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**Department
of Health**

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

September 16, 2024

CERTIFIED MAIL/RETURN RECEIPT

■■■■ ■■■■
c/o Montefiore Medical Center – Moses Campus
111 East 210th Street
Bronx, New York 10467

Terun Kumar, NHA
Citadel at Kingsbridge
Rehab & Nursing Center
3400-26 Cannon Place
Bronx, New York 10463

Farah Berrios, RN, Director Care Management
Montefiore Medical Center – Moses Campus
111 East 210th Street
Bronx, New York 10467

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

██████████

Appellant,

from a determination by

**Citadel at Kingsbridge
Rehabilitation & Nursing Center,**
Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA24-6442

Hearing before: John Harris Terepka
Administrative Law Judge
September 16, 2024
By videoconference

Parties: Citadel at Kingsbridge Rehabilitation & Nursing Center
3400-26 Cannon Place
Bronx, New York 10463
By: Terun Kumar, administrator
tkumar@khnrc.org

██████████
Montefiore Medical Center – Moses Campus
111 East 210th Street
Bronx, New York 10467
By: Farah Berrios, RN, director of care management
Montefiore Medical Center – Moses Campus
fberrios@montefiore.org

JURISDICTION

Citadel at Kingsbridge Rehabilitation & Nursing Center (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, discharged ██████████ ██████████ (the Appellant) from its nursing home to an acute care hospital and refuses to readmit him. The Appellant appealed the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i). The Respondent has the burden of proving that discharge was necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

The hearing was held and recorded by Webex videoconference. (0h25m.) The Respondent appeared by its administrator, Terun Kumar, and presented documents (Exhibits 1-4). The Appellant was represented at his request by Farah Berrios, RN, director of care management at Montefiore Medical Center.

SUMMARY OF FACTS

1. The Respondent is a residential health care facility, specifically a nursing home within the meaning of PHL 2801(2) and 10 NYCRR 415.2(k), in the Bronx, New York.
2. Appellant ██████████ ██████████ age ██████████ was admitted as a resident of Citadel in ██████████ 2023 after hospitalization for ██████████ surgery. (Exhibit 1.)
3. On ██████████ 2024, when he returned to Citadel 22 minutes late after being out on pass, the Respondent refused to allow him to enter the facility and called police, who transported him to Montefiore Medical Center. (Exhibit 4.)
4. Montefiore Medical Center is a general hospital within the meaning of PHL 2801(10). The hospital determined that the Appellant does not require inpatient medical care at a general hospital and advised the Respondent that he can return to Citadel.

5. The Respondent refuses to accept the Appellant back at Citadel. He remains at Montefiore Medical Center.

6. At no time did the Respondent provide to the Appellant or his designated representative or other family member a written notice of discharge including the grounds for discharge, discharge location, the Appellant's appeal rights, and the other information required by 10 NYCRR 415.3(i)(1)(iii),(iv)&(v).

ISSUES

Has the Respondent established that the Appellant's discharge from Citadel is necessary and that the discharge plan is appropriate?

DISCUSSION

The Respondent transferred the Appellant to Montefiore Medical Center on ██████████ 2024 when he returned to Citadel 22 minutes late after being "out on pass." The Respondent had advised him that returning late was not consistent with facility policies and expectations. There was no medical reason for the transfer to Montefiore, but the Respondent refused and continues to refuse to allow him to return to its nursing home because he violated its out on leave policy. (Exhibit 4.)

Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth in Department regulations at 10 NYCRR 415.3(i) and federal regulations at 42 CFR 483.15(c). These laws and regulations specify permissible grounds for an involuntary discharge. Violation of facility leave policy is not an authorized grounds for discharge.

The Respondent's contention that because it advised the Appellant about the facility policy, his late return constituted a voluntary discharge against medical advice (AMA) is meritless. (Exhibit 4.) A nursing home resident is entitled to discharge on his own request,

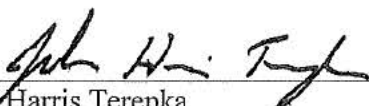
but such a request must be evidenced by a signed and dated written statement. 10 NYCRR 415.3(i). Requiring a responsible party accompanying the resident to sign an “Out on Pass” form that states a failure to return on time “is equivalent to taking the resident **Against Medical Advice** and the resident will not be accepted back at the Facility and will be discharged” does not constitute compliance with this regulation. (Exhibit 2.)

Before it transfers or discharges a resident, a nursing home must notify the resident and designated representative, if any, of the transfer or discharge and the grounds for it in writing. PHL 2803-z(1)(c); 10 NYCRR 415.3(i)(1)(iii),(iv)&(v); 42 CFR 483.15(c)(3)&(5). No notice was issued in this case. When a resident is hospitalized, the nursing home is required to readmit him if he requires nursing home care. 10 NYCRR 415.3(i)(3); 42 CFR 483.15(e). If the resident is not appropriate for return to the nursing home, the nursing home is required to provide notice and sufficient preparation and orientation to ensure safe and orderly transfer or discharge in the form of a discharge plan which addresses his medical needs and how these will be met after discharge. 10 NYCRR 415.3(i)(1)(vi). As the Respondent has not complied with any of these regulations it is not authorized to discharge the Appellant.

DECISION: Respondent has failed to establish that the discharge of Appellant was necessary and that its discharge plan is appropriate. The Respondent is directed, pursuant to 10 NYCRR 415.3(i)(2)(i)(d), to readmit the Appellant prior to admitting any other person.

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

Dated: Rochester, New York
September 16, 2024



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication