



RICK SNYDER  
GOVERNOR

State of Michigan  
DEPARTMENT OF HUMAN SERVICES  
BUREAU OF CHILDREN AND ADULT LICENSING



MAURA D. CORRIGAN  
DIRECTOR

December 29, 2014

Ms. Debra Kolnitys, Administrator  
Rolling Acres Adult Foster Care, Inc.  
11229 US 25 South  
Ossineke, MI 49766

Re: **MAHS Docket No. 14-015943-DHS**  
**License AM040007724**

Dear Ms. Kolnitys:

On or about December 11, 2014, you were mailed a copy of the Final Decision and Order upholding the agency's revocation of your license to operate an adult foster care small group home. In accordance with that Decision and Order, your license has been revoked effective December 22, 2014. It is further understood that you will not receive adults for care now, or in the future, without being properly licensed.

Sincerely,

Jerry Hendrick, Acting Director  
Adult Foster Care/Homes for the Aged Licensing Division  
Bureau of Children and Adult Licensing

JH:kam

cc: Betsy Montgomery, Area Manager  
Marcia S. Elowsky, Licensing Consultant

**Certified Mail- Return Receipt Requested**

STATE OF MICHIGAN  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Rolling Acres Adult Foster Care, Inc.,  
Petitioner

v

Bureau of Children and Adult Licensing,  
Respondent

Docket No.: 14-015943-DHS

Case No.: AM 040007724

Agency: Department of  
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered  
this 11 day of December, 2014  
by  
Maura D. Corrigan, Director  
Department of Human Services

RECEIVED  
DEC 15 2014  
BUREAU OF CHILDREN  
AND ADULT LICENSING

FINAL DECISION AND ORDER

This matter began on July 14, 2014, with Respondent's issuing an order of summary suspension and notice of intent to revoke license (Notice) regarding Petitioner's license to operate an adult foster family small group home pursuant to the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.701 *et seq.* A properly noticed hearing was held by Administrative Law Judge Christopher S. Saunders (ALJ) on September 8, 2014. Assistant Attorney General Kristin Heyse represented Respondent. Neither Petitioner nor an attorney appeared on behalf of Petitioners.

Upon Petitioner's failure to appear and at the request of Respondent, the ALJ entered a Default Judgment against Petitioner pursuant to Sections 72(1) and 78(2) of

the Administrative Procedures Act of 1969, as amended, MCL 24.201 *et seq.* (APA). The notice being incorporated into the hearing as a part of Respondent's pleadings and as a result of Petitioner's failure to appear at the hearing to contest the facts placed on the record as presented in the notice, the ALJ found the facts as alleged by Respondent to be true and accurate. Therefore, the ALJ properly concluded that Petitioner violated the rules as alleged by Respondent.

October 8, 2014, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioners willfully and substantially violated Rule 400.14201 (9)(a); MCL 400.734b (1)(c); and MCL 400.713 (26). No exceptions were filed.

I concur in the ALJ's findings of fact and conclusions of law.

**ORDER**

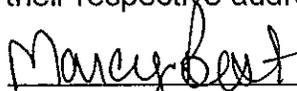
**NOW THEREFORE, IT IS ORDERED:**

1. That the ALJ's Proposal for Decision (PFD) is adopted in its entirety and is incorporated by reference and made a part of this Final Decision and Order (see attached PFD).
2. That the actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. That Petitioner's license is REVOKED, effective on the date this Final Decision and Order is issued and entered.

  
\_\_\_\_\_  
Maura D. Corrigan, Director  
Department of Human Services

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 11<sup>th</sup> day of December, 2014.



\_\_\_\_\_  
Marcy Best  
Department of Human Services

Jason Scheeneman  
Bureau of Children and Adult Licensing  
P.O. Box 30650  
Lansing, MI 48909

Marcia S. Elowsky  
Bureau of Children and Adult Licensing  
701 South Elmwood  
Traverse City, MI 49684

Jennifer Kerr  
Bureau of Children and Adult Licensing  
P.O. Box 30650  
Lansing, MI 48909

Betsy Montgomery  
5303 South Cedar St.  
P.O. Box 30321  
Lansing, MI 48909

Kristin M. Heyse  
Assistant Attorney General  
P.O. Box 30754  
Lansing, MI 48909

Rolling Acres Adult Foster Care, Inc.  
Debra Kolnitys, Administrator  
11229 US 23 South  
Ossineke, MI 49766

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Rolling Acres Adult Foster Care, Inc.,  
Petitioner

v

Bureau of Children and Adult Licensing,  
Respondent

Docket No.: 14-015943-DHS

Case No.: AM 040007724

Agency: Department of  
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

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Issued and entered  
this 8<sup>th</sup> day of October, 2014  
by: Christopher S. Saunders  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This matter commenced on July 14, 2014, with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing an Order of Summary Suspension and Notice of Intent to Revoke License (Notice), regarding the license of Rolling Acres Adult Foster Care, Inc. (Petitioner) to operate an adult foster care small group home pursuant to the authority of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.701 *et seq.* Petitioner subsequently filed a request for hearing. On July 15, 2014, the request for hearing was forwarded to the Michigan Administrative Hearing System (MAHS).

On July 16, 2014, the Michigan Administrative Hearing System issued a Notice of Hearing, scheduling a hearing for September 8, 2014. The hearing commenced as scheduled on September 8, 2014.

Petitioner did not appear at the scheduled hearing. The Notice of Hearing, which scheduled the hearing for September 8, 2014 was sent to Petitioner at the last known address thereof. Petitioner did not request an adjournment of the scheduled hearing date. Petitioner did not appear for the hearing nor did an attorney appear on its behalf. Assistant Attorney General Kristin Heyse appeared on behalf of Respondent. On September 5, 2014, Respondent's attorney sent a communication to MAHS indicating that Petitioner had an attorney at some point, that she was not sure if the representation was continuing, and that she did not think that said attorney received the Notice of

Hearing as she did not think an appearance was filed with MAHS. There is no record of an attorney appearance being filed with MAHS on behalf of Petitioner, nor was there any communication received from an attorney's office on behalf of Petitioner. Ms. Heyse stated that she had been in communication with the alleged attorney's office and advised them of the date for hearing. However, even with such communication from Ms. Heyse, there was no contact or attempted contact with MAHS by an attorney on behalf of Petitioner.

Pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, the hearing proceeded in Petitioner's absence. Additionally, Respondent requested a default judgment and such was entered against Petitioner pursuant to Section 78 of the APA.

Section 72(1) of the APA provides:

If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Section 78(2) of the APA provides:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

As a result of the default, the factual allegations contained in Respondent's Amended Notice of Intent to Revoke License are deemed true. As such, no formal testimony was taken at the proceeding and no exhibits were admitted.

### **ISSUES AND APPLICABLE LAW**

The general issue presented is whether the Petitioner's conduct provides grounds for Respondent to refuse to renew Petitioner's license. At specific issue are the alleged willful and substantial violations of Rule 400.14201(9)(a), and violations of MCL 400.734b(1)(c) and MCL 400.713(26), which provide in pertinent part:

**400.734b Employing or contracting with certain individuals providing direct services to residents; prohibitions; criminal history check; exemptions; written consent and identification; conditional employment; use of criminal history record information;**

disclosure; determination of existence of national criminal history; failure to conduct criminal history check; automated fingerprint identification system database; electronic web-based system; costs; definitions.

Sec. 34b.

- (1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility if the individual satisfies 1 or more of the following:

\* \* \*

- (c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7(a) or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract.

400.713 License required; application; forms; investigation; on-site evaluation; issuance or renewal of license; disclosures; maximum number of persons; stating type of specialized program; issuance of license to specific person at specific location; transferability of license; sale of facility; notice; items of noncompliance; refusal by department to issue or renew license; conditions; unlicensed facility; violation as misdemeanor; penalty; receipt of completed application; issuance of license within certain time period; inspections; report; criminal history and records check; storage of fingerprints in automated fingerprint identification system database; convictions; "completed application" defined.

Sec. 13.

\* \* \*

- (26) A licensee, licensee designee, owner, partner, or director of the licensee shall not be permitted on the premises of an adult foster care facility if he or she has been convicted of any of the following: adult abuse, neglect, or financial exploitation; or listed offenses as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

**R 400.14201 Qualifications of administrator, direct care staff, licensee, and members of household; provision of names of employee, volunteer, or member of household on parole or probation or convicted of felony; food service staff.**

Rule 201.

\* \* \*

- (9) A licensee and the administrator shall possess all of the following qualifications:
- (a) Be suitable to meet the physical, emotional, social, and intellectual needs of each resident.

The definitions for the words "willful and substantial" should also be noted. These definitions are provided in R400.16001(c),(d)&(e) as used in 1973 PA 116 as amended:

**R400.16001**

- (c) "Noncompliance" means a violation of the act or act 218, an administrative rule promulgated under the act or act 218, or the terms of a license or a certificate of registration.
- (d) "Substantial noncompliance" means repeated violations of the act or act 218 or an administrative rule promulgated under the act or act 218, or noncompliance with the act or act 218, or a rule promulgated under the act or act 218, or the terms of a license or a certificate of registration that jeopardizes the health, safety, care,

treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.

- (e) "Willful noncompliance" means, after receiving a copy of the act or act 218, the rules promulgated under the act or act 218 and, for a license, a copy of the terms of a license or a certificate of registration, an applicant or licensee knew or had reason to know that his or her conduct was a violation of the act or act 218, rules promulgated under the act or act 218, or the terms of a license or a certificate of registration.

### FINDINGS OF FACT

Based on the entire record in this matter, including the default and pleadings, the following findings of fact are established:

1. On or about January 2, 1993, Petitioner was issued a license to operate an adult foster care small group home with a licensed capacity of 10 at 11229 US 23 South, Osineke, MI 49766.
2. Debra Kolnitys is the Licensee Designee and the Administrator at Respondent facility.
3. On June 9, 2014, Debra Kolnitys submitted a license renewal application with Respondent. Ms. Kolnitys is also the resident agent and president of Rolling Acres Adult Foster Care, Inc.
4. From 2012 through 2014, Ms. Kolnitys embezzled funds from a resident in her care at Rolling Acres AFC, License #AM350296715, located at 751 Newman Street, East Tawas, MI 48730.
5. On April 17, 2014, Debra Kolnitys was charged with Embezzlement From A Vulnerable Adult-\$1,000.00 or More but Less than \$20,000.00. Ms. Kolnitys was found guilty of this charge on July 8, 2014. She was scheduled for sentencing on August 14, 2014.

### CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Respondent to prove, by a preponderance of the evidence that grounds exist for the decision to revoke the registration and/or imposition of other

sanctions upon Petitioner. Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true Smith v Lansing School Dist. 428 Mich. 248 (1987).

Based upon a default being granted in this matter, the allegations cited in the Notice of Intent to Revoke License are deemed true. Accordingly, Respondent has proven, by a preponderance of the evidence, that Petitioner willfully and substantially violated Rule 400.14201(9)(a), and MCL 400.734b(1)(c) and MCL 400.713(26).

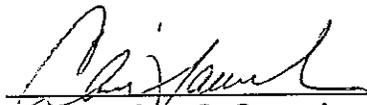
### **PROPOSED DECISION**

This Administrative Law Judge proposes that the Director conclude that Respondent acted properly in issuing the subject Notice of Intent to Revoke License for the reasons set forth above.

### **EXCEPTIONS**

If any party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fourteen (14) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after Exceptions are filed. All Exceptions and Responses to Exceptions must be served on all parties to the proceeding and filed with the:

Michigan Administrative Hearing System  
P.O. Box 30695  
Lansing, MI 48909-8195

  
\_\_\_\_\_  
Christopher S. Saunders  
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 8<sup>th</sup> day of October, 2014.



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Verna Curtis  
Michigan Administrative Hearing System

Betsy Montgomery  
5303 South Cedar Street  
P.O. Box 30321  
Lansing, MI 48909

Jason Scheeneman  
Bureau of Children and Adult Licensing  
201 N. Washington Square, 4th Floor  
P.O. Box 30650  
Lansing, MI 48909

Marcia S. Elowsky  
Bureau of Children and Adult Licensing  
701 South Elmwood, Suite  
Traverse City, MI 49684

Jennifer Kerr  
Bureau of Children and Adult Licensing  
201 N. Washington Square, 4th Floor  
P.O. Box 30650  
Lansing, MI 48909

Kristin M. Heyse  
Assistant Attorney General  
Licensing & Regulation Division  
525 West Ottawa Street, P.O. Box 30754  
Lansing, MI 48909

Rolling Acres Adult Foster Care, Inc.  
Debra Kolnitys, Administrator  
11229 US 23 South  
Ossineke, MI 49766