

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Health and
Environmental Control,

Petitioner,

vs.

Robin's Residential Care Facility,

Respondent.

Docket No. 14-ALJ-07-0299-CC

**AMENDED FINAL ORDER
AND DECISION**

APPEARANCES: For the Petitioner: Vito Wicevic, Esquire
Ashley C. Biggers, Esquire
For the Respondent: Johnny E. Watson, Sr., Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to Code Sections 44-1-60 and 1-23-310 et seq., and Regulation Section 61-84.302.G for a contested case hearing regarding whether the South Carolina Department of Health and Environmental Control (DHEC or Department) properly revoked Robin's Residential Care Facility's (RRCF or Facility) license to operate as a community residential care facility (CRCF), pursuant to Code Section 44-7-320 and Regulation Section 61-84.301, based upon RRCF's noncompliance with the Standards for Licensing Community Residential Care Facilities, found in Regulation 61-84.¹

Notice of a contested case hearing was given to the parties, and a hearing on the merits was held on June 1 and 2, 2015, at the ALC in Columbia, South Carolina. Both parties appeared at the hearing and presented testimony and evidence. After carefully weighing all the evidence, the Court concluded that the Department properly revoked RRCF's license to operate as a CRCF for violations of Regulation 61-84. The Court issued an order to that effect on December 9, 2015. The Department filed a Motion to Reconsider on December 21, 2015, arguing that the Court's

¹ Regulation 61-84 was amended on June 26, 2015. Citations and references to Regulation 61-84 in this order refer to the version applicable at the time of the inspections and violations at issue here. Brownlee v. S.C. Dept. of Health & Env'tl. Control, 382 S.C. 129, 132, 676 S.E.2d 116, 118 (2009) (version of regulation effective at the time permit application is filed is controlling).

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findings conflicted with the Department's interpretation of Regulation Section 61-84.302. No response was filed by Respondent. The Court now amends its Order to incorporate the Department's interpretation of its own regulations, pursuant to the deference doctrine. See Kiawah Dev. Partners, II v. S.C. Dept. of Health & Env'tl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the burden of persuasion and the credibility of the witnesses, the Court makes the following findings of fact by a preponderance of the evidence:

General Findings

Robin's Residential Care, Inc. is a CRCF with nine beds licensed by the Department and located in Columbia, South Carolina. Lillian Jamison is the administrator of RRCF and is licensed by the Board of Long Term Health Care Administrators. RRCF has operated since 1989 without any previous disciplinary action against the license. The purpose of a CRCF is to offer room and board and coordinate personal care for the residents. It is a step below nursing care and is designed to promote the independence and autonomy of the residents. RRCF provides a home for four adults. RRCF operates with two long-time employees: Jamison and a cook and maintenance man who has been employed by RRCF since 1996. There are also volunteers, including Jamison's daughter who lives at the facility with her mother.

The Department conducts a number of different inspections (including general, resident care focused, and food and sanitation inspections) at CRCFs to determine compliance with Regulation 61-84. Inspections generally begin with the inspector requesting documentation required by Regulation 61-84 from the CRCF administrator or responsible staff person. The inspector also conducts a medication review to determine whether the CRCF complies with the regulatory requirements regarding administration of medications. The inspector conducts a walkthrough of the CRCF to observe the physical conditions of the facility and its grounds. The inspector also interviews residents and staff of the CRCF. At the conclusion of the inspection, the inspector conducts an exit conference with the CRCF administrator or responsible staff person during which the Department's report of visit (ROV) is explained and clarified. The ROV is a document that describes the conditions, conduct, or practices observed by the inspector that are in violation of the regulation. If there are errors in the ROV, the CRCF administrator or responsible

staff person has the opportunity during the exit conference to present the errors to the inspector for correction. The ROV normally provides the due date of the CRCF's written plan of correction (POC), which describes the actions taken by the CRCF to correct each cited deficiency, the actions taken to prevent recurrences, and the actual or expected completion dates of those actions. See S.C. Code Ann. Regs. 61-84.202.D (2012). Additionally, facilities may submit requests for reconsideration to the Department contesting individual citations.

From July 2011 to May 2013, the Department visited RRCF 11 times to conduct various types of inspections and investigations, including general, resident care focused, food and sanitation, fire and life safety, complaint, and follow-ups. During these inspections, the Department cited RRCF with numerous violations of Regulation 61-84 that concerned deficiencies in staff training, resident records, medication management, kitchen maintenance, housekeeping, and allowing officials access to the facility to conduct inspections. The following are the violations observed and cited by the Department during the inspections and RRCF's POCs for those citations.

July 20, 2011 Resident Care Focused Inspection and Food and Sanitation Inspection

On July 20, 2011, Angie Smith, an inspector for the Department, conducted a resident care focused inspection and a food and sanitation inspection at RRCF. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 504.A.1. No documentation of training in basic first-aid for a staff member.
- Section 504.A.3. No documentation of annual training in management/care of persons with contagious and communicable diseases for four staff members.
- Section 504.A.4. No documentation of training in medication administration and management for a staff member.
- Section 504.A.6. No documentation of annual training in the use of restraints for the Facility's designated staff member.
- Section 504.A.7. No documentation of training in OSHA standards regarding blood-borne pathogens for a staff member.
- Section 504.A.9. No documentation of training in confidentiality of resident information/records and the protection of resident rights for a staff member.
- Section 504.A.10. No documentation of training in fire response for a staff member.
- Section 504.A.11. No documentation of training in emergency procedures/disaster preparedness for a staff member.
- Section 701.B.6. No notes of observation at least monthly for three residents.
- Section 701.B.10. No photograph of a resident.
- Section 901.A. No written agreement between a resident, and/or his responsible party, and the Facility.
- Section 1302.A. Containers of expired yogurt in the refrigerator.
- Section 1703. Roaches in the kitchen.

Smith reviewed the above citations with RRCF and issued ROVs, which Jamison signed. RRCF submitted POCs dated August 15, 2011 for the violations cited in the July 20, 2011 ROVs. RRCF's responses reflect plans to remediate each violation. The Court finds that the actions taken by Jamison as documented on the POC successfully resolved each of the violations.

August 5, 2011 Complaint Investigation

On August 5, 2011, Smith conducted a complaint investigation at RRCF. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 504.A.3. No documentation of training in management/care of persons with contagious and/or communicable diseases for a staff member.
- Section 504.A.4. No documentation of annual training in medication management for a staff member.
- Section 504.A.5. No documentation of training in specific person care for a staff member.
- Section 504.A.7. No documentation of annual training in OSHA standards regarding blood-borne pathogens for a staff person.
- Section 504.A.9. No documentation of annual training in confidentiality of resident information and records and the protecting of resident rights for a staff member.
- Section 504.A.10. No documentation of annual training in fire response for a staff member.
- Section 504.A.11. No documentation of annual training in emergency procedures/disaster preparedness for a staff member.
- Section 901.A. No written agreement between a resident, and/or his responsible party, and the Facility.
- Section 1703. RRCF's basement had a strong mold odor. Additionally, the basement had an accumulation of furniture. The closets in the resident rooms were cluttered and needed to be organized. The front walkway of RRCF was cluttered with paper.
- Section 1703.A.1. RRCF's basement window had spider webs. The basement floor was soiled. The dining room carpet was soiled and littered with debris.

Smith reviewed the above citations with RRCF and issued the ROV, which Jamison signed. The POC to these cited violations was received by the Department on September 9, 2011. Again, RRCF's POC reflects plans to remediate each violation. The Court finds that the actions taken by Jamison as documented on the POC successfully resolved each of the violations.

November 7, 2011 Complaint Investigation

On November 7, 2011, Smith conducted a complaint investigation at RRCF. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 1703. A bedroom had an offensive urine-like odor.
- Section 1703.A.1. Dust on the surfaces throughout the Facility; an accumulation of dirt and debris on the floors and baseboards. The area rugs were dirty and stained. The chairs in the dining room had hardened debris. The bed spreads in the resident rooms were stained. The walls throughout the Facility were stained. Dead insects were in several areas of the Facility.

Smith reviewed the above citations with RRCF and issued an ROV, which Jamison signed. The Department received RRCF's POC to the violations cited in the November 7, 2011 ROV on January 1, 2012. The POC describes plans to remediate each violation. With respect to the Section 1703.A.1 citation, RRCF's response indicated that the facility would be cleaned by November 12 and that the chairs would be cleaned by November 13.

November 9, 2011 General Inspection

Two days later, on November 9, 2011, Smith conducted a general inspection at RRCF. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 701.B.6. No monthly notes of observation for a resident.
- Section 701.B.10. No photographs of three residents.
- Section 703.A. For two residents, RRCF had incomplete individual care plans (ICPs). For the first resident, the front page of the ICP was not available and the third page did not indicate the care the resident was to receive. For the second resident, the second page of the ICP was not available. For another resident, RRCF failed to have the ICP signed by the resident or the resident's responsible party.
- Section 901.A. No written agreement between the resident, and/or his responsible party, and the Facility for three residents.
- Section 1201.A. Physician-ordered medications not available for administration to a resident.
- Section 1306.A. No menus signed and dated by a dietitian, physician, or other authorized healthcare provider for resident who was prescribed a low sodium diet.
- Section 1703.A.1. Dust on surfaces throughout the Facility. There was an accumulation of dirt and debris on floors and baseboards. The area rugs were dirty and stained. There was hardened debris on the chairs in the dining room. The residents' bedspreads were stained. The walls throughout the Facility were dirty. There were dead insects throughout the Facility.

Smith reviewed the above citations with RRCF and issued an ROV, which Jamison signed. The Department received RRCF's POC to the violations cited in the November 9, 2011 ROV on January 10, 2012. The 1703.A.1 violation noted in this inspection is based upon the same facts supporting the violation two days earlier. This second violation was written before RRCF was given an opportunity to clean the facility as she committed to do by November 13, 2011. The POC describes plans to remediate each violation related to client files by November 30, 2011. With respect to the menus for the low sodium diet, those menus were submitted attached to the ROV with the explanation that the menus posted on the date of the inspection were valid, but were dated incorrectly.

March 15, 2012 Fire and Life Safety Inspection

On March 15, 2012, David Moody, a fire and life safety officer for the Department, conducted a fire and life safety inspection at RRCF. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 2501.A. Doorbell outside the dayroom did not have a cover. Front porch light was missing a cover.²
- Section 2705.J. The doors of resident bedrooms at RRCF did not close automatically and obtain a positive latch when closed.

The Department received RRCF's POC to the violations cited in the March 15, 2012 ROV on April 19, 2012. The POC describes plans to remediate each violation. The Court finds that the Department failed in its burden of demonstrating that the missing covers on the doorbell and light represent either a fire hazard or a maintenance issue in which the fixtures could not be used for their intended purpose. Jamison's POC stated that the doors would be repaired by April 5, 2012.

May 7, 2012 General Inspection

On May 7, 2012, Smith attempted to conduct a general inspection at RRCF. As a result of this visit, the Department cited RRCF with the following violation of Regulation 61-84:

- Section 202.B. There were no RRCF staff members, residents, or volunteers present upon Smith's arrival at RRCF. There was no information available as to the expected return of the RRCF staff members, volunteers, or residents.

Smith mailed a citation to RRCF on May 7, 2012. RRCF submitted a POC which included a calendar of events, including movies, trips, etc. The calendars show the expected return time of the staff members and residents for scheduled events for two months. Jamison testified that it is a security risk to leave the expected time of return posted on the door to the facility. Jamison also testified that she generally takes all four residents with her when she leaves the facility so that they can enjoy outings. Because there are so few residents, their schedule is fairly flexible. While the Court agrees it may be inadvisable to post a scheduled return time on the door, it is not unreasonable to expect RRCF to provide a phone number at which the staff can be contacted at all times when residents and staff are absent from the Facility. The Court finds Jamison's attempt to use these calendars to apprise the Department of the whereabouts of the residents and staff to be ineffective.

² Moody testified at the hearing that these observations should have been considered maintenance issues.

**June 1, 2012 Resident Care Focused Inspection, Food and Sanitation Inspection, and
Follow-up Fire and Life Safety Inspection**

On June 1, 2012, Peter Adamowsky, an inspector for the Department, conducted a resident care focused inspection and a food and sanitation inspection. Additionally, Moody conducted a follow-up fire and life safety inspection at RRCF. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 1201.A. A resident's medications not available. There were no physician orders to discontinue the unavailable medications.
- Section 1302.A. Raw meat was in a refrigerator door in contact with ready-to-eat foods. There were a number of expired foods in the refrigerator. There was a white Tupperware container with no label to indicate its contents or the date the food was prepared.
- Section 1303. Shelving, cupboards, and surrounding walls had hardened food debris, dust, and dirt.
- Section 1601.A. The screen above the two-compartment sink was torn and pulled away from the window frame. The wallpaper in a bedroom was dirty, peeling, and had water damage. Lampshades throughout RRCF were dirty and heavily stained.
- Section 1703. There was an unpleasant musty odor in a bedroom. Additionally, the drawer beside the kitchen sink had live roaches of various sizes.
- Section 1703.A.1. Water was on the floor of a bathroom. The floor was dirty and muddy.
- Section 1703.A.3. Chemicals marked harmful on their product labels were stored unsecured on the kitchen floor. The chemicals were accessible to residents.
- Section 2705.J. Resident room doors did not make a positive latch.

Adamowsky reviewed the citations from the resident care focused and food and sanitation inspections with RRCF and issued ROVs, which Jamison signed. Moody reviewed the citation from the follow-up fire and life safety inspection with RRCF and issued an ROV, which Jamison signed. The ROV required the corrections to the above fire and life safety citation for the door latches to be completed by June 15, 2012. The Department received RRCF's POCs to the cited violations in the June 1, 2012 resident care focused and food and sanitation inspections on June 27, 2012. The Court finds this second violation in which a resident's medication was not available to be administered to be evidence of a serious and ongoing failure to properly provide and administer medications ordered by a physician for the residents.

September 14, 2012 General Inspection

On September 14, 2012, Adamowsky conducted a general inspection. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 202.B. A staff member was not present upon arrival to RRCF. RRCF did not provide information as to the expected return of staff members, volunteers, or residents.

- Section 1703. An accumulation of trash on the ground around the exterior of the Facility. The front porch of RRCF had plastic sacks of potting soil and other clutter preventing the inspectors from getting to the other side of the porch.
- Section 1703.A.3. A full bottle of automotive anti-freeze on RRCF's front porch. The bottle was not secured and was accessible to the residents.

Adamowsky mailed the ROV to RRCF. The POC to the cited violations was due to the Department by September 29, 2012. The Department received RRCF's POC to the violations cited on the September 14, 2012 general inspection on October 3, 2012. Jamison testified that the anti-freeze bottle was filled with water and used to water the plants on the porch. Jamison's continued refusal to provide information as to the whereabouts of the staff and residents, a time of return, or a manner for staff to be immediately contacted to obtain that information is quite troubling. At best, these circumstances evidence a willful refusal to comply with the regulation requiring such information to be given. At worst, in light of the evidence that three vehicles were in RRCF's driveway at the time the inspectors sought entry to the facility, it is a refusal to allow an inspection by ignoring the knocking and phone calls of the inspectors.

October 12, 2012 General Inspection

On October 12, 2012, Adamowsky conducted another general inspection. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 202.C. RRCF did not provide Adamowsky full access to the Facility's physical property and records in a timely manner. Adamowsky requested staff and resident records. Jamison was argumentative and threatening. Despite the requests, Adamowsky only received four resident records and a bag containing resident medications.
- Section 504.A.1. No first-aid training records for staff members.
- Section 504.A.2. No vital signs training records for staff members.
- Section 504.A.3. No contagious and communicable disease training records.
- Section 504.A.4. No medication management training records for staff members.
- Section 504.A.5. No specific person/special care training records for staff members.
- Section 504.A.6. No restraint training records for staff members.
- Section 504.A.7. No OSHA/blood-borne pathogens training records for staff members.
- Section 504.A.9. No confidentiality of resident records and protecting resident rights training records for staff members.
- Section 504.A.10. No fire response training records for staff members.
- Section 504.A.11. No emergency procedures/disaster preparedness training records for staff.
- Section 504.B. No recreational activities training records for a designated staff member.
- Section 701.B.10. Photographs of two residents not dated.
- Section 703.A. The ICPs for two residents were not signed by either the residents or the residents' responsible parties.
- Section 1201.A. A resident's medication was not available for administration and there were no physician orders for discontinuance of the medication.

- Section 1306.A. A resident was on an ordered low sodium diet. RRCF did not provide documentation of the menu(s) for this medically-prescribed diet.
- Section 1601.A. There was a large amount of peeling paint in the entrance hallway and the kitchen, especially around the door and window frames.
- Section 1703. There was clutter inside and outside of RRCF. There was an accumulation of books, magazines, cardboard boxes, toys, and paint in the living room. The front porch was cluttered with decorations, plants, a child's car seat, an empty cardboard box, and a plastic bag of potting soil.
- Section 1703.A.1. There was an accumulation of dirt and debris on the floor throughout RRCF.
- Section 1703.A.3. A bottle of ant and roach killer on a table in the hallway was unsecured and accessible to residents.
- Section 1703.B.2. There was an accumulation of rubbish, including an empty popcorn bag, pieces of Styrofoam, candy wrappers, pieces of plastic, bottle caps, and other debris, on the ground in front of the front porch.

Adamowsky did not complete an exit interview explaining the citations and issue the ROV at the close of the inspection due to Jamison's hostile responses during the inspection. Instead, Adamowsky mailed the ROV to RRCF.

The POC to the cited violations was due to the Department by October 27, 2012. RRCF did not submit a timely POC to the violations cited on October 12, 2012. On October 31, 2012, the Department mailed RRCF a citation-by-mail citing RRCF for violating Regulation Section 61-84.202.D because of RRCF's failure to timely submit a POC. On November 13, 2012, the Department mailed RRCF another citation-by-mail citing RRCF for violating Regulation Section 61-84.202.D, again because of RRCF's failure to submit a POC. On December 26, 2012, Adamowsky sent a follow-up letter to RRCF regarding scheduling a compliance assistance meeting, where representatives of RRCF and the Department could discuss the standards in Regulation 61-84 and RRCF's compliance issues. RRCF did not respond to Adamowsky regarding the scheduling of a compliance assistance meeting.

The number of violations, the repetitive failure to make a resident's medication available to administer as prescribed, coupled with Jamison's refusal to cooperate in the inspection process or respond to the violations cited is evidence of a willful refusal to comply with the regulatory requirements.

May 1, 2013 General Inspection

On May 1, 2013, Gloria Wilson, an inspector with the Department, attempted to conduct a general inspection. Upon arriving at RRCF, Jamison informed the inspector she had experienced

a death in her family and needed to attend to family matters. The general inspection was rescheduled for a later date.

May 21, 2013 General, and Food/Sanitation Inspections, and Complaint Investigation

On May 21, 2013, the Department conducted a general inspection. As part of the general inspection, Wilson conducted the documentation review and Kelley Blocker, another inspector with the Department, conducted the walkthrough of RRCF. Wilson also conducted a complaint investigation and Katonya Jackson, an inspector with the Department, conducted a food and sanitation inspection. As a result of this visit, the Department cited RRCF with the following violations of Regulation 61-84:

- Section 202.C. RRCF denied Protection and Advocacy (P&A) access during several attempted team advocacy inspections. Pursuant to S.C. Code Ann. §§ 44-33-350(4) and 43-33-370, P&A has authority to conduct inspections and investigations of CRCFs. Brenda Stalzer was a team advocate for P&A. Team advocates conduct inspections of CRCFs in which they evaluate the quality of resident living conditions. From December 2012 to August 2013, Stalzer visited RRCF six times in attempts to conduct an inspection. Stalzer was unable to gain full access to the Facility in order to complete a team advocacy inspection. Upon being denied access, P&A submitted complaints to the Department.
 - On December 7, 2012, Jamison did not allow P&A to take photographs or make photocopies. Additionally, Jamison gathered all the residents and RRCF staff members and left the Facility, preventing P&A from completing its inspection.
 - On December 19, 2012, Stalzer returned to RRCF. Jamison informed her that the residents were going to the flea market to do Christmas shopping. Stalzer agreed to return at a later date to conduct the inspection.
 - On January 22, 2013, Stalzer returned to RRCF. However, no one was at the Facility.
 - On February 19, 2013, Stalzer returned to RRCF. Stalzer was greeted by Jamison's daughter who instructed her to wait in the living room until her mother returned. When Jamison returned to RRCF, she told P&A she needed to go to the hospital and asked P&A to return at a later date. P&A and Jamison agreed that Stalzer would return later in the morning to conduct the inspection. When Stalzer returned later that morning, no one was at RRCF. Stalzer contacted Jamison via phone and Jamison indicated she would not be returning to the Facility.
 - On February 20, 2013, Stalzer again returned to RRCF. Upon approaching RRCF's door, Stalzer heard a female talking loudly. After knocking on the door, the loud talking stopped. Stalzer rang the doorbell, but no one answered. Stalzer proceeded to call the Facility and left a message. She then contacted the Department and the Ombudsman's Office. Fearing that there were residents inside the Facility and their health and welfare were in danger, Stalzer called 911 and two police officers responded. Jamison eventually contacted Stalzer via phone and indicated that P&A could not conduct an inspection without Jamison being present. P&A was again unable to gain access on this date.

- On July 10, 2013, Stalzer attempted another team advocacy inspection of RRCF. Jamison answered the door at RRCF and told Stalzer she would not be allowed in the Facility and that she would see her in court.
- On August 20, 2013, while being accompanied by the Department, Stalzer was allowed access inside RRCF. However, Jamison did not allow P&A to observe breakfast, refused P&A's photographing of the Facility, and refused to produce certain documents.
- Section 504.A.3. No documentation of annual training in management/care of persons with contagious and communicable diseases for two staff members.
- Section 504.A.9. No documentation of annual training in confidentiality of resident records for two staff members.
- Section 504.A.11. No documentation of annual training in emergency procedure for four staff members.
- Section 1301.A. A white substance in a glass jar in a cabinet was not labeled to indicate the product and the item could not be easily identified.
- Section 1302.A. RRCF had several expired food items in its pantry and cabinetry below the kitchen island.
- Section 1302.E. A food item was wrapped in aluminum foil in the door of RRCF's refrigerator. The item was not labeled or dated. An opened and improperly sealed pack of bologna was in the refrigerator. A spoon was in an open cup of ice cream in the freezer. There was also a slightly opened and not properly sealed jar of peanut butter.
- Section 1303. There was dirt and food debris on the can opener blade. There was an accumulation of dust on serving trays. There was dirt and food debris on silverware stored in a cabinet drawer. A thick accumulation of carbon build-up was on pots and baking pans. A blackish substance and other debris was on kitchen cabinet shelving. Dirt and debris were on the utensil holders in the cabinet drawer. The inside surfaces of the kitchen cabinet doors were sticky with a yellow-brown substance. There was a heavy accumulation of dust on all kitchen equipment stored in the cabinets. The countertop of the kitchen's island was cluttered and unable to be reached to properly clean. Black hair was on the inside of the refrigerator door. A black substance was running down the refrigerator door. The pantry was heavily cluttered. The cabinet containing ceramic dishes was heavily cluttered.
- Section 1601.A. Curtain rods in a bathroom were rusted and bent. The door frame in a bathroom was rotted for approximately six inches at the floor juncture. The shelf in the vanity of the bathroom was wet and partially covered with a slimy black substance. Wallpaper in a bedroom was torn and stained. Paneling in the basement had water damage at the floor juncture. The basement flooring had peeling floor covering and uneven surfaces. The surfaces of the kitchen cabinet shelves were worn and had chipping paint. The bottom cabinet to the left of the refrigerator was buckling.
- Section 1703. There was a foul pungent odor in a resident bedroom.
- Section 1703.A.1. There was an accumulation of debris on the floor throughout the Facility, especially at the floor and wall junctures. There was an accumulation of debris in the floor vents throughout the Facility. The furniture in the living room and basement was soiled with stains and debris. The ceiling in a bathroom was soiled with particles of an unknown substance. There was a heavy accumulation of an unidentified powder behind a bureau and in the closet of a resident bedroom. There was a heavy accumulation of dust and debris between the wardrobes and the wall in a resident bedroom. Dead insects were on the bed linens and around

a resident's bed. Insect feces were on the wall at the head of a resident's bed. Cobwebs were on the walls and ceiling of the stairwell from the main level to the basement. Cobwebs were also on the HVAC ducts in the basement. The curtains in the basement were soiled. Dirt and debris were on the kitchen floor and along the baseboards of all lower kitchen cabinets. An accumulation of dust was on the ceiling fan blade and pull cord above the kitchen island counter.

- Section 1703.A.3. Cans of spray paint, a box of Miracle Grow, and an "Awesome" spray bottle were stored unsecured and accessible to residents.
- Section 1703.B.2. There was debris, including menus, nursery pots, broken furniture, and roofing material, around RRCF's grounds.

Wilson and Blocker reviewed the citations from the general inspection and complaint investigation with RRCF and issued ROVs, which Jamison signed. The POCs to the violations cited in the general inspection and complaint investigation were due June 5, 2013. Jackson reviewed the citations from the food and sanitation inspection with RRCF and issued an ROV, which Jamison signed.

The Department received RRCF's POCs to the violations cited on the May 21, 2013 general inspection and food and sanitation inspection on June 16, 2013 and the POC related to the complaint investigation on June 15, 2013.

Copies of appropriate records of training were attached to the POC in satisfaction of the Section 504.A violations. The Department takes the position that those training records do not comport with the requirements of the regulation because they are signed by the trainer but not by the employees receiving the training. The Court finds the Department's position to be captious; while the regulation requires the records to be signed by both the trainer and the employee, the failure to record the employee signature has no conceivable impact on the safe and adequate treatment of the residents of the facility. The POC further addressed each of the Section 1601.A maintenance violations, giving dates by which the repairs would be made. The repairs described would successfully remediate those problems.

The POC states that the facility was cleaned throughout by May 22, 2013. There was no follow-up inspection or photographic evidence to substantiate Jamison's claim that the facility was thoroughly cleaned by the following day. Given the repeated citations for housekeeping violations, the escalating nature of the descriptions of the accumulation of dirt and debris in the facility over the course of the inspections, and the clutter evidenced in the photographs taken at the May 21, 2013 inspection, the Court finds it unlikely that the facility could have been properly cleaned within 48 hours.

Administrative Order

As a result of visits to RRCF from July 2011 to May 2013, the Department determined an enforcement action was appropriate. By letter dated September 25, 2013, the Department requested RRCF attend an enforcement conference on October 17, 2013. RRCF notified the Department that it was unavailable on October 17, 2013. Accordingly, the Department rescheduled the enforcement conference for November 13, 2013. RRCF failed to attend the scheduled enforcement conference on November 13, 2013. The Department issued an administrative order revoking Robin's Residential Care, Inc.'s license to operate as a CRCF on April 14, 2014. In the Administrative Order, the Department noted its reliance upon the conditions at RRCF and their impact or potential impact on the health, safety, or well-being of residents, and RRCF's history of noncompliance.

RRCF timely filed a written request for final review on April 28, 2014. The decision to revoke Robin's Residential Care, Inc.'s license became the final agency decision on May 19, 2014, when the Board of Health and Environmental Control issued a letter declining to conduct a final review conference. RRCF timely filed a request for a contested case hearing with the ALC on June 18, 2014.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes the following as a matter of law:

General Conclusions

In reviewing this matter, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. See S.C. Code Ann. § 1-23-600(A) (Supp. 2014); Brown v. S.C. Dept. of Health & Env'tl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002). The standard of proof to be used by the Court in weighing the evidence and making a decision on the merits during a contested case proceeding is a preponderance of the evidence. S.C. Code Ann. §§ 1-23-330(1) (2005) and 1-23-600(A)(5) (Supp. 2014); Anonymous (M-156-90) v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998). The Court may utilize the agency's experience, technical competence, and specialized knowledge in evaluating the evidence. S.C. Code Ann. § 1-23-330(4) (2005). Because this is an action for the enforcement of an administrative order, the Department has the burden of proof. ALC Rule 29(B).

The Department is the state agency charged with the licensure of health facilities and the administration of the State Certificate of Need and Health Facility Licensure Act (Act). See S.C. Code Ann. §§ 44-7-110 et seq. (2002 and Supp. 2014). Pursuant to Sections 44-7-150(3), 44-7-250, and 44-7-260(A)(6), the Department promulgated Standards for Licensing Community Residential Care Facilities. See S.C. Code Regs. 61-84 (2012). Section 44-7-250 states, “The department shall establish and enforce basic standards for the licensure, maintenance, and operation of health facilities and services to ensure the safe and adequate treatment of persons served in this State.” Regulation 61-84 is the promulgation of those standards for community residential care facilities.

A CRCF is defined by law as “a facility which offers room and board and provides a degree of personal assistance for two or more persons eighteen years old.” S.C. Code Ann. § 44-7-130(6) (Supp. 2014). A CRCF “provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours” S.C. Code Ann. Regs. 61-84.101.N (2012). “Personal care” is defined in the CRCF regulation as:

The provision by the staff members/direct care volunteers of the facility of one or more of the following services, as required by the individual care plan or orders by the physician or other authorized healthcare provider or as reasonably required by the resident, including:

1. Assisting and/or directing the resident with activities of daily living;
2. Being aware of the resident’s general whereabouts, although the resident may travel independently in the community;
3. Monitoring of the activities of the resident while on the premises of the residence to ensure his/her health, safety, and well-being.

Id. at 101.QQ “Activities of Daily Living” (ADLs) include:

Those personal functions performed by an individual in the course of a day that include, but are not limited to, walking; bathing; shaving; brushing teeth; combing hair; dressing; eating; getting in or getting out of bed; toileting; ambulating; doing laundry; cleaning room; managing money; shopping; using public transportation; writing letters; making telephone calls; obtaining appointments; administration of medication; and other similar activities.

Id. at 101.A. A CRCF “is designed to accommodate residents’ changing needs and preferences, maximize residents’ dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement.” Id. at 101.N.

The Department is authorized to make inspections and investigations of CRCFs as considered necessary. S.C. Code Ann. § 44-7-150(1) (Supp. 2014); S.C. Code Ann. Regs. 61-84.201 (2012). The Department may take enforcement action against a CRCF, including license

revocation, for a violation of the Act or Departmental regulations. S.C. Code Ann. § 44-7-320(A)(1)(a) (Supp. 2014); S.C. Code Ann. Regs. 61-84.301 (2012).

On April 14, 2014, pursuant to Section 44-7-320 and Regulation Sections 61-84.301 and .302, the Department issued an administrative order revoking Robin's Residential Care, Inc.'s license to operate as a CRCF for numerous and repeated violations of Regulation 61-84. RRCF opposes the issuance of the administrative order. The Court has jurisdiction over this contested case matter pursuant to Sections 1-23-310 et seq. and Section 44-1-60.

Section 202.B—Notification of Expected Return

When staff members, volunteers, or residents are absent from the facility, CRCFs “shall provide information to those seeking legitimate access to the facility, including visitors, as to the expected return of staff members/volunteers/residents.” S.C. Code Ann. Regs. 61-84.202.B (2012). The Court agrees with Respondent that it may be inadvisable to post a scheduled return time on the door, however, the regulation does not require that. To comply with the regulation, RRCF should at least provide a phone number at which the staff can be contacted at all times when residents and staff are absent from the Facility. The Court finds Jamison's attempt to use calendars to apprise the Department of the whereabouts of the residents and staff to be ineffective because they were not comprehensive and accurate. Jamison's continued refusal to provide information as to the whereabouts of the staff and residents, a time of return, or a manner for staff to be immediately contacted to obtain that information is a willful refusal to comply with the regulation and is apparently designed to evade inspection by the Department.

Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation Section 61-84.202.B on May 7, 2012 and September 14, 2012, by failing to provide information to Department representatives seeking legitimate access to the Facility of the expected return of staff members, volunteers, and residents when those individuals were absent. Violations of Regulation Section 61-84.202.B are considered Class I violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 202.C—Access to the Facility

Regulation Section 61-84.202.C states:

Individuals authorized by S.C. law shall be granted access to all properties and areas, objects, and records in a timely manner, and have the authority to require the facility to make photocopies of those documents required in the course of inspections or investigations. Photocopies shall be used only for purposes of enforcement of regulations and confidentiality shall be maintained except to verify

the identity of individuals in enforcement action proceedings. Physical area of inspections shall be determined by the extent to which there is potential impact/affect upon residents as determined by the inspector, e.g., flammable liquids unsecured in a staff member's bedroom, attic, or basement. The Department is authorized to make inspections and investigations as considered necessary.

Additionally, P&A “may conduct team advocacy inspections of a facility providing residence to a developmentally disabled or handicapped person.” S.C. Code Ann. § 43-33-350(4) (2002). Further, the Department has authority to deny, suspend, or revoke licenses or assess a monetary penalty against a person or facility for failing to allow a P&A team advocacy inspection of a CRCF. S.C. Code Ann. § 44-7-320(A)(1)(e) (Supp. 2014).

Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation Section 61-84.202.C on October 12, 2012 and May 21, 2013, by failing to provide individuals authorized by South Carolina law, including Department and P&A representatives, access to the Facility's property, objects, and records in a timely manner. Violations of Regulation Section 61-84.202.C are considered Class I violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 202.D—Plans of Correction

Regulation Section 61-84.202.D requires CRCFs to submit an acceptable written plan of correction to the Department when the Department finds noncompliance with regulatory provisions. The POC must be returned by the date specified in the ROV. Id. The written POCs must describe the actions taken to correct each cited deficiency, the actions to prevent recurrences, and the actual or expected dates of those actions. Id. The Court finds RRCF violated Regulation Section 61-84.202.D on October 31, 2012 and November 13, 2012, by failing to provide an acceptable and timely written POC for violations cited during an inspection conducted on October 12, 2012. RRCF's failure to either submit a POC or attend the compliance assistance meeting requested by the Department to respond to the violations cited on October 12, 2012 constitutes a complete failure to address those violations. Violations of Regulation Section 61-84.202.D are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 504.A and 504.B—Training

Regulation Section 61-84.504.A states:

Documentation of all inservice training shall be signed and dated by both the individual providing the training and the individual receiving the training. The following training shall be provided by appropriate resources . . . to all staff members/direct care volunteers and private sitters in the context of their job duties

and responsibilities, prior to resident contact and at a frequency determined by the facility, but at least annually unless otherwise specified by certificate

The subdivisions of Section 504.A then describe the various types of required training, which include: (1) basic first-aid; (2) checking and recording vital signs for designated staff members only; (3) management/care of persons with contagious and/or communicable diseases; (4) medication management; (5) specific person care; (6) use of restraint techniques; (7) OSHA standards regarding blood-borne pathogens; (8) cardiopulmonary resuscitation for designated staff persons; (9) confidentiality of resident information and protection of resident rights; (10) fire response training which must be provided within 24 hours of the staff members first day on the job; and (11) emergency procedures/disaster preparedness which also must be provided within 24 hours of the staff members first day on the job.

Regulation Section 61-84.504.B states:

At least one staff person shall be trained and responsible for providing/coordinating recreational activities for the residents and shall receive appropriate training prior to contact with residents and at least annually thereafter. Documentation of staff training for providing/coordinating recreational activities shall be maintained.

RRCF has responded to all of the violations alleging failure to document training with certificates reflecting that the training was received. Although some of the certificates were not signed by the individual receiving the training, the Court finds that Respondent has demonstrated substantial compliance with Regulation Section 61-84.504.A.

Sections 701 and 703—Resident Documents

CRCFs are required to “initiate and maintain an organized record for each of its residents.” S.C. Code Ann. Regs. 61-84.701.A. Regulation Section 61-84.701.B explains the minimum entries/documentation of such records, including inter alia, notes of observation. Regulation Section 61-84.701.B.6 requires:

Notes of observation. In instances that involve significant changes in a resident's medical condition and/or the occurrence of a serious incident, notes of observation shall be documented at least daily until the condition is stabilized and/or the incident is resolved. In all other instances, notes of observation for residents shall be documented at least monthly[.]

Additionally, Regulation Section 61-84.701.B.10 requires the following as part of the resident record:

Photograph of resident. Resident photographs shall be at a minimum two and one half inches by three and one half inches (2 ½ by 3 ½ inches) in size, dated and no

more than twenty-four (24) months old unless significant changes in appearance have occurred necessitating a more recent photograph.

Regulation Section 61-84.703.A states:

The facility shall develop an ICP with participation by, as evidenced by their signatures, the resident, administrator (or designee), and/or the sponsor or responsible party when appropriate, within seven days of admission. The ICP shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above-appropriate individuals.

Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation 61-84 as follows:

- Section 701.B.6—November 9, 2011, by failing to have documentation of monthly notes of observations in resident records.
- Section 701.B.10—November 9, 2011, and October 12, 2012, by failing to have photographs in resident records or by failing to have the photographs of residents dated.
- Section 703.A—November 9, 2011 and October 12, 2012, by failing to have documentation of completed ICPs with participation by, as evidenced by their signatures, the resident, administrator (or designee), and/or the sponsor or responsible party.

All violations of these sections are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 901.A—Written Agreements

Regulation Section 61-84.901.A states, “There shall be a written agreement between the resident, and/or his/her responsible party and the facility.” The subdivisions of Section 901.A then describe the contents of the written agreement which include, among other things, disclosure of fees, the facility’s refund policy, and the facility’s transportation policy. The Court finds that RRCF violated Regulation Section 61-84.901.A on November 9, 2011, by failing to have a written agreement between a resident, and/or his/her responsible party, and the Facility. Violations of Regulation Section 61-84.901.A are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 1201.A—Resident Medications

Regulation Section 61-84.1201.A states, in relevant part, “Medications, including controlled substances, medical supplies, and those items necessary for the rendering of first aid shall be available and properly managed in accordance with local, state, and federal laws and regulations.”

Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation Section 61-84.1201.A on November 9, 2011, June 1, 2012, and October 12, 2012, by failing to

have resident medications available for administration. RRCF failed to provide safe and adequate treatment to the affected residents in the instances underlying those violations. The repeated citation for this same issue raises serious concerns as to whether RRCF is providing safe and adequate treatment to the persons it serves. See S.C. Code Ann. Regs. 61-64.302.E (2012). Violations of Regulation Section 61-84.1201.A are considered Class I violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 1300—Meal Service

Regulation Section 61-84.1301.A states, “All facilities that prepare food on-site shall be approved by DHL, and shall be regulated, inspected, and graded pursuant to R.61-25.” The Department has cited numerous violations of 61-84 Section 1300 related to meal service. At the outset, it should be noted that the regulation has been amended since the time these violations were written up to remove many of the regulatory requirements RRCF is cited for violating here. Compare S.C. Code Ann. Regs. 61-84.1302.A (2012) (requiring the storage, preparation, serving, transportation of food, and the sources from which food is obtained shall be in accordance with R. 61-25) with S.C. Code Ann. Regs. 61-84.1302.A (2015) (lacking such a requirement). While the amended regulation does not apply here, the change is indicative of the importance of strict enforcement of those provisions as a matter of public policy. In general, the Court finds many of the violations cited by the Department to be captious; while they may be technical violations of the regulations, citations for every conceivable violation of regulations written for retail food service establishments in a small residential care facility serving four residents is counterproductive to the safe and adequate treatment of the clients because it encourages attention to the letter of the regulations rather than to the care of the residents. However, serving healthy meals and having sanitary conditions in the kitchen and food preparation areas directly impacts the health, safety, and well-being of the residents.

Of the violations cited, the Court concludes that the Department has demonstrated that Respondent failed to substantially comply with the following violations:

Regulation Section 61-84.1303 states, “[t]he equipment and utensils utilized, and the cleaning, sanitizing, and storage of such shall be in accordance with R.61-25.” Relevant portions of Regulation 61-25 require that kitchenware and food-contact surfaces of equipment must be washed, rinsed, and sanitized whenever contamination may have occurred and that surfaces of equipment that do not come into contact with food must be cleaned as often as necessary to keep

the equipment free from accumulation of dust, dirt, food particles, and other debris. S.C. Code Ann. Regs. 61-25.V.A.1.b.3 and .1.e. The Court finds RRCF violated Regulation Section 61-84.1303 on June 1, 2012 and May 21, 2013, by failing to maintain food-contact and non-food contact surfaces in the kitchen in a clean and sanitary condition. Violations of Regulation Section 61-84.1303 are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Regulation Section 61-84.1306.A provides, in relevant part:

If the facility accepts or retains residents in need of medically-prescribed special diets, the menus for such diets shall be planned by a professionally-qualified dietitian or shall be reviewed and approved by a physician or other authorized healthcare provider. The facility shall maintain documentation that each of these menus has been planned by a dietitian, a physician or other authorized healthcare provider. At a minimum, documentation for each resident's special diet menu shall include the signature of the dietitian, the physician or other authorized healthcare provider, his/her title, and the date he/she signed the menu.

An “authorized healthcare provider” is defined as “[a]n individual authorized by law and currently licensed in South Carolina to provide specific treatments, care, or services to residents.” Id. at .101.K. Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation Section 61-84.1306.A on October 12, 2012, by failing to ensure that menus for the special diet of a resident were available for review and/or planned by a professionally-qualified dietitian or approved by a physician or other authorized healthcare provider. Violations of Regulation Section 61-84.1306.A are considered Class I violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 1601.A—Maintenance Issues

Regulation Section 61-84.1601.A states, “The [facility’s] structure, including its component parts and equipment, shall be properly maintained to perform the functions for which it is designed.” On March 15, 2012, the Department cited RRCF for violating Regulation Section 61-84.2501.A based upon RRCF not having covers for a doorbell and porch light. These observations are more appropriately cited as a Regulation Section 61-84.1601.A violation concerning proper maintenance of RRCF’s structure and component parts. The Department has failed to demonstrate that the missing doorbell and light covers rendered the doorbell or light incapable of performing the functions for which they were designed.

Section 1703—Maintaining a Neat, Clean, and Odor-Free Facility

Regulation Section 61-84.1703 states, “The facility and its grounds shall be neat, uncluttered, clean, and free of vermin and offensive odors.” Regulation Section 61-84.1703.B.2 requires exterior housekeeping to include “[k]eeping facility grounds free of weeds, rubbish,

overgrown landscaping, and other potential breeding sources for vermin.” Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation Section 61-84.1703 on November 7, 2011, June 1, 2012, October 12, 2012, and May 21, 2013, by failing to ensure the interior of the Facility and its grounds were maintained neat, uncluttered, clean, and free of vermin and offensive odors. These violations are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 1703.A.3—Safe Storage of Chemicals

Regulation Section 61-84.1703.A.3 requires facilities to maintain “[s]afe storage of chemicals indicated as harmful on the product label, cleaning materials, and supplies in cabinets or well-lighted closets/rooms, inaccessible to residents.” Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation 61-84.1703.A.3 on June 1, 2012, October 12, 2012, and May 21, 2013, by failing to ensure that harmful chemicals and cleaning agents were stored in a secured manner and inaccessible to residents. The Court does not find the anti-freeze bottle filled with water to be a violation. Violations of Regulation Section 61-84.1703.A.3 are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Section 2705.J—Door Closures

Regulation Section 61-84.2705.J states, “All resident room doors shall be solid-core; facilities licensed for six beds or more shall have 20-minute doors with closures.” Based upon the foregoing findings of fact, the Court finds RRCF violated Regulation 61-84.2705.J on March 15, 2012 and June 1, 2012, by failing to maintain the closures on resident room doors in working condition. Violations of Regulation Section 61-84.2705.J are considered Class II violations. See S.C. Code Ann. Regs. 61-84.302.D (2012).

Sanction for Regulatory Violations

Pursuant to the Act, a monetary penalty imposed by the Department for violation of the Act or regulation must be not less than one hundred nor more than five thousand dollars for each violation. S.C. Code Ann. § 44-7-320(C) (Supp. 2014). Additionally, each day’s violation is considered a subsequent offense. Id. Regulation Section 61-84.302.F provides a monetary penalty schedule based upon the classification level of each violation and the number of times the violation has occurred at the facility within a 36-month time period. “The notations, ‘(I)’ or ‘(II)’ placed within sections of [Regulation 61-84], indicate those standards are considered Class I or II violations if they are not met, respectively.” S.C. Code Ann. Regs. 61-84.302.D (2012).

Instead of imposing a monetary penalty, the Department revoked Robin's Residential Care, Inc.'s license. In deciding its enforcement action against RRCF, the Department placed particular emphasis on the conditions at RRCF and their potential detrimental impact on the health, safety, and well-being of the residents; RRCF's history of repeated violations; its failure to implement POCs; and its obstruction of Department and P&A representatives from conducting authorized inspections. RRCF has exhibited a willful refusal to cooperate with regulatory authorities and an inability to maintain reasonable standards of cleanliness in the Facility. Substituting a fine for the license revocation proposed by the Department would be unlikely to bring the Facility into compliance with the regulations. The Court therefore finds it appropriate to uphold the Department's decision to revoke Robin's Residential Care, Inc.'s license to operate as a CRCF.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Department's Motion for Reconsideration is **GRANTED**. This Court's order dated December 9, 2015 is **VACATED**.

IT IS FURTHER ORDERED that the Department's decision to revoke Robin's Residential Care, Inc.'s license to operate a Community Residential Care Facility is **UPHELD**.

IT IS ALSO ORDERED that Robin's Residential Care, Inc. surrender its license to the Department immediately and coordinate with the Department and other agencies for relocation of Robin's Residential Care Facility's residents.

AND IT IS SO ORDERED.

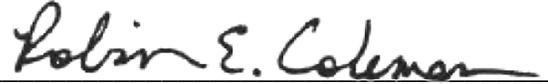


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

January 11, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

January 11, 2016
Columbia, South Carolina

FILED

January 11, 2016

SC ADMIN. LAW COURT