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FILED

JUN 25 2010

Division of Consumer Affairs

By: Jah-Juin Ho
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

SOUTH JERSEY HOME CARE, INC.

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order to ascertain whether violations of the Private Employment Agency Act, N.J.S.A. 34:8-43 et seq. (“Private Employment Agency Act”), the Regulations Governing Placement of Health Care Practitioners, N.J.A.C. 13:45B-14.1 et seq. (“Practitioner Regulations”), and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), have been or are being committed by South Jersey Home Care, Inc., with a principal place of business in the State of New Jersey (“State” or “New Jersey”) of 1028 Asbury Avenue, Ocean City, New Jersey 08226, as well as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns (collectively, “Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS the Division alleges that Respondent failed to re-evaluate their clients' health care needs as required and failed to document information required in hiring/employing Health Care Practitioners;

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding this Investigation without the need for further action, and for good cause shown:

IT IS ORDERED and **AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which shall apply wherever the words and terms appear in this Consent Order:

2.1 "Additional Consumer" shall refer to any Consumer who submits to the Division, either directly or through another agency and after the Effective Date, a written Consumer complaint concerning Respondent's business practices.

2.2 "ADR Unit" shall refer to the Alternative Dispute Resolution Unit of the Division.

2.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.4 "CALA" shall refer to the Consumer Affairs Local Assistance Offices within counties and/or municipalities in the State.

2.5 “Consumer” shall refer to any Person, who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(d).

2.6 “Employment Application” shall refer to the form that each Person who applies for placement by or employment in the State with Respondent is required to complete pursuant to N.J.A.C. 13:45B-14.2.

2.7 “Health Care Practitioner(s)” shall be defined in accordance with N.J.A.C. 13:45B-14.1 and shall refer to any individual placed or employed in the State by the Respondent for the purpose of rendering Health Care Services.

2.8 “Health Care Services” shall refer to any services rendered to a patient for the purpose of maintaining or restoring the patient’s physical or mental health, or any health related services rendered to a patient for which licensure, registration or certification is required as a pre-condition to the rendering of such services. Such services include assistance with basic life functions such as bathing, toileting, transferring, dressing, grooming, and assistance with ambulation, exercise, or other aspects of personal hygiene.

2.9 “Person[s]” shall refer to any natural person, individual, any business entity (whether partnership, trust, estate, incorporated or unincorporated association, cooperation or corporation), any governmental agency or entity and any other legal or commercial entity, however organized. For purposes of the CFA, “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.10 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of refunds or the reversal of credit card or debit card charges.

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the Private Employment Agency Act, the Practitioner Regulations and the CFA.

3.2 Respondent shall comply with all requirements of the Practitioner Regulations.

3.3 Respondent shall create an Employment Application for each Health Care Practitioner seeking employment with Respondent, which shall include the information required by N.J.A.C. 13:45B-14.2.

3.4 Prior to placement or referral, Respondent shall verify the license status of each Health Care Practitioner and maintain a record of such verification, as required by N.J.A.C. 13:45B-14.4(c) and N.J.A.C. 13:45B-14.4(e).

3.5 Respondent shall maintain a copy of each Health Care Practitioner's license or registration with the notation required by N.J.A.C. 13:45B-14.4(d).

3.6 Prior to placement or referral, Respondent shall verify the Health Care Practitioner's work history, inquire into the reasons for the end of prior employment and shall maintain written records of such verification and inquiry, as required by N.J.A.C. 13:45B-14.6.

3.7 Prior to placing a Health Care Practitioner, Respondent shall assure that an appropriately licensed person evaluates the patient/employer's needs and establishes a written plan of care, as required by N.J.A.C. 13:45B-14.9(a).

3.8 Once a placement or referral of a Health Care Practitioner has been made, Respondent shall inquire, at a minimum of once every thirty (30) days, whether the plan of care is adequate to

meet the needs of the patient/employer and whether the plan of care is being discharged appropriately, as required by N.J.A.C. 13:45B-14.9(c).

3.9 Once a placement or referral of a Health Care Practitioner has been made, Respondent shall conduct, at a minimum of once every sixty (60) days, an on-site, in home evaluation of the plan of care, as required by N.J.A.C. 13:45B-14.9(g).

3.10 Respondent shall not request that a patient/employer waive the required sixty (60) day on-site, in home evaluation of the plan of care, as required by N.J.A.C. 13:45B-14.9(g).

3.11 Respondent shall not imply association with a governmental department or agency by using the following statement in the Agency-Client Placement Agreement: "South Jersey Home Care is a New Jersey State employment and personnel service agency licensed by the State of New Jersey," in violation of N.J.S.A. 56:8-2.1.

4. ADDITIONAL CONSUMER COMPLAINTS

4.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints received by the Division or forwarded to the Division, among other things, by any CALA office. The Division shall forward to Respondent the Additional Consumer complaints within thirty (30) days of the Division's receipt thereof.

4.2 During this one (1) year period, the Division shall notify each Additional Consumer in writing, with a copy to Respondent's designate, of the following: (a) that the Additional Consumer's complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days; and (c) the right to refer his/her complaint to the ADR Unit for binding arbitration if Respondent disputes the Additional Consumer's complaint and/or requested relief.

4.3 Within thirty (30) days of receiving the Additional Consumer's complaint from the Division, Respondent shall send a written response to each Additional Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, Post Office Box 45025, Newark, New Jersey 07101.

4.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall contemporaneously provide the requested relief to such Additional Consumer. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by a check payable to the Additional Consumer.

4.5 If Respondent disputes the Additional Consumer's complaint and/or the requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the Additional Consumer's complaint.

4.6 Within forty-five (45) days of Respondent's receipt of the Additional Consumer's complaint, Respondent shall notify the Division as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;

- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

4.7 If within sixty (60) days of Respondent's receipt of the Additional Consumer's complaint: (a) Respondent has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer's complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing both the Additional Consumer and Respondent's designate of the referral of the Additional Consumer's complaint to the ADR Unit. Thereafter, upon the consent of the Additional Consumer, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached).

4.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

4.9 Respondent's failure or refusal to comply with the requirements of Sections 4.3 through 4.6 and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Respondent.

4.10 If an Additional Consumer fails or refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

4.12 After one (1) year from the Effective Date, either Party may opt out of the Additional Consumer complaint resolution process for any reason at any time.

4.13 Following the expiration of the one (1) year period, Respondent may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods, upon written notice by Respondent to the Division provided thirty (30) days prior to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Respondent's request, at its sole discretion for any reason including, but not limited to, those set forth in Section 4.9.

5. SETTLEMENT PAYMENT

5.1 Contemporaneously with the execution of this Consent Order, Respondent agrees to pay the amount of Fifteen Thousand and 00/100 Dollars \$15,000.00 to the Division ("Settlement Payment"). The Settlement Payment shall be comprised of Fourteen Thousand Four Hundred Sixty-Two and 18/100 Dollars (\$14,462.18) in civil penalties, pursuant to N.J.S.A. 34:8-61 and N.J.S.A.

56:8-19, and Five Hundred Thirty Seven and 82/100 Dollars (\$537.82) as reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 34:8-62 and N.J.S.A. 56:8-11.

5.2 The Settlement Payment shall be made by certified or cashier's check payable to the "New Jersey Division of Consumer Affairs" and shall be forwarded to:

New Jersey Office of the Attorney General
Division of Consumer Affairs
Administration - Fiscal Unit
124 Halsey St.
PO Box 45024
Newark, NJ 07101

5.3 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid, and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

6. GENERAL PROVISIONS

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondent as well as its principals, officers, directors, agents, employees, successors and assigns, and any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the Private Employment Agency Act, the Practitioner Regulations and the CFA. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or

precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act.

6.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

7. RELEASE

7.1 In consideration of the injunctive relief, Settlement Payment, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the Private Employment Agency Act, the Practitioner Regulations and the CFA arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order as well as the Private Employment Agency Act, the Practitioner Regulations, and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 34:8-61 and N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

9. COMPLIANCE WITH ALL LAWS

9.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that

provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Jah-Juin Ho
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

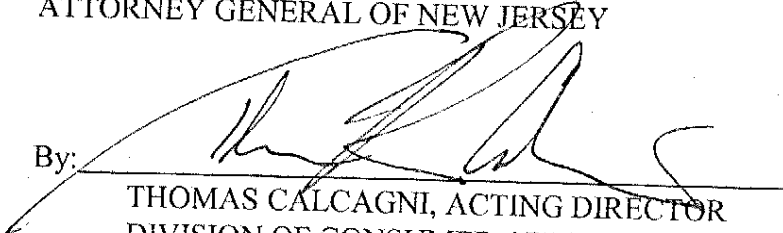
For the Respondent:

Jeffrey D. Light, Esq.
Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill
660 New Road, Ste. 1-A
Northfield, New Jersey 08226

IT IS ON THE 25th DAY OF June, 2010 SO ORDERED.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY


By:


THOMAS CALCAGNI, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

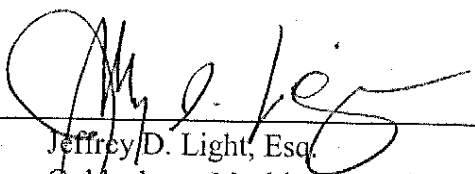
By: 
Jah-Juin Ho
Deputy Attorney General

Dated: June 22, 2010

Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 877-1280

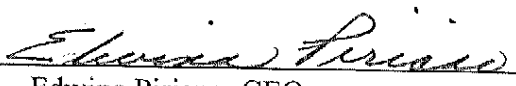
FOR THE RESPONDENT SOUTH JERSEY HOME CARE, INC:

JEFFREY D. LIGHT, ESQ.

By: 
Jeffrey D. Light, Esq.
Goldenberg, Mackler, Sayegh,
Mintz, Pfeffer, Bonchi & Gill
660 New Road, Ste. 1-A
Northfield, New Jersey 08226

Dated: June 15, 2010

EDWINA PIRIANO, CEO

By: 
Edwina Piriano, CEO
South Jersey Home Care, Inc.
1028 Asbury Avenue
Ocean City, New Jersey 08226

Dated: June 15, 2010