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# Department of Health

KATHY HOCHUL  
Governor

JAMES V. McDONALD, MD, MPH  
Commissioner

JOHANNE E. MORNE, MS  
Executive Deputy Commissioner

May 27, 2025

## CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]  
c/o Newfane Rehab & Health Center  
2709 Transit Road  
New Fane, New York 14108

Kathryn J. Rebhan, Esq.  
Center of Elder Law & Justice  
438 Main Street, Suite 1200  
Buffalo, New York 14202

Ashley Smyth, SW  
Newfane Rehab & Health Center  
2709 Transit Road  
New Fane, New York 14108

Vanessa Robinson, Esq.  
Magavern Magavern Grimm LLP  
810 Main Street  
Niagara Falls, New York 14301

**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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COPY

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

██████████  
Appellant,

ORDER

from a determination by

NEWFANE REHABILITATION AND NURSING

to discharge them from a residential health care facility.

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On ██████████ 2025 New Fane Rehabilitation and Nursing (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a discharge notice to ██████████ (Resident). The Resident 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). A notice of hearing was issued scheduling the hearing on May 20, 2025, by Webex video conference, before Kimberly A. O'Brien, Administrative Law Judge (ALJ). The parties appeared. The Facility was represented by Vanessa Robinson, Esq. The Resident appeared and was represented by Kathryn J. Rebhan, Esq. The discharge notice states that the basis for the discharge is that the Resident's health has improved and provides only an address for the discharge location, which is an assisted living facility. The ALJ held a prehearing conference which revealed that the Resident had requested that he be transferred to another nursing home closer to ██████████ New York, not an assisted living facility. The Resident does not believe an assisted living facility can meet his needs. Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove that the discharge is necessary and

appropriate. Admittedly at the time of the hearing the Facility did not have a physician available to testify or physician documentation to support that the Resident no longer has skilled needs and discharge to an assisted living facility is appropriate. Accordingly the matter did not proceed to a hearing.

#### ORDER

The Facility must issue a new discharge notice if it intends to discharge the Resident. The discharge notice must clearly state the basis for discharge and the name and address of the discharge location.

DATED: Albany, New York  
May 27, 2025

Kimberly A. O'Brien / amy  
Kimberly A. O'Brien  
Administrative Law Judge

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