

Office of Health Facility Complaints

Investigative Public Report

Maltreatment Report #: HL28352020M
Compliance #: HL28352021C

Date Concluded: February 24, 2020

Name, Address, and County of Licensee Investigated:

Ebenezer Management Services
2722 Park Avenue South
Minneapolis, MN 55407
Hennepin County

Name, Address, and County of Housing with Services location:

Cherrywood Pointe of Lexington
2680 Lexington Avenue
Roseville, MN 55113
Ramsey County

Facility Type: Home Care Provider

Investigator's Name: Paul Spencer, RN
Special Investigator

Finding: Substantiated, individual responsibility

Nature of Visit:

The Minnesota Department of Health investigated an allegation of maltreatment, in accordance with the Minnesota Reporting of Maltreatment of Vulnerable Adults Act, Minn. Stat. 626.557, and to evaluate compliance with applicable licensing standards for the provider type.

Allegation(s):

It is alleged: The alleged perpetrator (AP) financially exploited the client when the AP diverted the client's prescribed oxycodone 5 milligram (mg) tablets.

Investigative Findings and Conclusion:

Financial exploitation was substantiated. The AP was responsible for the maltreatment. The AP stated she documented giving the client oxycodone 5 mg tablets when, at times, she actually consumed them herself.

The investigation included interviews with facility staff members, including administrative staff, nursing staff, and unlicensed staff. The investigation included an onsite visit at the facility, which included observation of cares. The investigation included a review of medical records including the client's medical record. The investigation included a review of pertinent facility policies and a review of the AP's personnel file. The investigation included an interview with the AP.

The client's diagnosis included Alzheimer's disease. The client received hospice services including medication for pain. The client's service plan indicated the client required assistance in areas including transferring, toileting, and medication administration. The client's physician orders included an order for scheduled oxycodone 5 mg twice daily at 9:00 a.m. and 8:00 p.m. and oxycodone 5 mg as needed every two hours for pain.

According to facility documents, the facility conducted an internal investigation when it identified a pattern of increased oxycodone use when the AP worked to determine if drug diversion was taking place. The internal investigation included video recordings and an interview with the AP that indicated the AP did divert the client's oxycodone.

When interviewed by this investigator, the AP stated she diverted the client's oxycodone stating she at times swallowed the pills in the client's room or took them out of the room for use later. The AP stated she gave the client his scheduled oxycodone, but when she documented giving as needed doses to the client, she actually took the client's oxycodone for herself. The AP stated she had no collaborators taking part in the drug diversion.

When interviewed, the executive director reviewed the video recordings obtained during the internal investigations and described multiple instances the AP was seen diverting medication from the client. The executive director stated she and the director of nursing (DON) spoke over the telephone to the AP with the investigation results when the AP admitted to diverting the client's oxycodone.

When interviewed, the DON stated she learned the AP had a history as a registered nurse (RN) although she was not working as an RN at the facility. When the DON checked the Minnesota Board of Nursing website, she learned of the AP's suspended nurse license for drug diversion. The DON stated she was present with the executive director during the phone call with the AP and confirmed the AP admitted to diverting the client's oxycodone.

A review of the Minnesota Board of Nursing (MBON) website indicated a person with the same name and date of birth as the AP held a suspended RN license. A document on the MBON website titled Stipulation and Consent Order indicated the reasons for suspension included drug diversion.

A review of the client's medical record, compared with the AP's timecard punches, found the client's Medication Administration Record (MAR) was consistent with the AP's statement she took the client's as needed oxycodone to herself. The client's MAR showed an increased amount and frequency of as needed oxycodone documented as administered to the client while the AP was on-duty. Additionally, the client's medical record indicated multiple occasions the AP signed more oxycodone out of the client's oxycodone supply than she documented as given to the client thus leaving multiple unaccounted for doses of oxycodone.

A review of the AP's personnel file included a document titled Drug Diversion Quiz. The document indicated the AP understood drug diversion is the illegal removal of a prescription from its intended path. The same document indicated the AP understood employees who do not adhere to the facility policy on drug diversion are subject to termination of employment and report to law enforcement, the Board of Nursing, and the Office of Health Facility Complaints.

The AP was no longer employed at the facility.

In conclusion, financial exploitation was substantiated.

Financial exploitation: Minnesota Statutes, section 626.5572, subdivision 9

"Financial exploitation" means:

(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.

Vulnerable Adult interviewed: No, unable to interview due to impaired cognition.

Family/Responsible Party interviewed: Yes.

Alleged Perpetrator interviewed: Yes.

Action taken by facility:

The facility reviewed completed and internal investigation upon suspicion of drug diversion and reviewed pertinent policies and procedures. The AP was no longer employed by the facility.

Action taken by the Minnesota Department of Health:

The facility was found to be in noncompliance. To view a copy of the Statement of Deficiencies and/or correction orders, please visit:

<https://www.health.state.mn.us/facilities/regulation/directory/provcompselect.html>

Or call 651-201-4890 to be provided a copy via mail or email. If you are viewing this report on the MDH website, please see the attached Statement of Deficiencies.

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.

cc:

The Office of Ombudsman for Long-Term Care

Ramsey County Attorney

Roseville City Attorney

Roseville Police Department

Minnesota Board of Nursing

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 01/21/2020
NAME OF PROVIDER OR SUPPLIER EBENEZER MANAGEMENT SERVICES, INC		STREET ADDRESS, CITY, STATE, ZIP CODE 2722 PARK AVENUE SOUTH MINNEAPOLIS, MN 55407		
(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, the Minnesota Department of Health issued a correction order(s) pursuant to a survey.</p> <p>Determination of whether a violation is corrected requires compliance with all requirements provided at the statute number indicated below. When a 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 January 21, 2020, the Minnesota Department of Health initiated an investigation of complaint Maltreatment Report #: HL28352020M/HL28352021C, HL28352024M/HL28352025C, and HL28352026M/HL28352027C. At the time of the survey, there were 73 clients receiving services under the comprehensive license.</p> <p>The following correction orders are issued for #HL28352020M/HL28352021C, tag identification 0325 and 0920.</p>	0 000	<p>The Minnesota Department of Health documents the State Licensing Correction Orders using federal software. Tag numbers have been assigned to Minnesota State Statutes.</p> <p>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 number out of compliance are listed in the "Summary Statement of Deficiencies" column and replaces the "To Comply" portion of the correction order. This column also includes the findings, which are in violation of the state statute after the statement, "This Rule 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 Maltreatment</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</p>	0 325		

Minnesota Department of Health

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

TITLE

(X6) DATE

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED C 01/21/2020
NAME OF PROVIDER OR SUPPLIER EBENEZER MANAGEMENT SERVICES, INC		STREET ADDRESS, CITY, STATE, ZIP CODE 2722 PARK AVENUE SOUTH MINNEAPOLIS, MN 55407			
(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
0 325	Continued From page 1 of maltreatment covered under the Vulnerable Adults Act and the Maltreatment of Minors Act; This MN Requirement is not met as evidenced by: Based on observations, interviews, and document review, the facility failed to ensure one of three clients reviewed (C1) was free from maltreatment. C1 was financially exploited. Findings include: On February 24, 2020, the Minnesota Department of Health (MDH) issued a determination that financial exploitation occurred, and that an individual staff person was responsible for the maltreatment, in connection with incidents which occurred at the facility. The MDH concluded there was a preponderance of evidence that maltreatment occurred.	0 325	No plan of correction is required. Please refer to the public maltreatment report.		
0 920 SS=D	144A.4792, Subd. 5 Individualized Medication Mgt Plan Subd. 5. Individualized medication management plan. (a) For each client receiving medication management services, the comprehensive home care provider must prepare and include in the service plan a written statement of the medication management services that will be provided to the client. The provider must develop and maintain a current individualized medication management record for each client based on the client's assessment that must contain the following:	0 920			

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED C 01/21/2020
NAME OF PROVIDER OR SUPPLIER EBENEZER MANAGEMENT SERVICES, INC			STREET ADDRESS, CITY, STATE, ZIP CODE 2722 PARK AVENUE SOUTH MINNEAPOLIS, MN 55407		
(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
0 920	<p>Continued From page 2</p> <p>(1) a statement describing the medication management services that will be provided;</p> <p>(2) a description of storage of medications based on the client's needs and preferences, risk of diversion, and consistent with the manufacturer's directions;</p> <p>(3) documentation of specific client instructions relating to the administration of medications;</p> <p>(4) identification of persons responsible for monitoring medication supplies and ensuring that medication refills are ordered on a timely basis;</p> <p>(5) identification of medication management tasks that may be delegated to unlicensed personnel;</p> <p>(6) procedures for staff notifying a registered nurse or appropriate licensed health professional when a problem arises with medication management services; and</p> <p>(7) any client-specific requirements relating to documenting medication administration, verifications that all medications are administered as prescribed, and monitoring of medication use to prevent possible complications or adverse reactions.</p> <p>(b) The medication management record must be current and updated when there are any changes.</p> <p>This MN Requirement is not met as evidenced by: Based on interview and document review, the licensee failed to prevent the diversion of medications for one of one clients (C1) reviewed. An unlicensed personnel (ULP) documented she administered oxycodone 5 milligram (mg) tablets for pain as needed but instead diverted the</p>	0 920			

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED C 01/21/2020
NAME OF PROVIDER OR SUPPLIER EBENEZER MANAGEMENT SERVICES, INC			STREET ADDRESS, CITY, STATE, ZIP CODE 2722 PARK AVENUE SOUTH MINNEAPOLIS, MN 55407		
(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
0 920	<p>Continued From page 3</p> <p>medications. The ULP also repeatedly signed out more oxycodone 5 mg tablets from C1's supply that she documented as administered thus leaving multiple oxycodone 5 mg tablets unaccounted for.</p> <p>This practice resulted in a level two violation (a violation that did not harm a client's health or safety but had the potential to have harmed a client's health or safety, but was not likely to cause serious injury, impairment, or death), and was issued at an isolated scope (when one or a limited number of clients are affected or one or a limited number of staff are involved or the situation has occurred only occasionally).</p> <p>The findings include:</p> <p>C1's diagnosis included Alzheimer's disease. C1's received hospice services including medications for pain. C1's service plan dated April 2, 2019, indicated C1 required assistance in areas including transferring, toileting, and medication administration.</p> <p>C1's physician orders dated June 27, 2019, included oxycodone 5 mg one tablet two times a day scheduled at 9:00 a.m. and 8:00 p.m. and oxycodone 5 mg tablet every two hours PRN (as needed) for pain.</p> <p>C1's medication record included Medication Record: Controlled Substances forms (MRCS) to track the number of tablets remaining from each controlled substance C1 received from the pharmacy.</p> <p>C1's Medication Administration Record (MAR) dated July 2019 indicated ULP-G administered three oxycodone tablets to C1 on July 8, 2019.</p>	0 920			

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 01/21/2020
---	--	--	--

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

EBENEZER MANAGEMENT SERVICES, INC

**2722 PARK AVENUE SOUTH
MINNEAPOLIS, MN 55407**

(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
0 920	<p>Continued From page 4</p> <p>C1's MRCS indicated ULP-G signed out five oxycodone tablets of C1's supply on July 8, 2019. There were two unaccounted for tablets.</p> <p>C1's MAR dated July 2019 indicated ULP-G administered three oxycodone tablets to C1 on July 9, 2019.</p> <p>C1's MRCS indicated ULP-G signed out five oxycodone tablets of C1's supply on July 9, 2019. There were two unaccounted for tablets.</p> <p>C1's MAR dated July 2019 indicated ULP-G administered two oxycodone tablets to C1 on July 10, 2019. The same document did not include documentation for the scheduled dose July 10, 2019, at 8:00 p.m.</p> <p>C1's MRCS indicated ULP-G signed out five oxycodone tablets of C1's supply on July 10, 2019. There were three unaccounted for tablets.</p> <p>C1's MAR dated July 2019 indicated ULP-G administered one oxycodone tablet to C1 on the overnight shift from July 11, 2019 to July 12, 2019.</p> <p>C1's MRCS indicated ULP-G signed out two oxycodone tablets of C1's supply on the overnight shift from July 11, 2019 to July 12, 2019. There was one unaccounted for tablet.</p> <p>C1's MAR dated July 2019 indicated ULP-G administered three oxycodone tablets to C1 on the evening shift of July 12, 2019.</p> <p>C1's MRCS indicated ULP-G signed out five oxycodone tablets of C1's supply on July 12, 2019. There were two unaccounted for tablets.</p>	0 920		

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED C 01/21/2020
NAME OF PROVIDER OR SUPPLIER EBENEZER MANAGEMENT SERVICES, INC			STREET ADDRESS, CITY, STATE, ZIP CODE 2722 PARK AVENUE SOUTH MINNEAPOLIS, MN 55407		
(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
0 920	<p>Continued From page 5</p> <p>C1's MAR dated July 2019 indicated ULP-G administered three oxycodone tablets to C1 on July 13, 2019.</p> <p>C1's MRCS indicated ULP-G signed out seven oxycodone tablets of C1's supply on July 13, 2019. There were four unaccounted for tablets.</p> <p>C1's MAR dated July 2019 indicated ULP-G administered three oxycodone tablets to C1 on July 14, 2019.</p> <p>C1's MRCS indicated ULP-G signed out six oxycodone tablets of C1's supply on July 14, 2019. There were three unaccounted for tablets.</p> <p>C1's MAR dated July 2019 indicated ULP-G administered three oxycodone tablets to C1 on July 15, 2019.</p> <p>C1's MRCS indicated ULP-G signed out five oxycodone tablets of C1's supply on July 15, 2019. There were two unaccounted for tablets.</p> <p>During an interview on February 10, 2020, at 12:50 p.m., ULP-G stated she redirected C1's PRN doses of oxycodone 5 mg tablets for her use. She stated she took some tablets while still in the room while other times she took them later outside of the room. ULP-G stated she always gave C1 his scheduled oxycodone 5 mg tablets, but confirmed she documented PRN doses as administered to C1, while actually taking C1's PRN oxycodone 5 mg SL tablets for herself. ULP-G stated she had no collaborators.</p> <p>During an interview on January 28, 2020, at 10:35 a.m., executive director (ED)-C stated the facility conducted an investigation that revealed ULP-G</p>	0 920			

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: H28352	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED C 01/21/2020
NAME OF PROVIDER OR SUPPLIER EBENEZER MANAGEMENT SERVICES, INC			STREET ADDRESS, CITY, STATE, ZIP CODE 2722 PARK AVENUE SOUTH MINNEAPOLIS, MN 55407		
(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
0 920	<p>Continued From page 6</p> <p>diverted oxycodone 5 mg tablets from C1's supply. ED-C stated the facility consulted with C1's family and placed a video recorder in his room as part of the investigation. ED-C stated she reviewed the video recordings and found multiple occasions when ULP-G placed tablets in her mouth or placed the pills in the cabinet and then picked them up in her hands. ED-C stated ULP-G diverted oxycodone from C1's supply. ED-C stated ULP-G admitted to taking C1's medications over the phone when the facility terminated the ULP-G employment. ED-C stated the director of nursing (DON)-D was present during the telephone call.</p> <p>During an interview on January 28, 2020, at 12:04 p.m., DON-D stated she was present during the phone call with ED-C and ULP-G when ULP-G admitted to taking C1's medications when the facility terminated ULP-G's employment.</p> <p>A facility-provided policy titled Controlled Substances dated November 15, 2019, indicated the purpose of the policy was to eliminate theft or misuse of controlled substances. Staff will document the exact controlled drug count at the time of the medication administration and report any discrepancies immediately to the nurse.</p> <p>Time Period of Correction: 7 Days</p>	0 920			