

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

CIVIL ACTION NO. 98-CV-139

CHESTER CARE CENTER :

BISHOP NURSING HOME :

MANCHESTER HOUSE NURSING :

& CONVALESCENT CENTER :

THE BISHOP NURSING HOME, INC. and :

COMMONWEALTH REAL ESTATE INVESTORS :

Defendants. :

CONSENT ORDER AND JUDGMENT

The United States of America ("United States") and defendants, Chester Care Center, Bishop Nursing Home, Manchester House Nursing & Convalescent Center, The Bishop Nursing Home, Inc. and Commonwealth Real Estate Investors ("defendants"), have consented to the issuance of the following order subject to the approval of the Court:

JURISDICTION AND VENUE

1. The United States and defendants agree that this Court has jurisdiction pursuant to 28 U.S.C.A. §§1331, 1345 and 31 U.S.C.A. § 3729; that venue lies in this judicial district pursuant to 28 U.S.C.A. § 1391 (b) and (c); and that the parties will be bound by the terms of this Consent Order and Judgment.

FACTUAL BACKGROUND

2. The United States alleges that from June 1995 to the present, the defendants submitted, or caused to be submitted, claims for services rendered at Chester Care Center and Bishop Nursing Home on behalf of nursing home residents, to the government in violation of the False Claims Act, 31 U.S.C. §3729 et seq.

3. The United States alleges that from June 1995 to the present, the defendants submitted, or caused to be submitted, claims for services rendered to residents of Chester Care Center, and Bishop Nursing Home in deliberate ignorance and/or reckless disregard of the truth of those claims regarding their failure to provide adequate nutrition, adequate nursing care to residents with diabetes, adequate monitoring of water temperatures, adequate wound care and adequate staffing, as required by state and federal law and regulations. The Health Care Financing Administration (HCFA) imposed civil money penalties against defendants based on deficiencies found at Chester Care Center, Bishop Nursing Home and Manchester House Nursing & Convalescent Center. HCFA has also notified Chester Care Center that, if it is not in substantial compliance with Medicare requirements by January 14, 1998, it will be terminated from the Medicare Program.

4. The defendants believe that the claims submitted to the United States were appropriate and expressly deny any wrongdoing or liability with respect to those claims. Defendants have filed administrative appeals from HCFA's imposition of civil money penalties and the underlying findings of alleged deficiencies.

GENERAL PROVISIONS

5. In entering into this Consent Order and Judgment, defendants do not admit to any violation of law and the parties agree that this Order may not be used as evidence of liability in any other proceeding.

6. The parties agree that the provisions of this Order are a lawful, fair and appropriate resolution of this case.

7. This Order is legally binding and judicially enforceable by the parties and it shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

PAYMENT

8. The defendants agree to pay the sum of Five Hundred Thousand Dollars (\$500,000) to the United States in settlement of this False Claims Act action and HCFA's civil money penalties. Payment of this amount to the United States Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, Pa. 19106, Attn.: David R. Hoffman, is to be made as follows:

(a) Upon entry of this Consent Order, the defendants shall remit the amount of Fifty Thousand Dollars (\$50,000) by electronic funds transfer pursuant to directions of the United States Attorney's Office;

(b) Defendants shall remit, on a monthly basis, the amount of \$7,500 by certified check or electronic funds transfer for a period of five (5) years from the entry of this Consent Order, commencing on February 1, 1998.

(c) Defendants agree to provide to the United States a first-priority mortgage lien ("lien") on unencumbered property in an amount equal to the debt owed to the United States pursuant to this Consent Order. Defendants certify that the appraised value of the property shall be sufficient to satisfy the full amount of the debt owed (\$450,000.00) to the United States. The amount of the lien shall be reduced by defendants' payment of scheduled installments as set forth in this Consent Order. Defendants shall provide, within 45 days from the date of entry of this Consent Order, an independent appraisal of the property and the appropriate documentation creating the lien.

DEFENDANTS' POLICIES AND PROCEDURES

9. Defendants agree to comply, and to cause all of their subsidiaries, officers, agents, employees, contractors, and/or subcontractors to comply with the Policies and Procedures attached hereto and incorporated herein as Exhibit A. Defendants

will provide the United States with notice and a reasonable period of time to review and approve additional policies and procedures pertaining to resident care as they are created, modified or discontinued.

NUTRITION AND WOUND CARE STANDARDS

10. Defendants agree to provide wound care (decubitus ulcer) treatment that meets or exceeds the Agency for Health Care Policy and Research Guidelines, attached hereto and incorporated herein as Exhibit B. Additionally, defendants agree to provide nutrition for those with wounds as set forth in Exhibit C, attached hereto and incorporated herein.

11. Defendants agree that Registered Dietitians will accurately calculate all residents' ideal body weight, compare current body weight to the residents' usual body weight in order to determine an appropriate healthy weight range for each resident on a regular and consistent basis and will clearly document such findings in the residents' charts.

12. Defendants agree to identify and provide timely clinical responses to all "nutritionally at risk" and "nutritionally compromised" residents at the earliest possible time. Nutritionally at risk and nutritionally compromised residents are defined in Exhibit A.

13. Defendants agree to obtain serum albumin levels for all residents at the time of admission for screening purposes,

and as warranted thereafter to measure protein levels and will perform prealbumins in accordance with Exhibits A and C.

COMPLIANCE WITH FEDERAL LAW AND ATTACHED PROTOCOLS

14. In the operation and management of any of defendants' long-term care facilities and in providing services to the defendants' residents, the defendants shall comply fully with the particular provisions of the Nursing Home Reform Act and other relevant provisions as embodied in Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq., and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., all regulations and guidelines promulgated pursuant to these statutes and the American with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. See attached Exhibit D, 42 C.F.R. Part 483, Subparts B, C, D, and E, § 483.1 through § 483.206. The parties agree that the language in 42 C.F.R. § 483.1 through § 483.206 is incorporated by reference into this Consent Order and that the provisions of this Consent Order are to be construed consistent therewith. Defendants shall also comply fully with the particular provisions of the defendants' protocols attached to this Order and incorporated by reference herein. Defendants agree that their obligation to comply fully with the language of the attached protocols does not limit their obligation to comply fully with federal law or with the provisions of this Order.

15. Defendants' submission of plans of correction and/or certification by the Health Care Financing Administration

does not in and of itself constitute compliance with this Consent Order nor does a cited deficiency by state or federal surveyors conclusively establish non-compliance with this Consent Order.

16. If the defendants seek to add a policy, procedure, or protocol which addresses resident care issues to this Consent Order or to modify a policy, procedure or protocol which has been attached to and incorporated into this Consent Order, the defendants shall first submit any proposed new or modified policy, procedure, or protocol to the United States and the Monitor as defined in paragraph 52 for review.

17. The United States or the Monitor may provide the defendants with comments or recommendations regarding the proposed new or modified protocol within 30 days of receipt of the proposed modification.

18. If the United States or the Monitor do not submit any comments or recommendations, the defendants shall submit the new or modified policy, procedure, or protocol to the Court as an agreed-upon exhibit.

19. In the event that the United States or the Monitor submits any comments or recommendations, the defendants shall consider the comments and recommendations. If the defendants decline to adopt the recommendations or comments of the United States or the Monitor, they shall so notify, in writing, the United States and the Monitor, and the parties and the Monitor shall confer within 30 days.

20. If the parties reach agreement to add or modify a protocol, the parties shall submit the new or modified policy, procedure or protocol as an agreed-upon exhibit. If the parties do not reach agreement, defendants may seek addition or modification of the policy, procedure or protocol with the Court and the United States may present its objections.

21. A new or modified policy, procedure, or protocol may be implemented immediately, if necessary due to emergency conditions or to comply with a change in the law, and then submitted to the Court.

RESIDENT SAFETY

22. Defendants shall provide a safe and functional environment for the residents. Defendants shall ensure that all residents are free from mistreatment, verbal, sexual, physical, and mental abuse, corporal punishment, involuntary seclusion, neglect, and misappropriation of property.

23. Defendants shall adequately supervise, monitor and safeguard the residents, especially those with histories of exhibiting behaviors that cause injury to themselves or others. Residents shall be protected from being victimized by other aggressive residents.

24. Defendants shall promptly notify the United States and the Monitor of any resident death resulting from injuries, suicide, malnutrition, dehydration, diabetes or complications thereof, any incident of staff abuse or neglect (as defined in

the applicable federal guidelines) of a resident, transfer and admission to a hospital as a result of injury or accident and any other incident involving a resident that prompts a full internal investigation, specifying for each death or incident, the full name and social security number of the resident, the date of death or incident, and, to the extent that such information is available to defendants, a brief description of the events surrounding the death or incident.

BASIC CARE

25. Defendants shall ensure that staff members provide residents with appropriate basic care services that meet the residents' individual needs. Among other things, defendants shall ensure that all residents are positioned properly, receive proper oral care and are bathed as scheduled, in appropriate water temperatures and with sufficient frequency. To that end, defendants shall ensure that the water temperature is constantly monitored and tested to ensure that no resident suffers any injury as a result of improper (i.e., within legal requirements for hot water and reasonable temperature for cold) water temperatures. A report of all tests pertaining to water temperature shall be provided to, reviewed and retained by the Administrator of each facility. In the case of Chester Care Center, all tests on water temperatures shall be immediately provided to the Monitor for review. Defendants shall care for

the residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

COMPREHENSIVE ASSESSMENT AND CARE PLAN

26. Defendants shall ensure that there is a timely, complete, and accurate minimum data set (MDS) and a current, complete and accurate interdisciplinary care plan in each resident's chart. Defendants shall conduct, at the time of each resident's admission and periodically thereafter (at least annually and promptly after a significant change in the resident's physical or mental condition), a comprehensive, accurate, standardized assessment of each resident's functional capacity with input by all relevant disciplines.

27. Defendants shall ensure that within seven (7) days after the completion of the comprehensive assessment, the defendants' interdisciplinary team develops a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment. The care plan shall describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being and must meet professional standards of quality. Defendants shall ensure that each resident's comprehensive care plan is implemented in a timely manner by appropriate and adequately trained staff. Defendants shall examine each resident no less

than once every 3 months and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

ACTIVITIES

28. Defendants shall provide residents with sufficient, meaningful activities both during the week and on the weekends to ensure that the residents attain or maintain the highest practicable physical, mental, and psychosocial well-being. Defendants shall provide for an ongoing structured program of activities designed to meet the individual interests and physical, mental, and psychosocial well-being of each resident, and defendants shall provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Defendants shall ensure that unit-based activities are provided for those residents unable to attend activities elsewhere. Defendants shall evaluate the activities programs for effectiveness and modify their programs as warranted.

CHEMICAL AND PHYSICAL RESTRAINTS

29. Defendants shall ensure that physical and chemical restraints are used only pursuant to accepted professional standards and that they are never used as punishment or for the convenience of staff. Defendants shall assess, document, advocate and ensure that any restraints used, whether chemical or

physical, are the least restrictive restraints appropriate for the resident and the situation. An interdisciplinary team will review and evaluate the need for restraints in all cases. Defendants recognize that they have an obligation to seek the least restrictive restraint for residents.

30. Defendants shall ensure that appropriate physicians' orders are obtained and followed before physical restraints are utilized and shall at all times seek the implementation of the least restrictive alternative for their residents.

31. Defendants shall ensure that residents are released from any physical restraints at least every two hours for at least 10 minutes under supervision by staff and are assessed at such time as to whether they need to remain in restraints. All residents who are restrained shall be appropriately repositioned and provided with adequate supervision, hydration, and circulation while in restraints.

32. Defendants shall only use psychotropic medication in accordance with accepted professional standards and where there is an appropriate psychiatric or neuropsychiatric diagnosis. Defendants must evaluate the availability of behavior management prior to the use of medication. Defendants must not use psychotropic medication as punishment, in lieu of a training program, for behavior control, in lieu of a psychiatric or neuropsychiatric diagnosis, or for the convenience of staff.

33. Absent emergency circumstances, defendants shall ensure that prior to using psychotropic medication, other less restrictive techniques have been systematically tried and have been demonstrated to be ineffective. Prior to using psychotropic medication, defendants will also ensure that:

(a) a psychiatrist reviews the current medication regimen of each individual to determine whether the type and dosage of the medication is appropriate and still necessary, and recommends any changes in the medication regimen;

(b) the psychiatrist consults with the resident's primary care physician, nurse, and other appropriate members of the resident's interdisciplinary team, to determine whether the harmful effects of the resident's mental illness clearly outweigh the possible harmful side effects of the psychotropic medication and whether reasonable alternate treatment strategies are likely to be less effective or potentially more dangerous than the medication.

PSYCHIATRIC AND RELATED SERVICES

34. Defendants agree to develop and implement a professionally appropriate system to: (a) regularly monitor the progress of the defendants' residents with mental illness to ensure that staff members are continually taking whatever steps are necessary and appropriate to address the individual's mental health needs; (b) provide ongoing monitoring of the efficacy of

treatment and make revisions in the treatment plan when warranted; (c) implement a protocol whereby a psychiatrist promptly sees any resident with a diagnosis of mental illness who has recently exhibited violent or threatening behaviors.

35. Defendants shall develop and implement an adequate and appropriate system, utilizing an interdisciplinary approach and based on generally accepted professional standards, for detecting, reporting, and responding to any drug-induced side effects of psychotropic medication; take special care to adequately and appropriately monitor involuntary movement side effects; adequately train and in-service appropriate nursing and direct care staff in how to properly monitor and document medication side effects.

MEDICAL CARE

36. Defendants shall ensure that residents receive adequate preventive, chronic, routine, acute, follow-up, and emergency medical care in accordance with generally accepted standards of care. Defendants shall provide the necessary health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. To that end, defendants shall ensure that a physician is available 7 days a week to address changes in residents' medical conditions which warrant physician intervention.

37. Defendants shall take all reasonable steps, including intervention by their medical directors or revocation of physician privileges at defendants' facilities, to ensure that residents receive the care under paragraph 36, including that:

a. Physicians promptly obtain and review all laboratory and test results, document the responses in the residents' charts and take appropriate actions to address any abnormal results;

b. Physicians complete monthly notes in the residents' charts on a timely basis;

c. Physicians do not rely inappropriately on telephone orders in treating residents;

d. Physicians address promptly residents' significant or undesirable weight loss and personally provide continual follow-up until the situation is adequately addressed;

e. Health care of all diabetic residents comports with generally accepted medical practice;

f. All individuals with seizure disorders at defendants' facilities are provided with adequate and appropriate seizure management in accordance with accepted professional standards of care and with adequate and appropriate seizure documentation and with adequate and appropriate diagnostic techniques;

g. Residents currently receiving anticonvulsant medication, receive the type of medication(s) that is (are)

appropriate and effective for the type of seizure and represents the fewest number of medications appropriate for effective seizure management;

h. There are a sufficient number of neurology consult hours to meet the needs of the residents and to provide each resident with a seizure disorder with a neurology review every six (6) months;

i. As indicated by accepted professional standards of care, in the event of a medical emergency involving a resident, including status epilepticus, facility staff will immediately call an ambulance, and will initiate appropriate emergency interventions while awaiting arrival of the ambulance prior to transport of the resident to the closest tertiary care facility;

j. Physicians conduct comprehensive health care evaluations of all residents;

k. Physicians determine what specialized medical services are required for the residents and ensure that such services are timely provided whenever necessary to evaluate or treat the resident's medical problems;

l. An integrated medical plan of care for each resident exists;

m. Each resident's medical status and progress in response to the resident's medical plan of care is regularly

and adequately reviewed and all changes appropriately documented;

n. Each resident's drug regimen is free from unnecessary drugs, i.e., any drug used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of the reasons set forth herein;

o. Adequate and appropriate interdisciplinary communication among relevant professionals, especially between and among physicians and nurses;

p. Physicians communicate with the pharmacist pertaining to therapeutic responses by residents to prescribed medications.

NURSING CARE

38. Defendants shall ensure that residents receive adequate and appropriate nursing care, and that nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents' health care status. Defendants shall provide the necessary nursing care and services to attain or

maintain the residents' highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

Defendants shall take, at a minimum, the following measures:

a. Conduct adequate, comprehensive nursing assessments, with quarterly updates, of the nursing care needs of the residents;

b. Develop nursing protocols and develop and implement adequate and appropriate comprehensive interdisciplinary care plans to address each resident's health care needs;

c. Routinely perform ongoing monitoring of serious medical conditions, including such basic procedures as taking vital signs and measuring weights;

d. Implement a system for recording important information about a resident's status to monitor changes;

e. Regularly monitor the progress of residents to ensure that staff members are continually taking whatever nursing steps are necessary for the health care of the individual;

f. Communicate essential information to physicians;

g. Follow physicians' orders or document fully why a physician's order was not expressly followed;

h. Administer medications in a timely manner consistent with accepted nursing practice and provide the necessary supervision and training to minimize medication errors and

if a medication error occurs, promptly investigate the error, properly document it and take appropriate corrective action;

i. Ensure that residents are provided with adequate skin care, nutrition, turning and positioning to decrease the likelihood of skin breakdown; perform skin care assessments and ongoing treatments and therapy to prevent skin breakdown; comply fully with the particular provisions of Exhibit A and the Clinical Practice Guidelines Number 15 entitled "Treatment of Pressure Ulcers," promulgated by the Agency for Health Care Policy Research, attached as Exhibit B;

j. Follow standard infection control procedures, maintain aseptic technique and conditions at treatment sites; require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice; establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

k. Ensure that residents' nutritional intake is adequate, that weights are routinely and accurately recorded, and that residents receive appropriate diets, adequate amounts of food, and sufficient quantities of fresh water to ensure proper hydration; ensure that residents are

provided with proper mealtime assistance and supervision and with appropriate eating assistive devices and adaptive equipment where necessary; ensure that residents with significant or undesirable weight gains or losses are promptly seen by nursing and dietary staff and provided with continual follow-up until the situation is adequately addressed; ensure that each resident receives food prepared by methods that conserve nutritive value, flavor, and appearance, food that is palatable, attractive, and at the proper temperature, prepared in a form designed to meet individual needs; offer substitutes of similar nutritive value to residents who refuse food served;

1. Ensure nurses provide adequate and acceptable health care to residents with diabetes, including properly evaluating blood sugars and providing appropriate treatment when necessary; ensure nurses promptly notify a supervising registered nurse and/or physician when necessary to meet the residents' needs; ensure nurses follow physicians' express orders with respect to the care and treatment of diabetic residents; and comply with the protocols attached as Exhibit E and incorporated by reference herein;

m. utilize an interdisciplinary approach to properly assess and appropriately treat residents with swallowing problems and residents who are unable to eat orally in accordance with accepted professional procedures. To this

end, defendants agree to: (1) provide adequate care for those residents at risk of aspiration, take any appropriate steps to ameliorate the individual's aspiration risk, and develop and implement an individualized feeding and positioning plan for each resident identified as at risk of aspiration; and (2) train staff in how to properly implement the feeding and positioning plans, and shall develop and implement a system to regularly monitor the progress of the residents who are at risk of aspirating to ensure that the staff is continually taking whatever assessment, diagnostic, supervision and treatment steps are necessary to ameliorate the resident's risk;

n. Procure sufficient nursing staff to ensure adequate continuity of resident care so that the facility is not excessively reliant on temporary contract nurses; employ sufficient nursing staff to provide nursing and related services on a 24-hour basis to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

THERAPY SERVICES

40. Defendants shall provide each resident in need of such services with adequate and appropriate physical therapy and occupational therapy services.

MOST INTEGRATED SETTING

41. Defendants shall ensure that appropriate professionals evaluate each resident to determine whether the resident is being served in the most integrated setting appropriate to the resident's needs. An initial evaluation shall occur within fourteen days of admission as part of a comprehensive assessment of each resident. Each resident shall be re-evaluated at least every three months or sooner if there is a significant change in the resident's physical or mental condition.

42. Defendants shall implement professional decisions that a resident can be served in a more integrated setting by transferring the resident to the alternative setting.

43. Defendants shall ensure that before any resident is transferred to a more integrated setting, the setting is capable of meeting the resident's needs, and once transferred, the needs of the resident are being met.

RECORDKEEPING

44. Defendants shall ensure that they maintain medical records for each resident that comports with accepted professional standards and includes current information with respect to the individual's care, medical treatment, and activities. Defendants shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized. Defendants recognize

that if clinical responses are not clearly documented, there is a rebuttable presumption in this proceeding that they did not, in fact, occur.

45. Defendants shall ensure that professional staff, including physicians, psychiatrists, therapists, and nurses, as well as direct care staff, make timely and appropriate notes in the residents' records detailing the residents' progress, status, condition, and detailing the steps needed to fully meet the residents' needs. Defendants shall ensure that all professional staff utilize such records in making care, medical treatment and training decisions.

QUALITY ASSURANCE

46. Defendants shall maintain a quality assessment and assurance committee that develops and implements appropriate plans of action to correct identified quality deficiencies.

STAFFING

47. Defendants shall ensure that a sufficient number of professional and non-professional staff, especially nurses, are employed to fully meet the needs of the residents.

STAFF TRAINING

48. Defendants shall provide a training program to ensure that all professional and direct care staff who provide services to residents are adequately trained to implement the requirements of this Consent Order and are thereafter provided

with in-service training on a regular basis. Defendants shall provide a training program for all personnel, including physicians, nurses and dieticians regarding, at a minimum: nutrition; wound care and infection control; abuse and neglect; appropriate drug therapies for the elderly; diabetes; behavior modification; renal disease; mental health needs of residents; and a coordinated interdisciplinary approach to providing care to residents. Defendants shall ensure that all nurse aides are appropriately trained and demonstrate competence in the performance of their duties. Defendants also agree to report all training sessions to the U.S. Attorney's Office and the Monitor.

49. Defendants shall ensure that their medical staff regularly attends continuing medical education programs that address geriatrics, including but not limited to, medical therapies utilized in wound care, nutrition and diabetic care for long-term care residents.

RETENTION OF TECHNICAL ASSISTANCE

50. If and to the extent that the defendants require additional outside technical assistance to comply with the provisions of this Order, they shall obtain such technical assistance and provide to the United States and the Monitor a list of the professionals providing the assistance and a list of topics addressed by the professionals.

TEMPORARY MANAGEMENT

51. The defendants have hired and installed Peggy McDonough, M.S.N., as temporary manager at Chester Care Center.

The parties agree that defendants' temporary manager shall have all of the regulatory authority set forth in 42 C.F.R. §488.415(a), including but not limited to, the independent authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in Chester Care Center. The defendants shall employ the temporary manager until Chester Care Center is in substantial compliance with all Medicare requirements, and for a period of at least six (6) months thereafter. The temporary manager may be removed from her position for cause with the assent of the United States. The temporary manager shall coordinate her activities with the Monitor to ensure that appropriate decisions are made pertaining to staffing and quality of care issues for those residents residing at Chester Care Center.

MONITOR

52. A Monitor shall be appointed by January 23, 1998, who shall have full authority to oversee the defendants' compliance with the provisions of this Consent Order. The Monitor shall assess independently defendants' compliance with this Order, with the attached protocols, and with 42 C.F.R. § 483.1 through § 483.206 and guidelines as incorporated into this Order. The Monitor shall not be bound in his or her conclusions, in whole or in part, on the basis of any certification by the Health Care Financing Administration. In addition, the Monitor shall advise management and staff as to possible procedures that, in

the Monitor's view, may be implemented to facilitate compliance with this Order. Defendants are not bound by the Monitor's conclusions and may contest the same.

53. Defendants agree to allow the Monitor access to Chester Care Center, Bishop Nursing Home and Manchester House Nursing & Convalescent Center at any time and without prior notice, to assess compliance with this Consent Order. The Monitor shall visit these long-term care facilities at least monthly until this Order is terminated and shall have immediate access to all nursing home residents and their records. The Monitor shall also have access to relevant documents and records in the possession of defendants and to defendants' quality assurance reviews for purposes of ensuring coordination of responses to identified problems. Upon request, the Monitor will be promptly provided with access to and/or copies of incident reports, investigations, resident records, and any other records necessary to enable the Monitor to fulfill his or her duties under this Order. The Monitor shall attempt to coordinate his or her activities with relevant personnel in order to minimize disruption in the day to day operations of the facility. At all times, the Monitor shall respect the privacy and dignity of all residents.

54. The Monitor shall create a report documenting any adverse findings relating to compliance with this Order and shall present the report within ten calendar days of the site visit to the defendants, the United States Attorney's Office, the U.S.

Department of Health and Human Services, Office of the Inspector General, and the Health Care Financing Administration. The Monitor shall submit to the parties a quarterly status report regarding the defendants' compliance with the terms of this Order. The Monitor may confer and correspond with the parties on an ex parte basis.

55. The parties agree that Sahar Muhammad, R.N., shall serve as the Monitor and that she serves at the behest of the United States and may be removed from the Monitor position solely at the discretion of the United States. In the event the Monitor is replaced, the United States shall submit the name(s) and curricula vitae of the new proposed Monitor to the Court and the defendants shall have the right to present to the Court their position as to the new proposed Monitor.

56. The Monitor shall submit within thirty days of his/her designation an initial budget for monitoring activities. Subject to the budget provided pursuant to this Consent Order, the Monitor may retain independent consultants, as needed, to meet his or her obligations under this Order. Defendants shall bear all reasonable costs of the Monitor consistent with the budget and the parties agree that the total annual budget for the monitoring program shall not exceed the amount of \$150,000, except in the event that unforeseen circumstances arise. Defendants agree to fund the Monitor at the same annual rate until this Order is terminated.

ACCESS TO DEFENDANTS' FACILITIES

57. The Monitor, the United States and its agents shall have the right to request, inspect, review and copy facility records, resident charts and other documents, including all financial data pertaining to Chester Care Center, Bishop Nursing Home and Manchester House Nursing & Convalescent Center, conduct interviews with residents and staff outside the presence of supervisory staff or counsel, and observe activities normally conducted at the various facilities to assess compliance with this Order. The Monitor, the United States and its agents agree to respect the privacy and dignity of the residents.

CORPORATE COMPLIANCE PROGRAM

58. The defendants agree to adopt a Corporate Compliance Program that sets forth the structure for reporting and addressing all components relevant to the provision of adequate care, e.g., medical, nursing, nutrition, wound care, dietary, housekeeping, laundry, infection, plant operations and facility management services. This Program shall be submitted for approval by the Office of Counsel to the Inspector General, Civil Recoveries Branch-Compliance Unit, Department of Health and Human Services by March 31, 1998. The Office of Counsel to the Inspector General shall have sixty (60) days from receipt of the defendants' Program within which to review and either accept or reject the Program. If, after reasonable attempts have been made to obtain an acceptable Compliance Program, and this Program is

not approved by May 31, 1998, the United States may treat this failure as a material breach as defined in paragraph 65 of this Order and as grounds for exclusion from the Medicare Program in accordance with the procedures set forth in paragraph 65.

HCEFA TERMINATION PROCESS

59. This Consent Order will not forestall the termination action scheduled for January 14, 1998 if Chester Care Center does not come into substantial compliance with Medicare requirements. In the event Chester Care Center is terminated from the Medicare Program, however, and subsequently comes into compliance with Medicare requirements, this Consent Order shall serve as the "reasonable assurance" necessary for readmission to the Medicare Program. This Consent Order does not preclude any future civil money penalty or termination actions based on events occurring after the entry of the Consent Order.

TERMINATION OF CONSENT ORDER

60. The Court shall retain jurisdiction of this action for all purposes under this Consent Order until defendants shall have fully and faithfully implemented all provisions of the Order and until this action is dismissed.

61. On or after the date on which the defendants shall have fully and faithfully implemented all provisions of this Consent Order, the defendants may move that the case be closed on the grounds that defendants have fully and faithfully implemented and maintained all provisions of this Order. The parties

contemplate that the monitoring program will last for a period of at least two (2) years from the date of the entry of this Order.

62. Subject to defendants' continuing payment obligations under this Consent Order, dismissal shall be granted if the defendants are in material compliance with this Consent Order for a reasonable period of time and unless, within 60 days after receipt of the defendants' motion, the United States objects to the motion. If the United States makes such an objection, the Court shall hold a hearing on the motion and the burden shall be on the defendants to demonstrate that they have fully and faithfully implemented all provisions of this Consent Order.

63. In the event of any filing of a motion to terminate this Order, nothing in this Order precludes the parties from conducting discovery pursuant to the Federal Rules of Civil Procedure.

64. The parties reserve the right to withdraw consent to this Consent Order in the event that this Order is not approved by the Court in its entirety.

ENFORCEMENT OF CONSENT ORDER

65. In the event that defendants and/or their agents, employees, contractors and subcontractors fail to materially comply in good faith with the terms of this Consent Order, that is, fail to meet any obligation under this Consent Order that has a significant impact on the quality of care rendered to any resident or residents, or should any of defendants'

representations be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

(a) seek contempt of court based on the failure of defendants and/or their agents, employees, contractors and subcontractors to materially comply with this Consent Order. The parties agree that, after a finding of civil contempt, a penalty of ten thousand dollars (\$10,000) per day may be assessed, beginning upon the finding of contempt and lasting until all defaults are cured. After curing all defaults, the defendants may petition the Court to lift its contempt order and to withdraw the imposition of any penalties;

(b) exercise any other right granted by law, including exclusion of defendants or any of their officers, directors, agents and employees from the Medicare Program, Medicaid Program and all other state and federal health programs. In the event the United States decides to seek exclusion as one of its enforcement remedies based upon a material breach of the Consent Order or Corporate Compliance Program, the HHS-OIG will notify defendants of the alleged breach, in writing, specifying the circumstances of the alleged breach. A material breach under this subsection is a failure by any of the defendants to meet an obligation under the Consent Order or Corporate Compliance Program that has a significant impact on the quality of care rendered to any resident or residents of defendants' facilities or a significant impact on the Medicare or Medicaid Programs. Defendants shall

have 15 calendar days in which to respond to this notification and 30 days from the notification to demonstrate to the HHS-OIG that they are not in material breach or that the breach has been cured. If, in response, HHS-OIG determines that defendants are in default of this Order or the Compliance Program, it may institute an action to exclude defendants and/or any of their individual officers, directors, employees, agents from participation in the Medicare Program, Medicaid Program and state and federal health programs until such time as the breach is cured, for a specified length of time, or permanently.

Notwithstanding any provisions of Title 42 of the United States Code or Chapter 42 of the C.F.R., the sole issues in a proceeding for exclusion based on breach of this Order will be: (a) whether defendants materially breached one or more of their obligations as specified in the notice of breach; (b) whether it was reasonable for such breach to have been cured within 30 calendar days; (c) whether defendants had taken significant action to cure the breach or had done so with reasonable diligence; and (d) whether such breach was continuing on the date HHS-OIG instituted an action to exclude defendants.

(c) ~~exercise any right~~ recognizable at common law or equity including ~~injunctive~~ relief.

RELEASES

66. In consideration for such repose and on the terms and conditions contained herein, and upon payment in full of the amount due the United States as set forth in this Consent Order,

and as expressly provided below, the United States fully and finally releases and forever discharges the defendants, their officers, employees, servants and agents from any and all civil and administrative monetary claims, demands, damages, liabilities, losses and causes of action, including penalties and costs of investigation under the False Claims Act, 31 U.S.C. §§ 3729 et seq., the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Medicare and Medicaid Patient and Program Protection Act, 42 U.S.C. §1320a-7(b), or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud, for the billing for alleged inadequate care rendered to residents of Chester Care Center, Bishop Nursing Home and Manchester Nursing & Convalescent Center in violation of regulations governing standards of care applicable to long-term care facilities from June 1995 through the date of the entry of this Consent Order.

67. The parties agree that the release given in the preceding paragraph specifically excludes the following:

a. Any civil or administrative disputes, adjustments or claims relating to matters other than the alleged violation of standards of care rendered to residents of Chester Care Center, Bishop Nursing Home and Manchester House Nursing Home & Convalescent Center from June 1995 through the date of entry of this Consent Order.

b. Any disputes or claims arising under the Internal Revenue Code.

c. Any disputes or claims arising under any express or implied warranties relating to products or services.

d. Any disputes or claims arising under the criminal laws of the United States.

e. Any enforcement proceedings based upon the defendants' violations of this Agreement.

f. Any HHS-OIG administrative exclusion action pursuant to 42 U.S.C. §1320a-7a, 42 U.S.C. §1320a-7(b), or 42 U.S.C. §1320a-7(d), based on events occurring after the date of entry of this Consent Order.

g. Any intentional fraudulent conduct performed by the defendants and/or their agents or employees.

68. Defendants agree that all costs (as defined in the Federal Acquisition Regulation ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and §§ 1396 et seq., and the regulations promulgated thereunder) incurred by or on behalf of defendants, in connection with: (a) the government's investigations, and defendants' investigations and defense of this False Claims Act proceeding, (b) the negotiation of this Order, (c) any corrective action undertaken by defendants for the released acts during the relevant period, and (d) the payments made to the United States pursuant to this Order, shall be unallowable costs for government contract accounting and for Medicare, Medicaid, CHAMPUS, VA and

FEHBP reimbursement purposes. These amounts shall be separately estimated and accounted for by defendants, and defendants will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by defendants, CHAMPUS, VA or FEHBP programs. Defendants agree further that within 60 days they will identify to applicable Medicare and CHAMPUS fiscal intermediaries, carriers and/or contractors, and Medicaid fiscal agents any unallowable costs (as defined in this paragraph) included in payments sought in any cost reports, cost statements or information reports already submitted by defendants or any of its subsidiaries and will request that such cost reports, cost statements or information reports, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Any payments due after the adjustments have been made shall be paid to the United States at the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by defendants or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on defendants', or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of HHS, or any Medicare or CHAMPUS fiscal intermediary or contractor, or any Medicaid fiscal agent, to

examine or re-examine the unallowable costs described in this paragraph.

69. In consideration for such repose and on the terms and conditions contained herein, defendants fully and finally release, dismiss, and forever discharge the United States, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by HCFA, and damages, including attorney's fees, costs and expenses which defendants have asserted or could have asserted against the United States, its agencies, employees, servants, and agents, related to the billing for alleged inadequate care rendered to residents of Chester Care Center, Bishop Nursing Home and Manchester House Nursing & Convalescent Center in violation of regulations governing standards of care applicable to long-term care facilities from June 1995 through the date of entry of this Consent Order. Defendants agree that within five (5) days of the entry of this Consent Order, they will notify the Administrative Law Judges presiding over all administrative appeals filed by defendants pertaining to remedies imposed by HCFA, excluding the appeal of HCFA's termination action dated December 22, 1997, that the appeals are withdrawn with prejudice and that all requests for hearings are also withdrawn with prejudice.

70. The parties agree that the release set forth in paragraph 69 specifically excludes any dispute or appeal that defendants may assert in connection with any claim for

reimbursement under the Medicare or Medicaid Programs for services other than those provided to the individuals which are the basis for this proceeding.

COSTS

71. All parties shall bear their own costs, including attorney fees.

RETALIATION

72. Defendants and its agents, employees, contractors, and/or subcontractors agree not to take any retaliatory action against any individual or individuals who cooperated with this investigation and/or who cooperates with the United States or the Monitor throughout the pendency of this Consent Order.

SIGNATURES

73. All signatories to this Consent Order hereby warrant that they have the authority to and have entered into this Consent Order knowingly, voluntarily and of their own free will and without duress of any kind. This Consent Order may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

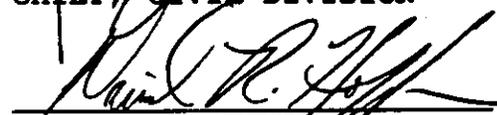
We, the undersigned, consent to the entry of the above Consent Order. We represent to the Court that this Consent Order contains a complete description of the agreement between the parties. All material representations, understandings and promises of the parties are contained in this Order. Any modifications must be set forth in writing and signed by all parties. The defendants represent that this Consent Order is entered into with knowledge of the events described herein, and that it is entered into knowingly and voluntarily, without any degree of duress or compulsion whatsoever.

UNITED STATES OF AMERICA:

DEFENDANTS:

MICHAEL R. STILES
UNITED STATES ATTORNEY


JAMES G. SHEEHAN
ASSISTANT U.S. ATTORNEY
CHIEF, CIVIL DIVISION


DAVID R. HOFFMAN
ASSISTANT U.S. ATTORNEY

WALTER M. STRINE, JR.
AUTHORIZED TO SIGN FOR:

CHESTER CARE CENTER
BISHOP NURSING HOME
MANCHESTER HOUSE NURSING
& CONVALESCENT CENTER
THE BISHOP NURSING HOME, INC.
COMMONWEALTH REAL ESTATE INVESTORS

LEWIS MORRIS
ASSISTANT INSPECTOR GENERAL
OFFICE OF COUNSEL TO THE INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

JAMES C. NEWMAN
CHIEF COUNSEL, REGION III



JAN M. LUNDELIUS
ASSISTANT REGIONAL COUNSEL
COUNSEL FOR HEALTH CARE FINANCING ADMINISTRATION

APPROVED AND SO ORDERED:

J.



LEWIS MORRIS
ASSISTANT INSPECTOR GENERAL
OFFICE OF COUNSEL TO THE INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES


WALTER M. STRINE, JR.

AUTHORIZED TO SIGN FOR:

CHESTER CARE CENTER
BISHOP NURSING HOME
MANCHESTER HOUSE NURSING
& CONVALESCENT CENTER
THE BISHOP NURSING HOME, INC.
COMMONWEALTH REAL ESTATE INVESTORS