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NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

July 21, 2025

CERTIFIED MAIL/RETURN RECEIPT

Adam Kahn, Esq.
LaSalle & Dwyer, PC
309 Sea Cliff Avenue
Sea Cliff, New York 11579

Bryan Rosenzwieg, Administrator
Pine Forest Care Center for Rehabilitation
and Healthcare
9 Hilaire Drive
Huntington, New York 11743

[redacted]
c/o [redacted] & designated representative
[redacted]

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 /cmg

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

[redacted]

Appellant,

from a determination by

Pine Forest Center for Rehabilitation and Healthcare,

Respondent,

to discharge him from a residential health care facility.

DECISION AFTER HEARING

#DA25-6629

Hearing before: John Harris Terepka
Administrative Law Judge
July 21, 2025
By videoconference

Parties: Pine Forest Center for Rehabilitation and Healthcare
9 Hilaire Drive
Huntington, New York 11743
By: Bryan Rosenzwieg, Administrator
admin@pfcnh.com

[redacted] *and designated representative*

By: Adam Kahn, Esq.
La Salle & Dwyer, PC
309 Sea Cliff Avenue
Sea Cliff, New York 11579
AKahn@lasalledwyer.com

JURISDICTION

Pine Forest Center for Rehabilitation and Healthcare (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, transferred [redacted] (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 the discharge was necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

SUMMARY OF FACTS

1. Respondent is a residential health care facility, specifically a nursing home within the meaning of PHL 2801(2) and 10 NYCRR 415.2(k), located in Huntington, New York.

2. Appellant [redacted] age [redacted] was admitted as a resident in [redacted] 2024 from [redacted]. His medical history includes [redacted] and [redacted]. (Exhibit 1.)

3. On [redacted], 2024, the Respondent transferred the Appellant to [redacted] for evaluation [redacted] facility resident. (Testimony of Rosenzwieg.)

4. [redacted] is a general hospital within the meaning of PHL 2801(10). [redacted] has determined that the Appellant no longer requires continued hospitalization and is ready to return to the Respondent's care. He is medically stable for discharge and appropriate for nursing home placement. (Testimony of Ortolani, Jean-Baptiste.)

5. The Respondent refuses to readmit the Appellant.

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). Neither the Appellant nor his designated representative has signed and dated a written statement requesting discharge.

7. The Respondent has not developed an appropriate post-discharge plan of care for the Appellant that addresses his long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi).

ISSUES

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

HEARING RECORD

Respondent witnesses:	Bryan Rosenzweig, administrator
Respondent exhibits:	1 (Pine Forest admission record face sheet)
Appellant witnesses:	[redacted], director of social work, [redacted] nurse practitioner, [redacted]
Appellant exhibits:	None
ALJ exhibit:	ALJ I (hearing notice)

The hearing was held and recorded on Webex videoconference. (0h32m.)

DISCUSSION

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). They include the requirement that before it transfers or discharges a resident, the nursing home must notify the resident and designated

representative, if any, of the transfer or discharge and the reasons for the move in writing. Discharge does not include transfer or discharge made in compliance with a request by the resident, the resident's legal representative or health care agent, as evidenced by a signed and dated written statement. 10 NYCRR 415.3(i).

The required written notice must be given no later than the date on which a determination was made to transfer or discharge the resident and must include, among other things:

- the reason for the transfer or discharge
- the specific regulations that support the action
- the effective date of the transfer or discharge
- the location to which the resident will be transferred or discharged
- a statement that the resident has the right to a hearing to appeal the discharge
- the name, address and telephone number of the State long term care ombudsman

10 NYCRR 415.3(i)(1)(iii),(iv)&(v); 42 CFR 483.15(c)(3)&(5).

Department policy disseminated to nursing home administrators by "Dear Administrator Letter" (DAL) explicitly confirms that the notice requirements are applicable if a nursing home does not want to readmit a resident who has been hospitalized:

Q: If a resident is sent to the hospital due to the resident's clinical or behavioral status that endangers the health and/or safety of other individuals in the facility, do I need to issue a Discharge/Transfer Notice?

A: A hospital is not an appropriate discharge location. Admission assessments are key to ensuring the facility can care for the residents admitted. If there is evidence a facility cannot meet the resident's needs, or the resident poses a danger to the health and safety of his/herself or others, the facility must follow all the requirements as they apply to discharge including the basis for discharge, provide notice to the resident, his/her representative and the LTCOP, reason for discharge, discharge location and appeal rights information. A facility's determination not to permit a resident to return must not be based on the resident's condition when originally sent to the hospital. DAL-NH 19-07, August 20, 2019; *reissued* October 11, 2022; DAL-NH 25-01, January 7, 2025.

The Respondent has failed to comply with the notice requirements of New York State law and both state and federal regulations.

At the hearing the Respondent suggested that the Appellant was discharged at his own request and did not wish to return. The Appellant denied this, and in any event the Respondent did not substantiate its assertion by producing a signed and dated written statement as is required by Department regulations at 10 NYCRR 415.3(i) to establish a voluntary discharge.

It may have been appropriate for the Respondent to transfer the Appellant for hospital evaluation in [redacted] 2024 after he became [redacted] resident. But it is now the opinion of the hospital care team that he no longer requires hospitalization for either medical or [redacted] reasons and that a nursing home is an appropriate placement that can and should be expected to meet his care needs. The hospital's director of social work and [redacted] nurse practitioner, who are both familiar with the Respondent's current condition, both testified that the Appellant is ready to return to nursing home placement. The [redacted] nurse practitioner noted that medication management has largely resolved the Appellant's behavioral issues and that he does not meet the criteria for [redacted] placement. The Respondent offered no evidence about the Appellant's current condition to call that assessment into question. It has not even evaluated the Appellant since sending him to the hospital in [redacted] 2024.

The Respondent complains that it was not fully aware of the Appellant's behavioral history when it admitted him. Facilities are required to determine their capacity and capability to care for the residents they admit and should not admit residents whose needs they cannot meet. DAL-NH 19-07 & DAL-NH 25-01, *supra*. The Respondent's failure to

adequately evaluate the Appellant before admitting him does not relieve it of the responsibilities it undertook when it did admit him.

The Respondent argues that the health and safety of individuals in the facility may be endangered by the Appellant. When discharge is alleged to be necessary due to the endangerment of the health or safety of other individuals in the facility, the resident's clinical record must include complete documentation made by a physician. 10 NYCRR 415.3(i)(1)(ii)(b); 42 CFR 483.15(c)(2)(ii)(B). The facility is also required to document in the resident's clinical record the risks to the resident or others if the resident were to remain in the facility. PHL 2803-z(e). When discharge is alleged to be necessary because the resident's needs cannot be met after reasonable accommodation in the facility, the resident's clinical record must include complete documentation made by the resident's physician of the specific needs that cannot be met and the facility's attempt to meet those needs. PHL 2803-z(d); 10 NYCRR 415.3(i)(1)(ii)(a); 42 CFR 483.15(c)(2)(i)&(ii).

The Respondent has failed to produce documentation to show compliance with any of these requirements. Having offered no such documentation, and no professional medical opinion to document the Appellant's current condition, the Respondent has failed to meet its burden of documenting and proving appropriate grounds for discharge or refusal to now readmit him from [redacted].

In addition to ignoring the notice requirements and failing to document grounds for discharge as required, the Respondent failed to conduct and document appropriate discharge planning. When a resident is hospitalized, the nursing home is required to establish and follow a written policy that includes readmission to the facility if the resident 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 sufficient preparation and orientation to ensure safe and orderly transfer or discharge in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and to provide a discharge summary pursuant to 10 NYCRR 415.11(d). 10 NYCRR 415.3(i)(1)(vi).

The Respondent has failed to develop a plan to address the Appellant's continued need for residential care. Discharge to a general hospital does not meet the nursing home's responsibility to provide an appropriate discharge plan. Department policy is explicit on this point:

> State and Federal regulations require that nursing home residents who are temporarily hospitalized be allowed to return to the facility following hospitalization... Hospitals are not acceptable discharge locations. When sending residents with episodes of acting out behavior to hospitals for treatment, the nursing home is responsible to readmit the resident and/or develop an appropriate discharge plan. In these cases, the hospital is not considered to be the final discharge location. DAL-NH 15-06, September 23, 2015.

Shifting a difficult resident off to a general hospital without any discharge plan, and then refusing to take them back, is known as a "hospital dump." In this case the Respondent's actions have been compounded by a complete failure to comply with notice, documentation of grounds, or discharge planning requirements. The Respondent is apparently proposing that the Appellant remain at [redacted] Hospital until the long-term care plan that the Respondent claims is required but has failed to develop, is accomplished. This is an inappropriate, costly, and medically unnecessary solution that places the care management and planning burden on the hospital. Department and Federal regulations clearly intend that the discharge planning burden remain on the nursing home that undertook the Appellant's long term residential care.

The management and care planning issues presented by this resident cannot be solved in this hearing decision, but responsibility for them can be and accordingly is reaffirmed. If the Appellant requires supervision in his interactions with other residents, a nursing home can be and is expected to provide that supervision. If the Respondent does not have or is unwilling to devote the resources necessary to provide the care and supervision the Appellant requires and believes some other placement is appropriate, it has the responsibility to find that placement, develop an appropriate discharge plan, and issue the required written notice of discharge.

DECISION: Respondent has failed to establish that the discharge of Appellant [redacted] 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
July 21, 2025

John Harris Terepka
Administrative Law Judge
Bureau of Adjudication