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STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

VS.

MONTGOMERY COUNTY, TEXAS

HECTOR J. IBARRA individually
AND D/B/A
WESTRIDGE PINNACLE CARE
KENNETH J. PRICE, individually
AND KENNETH J. PRICE, LLC.
Defendants.

____ JUDICIAL DISTRICT

**STATE'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION
AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas, Plaintiff ("State"), acting by and through the Attorney General of Texas, GREG ABBOTT, and at the request of the Commissioner of the Texas Department of Aging and Disability Services ("DADS") files this Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction complaining of HECTOR J. IBARRA individually and D/B/A WESTRIDGE PINNACLE CARE AND KENNETH J. PRICE, individually and KENNETH J. PRICE, LLC., and respectfully shows:

DISCOVERY PLAN

1. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.1, the State submits that discovery in this suit should be conducted under Level 2.

PARTY PLAINTIFF

Plaintiff's Original Petition and Application for Permanent Injunction
State of Texas v. Hector J. Ibarra d/b/a Westridge Pinnacle Care and Kenneth J. Price, LLC.

2. This suit is brought in the name of the State of Texas by its Attorney General and his Consumer Protection and Public Health Division in the public interest and under the authority granted to him by the Constitution, and statutes and laws of the State of Texas.

3. This suit is further brought by the Attorney General pursuant to the request of the Commissioner of DADS as authorized by TEXAS HUMAN RESOURCES CODE § 103.0091(c).

PARTY DEFENDANT

4. DEFENDANT, HECTOR J. IBARRA did, at all times relevant, own, control or operate the business operating as an adult day-care facility WESTRIDGE PINNACLE CARE L.L.C a/k/a PINNACLE CARE SERVICES at 611 Westridge Drive, Montgomery County, Spring, Texas 77380. HECTOR J. IBARRA, may be served with process at his residence at 3025 Country Club Drive., Brazoria County, Pearland, Texas 77581 or wherever he may be found.

5. DEFENDANT, KENNETH J. PRICE, LLC, is a limited liability company that did, at all times relevant, own, control or operate the business operating as an adult day-care facility WESTRIDGE PINNACLE CARE at 611 Westridge Drive, Montgomery County, Spring, Texas 77380. KENNETH J. PRICE, LLC, may be served with process at 611 Westridge Road, Montgomery County, Spring, Texas 77380.

6. DEFENDANT, KENNETH J. PRICE is an individual who did, at all times relevant, own, control or operate the business operating as an adult day-care facility WESTRIDGE PINNACLE CARE L.L.C a/k/a PINNACLE CARE SERVICES at 611 Westridge Drive, Montgomery County, Spring, Texas 77380. KENNETH J. PRICE, LLC, may be served with process at 611 Westridge Road, Montgomery County, Spring, Texas 77380.

AUTHORITY

7. The Office of the Attorney General of Texas has authority to bring this cause of action under Texas Human Resources Code § 103.0091(c).

8. At all times relevant to this lawsuit, Defendants HECTOR J. IBARRA and KENNETH J. PRICE, LLC operated the WESTRIDGE PINNACLE CARE adult day-care facility but did not have a license to operate as an adult day-care facility. The Texas Human Resources Code § 103.0091 authorizes DADS to institute and conduct a suit seeking injunctive relief for violations of the standards or licensing requirements of Texas Human Resources Code Chapter 103. In the alternative, DADS may request that the Attorney General of Texas institute and conduct a suit authorized by this section, pursuant to Texas Human Resources Code § 103.0091(c).

VENUE

9. Venue of this suit is proper in Montgomery County, Texas for the following reasons:

A. Under Texas Civil Practice and Remedies Code §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to this claim occurred in Montgomery County, Texas.

B. Under Texas Human Resources Code § 103.0091(d) because the facility at 611 Westridge Drive, Spring, Texas 77380 is located in Montgomery County, Texas.

PURPOSE OF SUIT

10. This suit is brought against Defendants HECTOR J. IBARRA, KENNETH J. PRICE and KENNETH J. PRICE, LLC, for injunctive relief to prohibit HECTOR J. IBARRA and KENNETH J. PRICE, LLC and their agents from operating an adult day-care facility without a license.

EXHIBITS

11. In support of this petition, the Plaintiff State of Texas relies upon and adopts by reference, as if set forth verbatim, the attached exhibits:

A. Exhibit A - Referral letter from DADS to Texas Attorney General Greg Abbott, confirming DADS' finding that Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE and KENNETH J. PRICE, LLC violated Texas Human Resources Code Chapter 103 by operating an adult day-care facility without a license (*See Exhibit A attached hereto and incorporated herein*); and

B. Exhibit B - Affidavit of Ryan A. Dalton, Surveyor with DADS Regulatory Services Division, explaining DADS' finding that the facility located at 611 Westridge Drive, Montgomery County, Spring, Texas 77380, operated by Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC , operated as an adult day-care facility without a license in violation of Texas Human Resources Code Chapter 103 and there was sufficient evidence to support the findings of physical and verbal abuse. (*See Exhibit B attached hereto and incorporated herein*).

ACTS OF AGENTS

12. Whenever in this petition it is alleged that Defendants HECTOR J. IBARRA d/b/a Westridge PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC did any act or thing, it is meant that HECTOR J. IBARRA, KENNETH J. PRICE and KENNETH J. PRICE, LLC performed or participated in such act or thing or that such act was performed by the officers, agents or employees of HECTOR J. IBARRA, KENNETH J. PRICE and KENNETH J. PRICE, LLC and in each instance, the officers, agents, or employees of HECTOR J. IBARRA, KENNETH J. PRICE

and KENNETH J. PRICE, LLC were then authorized to and did in fact act on behalf of HECTOR J. IBARRA and KENNETH J. PRICE, LLC or otherwise acted under the guidance and direction of HECTOR J. IBARRA, KENNETH J. PRICE and KENNETH J. PRICE, LLC.

ALLEGATIONS

13. Defendants HECTOR J. IBARRA, KENNETH J. PRICE and KENNETH J. PRICE, LLC violated Texas Human Resources Code § 103.0041(a) by operating the WESTRIDGE PINNACLE CARE adult day-care facility at 611 Westridge Drive, Montgomery County, Spring, Texas 77380 without a license. At all times relevant, Defendant HECTOR J. IBARRA, KENNETH J. PRICE and KENNETH J. PRICE, LLC owned, controlled or operated the WESTRIDGE PINNACLE CARE facility.

14. On April 1, 2010, DADS Surveyor, Ryan A. Dalton conducted a complaint visit at the WESTRIDGE PINNACLE CARE facility located at 611 Westridge Drive, Montgomery County, Spring, Texas 77380 to determine if WESTRIDGE PINNACLE CARE was operating an adult day care without a license and investigate allegations of physical and verbal abuse.

15. Surveyor Dalton determined that the facility was operating as an adult day-care facility without a license in violation of Texas Human Resources Code Chapter 103 and there was sufficient evidence to support the findings of physical and verbal abuse. Surveyor Dalton notified Yashare Ramey, Director of Contracts, of this finding.

16. The DADS Regulatory Services Division receives licensure applications and issues licenses for adult day-care facilities. DADS surveyor Ryan A. Dalton searched the licensure records and databases and confirmed that the facility's license to operate an adult day-care facility had been

denied on March 16, 2010 and no current license existed for the operation being conducted by Hector Ibarra, or any other entity at 611 Westridge Drive, Montgomery County, Spring, Texas 77380.

17. Based on these findings, DADS recommends that the Attorney General seek injunctive relief and any other relief that may be appropriate in order to prevent Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE and KENNETH J. PRICE, LLC from continuing to represent that they are a provider of adult day-care facility services, without the license required by Texas Human Resources Code § 103.0041(a).

TRIAL BY JURY

18. Plaintiff State of Texas herein requests a jury trial and tenders the jury fee to the Montgomery County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. § 51.604 (Vernon 2005).

REQUEST FOR TEMPORARY RESTRAINING ORDER

19. State's application for a temporary restraining order is authorized by Texas Human Resources Code § 103.0091.

20. Pursuant to section 103.0091 of the Texas Human Resources Code, the State requests that the Court grant a temporary restraining order enjoining Defendant, their officers, agents, servants, and employees from interfering with or denying the State access to the facility located at 611 Westridge Drive, Spring, Texas 77380 in Montgomery County for the purpose of removing the residents from the location and transferring them to a licensed facility.

21. Notice of this filing was not given to the Defendant because of the possibility of retaliation against the residents or the possibility of transferring the residents to a different location.

APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

22. Because Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC have engaged in the unlawful acts and practices described above, they have violated and will continue to violate the law as alleged in this Petition. Unless restrained by this Court, Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC will continue to violate the laws of the State of Texas and cause injury, loss and damage to the State of Texas and to the general public.

PRAYER

23. That a temporary restraining order be issued against Defendants, HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC, to prevent Defendants, their officers, agents, servants, and employees from interfering with or denying the State access to the facility located at 611 Westridge Drive, Spring, Texas 77380 in Montgomery County for the purpose of transferring residents to a licensed facility pursuant to chapter 103 of the Texas Human Resources Code.

24. Plaintiff State of Texas prays that Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC be cited according to law to appear and answer herein; that after due notice and hearing a permanent injunction be issued, restraining and enjoining Defendants HECTOR J. IBARRA d/b/a WESTRIDGE PINNACLE CARE, KENNETH J. PRICE and KENNETH J. PRICE, LLC, their successors, assigns, officers, agents,

servants, employees and attorneys and any other person in active concert or participation with her, from engaging in the following acts or practices:

A. Continuing a violation of the licensing requirements, as provided by Texas Human Resources Code § 103.0091(b)(1);

B. Establishing or operating a facility in Texas without a license as provided by Texas Human Resources Code § 103.0091(b)(2);

C. Operating any other facility or engaging in any other activity regulated by DADS, without making proper disclosures regarding the exact nature of the business; and

D. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the businesses of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause.

25. In addition, Plaintiff State of Texas respectfully prays that upon final hearing this Court will:

A. Award any other injunctive relief warranted by the facts under Texas Human Resources Code § 103.0091(b)(3);

B. Order Defendant to pay Plaintiff State of Texas' attorney fees and costs of court; and

C. Award all other and further relief to which the Plaintiff State of Texas may show itself to be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection and Public Health Division

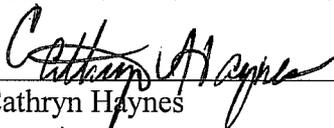


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ATTORNEYS FOR PLAINTIFF STATE OF TEXAS
SPIN No.: 99999928

VERIFICATION

Exhibits "A" and "B" attached are true and correct copies of documents sent by the Department of Aging and Disability, form the basis of this Petition and request for a Temporary Restraining order and injunctive relief, and serve as verification of this Petition.



Cathryn Haynes
Investigator
Office of the Attorney General
Consumer Protection and Public Health Division



COPY

COMMISSIONER
Chris Traylor

April 15, 2010

The Honorable Gregg Abbott
Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Attention: David Morales

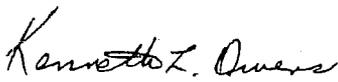
Dear General Abbott:

Re: Hector J. Ibarra dba Westbridge Pinnacle and Kenneth J. Price, LLC, 611 Westbridge Drive,
Montgomery County, Spring, Texas 77380, Facility ID #104180

The Texas Department of Aging and Disability Services (DADS) has determined that the above-named referenced unlicensed facility is operating in violation of Chapter 103, Section 103.0041 of the Human Resources Code by operating an adult day care facility without a license. In addition, on April 2, 2010, DADS Regulatory Services Division, Region 6 staff, conducted a complaint investigation at 611 Westridge Drive. A threat to the health and safety of the residents was identified. Please file suit for a Temporary Restraining Order under Section 103.0091 of the Human Resource Code as expeditiously as possible enjoining the owner from operating a day activity program without a license and ordering the residents be relocated.

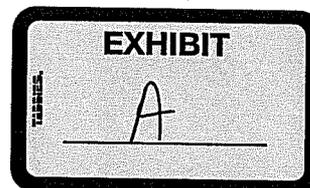
Pertinent information for the handling of this matter is enclosed. Should you have any questions or require additional information, please contact Teresa Gutierrez, Enforcement Attorney at 512/438-5766.

Sincerely,


Kenneth L. Owens
General Counsel
Legal Services

KO:lh

Enclosure



Greg Abbott
April 15, 2010
Page 2

bc: Veronda Durden, E-340
Cedric Gardner, 174-7
Charlotte Booker, 174-7
Brent Pokorny, E-351
Mark Kendall, 175-5

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

AFFIDAVIT OF RYAN A. DALTON

Before me, the undersigned authority, personally appeared Ryan A. Dalton, who by me having been duly sworn and identified by his Texas Drivers License, did upon his oath state as follows:

“My name is Ryan A. Dalton. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

I have been employed since December 8, 2008 as a Surveyor with the Texas Department of Aging and Disability Services (“DADS”) Regulatory Services Division located at 5425 Polk Street, Houston, Texas. I have over a year experience in inspections and conducting investigations for the State of Texas. In my capacity as a Surveyor, my duties include the inspection of adult day care facilities to determine whether such facilities are in compliance with applicable state laws and regulations.

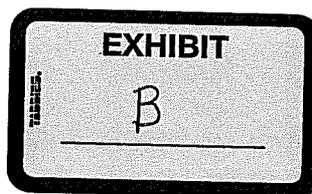
Chapter 103, Texas Human Resources Code defines an adult day care facility as a facility or establishment that provides adult day care services under an adult day-care program on a daily or regular basis but not overnight to four or more elderly or handicapped persons who are not related by blood, marriage or adoption to the owner of the facility. § 103.003(1)

Chapter 103, Texas Human Resources Code defines Adult day-care program as a structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting. § 103.003(2)

Chapter 103, Texas Human Resources Code defines handicapped person as a person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person’s attendance and supervision. § 103.003(5)

In the course of my duties with DADS, I was assigned the duty of conducting a complaint investigation at 611 Westridge Drive, Spring, Texas (“the Facility”). The purpose of my visit was to determine whether said facility is operating as an Adult Day Care without a license and to investigate allegations of physical abuse and verbal abuse.

As a part of my employment, I have computer access to DADS data bases which can verify whether a facility has an adult day care license or an application pending. I researched these databases and found that the facility’s license was denied on 3/16/2010. I also found that



no current license exists for the operation being conducted by Hector Ibarra, or any other entity at 611 Westridge Drive, Spring, Montgomery County, Texas.

I arrived at the facility on 4/1/2010 at 8:00 AM. I was greeted by Yashare Ramey who identified herself as the Director of Contracts. Ms. Ramey stated that she had 20 clients that attend the Adult Day Care regularly.

I conducted an interview on 3/31/2010 at 2:00 PM with Cody Tweedy, staff person at the facility. He stated that he witnessed Kene Price, Director of Operations, and Client #1 arguing in the hall about calling the client's mother to have her pick him up because he stated he was not feeling well. Mr. Tweedy further stated that he saw Mr. Price put Client #1 in a headlock and take him into the front office and sit him in a chair. At this time, Client #1 continued to say he wanted to call his mother, and Mr. Price screamed at Client #1, "You're not going to be violent. I'm the only one that is going to be violent. If you do it again, I'll bite your face off!" He also stated there were two other witnesses to the incident, [REDACTED]. Mr. Tweedy further stated that after the incident, Ms. White asked him, "Did I hear, I'll bite your face off?"

I conducted an interview on 3/31/2010 at 2:40 PM with Mynequa "Nicki" Lewis, former Attendant at the facility. Ms. Lewis stated she was aware of abuse in the facility. She stated she witnessed Mr. Price and Client #1 arguing in the hallway and that she saw Mr. Price hit Client #1 in the face and place him in a "choke hold." Mr. Price sat Client #1 down in a chair in the office and told him, "I will bite your face off. You are messing with the wrong one, boy." She also stated that when Client #1 was in her class, he would sometimes come to class and say, "My arms, my arms", and I would ask him [Client #1], "what's the matter with your arms?", and he would say, "The brown man hit me." Mr. Price was the only "brown man" in the facility. She also stated Cierra White witnessed the incident. Ms. Lewis further stated that Client #1's mom is aware of the incident. She has been in contact with Client #1's mom regarding the incident. His mother removed him from the program the next day.

I conducted an interview on 4/1/2010 at 11:30 AM with Cierra White, former Attendant at the facility. Ms. White stated that she was aware of abuse in the facility. She stated that she did not personally witness the incident between Mr. Price and Client #1 but her sister was at the facility with her at the time and she is the one who witnessed the incident and she told her about it. Ms. White stated, "All I overheard was the client yelling."

I conducted an interview on 4/1/2010 at 11:35 AM with [REDACTED] sister. [REDACTED] stated that she is 14 years old and that she witnessed the incident at the facility. She stated that she witnessed Client #1 yelling and screaming, "I want to go home!" Mr. Price then got in his face and said "You're not going home!" The client then punched Mr. Price in the face and Mr. Price then punched the client in the face, put him in a headlock, and then sat him down. She stated that she then heard Mr. Price say, "I'm the wrong person to mess with, I'll bite your face off!" [REDACTED] stated that she left the facility after the incident.

I conducted an interview on 4/1/2010 at 8:05 AM with Yashare Ramey, Director of Contracts. Ms. Ramey stated that she was not aware of any physical or verbal abuse by any staff

member in the facility. She stated that all staff members are trained in SAMA (Satori Alternatives to Managing Aggression). When she was asked under what circumstances is it okay to hit a client, she stated that it is never okay to hit a client. When asked about her incident accident log, she stated that there has only been one incident at the facility. This was when a client, Client #1, hit Mr. Price in the face and Mr. Price used a SAMA restraint hold and sat him in a chair in the office, she stated that she was a witness to the incident. She stated that Mr. Price was speaking very loudly towards Client #1, but she doesn't remember what he said. They were both talking over each other and yelling. The mother of the client was notified. The client stayed the rest of the day and Mr. Price and I talked to his mother when she picked him up. Ms. Ramey stated that the facility census was 19 clients. When asked, how long has the facility been providing care for more than three clients, she stated, "These clients are for DARS (Department of Assistive and Rehabilitative Services) and only three clients in the facility were Medicaid clients."

I conducted an interview on 4/1/2010 at 8:50 AM with Kene Price, Director of Operations. When asked if he was the owner, he stated that the owner was Hector Ibarra. He stated that he was not aware of any physical or verbal abuse by any staff member in the facility towards a resident. He denied any physical or verbal abuse on his part. He stated that all staff in the facility are trained in SAMA, which is provided by Tri County MHMR. When asked about the incident with Client #1, Mr. Price stated that Client #1 told him he wanted to go home and he told him to give him a minute, they were working on a project. Client #1 then got mad and hit Mr. Price. He stated that he used a SAMA move to restrain him and sat him in a chair. Client #1 got up 30-40 seconds later and went to eat his lunch. There were no other incidents the rest of the day. Mr. Price also stated that Client #1 was being verbally abusive during the incident. When asked if he had yelled at the client, Mr. Price stated, "My voice pitched a little high" due to the incident. When asked when is it okay to hit a client, he said it is never okay to hit a client. "If a client strikes you, you do not strike that client."

I conducted an interview on 4/1/2010 at 9:10 AM with Cody Tweedy. He stated that Mr. Price and Client #1 were standing with their backs towards him. He stated he could not tell if Mr. Price's hands were wrapped around Client #1's chest or behind his head. When he was asked if any other clients witnessed the incident, he stated he didn't know if any clients would remember.

I conducted an interview on 4/1/2010 at 1:45 PM with the mother of Client #1. She stated that she was aware of abuse against her son at the facility by Kene Price. She stated that a report was made with Barbara Pride, an APS (Adult Protective Services) worker. She stated Client #1 had bruising on his right forehead, right forearm and a scratch on his right knee. She stated Client #1 told her, "I don't want that brown man to touch me and be safe." She stated she took pictures of his bruises and gave them to Barbara Pride.

I conducted a record review on 4/1/2010 of the Personnel Record for Kene Price. This document revealed a Misconduct Registry check was conducted as well as a criminal background check. He also completed the SAMA course and received a certificate dated 9/18/2009. A signed, "Tri County MHMR Services Training Document" was found. This document revealed Mr. Price received abuse training and was dated 3/15/10.

I conducted an exit interview on 4/1/2010 at 3:45 PM with Yashare Ramey. During the exit interview, she stated that she did not understand how she was in violation of Chapter 103. She stated that those aren't DADS clients, most of them are private pay. She further stated that she had only three Medicaid clients, 3 Tri County MHMR clients, and the rest were private pay. She stated that she was not aware that the facility could only provide care for no more than three people unless they are licensed.

According to Yashare Ramey, the clients are there from 9:00 AM- 6:00 PM. Per the Westridge Pinnacle Care website, a light breakfast, full lunch and afternoon snack is provided to clients.

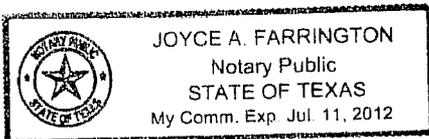
There were 19 disabled clients observed in the adult day care that were at the facility at the time of the visit. Per the Westridge Pinnacle Care website, the requirements to enroll at the facility, the applicant must be 16 years of age or older, have physical, mental, and/or social impairments and require assistance with personal care and/or medical condition. While at the facility I witnessed staff conducting structured classes with the clients at the facility. I also interviewed four interviewable clients who stated they attended classes at the facility such as art classes and life skills classes.

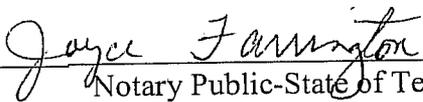
I conducted an exit conference with Yashare Ramey on 4/1/2010. I informed her that the facility was in violation of Chapter 103 and may be cited for potential violations for physical abuse and verbal abuse.

As a result of my investigation, I found that 19 clients attended the day program located at 611 Westridge Drive, Spring, Montgomery County, Texas. I determined there was sufficient evidence to support the findings of physical and verbal abuse. I further determined that the facility was providing services under an adult day-care program on a daily or regular basis but not overnight to four or more elderly or handicapped persons who are not related by blood, marriage or adoption to the owner of the facility."


Ryan A. Dalton, Surveyor

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by
Ryan A. Dalton on this the 16 day of April, 2010.




Notary Public-State of Texas