

CAUSE NO. _____

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|----------------------------|---|--------------------------|
| STATE OF TEXAS | § | IN THE DISTRICT COURT OF |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | |
| | § | VICTORIA COUNTY, TEXAS |
| JOYCE BURRIS d/b/a JOYCE’S | § | |
| TLC ASSISTED LIVING, | § | |
| OWNER AND OPERATOR OF | § | |
| AN UNLICENSED ASSISTED | § | |
| LIVING FACILITY, | § | |
| <i>Defendant.</i> | § | _____ JUDICIAL DISTRICT |

**STATE’S ORIGINAL PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER AND TEMPORARY AND
PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF THE COURT:

The State of Texas (“State”), acting by and through its Attorney General of Texas, GREG ABBOTT, and at the request of the Commissioner of the Texas Department of Aging and Disability Services (“DADS”), Chris Traylor, files this Original Petition and Application for Ex Parte Temporary Restraining Order, and Temporary and Permanent Injunction, complaining of JOYCE BURRIS d/b/a JOYCE’S TLC ASSISTED LIVING (DEFENDANT), owner and operator of an assisted living facility, and to obtain compliance with State law regarding the operation of Assisted Living Facilities, and in support thereof would respectfully show unto the Court as follows:

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Rule 190.1, TEX. RULES OF CIVIL PROCEDURE, the State submits that this suit should be governed by Rule 190.3, Level 2 discovery.

2. PARTY PLAINTIFF

2.1 This action is brought in the name of the State of Texas by and through its Attorney General, GREG ABBOTT, and the Consumer Protection and Public Health Division of the Office of the Attorney General in the public interest and under the authority of the Constitution, statutes and laws of the State of Texas. More importantly, this suite is brought to protect the dependent residents of Defendant's facility and to alleviate the immediate and serious threat to the health and safety of those residents, pursuant to **TEXAS HEALTH AND SAFETY CODE** §§ 247.044(a)(1),(2) & (b)(1),(2),(3), as detailed in this Petition.

2.2 This suit is further brought at the request of the Commissioner of the Texas Department of Aging and Disability Services (DADS) as authorized by **Chapter 247 of the TEXAS HEALTH AND SAFETY CODE**. Under **Chapter 247**, DADS is responsible for licensing and regulating assisted living facilities. The State may file for an ex parte temporary restraining order to prohibit the operation of an assisted living facility without a license under **TEXAS HEALTH AND SAFETY CODE** § 247.044(d). Additionally, an assisted living facility that is operating without a license is subject to civil penalties under **TEXAS HEALTH AND SAFETY CODE** §§ 247.045(b),(c).

3. PARTY DEFENDANT

3.1 Defendant JOYCE BURRIS, is alleged to be the owner and controlling person, operating JOYCE'S TLC ASSISTED LIVING, an unlicensed assisted living facility at 607 Rosewood, Victoria, Victoria County, TX 77901.

3.2 Defendant may be served with process at 607 Rosewood, Victoria, Victoria County, TX 77901.

4. AUTHORITY

4.1 This Court has authority over this cause of action under Chapter 247 of the TEXAS HEALTH AND SAFETY CODE and the authority granted to the Attorney General of Texas under the Constitution and laws of the State of Texas.

5. VENUE

5.1 Venue of this suit is proper in Victoria County under TEX. HEALTH AND SAFETY CODE § 247.044(e).

6. BASIS FOR THIS CAUSE OF ACTION

6.1 Defendant JOYCE BURRIS, is the owner and controlling person, operating JOYCE'S TLC ASSISTED LIVING, an assisted living facility without a license, in violation of Chapter 247 of the TEXAS HEALTH & SAFETY CODE. DADS has referred this case to the Attorney General, GREG ABBOTT, and his Consumer Protection and Public Health Division for suit, and the State of Texas is seeking injunctive relief under TEX. HEALTH & SAFETY CODE ANN. § 247.044 to enjoin the Defendant from continuing to operate any assisted living facility without a license.

6.2 To protect the residents of Defendant's facility and to eliminate the potential for an immediate and serious threat to those residents' health and safety, the State of Texas seeks:

- a. an ex parte temporary restraining order prohibiting Defendant from operating any assisted living facility in Texas without a license;
- b. from interfering with the immediate orderly transfer of all residents except those residents related to the Defendant, to other licensed facilities;

- c. within fourteen (14) days after the temporary restraining order has been served upon Defendant, a temporary injunction prohibiting Defendant from operating any assisted living facility in Texas without a license be issued; and
- d. a permanent injunction be issued against Defendant prohibiting the Defendant from operating any assisted living facility in Texas without a license.

7. APPLICABLE LAW

7.1 A person may not establish or operate an assisted living facility without a license issued under Chapter 247 of the Texas Health & Safety Code. TEX. HEALTH & SAFETY CODE § 247.021(a). Pursuant to TEX. HEALTH & SAFETY CODE § 247.002, the following words or phrases mean:

- a. **"Assisted Living Facility"** means an establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment and that provides personal care services;
- b. **"Personal Care Services"** means:
 - (i) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
 - (ii) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
 - (iii) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in a personal care facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

7.2 Chapter 247 of the TEX. HEALTH & SAFETY CODE authorizes DADS to promulgate, publish and enforce minimum standards for assisted living facility which ensure the health, safety and comfort of its residents. Under the TEX. HEALTH & SAFETY CODE ANN.

§§ 247.025 and 247.026, DADS has promulgated minimum licensing standards for assisted living facility at 40 T.A.C. Chapter 92.

7.3 TEX. HEALTH & SAFETY CODE ANN. § 247.044(a), provides that the Department may seek injunctive relief as follows:

- a. The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that:
 - (1) the violation creates an immediate threat to the health and safety of the assisted living facility residents; or
 - (2) the facility is operating without a license.

7.4 TEX. HEALTH & SAFETY CODE ANN. § 247.044(b) provides that the Department may seek injunctive relief to:

- (1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
- (2) restrain the establishment or operation of an institution without a license issued under this chapter, or
- (3) grant the injunctive relief warranted by the facts.

7.5 TEX. HEALTH & SAFETY CODE ANN. § 247.045(a) provides that a person who violates Chapter 247 or rule adopted under that chapter is liable for a civil penalty of not less than \$100, nor more than \$10,000, for each act violation if the Department determines that the violation threatens the health and safety of a resident of an assisted living facility. The statute also provides that each day of continuing violation constitutes a separate ground for recovery.

7.6 TEX. HEALTH & SAFETY CODE ANN. §§ 247.045(b) and (c) provides that a person who does not possess a license for an assisted living facility as required by TEX. HEALTH & SAFETY CODE ANN. § 247.021 is subject to a civil penalty of not less than \$1,000 or more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

7.7 TEX. HEALTH & SAFETY CODE ANN. § 247.045(e) also authorizes the imposition of investigation and attorney's fees.

8. EXHIBITS

8.1 In support of this petition, the State relies upon and adopts by reference for all purposes the attached exhibits as follows:

- a. Exhibit A is an affidavit from Lydia Maise, Legal Coordinator in the Long Term Care Regulatory Facility Enrollment Section, Texas Department of Human Services, establishing that the Defendant does not have a license to operate an assisted living facility at 607 Rosewood, Victoria, Victoria County, TX 77901.
- b. Exhibit B is an affidavit from Robert M. Casias, Program Specialist III for the Long Term Care Regulatory Section, Texas Department of Human Services, describing the investigation of the Defendant's unlicensed assisted living facility on January 11, 2010, and the threat posed to the health and safety of the residents of 607 Rosewood, Victoria, Victoria County, TX 77901 (e.g. the conditions in the facility pose an immediate threat to the health and safety of all residents. The facility does not have a fire alarm and sprinkler system, only smoke detectors in three of the six bedrooms and the fire extinguishers are out of date. Additionally, the are exposed electrical outlets and extension cords that pose a fire and electrocution threat to the facility and its residents. Two of the six residents are bedfast, three require assistance with transfer and ambulation, and all of the residents need assistance with their daily activities. The facility only has one staff member present during the night shift).

9. FACTUAL ALLEGATIONS

9.1 Defendant is the owner and controlling person, and operates JOYCE'S TLC ASSISTED LIVING, an unlicensed assisted living facility at 607 Rosewood, Victoria, Victoria County, Texas 77901, as defined under TEX. HEALTH & SAFETY CODE ANN. § 247.021. Defendant furnishes food and shelter to four or more persons who are unrelated to the proprietor of the establishment and provides personal care services.

9.2 DADS conducted inspections of the facility on: January 11, 2010 citing an immediate threat to the health and safety of the residents. *See* Exhibit B.

9.3 During the January 11, 2010 investigatory visit to 607 Rosewood, Victoria, Victoria County, Texas 77901, it was determined the Defendant is caring for six (6) residents that require assistance with all activities of daily living. Three (3) of the six (6) residents also require assistance with transfer and ambulation, and two (2) of the residents are bedfast. *See* Exhibit B.

9.4 During the January 1, 2010 investigatory visit to 607 Rosewood, Victoria, Victoria County, Texas 77901, it was determined that the facility did not have a fire alarm or sprinkler system, no smoke alarms in three of the six bedrooms, and there were no carbon monoxide detectors in the facility. *See* Exhibit B. Furthermore, there were exposed electrical outlets throughout the facility and extension cords posing a fire and electrical threat.

9.5 Defendant admitted that only staff member is on duty during the night shift to care for all six (6) residents. *See* Exhibit B.

10. MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER

10.1 To protect the residents of 607 Rosewood, Victoria, Victoria County, Texas 77901, and to eliminate the immediate threat to residents' health and safety, pursuant to TEX.

HEALTH & SAFETY CODE ANN. Chapter 247, the State requests that Defendant, her officers, agents, servants, employees and all persons acting in concert with her be restrained from the following:

- a. Preventing or hindering or interfering with agents of DADS, or any other state or local law enforcement agency, from effectuating the immediate orderly transfer of all residents from 607 Rosewood, Victoria, Victoria County, Texas 77901, to other licensed facilities;
- b. Failing to follow any instructions given by DADS to Defendant and her agents in order to temporarily care for residents while DADS, or any other state or local law enforcement agency, supervises and effectuates the transfer of the residents to other licensed facilities;
- c. Operating at 607 Rosewood, Victoria, Victoria County, Texas 77901, as an assisted living facility without an assisted living facility license;
- d. Operating any other assisted living facility in Texas without an assisted living facility license;
- e. Admitting or retaining at 607 Rosewood, Victoria, Victoria County, Texas 77901, residents whose needs cannot be met by the facility, in violation of 40 TEX. ADMIN. CODE § 92.2(b)(3)(C);
- f. Failing to care for residents on a temporary and emergency basis while DADS, or any other state or local law enforcement agency, supervises and effectuates the transfer of the residents to other licensed facilities;
- g. Denying any DADS agent or any other state or local law enforcement agency, access to 607 Rosewood, Victoria, Victoria County, Texas 77901 or any other facility owned or operated by Defendant in Texas, in order to monitor compliance with this order;
- h. Withholding from residents, or their representatives, any property or records to which the residents are entitled; and
- i. Transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies or insurance, trust agreements, to other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendant, insofar as such property relates to, arises out of or is derived from the business operations of

Defendant, save and except for reasonable and necessary expenditures in the ordinary course of business.

11. REQUEST FOR TEMPORARY INJUNCTION

11.1 The State requests this matter be set for a hearing on the State's request for a temporary injunction within fourteen (14) days from the date the Court signs an order granting the ex parte temporary restraining order requested in section 10, above, and issue an order directing Defendant to appear and show cause as to why the restraining order so issued shall not be continued as a temporary injunction. Pursuant to TEX. HEALTH & SAFETY CODE ANN. § 247.044, the State requests this Court issue a temporary injunction in conformity with the terms set forth in section 10 above.

12. REQUEST FOR PERMANENT INJUNCTION

12.1 Upon entry of the temporary injunction requested in section 11, above, the State requests the Court set this matter for a final hearing, and at the conclusion of such hearing, issue a permanent injunction in conformity with the terms set forth in section 10, above, to be in effect pursuant to TEX. HEALTH & SAFETY CODE ANN. § 247.044.

13. REQUEST FOR IMPOSITION OF CIVIL PENALTIES AND AWARD OF ATTORNEY'S FEES

13.1 The State requests the Court enter judgment against Defendant for civil penalties in an amount found by the trier of fact within the statutory range set forth in TEX. HEALTH & SAFETY CODE ANN. §§ 247.045 or 247.021.

14. PRAYER

For these reasons, the State specifically requests:

A. All residents unrelated to the Defendant be immediately removed from 607 Rosewood, Victoria, Victoria County, Texas 77901 to other licensed facilities;

B. Defendant be temporarily restrained from operating any assisted living facility in Texas without a license;

C. The Court issue a show cause order directing Defendant to appear and show cause why the temporary restraining order entered herein should not become a temporary injunction, and upon such hearings, enter a temporary injunction prohibiting Defendant from operating any assisted living facility in Texas without a license; and

D. Upon a final trial upon the merits, the State be awarded judgment against the Defendant as follows:

a) That Defendant be permanently enjoined from operating any assisted living facility in the State of Texas without a license;

b) That Defendant be ordered to pay to the State civil penalties of not less than ONE THOUSAND DOLLARS (\$1,000.00) or more than TEN THOUSAND DOLLARS (\$10,000.00) for each violation of operating an assisted living facility without a license for each day such violation occurred pursuant to TEX. HEALTH & SAFETY CODE ANN. § 247.045;

c) That Defendant be ordered to pay to the State civil penalties of not less than ONE HUNDRED DOLLARS (\$100.00) or more than TEN THOUSAND DOLLARS (\$10,000.00) for each violation occurred that threatened the health and safety of a resident for each day such violation occurred pursuant to TEX. HEALTH & SAFETY CODE ANN. § 247.045; and

d) That Defendant be ordered to pay to the State attorneys fees within the range allowed by law and proven by the State.

Respectfully submitted,

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