



Protecting, Maintaining and Improving the Health of Minnesotans

Office of Health Facility Complaints Investigative Report  
PUBLIC

Facility:

The Commons on Marice  
1380 Marice Drive  
Eagan, MN 55121  
Dakota County

Report #: HL20662006

Date: June 24, 2013

Date of Visit: Phone Investigation Initiated on 10/17/2012

By: William Nelson, R.N., Special Investigator

Time of Visit: 10:00 a.m.-10:20 a.m.

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

- Facility Self Report
- Complaint

**Allegation(s):** The allegation is financial exploitation based on the following: A Nursing Assistant allegedly stole Oxycodone from a resident.

**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:

A preponderance of evidence supports that exploitation occurred when the Alleged Perpetrator (AP) took 4 or 5 Oxycodone pills from a resident for her/his own personal use. The AP admitted to taking the medication on one occasion and was photographed in the medication drawer in the resident's room.

The resident's medications are kept in the resident's apartment and the resident's family set up the weekly medication pill-minder box.

The resident reported to the facility that one hundred and twenty (120) Oxycodone pills and sixty (60) Oxycotin 20 mg pills were allegedly taken from the resident's medication drawer. Three days later the resident reported that 12 more Oxycodone pill were taken; that same day the family placed four or five Oxycotin 5 mg tabs in each of 2 plastic bags and placed one in the resident's bedroom and one in the medication drawer in the kitchen. They also installed a camera in the kitchen. Three days later the AP entered the resident's room without permission and without an assigned task to complete. The resident was attending an activity in the facility. The camera took photos of the AP in the medication drawer. The baggie and the pills in the medication drawer were gone.

Attempts to contact the AP for an interview were unsuccessful.

The AP was interviewed by the Executive Director and Director of Nursing of the facility and admitted to taking the baggie with four or five pills in it, the alleged perpetrator wrote a note admitting to removing a baggie from the resident's medication drawer. The AP denies ever taking medications from residents in the past; the AP claims this was the one and only time.

The local police department interviewed the AP, the AP admitted, on one occasion, to taking the baggie with medication in it. The police department forwarded the reports to the county attorney's office to file charges.

**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 facility has a policy regarding staff entering apartments without permission. This policy addresses theft and searching through resident's belongings or personal possessions. The AP signed a form acknowledging that the AP read, discussed and agreed to abide by this policy.

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 Licensing Rules for Home Care (MN Rules Chapter 4668) – Compliance Met**

The facility was found to be in compliance with State Licensing Rules for Home Care (MN Rules Chapter 4668). No state licensing orders were issued.

**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 Met**

The facility was found to be in compliance with State Statutes for Chapters 144 & 144A. No state licensing orders were issued.

**Facility Corrective Action:**

The facility took the following corrective action(s):

The facility installed lockable drawers in each apartment to be used to secure medications.

**Definitions:****Minnesota Statutes, section 626.5572, subdivision 19 - Substantiated**

"Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

**Minnesota Statutes, section 626.5572, subdivision 9 - Financial exploitation**

"Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

**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

Laboratory and X-ray Reports

Physician Orders

Social Service Notes

Nurses Notes

Meal Intake Records

Activities Reports

Weight Records

Therapy and/or Ancillary Services Records

Assessments

Skin 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

Personnel Records/Background Check, etc.

Staff Time Sheets, Schedules, etc.

Facility In-service Records

Facility Internal Investigation Reports

Facility Policies and Procedures

Call Light Audits

Other, specify: \_\_\_\_\_

Number of additional resident(s) reviewed: 0

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: Facility self-report

If unable to contact complainant, attempts were made on:

Date/time: \_\_\_\_\_ Date/time: \_\_\_\_\_ Date/time: \_\_\_\_\_

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

Did you interview the resident(s) identified in allegation:  Yes  No  N/A Specify: phone investigations, was not at facility.

Did you interview additional residents:  Yes  No

Total number of resident interviews: 0

Interview with staff:  Yes  No  N/A Specify: Subpoena sent, phone calls attempted, no return

Tennessee Warning given as required:  Yes  No

Total number of staff interviews: 1

Physician interviewed:  Yes  No

Nurse Practitioner interviewed:  Yes  No

Interview with Alleged Perpetrator(s):  Yes  No  N/A Specify: Subpoena sent, phone calls attempted; no response.

Attempts to contact: Date/time: 10/22/2012 9:30 AM Date/time: 11/02/12 9 AM Date/time: 5/21/13 11AM, No Response

If unable to contact was subpoena issued:  Yes , date subpoena was issued 05/23/2013  No

Were contacts made with any of the following:

Emergency personnel  Police Officers  Medical Examiner  Other: Specify \_\_\_\_\_

**Observations were conducted related to:**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Wound Care        | <input type="checkbox"/> Medication Pass        | <input type="checkbox"/> Meals            |
| <input type="checkbox"/> Personal Care     | <input type="checkbox"/> Dignity/Privacy Issues | <input type="checkbox"/> Restorative Care |
| <input type="checkbox"/> Nursing Services  | <input type="checkbox"/> Safety Issues          | <input type="checkbox"/> Facility Tour    |
| <input type="checkbox"/> Infection Control | <input type="checkbox"/> Cleanliness            | <input type="checkbox"/> Injury           |
| <input type="checkbox"/> Use of Equipment  | <input type="checkbox"/> Transfers              | <input type="checkbox"/> Incontinence     |
| <input type="checkbox"/> Call Light        | <input type="checkbox"/> 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 Compliance Monitoring - Licensing & Certification  
Minnesota Board of Pharmacy  
Eagan City Police Department  
Dakota County Attorney  
Eagan City Attorney

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>H20662</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____		(X3) DATE SURVEY COMPLETED  <b>C</b> <b>06/13/2013</b>
NAME OF PROVIDER OR SUPPLIER  <b>THE COMMONS ON MARICE</b>			STREET ADDRESS, CITY, STATE, ZIP CODE <b>1380 MARICE DRIVE EAGAN, MN 55121</b>		
(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	Initial comments  A complaint investigation was initiated to investigate case #HL20662006. No correction orders are issued.	0 000			

Minnesota Department of Health

TITLE

(X6) DATE

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE