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**Department  
of Health**

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, MD, MPH**  
Commissioner

**JOHANNE E. MORNE, MS**  
Executive Deputy Commissioner

January 31, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

Adam Kahn, Esq.  
309 Sea Cliff Avenue  
Sea Cliff, New York 11579

Peretz Tuvia Stein, NHA  
Ross Center for Health & Rehab  
839 Suffolk Avenue  
Brentwood, New York 11717

Lindsey Frank, DSW  
South Shore University Hospital  
301 East Main Street  
Bay Shore, New York 11706

**RE: In the Matter of [REDACTED] – 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

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

COPY

DECISION

[REDACTED]

Appellant,

from a determination by

ROSS CENTER FOR NURSING  
AND REHABILITATION,

Respondent,

to discharge him from a residential health care facility.

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Before: Tina M. Champion  
Administrative Law Judge

Date: January 29, 2025

Held at: Videoconference via WebEx

Parties: [REDACTED]  
c/o South Shore University Hospital  
301 East Main Street  
Bay Shore, New York 11706

By: Adam Kahn, Esq.  
309 Sea Cliff Avenue  
Sea Cliff, New York 11579  
akahn@lasalledwyer.com

Ross Center for Nursing and Rehabilitation  
839 Suffolk Avenue  
Brentwood, New York 11717

By: Peretz Stein, Nursing Home Administrator  
pstein@rosshealthcare.com

JURISDICTION

By notice dated [REDACTED] 2025, Ross Center for Nursing and Rehabilitation (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) 415.3(i).

HEARING RECORD

ALJ Exhibits: 1 – Adjudication Letter with Notice of Hearing

Facility Witnesses: Peretz Stein, Nursing Home Administrator  
Patricia Schill, Assistant Director of Nursing

Facility Exhibits: None

Appellant Witnesses: Olusola Segun, M.D., South Shore University Hospital Psychiatrist  
[REDACTED] Appellant's [REDACTED] and Designated Representative

Appellant Exhibits: None

Also Present: Lindsey Frank, Director of Social Work (South Shore University Hospital)  
[REDACTED] Appellant's [REDACTED]

A digital recording of the hearing was made. (1:14:20 in duration.)

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant was admitted to the Facility in 2018. (Testimony [T.] Schill, Peretz.)
2. The Appellant has [REDACTED] impairment secondary to injury to his [REDACTED] (T. Segun.)
3. The Appellant is able to understand others but is mostly [REDACTED] He has [REDACTED] [REDACTED] and can propel himself in his wheelchair, most often moving in a [REDACTED] (T. Schill, [REDACTED])

4. The Appellant has exhibited [REDACTED] at the Facility and has been involved in six different altercations with residents, with the last occurring on [REDACTED] 2025, and being the basis for the Facility sending him to South Shore University Hospital for [REDACTED] evaluation. (T. Schill.)

5. The hospital has medically and [REDACTED] cleared the Appellant for return to the Facility. (T. Segun.)

6. The Facility refuses to accept the Appellant back. (T. Schill, Stein.)

7. The Facility issued a Transfer/Discharge Notice dated [REDACTED] 2025, noting that the Appellant would be discharged on that date with the reason noted as the health and/or safety of individuals in the Facility would otherwise be endangered. (ALJ Ex. I.)

8. The notice did not contain a discharge location. (ALJ Ex. I.)

9. The notice was not provided to the Appellant or his [REDACTED] who is his designated representative and was with him at the Facility at the time he was transported to the hospital. (T. [REDACTED])

10. The Appellant has remained at the hospital during the pendency of the appeal.

#### APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].) Excluding reasons of nonpayment and facility closure, a resident may be transferred only when:

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (3) the safety of individuals in the facility is endangered; or
- (4) The health of individuals in the facility is endangered;

(10 NYCRR 415.3[i][1][i][a].)

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
  - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
  - (2) the method by which an appeal may be obtained;
  - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
  - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
  - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
  - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;
- (g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3[i][1][v].)

Facilities are also required to "provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge."

(10 NYCRR 415.3[i][1][vi].)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate.

#### DISCUSSION

Peretz Stein, Nursing Home Administrator, testified that he was unable to address the deficiency of the Transfer/Discharge Notice lacking a discharge location for the Appellant. He was also unable to refute the testimony by the Appellant's [REDACTED] that neither the Appellant nor his [REDACTED] were provided with a copy of the notice.

Upon inquiry by the Appellant's counsel as to whether it would be fair to say that the Facility's plan for the Appellant is to leave him at the hospital until the hospital figures out something, Mr. Stein testified, "That's what we would like." (Recording @ 38:17.)

The Facility has not offered any clinical documentation to indicate that the Appellant is a danger to himself or others at the Facility.

Olusola Segun, M.D., a psychiatrist at the hospital who has been treating the Appellant, testified that the Appellant is medically and [REDACTED] cleared to return to the Facility. She testified that the Appellant has behaviors and [REDACTED] [REDACTED] as a result of a [REDACTED] but that he has exhibited good behavioral control at the hospital. She testified that he does not meet the criteria for [REDACTED] admission, that he should return to the skilled nursing

facility with which he is familiar, and that an extended stay at the hospital places him at risk for hospital acquired infections.

The Facility is understandably concerned with the repetitive altercations involving the Appellant. It justifiably sent the Appellant to the hospital for a [REDACTED] evaluation following an incident of [REDACTED] on [REDACTED] 2025. There is, however, no justification for its failures to comply with regulatory requirements upon its determination to discharge the Appellant. It has failed to provide a proper and complete written notice of discharge, failed to provide the Appellant and his [REDACTED] with a copy of the notice, and, most concerningly, willfully failed to develop an actual discharge plan with a discharge location. Rather, the Facility has chosen to fully divest itself of any responsibility to the Appellant, who has resided at the Facility since 2018, and push its obligations onto the hospital. Its actions run afoul of the clear, well-established regulatory requirements at 10 NYCRR 415.3 and are unacceptable.

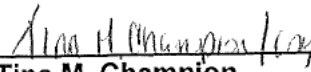
The Appellant currently has no acute condition, [REDACTED] or otherwise, requiring hospital admission. He has been fully cleared for return to the Facility and has exhibited good behavioral control. The Facility has not met its burden to prove that discharge is necessary, nor has it developed an appropriate discharge plan.

#### DECISION

Ross Center for Nursing and Rehabilitation has not established that the Appellant's discharge was necessary and that the discharge plan was appropriate.

1. Ross Center for Nursing and Rehabilitation is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

DATED: January 31, 2025

  
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**Tina M. Champion**  
**Administrative Law Judge**

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