



Protecting, Maintaining and Improving the Health of Minnesotans

Office of Health Facility Complaints Investigative Report
PUBLIC

Facility:

Whispering Pines Assisted Living
707 Polk Street
Anoka, Minnesota 55303
Anoka County

Report #: HL20533010 & HL20533011

Date: June 11, 2015

Date of Visit: April 7, 2015

By: Lisa Jacobsen, RN, Special Investigator

Time of Visit: 8:00 a.m. – 3:15 p.m.

- Type of Facility:**
- Nursing Home
 - SLF
 - Hospital
 - HHA
 - ICF/IID
 - Other: Comprehensive Home Care Provider
 - Home Care Provider/Assisted Living
 - Home Care

- Facility Self Report
- Complaint

Allegation(s): It is alleged that a client was abused when a staff, alleged perpetrator, (AP) had a sexual relationship with the client.

An unannounced visit was made at this facility and an investigation was conducted under:

- Federal Regulations for Hospital Conditions of Participation (42 CFR, Part 482)
- Federal Regulations for Long Term Care Facilities (42 CFR Part 483, subpart B)
- Federal Regulations for ICF/IID (42 CFR Part 483, subpart I)
- Federal Regulations for HHA (Home Health Agencies) (42 CFR, Part 484)
- Federal Regulations for CAH (Critical Access Hospital) (42 CFR, Part 485)
- Federal Regulations for EMTALA (42 CFR Part 489)
- State Licensing Rules for Boarding Care Homes (MN Rules Chapter 4655)
- State Licensing Rules for Nursing Homes (MN Rules Chapter 4658)
- State Licensing Rules for Supervised Living Facilities (MN Rules Chapter 4665)

- State Licensing Rules for Home Care (MN Rules Chapter 4668)
- State Statutes for Maltreatment of Minors (MN Statutes, section 626.556)
- State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557)
- State Statutes Chapters 144 and 144A

Conclusion:

Minnesota Vulnerable Adults Act (MN 626.557)

Under the Minnesota Vulnerable Adults Act (MN. 626.557):

Abuse Neglect Financial Exploitation was:

Substantiated Not Substantiated Inconclusive based on the following information:

The preponderance of evidence established that sexual abuse occurred when the alleged perpetrator (AP) had sexual intercourse with the client at least once during the time March 20 to April 3, 2015.

The client had diagnoses of schizoaffective disorder, anxiety disorder, alcohol dependence and personality disorder. The client's mental health symptoms were paranoia, disorganized thinking, impulsivity and poor judgment. The client was alert and oriented to person, and place, displayed anxiousness and agitation and received assistance with medication administration, which included antipsychotic medications.

The client left the facility on a leave of absence, March 20-22, 2015. Initially, the client stated he was spending the weekend with family. When the client returned to the facility the client stated he did not stay with family, but rather stayed with his girlfriend. On March 25, 2015, the AP told a staff person that she had brought the client to spend the weekend at her home. That same day the AP told a different staff person that she was in love with the client. Staff questioned the client about the past weekend, and the client acknowledged that he had spent the weekend at the AP's home.

A police report indicated that while at the facility on an unrelated call on March 26, 2015, the police officer listened to a conversation between a facility staff person and the client. During that conversation the client admitted to a sexual relationship, including sexual intercourse with the AP the past weekend (March 20-22, 2015).

The AP was suspended from employment March 25, 2015, pending an investigation. On March 27, 2015, the client stated he was going to a friend's house for the night and the friend would pick him up. The client left the facility and shortly thereafter, a staff person observed the client with the AP in the AP's car approximately one block from the facility. On April 3, 2015, the client requested all of his medications because he was moving out of the facility to live with the AP. The AP was terminated from her employment April 13, 2015.

The client was interviewed and stated he did not feel he was a vulnerable adult. The client stated he fell in love with the AP. The client acknowledged spending the weekend with the AP at her house, but denied having sexual intercourse. The client also denied spending any more overnights or having sexual intercourse with the AP at her house until after he moved out of the facility.

The AP was interviewed and stated the following: She did not know the client very long as she had only worked at the house the client resided a few times. One of the evenings the AP worked at the house the client resided, the client asked the AP if she was seeing anyone. The AP stated she picked the client up for the weekend to stay with her at her house March 20-22, 2015. The AP stated they kissed and held hands, but could not remember if they had sexual intercourse that first weekend. The AP stated she picked the client up the following weekend and stated she and the client had sexual intercourse that weekend. The AP stated the client then moved out of the facility the following week and began living with her at her house. The AP stated she did not realize the client was a vulnerable adult and that it was considered sexual abuse to have sexual intercourse with a vulnerable adult. The AP stated it was consensual sexual intercourse and the sexual intercourse did not occur on the licensee's property.

Mitigating Factors:

The "mitigating factors" in Minnesota Statutes, section 626.557, subdivision 9c (c) were considered and it was determined that the individual(s) and/or facility is responsible for the

Abuse Neglect Financial Exploitation. This determination was based on the following:

The AP is responsible for the abuse. The AP had documentation in her personnel file of several training sessions related to the Vulnerable Adults Act and the definition of abuse that she attended. The AP acknowledged she had received training of the Vulnerable Adults Act. Although the facility had policies in place related to Standards of Conduct with clients, the AP did not follow the policies and professional standards by choosing to engage in a sexual relationship with the client while she was an employee of the facility.

The responsible party will be notified of their right to appeal the maltreatment finding. If the maltreatment is substantiated against an identified employee, this report will be submitted to the nurse aide registry for possible inclusion of the finding on the abuse registry and/or to the Minnesota Department of Human Services for possible disqualification in accordance with the provisions of the background study requirements under Minnesota 245C.

Compliance:**State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557) – Compliance Met**

The facility was found to be in compliance with State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557). No state licensing orders were issued.

State Statutes Chapters 144 & 144A – Compliance Not Met

The requirements under State Statutes for Chapters 144 & 144A were not met.

State licensing orders were issued: Yes No If no, specify: _____

(State licensing orders will be available on the MDH website.)

Facility Corrective Action:

The facility took the following corrective action(s):

Definitions:**Minnesota Statutes, section 626.5572, subdivision 2 - Abuse**

"Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

- (1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;
- (2) the use of drugs to injure or facilitate crime as defined in section 609.235;
- (3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and
- (4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

The Investigation included the following:**Document Review: The following records were reviewed during the investigation:**

Medical Records

Care Guide

Medication Administration Records

Treatment Sheets

Facility Incident Reports

Physician Progress Notes

- ADL (Activities of Daily Living) Flow Sheets
- Physician Orders
- Nurses Notes
- Activities Reports
- Therapy and/or Ancillary Services Records
- Skin Assessments
- Laboratory and X-ray Reports
- Social Service Notes
- Meal Intake Records
- Weight Records
- Assessments
- Care Plan Records

Other pertinent medical records:

- Hospital Records
- Ambulance/Paramedics
- Medical Examiner Records
- Death Certificate
- Police Report

Additional facility records:

- Resident/Family Council Minutes
- Staff Time Sheets, Schedules, etc.
- Facility Internal Investigation Reports
- Call Light Audits
- Personnel Records/Background Check, etc.
- Facility In-service Records
- Facility Policies and Procedures
- Other, specify: _____

Number of additional resident(s) reviewed: 1

Were residents selected based on the allegation(s)? Yes No N/A Specify: _____

Were resident(s) identified in the allegation(s) present in the facility at the time of the investigation?

Yes No N/A Specify: _____

Interviews: The following interviews were conducted during the investigation:

Interview with complainant(s): Yes No N/A Specify: _____

If unable to contact complainant, attempts were made on:

Date/time: _____ Date/time: _____ Date/time: _____

Interview with family: Yes No N/A Specify: _____

Did you interview the resident(s) identified in allegation: Yes No N/A Specify: _____

Did you interview additional residents: Yes No

Total number of resident interviews: 0

Interview with staff: Yes No N/A Specify: _____

Tennessee Warning given as required: Yes No

Total number of staff interviews: 7

Physician interviewed: Yes No

Nurse Practitioner interviewed: Yes No

Interview with Alleged Perpetrator(s): Yes No N/A Specify: _____

Attempts to contact: Date/time: _____ Date/time: _____ Date/time: _____

If unable to contact was subpoena issued: Yes , date subpoena was issued _____ No

Were contacts made with any of the following:

Emergency personnel Police Officers Medical Examiner Other: Specify _____

Observations were conducted related to:

- Wound Care
- Medication Pass
- Meals
- Personal Care
- Dignity/Privacy Issues
- Restorative Care
- Nursing Services
- Safety Issues
- Facility Tour

Infection Control

Cleanliness

Injury

Use of Equipment

Transfers

Incontinence

Call Light

Other: _____

Was any involved equipment inspected: Yes No N/A

Was equipment being operated in safe manner: Yes No N/A

Were photographs taken: Yes No Specify: _____

xc: Division of Health Regulation – Home Care and Assisted Living Program
The Office of Ombudsman for Mental Health and Developmental Disabilities
Champlin City Police Department
Anoka County Attorney
Champlin City Attorney

Minnesota Department of Health

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| STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION | (X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H20533 | (X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING _____ | (X3) DATE SURVEY COMPLETED C 05/05/2015 |
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| NAME OF PROVIDER OR SUPPLIER WHISPERING PINES ASSTD LIVING | STREET ADDRESS, CITY, STATE, ZIP CODE 707 POLK STREET ANOKA, MN 55303 |
|---|---|

| (X4) ID PREFIX TAG | SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION) | ID PREFIX TAG | PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY) | (X5) COMPLETE DATE |
|--------------------|--|---------------|---|--------------------|
| 0 000 | <p>Initial Comments</p> <p>*****ATTENTION*****</p> <p>HOME CARE PROVIDER LICENSING CORRECTION ORDER</p> <p>In accordance with Minnesota Statutes, section 144A.43 to 144A.482, this correction order(s) has been issued pursuant to a survey.</p> <p>Determination of whether a violation has been corrected requires compliance with all requirements provided at the Statute number indicated below. When Minnesota Statute contains several items, failure to comply with any of the items will be considered lack of compliance.</p> <p>INITIAL COMMENTS:</p> <p>On April 7, 2015, a complaint investigation was initiated to investigate case #HL20533010 and #HL20533011. At the time of the survey, there were 59 clients that were receiving services under the comprehensive license. The following correction order is issued:</p> | 0 000 | <p>Minnesota Department of Health is documenting the State Licensing Correction Orders using federal software. Tag numbers have been assigned to Minnesota state Statutes/Rules for Home Care Providers. The assigned tag number appears in the far left column entitled "ID Prefix Tag." The state Statute/Rule number and the corresponding text of the state Statute/Rule out of compliance is listed in the "Summary Statement of Deficiencies" column. This column also includes the findings which are in violation of the state requirement after the statement, "This Minnesota requirement is not met as evidenced by." Following the surveyors' findings is the Time Period for Correction.</p> <p>PLEASE DISREGARD THE HEADING OF THE FOURTH COLUMN WHICH STATES, "PROVIDER'S PLAN OF CORRECTION." THIS APPLIES TO FEDERAL DEFICIENCIES ONLY. THIS WILL APPEAR ON EACH PAGE.</p> <p>THERE IS NO REQUIREMENT TO SUBMIT A PLAN OF CORRECTION FOR VIOLATIONS OF MINNESOTA STATE STATUTES/RULES.</p> | |
| 0 325 | <p>144A.44, Subd. 1(14) Free From Abuse</p> <p>Subdivision 1. Statement of rights. A person who receives home care services has these rights: (14) the right to be free from physical and verbal abuse, neglect, financial exploitation, and all forms of maltreatment covered under the Vulnerable</p> | 0 325 | <p><i>Correction orders completed 6/22/2015 [Signature]</i></p> | |

Minnesota Department of Health
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

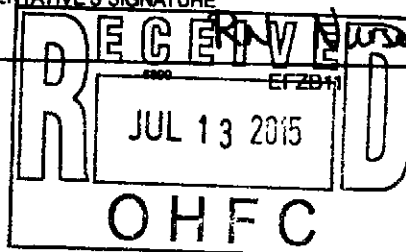
Chase Lee RN

TITLE
Manager

(X6) DATE

6/22/2015

STATE FORM



Minnesota Department of Health

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| STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION | (X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H20533 | (X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING _____ | (X3) DATE SURVEY COMPLETED C 05/05/2015 |
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| NAME OF PROVIDER OR SUPPLIER WHISPERING PINES ASSTD LIVING | STREET ADDRESS, CITY, STATE, ZIP CODE 707 POLK STREET ANOKA, MN 55303 |
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| 0 325 | <p>Continued From page 1</p> <p>Adults Act and the Maltreatment of Minors Act;</p> <p>This MN Requirement is not met as evidenced by: Based on interview and document review the licensee failed to ensure that a client was not sexually abused by a staff person for one of one client (C1) reviewed. This practice resulted in a level 3 violation (a violation that harmed a client's health or safety, not including serious injury, impairment, or death) and is issued at an isolated scope (1 or a limited number of clients are affected). The findings included:</p> <p>C1's record was reviewed. C1's functional assessment from an outside agency dated January 18, 2014 indicated the client had diagnoses of schizoaffective disorder, anxiety disorder, alcohol dependence and personality disorder. The functional assessment indicated C1's mental health symptoms were paranoia, disorganized thinking, impulsivity and poor judgment. A registered nurse evaluation dated February 3, 2015 indicated the client was alert and oriented to person and place, displayed anxiousness and agitation and received assistance with medication administration which included antipsychotic medications.</p> <p>The facility's internal investigation (undated) indicated the following information: On March 20, 2015, C1 left the facility on a leave from March 20, 2015 until March 22, 2015. Initially, C1 stated he was spending the weekend with family. When C1 returned to the facility he stated he didn't stay with family, he stayed with his girlfriend "Alice". On March 25, 2015, unlicensed person (ULP)-I told licensed practical nurse (LPN)-D that she had brought C1 to spend the weekend with her at her home and that C1 had brushed her hair and she</p> | 0 325 | | |

Minnesota Department of Health

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| 0 325 | <p>Continued From page 2</p> <p>shaved C1's back and chest. That same day ULP-I told ULP-E that she was in love with a client who lived at another housing with services under the home care provider's license. Registered Nurse (RN)-B spoke with C1 on March 25, 2015 regarding the weekend. C1 stated he and his girlfriend "Alice" were in love. When questioned if he had actually spent the weekend with Alice, C1's first response was yes, then C1's expression changed and the client became angry and yelling that if she loved him, she would not have told any of the staff. When questioned who he was talking about, C1 stated ULP-I's name. ULP-I was suspended from employment, pending an investigation. On March 26, 2015, C1 told the activities director he had "too much on his mind," and that he was having a relationship with ULP-I. On March 27, 2015, C1 stated he was going to a friend's house and that his friend was picking him up. C1 left the facility and RN-C saw C1 with ULP-I in ULP-I's car approximately one block from the facility. C1 returned to the facility March 28, 2015. On April 3, 2015, C1 requested all of his medications because he was moving out. C1 left with his personal belongings and medications to live with ULP-I.</p> <p>A police report dated March 26, 2015 indicated that while at the facility on an unrelated call, staff alerted the officer that ULP-I had a sexual relationship with C1. While in the office of the housing manager, C1 called the housing manager. The housing manager placed the phone call with C1 on speaker and the officer heard the conversation between the housing manager and C1. During the conversation, C1 admitted to a sexual relationship, including intercourse with ULP-I the past weekend (March 20-23, 2015).</p> | 0 325 | | |

Minnesota Department of Health

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| 0 325 | <p>Continued From page 3</p> <p>When interviewed April 7, 2015 at 1:55 p.m., the housing manager stated on March 26, 2015, C1 had contacted her because he was upset because ULP-I was not returning his phone calls. C1 also wanted to know how he was going to get his clothes and medications back from ULP-I's house. C1 initially denied having sexual intercourse with C1, but then admitted to having sexual intercourse.</p> <p>When interviewed April 10, 2015 at 1:03 p.m., LPN-D stated on March 25, 2015, ULP-I received a phone call at the Cypress House (a housing with services site where the licensee provides services). After ULP-I hung up the phone, LPN-D saw that the caller identification listed C1 as the person that had called. LPN-D confronted ULP-I as to why C1 was calling her. ULP-D stated she had picked up a evening shift at The Pines (a housing with services site where the licensee provides services and C1 resided) and had fallen in love with C1. ULP-I stated C1 spent the weekend of March 20, 2015 at her house.</p> <p>When interviewed April 23, 2015 at 11:15 a.m., ULP-I stated she did not know C1 very long. ULP-I stated she was filling in at The Pines, where C1 resided. She and C1 were in the kitchen and C1 asked her if she was seeing anyone. ULP-I stated she said I just wish God would find me a good man. ULP-I stated they really felt connected and it felt like they were to be together. ULP-I stated she picked C1 up for the weekend (March 20-23, 2015) to stay with her a her house. ULP-I stated they kissed and held hands, but could not remember if they had sexual intercourse that weekend. ULP-I stated she picked C1 up the following weekend (March 27, 2015) again and stated she was pretty sure she</p> | 0 325 | | |

Minnesota Department of Health

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| 0 325 | <p>Continued From page 4</p> <p>and C1 had sexual intercourse that weekend. ULP-I stated C1 then moved out of the facility the following week and began living with her. ULP-I stated although she had training on the Vulnerable Adults Act more than once during her employment with the licensee, she did not realize C1 was a vulnerable adult or that it was considered sexual abuse to have sexual intercourse with a vulnerable adult. ULP-I stated it was consensual sexual intercourse and the sexual intercourse did not occur on the licensee's property.</p> <p>When interviewed April 23, 2015 at 12:15 p.m., C1 stated he did not feel he was a vulnerable adult. C1 stated he fell in love with ULP-I. C1 acknowledged spending the weekend with ULP-I at her house the weekend of March 20-23, 2015, but denied having sexual intercourse. C1 also denied spending any more overnights or having sexual intercourse with ULP-I at her house until after he moved out of the facility on April 3, 2015.</p> <p>TIME PERIOD FOR CORRECTION: Twenty-one (21) days</p> | 0 325 | | |

State Form: Revisit Report

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| (Y1) Provider / Supplier / CLIA / Identification Number H20533 | (Y2) Multiple Construction A. Building B. Wing | (Y3) Date of Revisit 7/10/2015 |
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| Name of Facility WHISPERING PINES ASSTD LIVING | Street Address, City, State, Zip Code 707 POLK STREET ANOKA, MN 55303 |
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This report is completed by a State surveyor to show those deficiencies previously reported that have been corrected and the date such corrective action was accomplished. Each deficiency should be fully identified using either the regulation or LSC provision number and the identification prefix code previously shown on the State Survey Report (prefix codes shown to the left of each requirement on the survey report form).

| (Y4) Item | (Y5) Date | (Y4) Item | (Y5) Date | (Y4) Item | (Y5) Date |
|---|------------------------------------|--|----------------------|--|----------------------|
| ID Prefix <u>00325</u> Reg. # <u>144A.44. Subd. 1(14)</u> LSC _____ | Correction Completed 07/10/2015 | ID Prefix _____ Reg. # _____ LSC _____ | Correction Completed | ID Prefix _____ Reg. # _____ LSC _____ | Correction Completed |
| ID Prefix _____ Reg. # _____ LSC _____ | Correction Completed | ID Prefix _____ Reg. # _____ LSC _____ | Correction Completed | ID Prefix _____ Reg. # _____ LSC _____ | Correction Completed |
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| Reviewed By _____ | Reviewed By _____ | Date: _____ | Signature of Surveyor: _____ | Date: _____ |
| State Agency | | | | |
| Reviewed By _____ | Reviewed By _____ | Date: _____ | Signature of Surveyor: _____ | Date: _____ |
| CMS RO | | | | |

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|--|--|-----|----|
| Followup to Survey Completed on: 5/5/2015 | Check for any Uncorrected Deficiencies. Was a Summary of Uncorrected Deficiencies (CMS-2567) Sent to the Facility? <table style="float: right; margin-left: 20px;"> <tr> <td>YES</td> <td>NO</td> </tr> </table> | YES | NO |
| YES | NO | | |