports shall be simultaneously provided to the Director of Nursing Services, Administrator, Medical Director and the Department.
10. Each INC shall have the responsibility for:
 - a. Assessing, monitoring, and evaluating the delivery of direct patient care with particular emphasis and focus on the delivery of nursing services by registered nurses, licensed practical nurses, nurse aides, and orderlies and implementing prompt training and/or remediation in any area in which a staff member demonstrated a deficit. Records of said training and/or remediation shall be maintained by the Licensee for review by the Department;
 - b. Assessing, monitoring, and evaluating the coordination of patient care and services delivered by the various health care professionals providing services;
 - c. Recommending to the Department an increase in the INC's contract hours if the INC is unable to fulfill the responsibilities within the stipulated hours per week.
11. The INC, each facility's Administrator, the Director of Nursing Services and the Licensee or designee of the Governing Authority shall meet with the Department every four (4) weeks for the first three (3) months after the effective date of this Consent

Marathon Healthcare

Page 4

Agreement and thereafter at eight (8) week intervals throughout the tenure of the INC. The meetings shall include discussions of issues related to the care and services provided by the Licensee and the Licensee's compliance with applicable federal and state statutes and regulations.

12. Any records maintained in accordance with any state or federal law or regulation or as required by this Consent Agreement shall be made available to the INC and the Department, upon request.
13. The Department shall retain the authority to extend the period that the INC functions are required, should the Department determine that the Licensee is not able to maintain substantial compliance with federal and state laws and regulations. Determination of substantial compliance with federal and state laws and regulations will be based upon findings generated as the result of onsite inspections conducted by the Department.
14. Effective upon the execution of this Consent Agreement, the Licensee, through its Governing Body, Administrator and Director of Nursing Services, shall ensure substantial compliance with the following:
 - a. Sufficient nursing personnel are available to meet the needs of the patients;
 - b. Patients are maintained in a clean, comfortable and well-groomed manner;
 - c. Patient treatments, therapies and medications are administered as prescribed by the physician and in accordance with each patient's comprehensive care plan;
 - d. Patient assessments are performed in a timely manner and accurately reflect the condition of the patient;
 - e. Each patient care plan is reviewed and revised to reflect the individual patient's problems, needs and goals, based upon the patient assessment and in accordance with applicable federal and state laws and regulations;
 - f. Nurse aide assignments accurately reflect patient needs;
 - g. Each patient's nutritional and hydration needs are assessed and monitored in accordance with his/her individual needs and plan of care;

Marathon Healthcare

Page 5

- h. The personal physician or covering physician is notified in a timely manner of any significant changes in patient condition including, but not limited to, decline in skin integrity, presence of any infection, and deterioration of mental, physical, nutritional, and/or hydration status. In the event that the personal physician does not adequately respond to the patient's needs or if the patient requires immediate care, the Medical Director is notified;
 - i. Patients with pressure sores and/or impaired skin integrity are provided with the necessary care to treat and prevent pressure sores and/or impaired skin integrity. Wounds, including pressure sores, are monitored and assessed in accordance with current regulations and standards of practice;
 - j. Necessary supervision and assistive devices are provided to prevent accidents;
 - k. Policies and procedures related to dehydration prevention will be reviewed and revised to include, in part, notification of the attending physician or medical director when the patient's fluid intake does not meet their assessed needs; and
 - l. Patient injuries of unknown origin are thoroughly investigated, tracked, and monitored.
15. Effective upon the execution of this Consent Agreement, the Licensee shall appoint a free floating Registered Nurse Supervisor on each shift at each of the two (2) facilities whose primary responsibility is the assessment of patients and the care provided by nursing staff. Nurse supervisors shall maintain a record of any patient related issue(s) or problem(s) identified on his or her shift and a notation as to the subsequent action taken to resolve the problem(s). Such records shall be made available to the Department upon request and shall be retained for a three (3) year period.
16. Individuals appointed as Nurse Supervisor shall be employed by the facility, shall not carry a patient assignment and shall have previous experience in a supervisory role.
17. Nurse Supervisors shall be provided with the following:
 - a. A job description which clearly identifies the supervisor's day-to-day duties and responsibilities;

Marathon Healthcare

Page 6

- b. A training program which clearly delineates each Nurse Supervisor's responsibilities and duties with respect to patient and staff observations, interventions and staff remediation;
 - c. Nurse Supervisors shall be supervised and monitored by a representative of the Licensee's Administrative Staff, (e.g. Director of Nursing Services or Assistant Director of Nursing Services) to ensure the Nurse Supervisors are functioning in accordance with this Consent Agreement and state and federal requirements. Said administrative supervision and oversight shall be provided on all three (3) shifts on an irregular schedule of visits. Records of such administrative visits and supervision shall be retained for the Department's review; and
 - d. Nurse Supervisors shall be responsible for ensuring that all care is provided to reside patients by all caregivers is in accordance with individual comprehensive care plans.
18. The Licensee, within seven (7) days of the execution of this document, shall designate an individual within each Facility to monitor the requirements of this Consent Agreement. The name of the designated individual shall be provided to the Department within said timeframe.
19. This Pre-Licensure Consent Agreement shall remain in effect until such time as the Department determines that the Licensee has maintained substantial compliance with federal and state laws for a period of twelve months.
20. All reports pertinent to this document shall be sent to:

Barbara A. Yard, Health Program Supervisor
Facility Licensing and Investigations Section
Department of Public Health
410 Capitol Avenue, P.O. Box 340308 MS #12HSR
Hartford, CT 06134-0308

21. All parties agree that this Consent Agreement is an Order of the Department with all of the rights and obligations pertaining thereto and attendant thereon. Nothing herein shall be construed as limiting the Department's available legal remedies against the Licensee for violations of the Consent Agreement or of any other statutory or regulatory

Marathon Healthcare

Page 7

requirements, which may be sought in lieu of or in addition to the methods of relief listed above, including all options for the issuance of citations, the imposition of civil penalties calculated and assessed in accordance with Section 19a-524 et seq. of the General Statutes, or any other administrative and judicial relief provided by law. This Consent Order may be admitted by the Department as evidence in any proceeding between the Department and the Licensee in which compliance with its terms is at issue. The Licensee retains all of its rights under applicable law.

22. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the MFCU or the Bureau Chief of the Department of Criminal Justice's Statewide Prosecution Bureau.
23. The terms of this Consent Agreement shall remain in effect for a period of one (1) year from the effective date of this document unless otherwise specified in this document.
24. The Licensee understands that this Consent Agreement and the terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum including any right to review under the Uniform Administrative Procedure Act, Chapter 368a of the Statutes, Regulations that exists at the time the agreement is executed or may become available in the future, provided that this stipulation shall not deprive the Licensee of any other rights that it may have under the laws of the State of Connecticut or of the United States.
25. The Licensee had the opportunity to consult with an attorney prior to the execution of this Consent Agreement.

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Marathon Healthcare

Page 8

WITNESS WHEREOF, the parties hereto have caused this Consent Agreement to be executed by their respective officers and officials, which Consent Agreement is to be effective as of the later of the two dates noted below.

INTENDED LICENSEE

10-30-06
Date

By: [Signature]
Earle Lerner, its President

STATE OF Connecticut

County of Hartford ss East Hartford 2006

Personally appeared the above named Earle Lerner and made oath to the truth of the statements contained herein.

My Commission Expires: May 31, 2007 Kathleen Ajemian
(If Notary Public) Notary Public
Justice of the Peace
Town Clerk
Commissioner of the Superior Court

STATE OF CONNECTICUT,
DEPARTMENT OF PUBLIC HEALTH

11/1/06
10-30-06
Date

By: [Signature]
Joan D. Leavitt, R.N., M.S., Section Chief
Facility Licensing and Investigations Section