



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

DEC 30 2014

PAGE'S PERSONAL CARE HOME, )  
Petitioner, )  
v. )  
DEPARTMENT OF COMMUNITY )  
HEALTH, HEALTHCARE FACILITY )  
REGULATION DIVISION )  
Respondent. )

*K. Westray*  
Kevin Westray, Legal Assistant

Case No.:  
OSAH-DCH-HFR-PCH-1501923-121-  
Woodard

INITIAL DECISION

I. Introduction

Page's Personal Care Home ("Petitioner") appeals the determination by the Department of Community Health, Healthcare Facility Regulation Division (hereafter "Respondent" or "HFRD") to restrict it from housing residents with insulin-dependent diabetes. A hearing was conducted on August 28, 2014. Appearing and testifying for Petitioner were Kenneth Page and Golphin Page, Sr., Owners. Appearing for Respondent was Shariyf Muhammad, Attorney at Law, Georgia Department of Community Health, Atlanta. Testifying for Respondent were Kris Adams, Manager of Applications and Waivers for HFRD; Elaine Wright, Director, Personal Care Home Division, HFRD; and Mary Frances Thornton, Specialist Surveyor, HFRD.

For the reasons set forth in this Decision, Respondent's imposition of a restriction against housing and providing services to residents with insulin-dependent diabetes is AFFIRMED, but nothing written herein shall prohibit Petitioner from obtaining a permit to provide care to insulin-dependent diabetics.

II. Findings of Fact

1. Respondent is responsible for the regulation of Personal Care Homes ("PCHs") in Georgia. As part of that responsibility, it has promulgated the Rules and Regulations for Home Care Providers (hereinafter "PCH Rules"), which prescribe the application procedure for any individual or entity seeking to operate a PCH. If the application is approved, DCH will license the PCH for a maximum number of residents, and may restrict the PCH from accepting and providing residential services to certain persons. *Testimony of Kris Adams and Elaine Wright.*

2. If a PCH operator experiences a change in the makeup of its governing body, including situations when the owner of a sole proprietorship or co-owner of a partnership passes

away, the new governing body must submit a new application to Respondent. As part of the application review process, Respondent usually sends a surveyor to the PCH to conduct a site survey. If any violations of PCH rules are found, the surveyor will recommend that Respondent not grant the license immediately, and / or issue a statement of deficiency, and return at a later date to conduct a follow-up survey to ensure that the deficiencies are corrected. *Testimony of Kris Adams and Elaine Wright.*

3. Page's Personal Care Home has been licensed by the State as a PCH since 1988. Initially, the PCH was owned and operated by Louise Page and Golphin Page, Sr., a married couple. Louise Page passed away in February 2013. The facility continued to be operated by Golphin Page, Sr., and he brought his adult son, Kenneth Page, into the business as a co-owner. Respondent was notified of the change in ownership, and it required Golphin Page and Kenneth Page to file a new application in order to continue operations under a valid PCH license.

4. Petitioner submitted a new application to Respondent on May 27, 2013. During the initial post-application site survey conducted on April 5, 2013, surveyor Mary Frances Thornton observed that the facility had one insulin-dependent diabetic resident, a 69 year old man named Mr. P [REDACTED]. Both Golphin Page, Sr. and another employee, identified as a niece, performed glucose checks and injected insulin for Mr. F [REDACTED], but neither was a licensed nurse. The niece is a Certified Nurse Aide (C.N.A.), but such individuals are not legally allowed to perform glucose testing or inject insulin. *Testimony of Elaine Wright; testimony of Kenneth Page; Survey Report Form from April 5, 2014 Site Survey (Respondent's Exhibit 2).*

5. Insulin-dependent individuals must be given special care due to the seriousness of their disease. Failure to properly monitor blood glucose levels, or failure to correctly administer insulin injections, can cause serious health problems, including death. Therefore, Respondent's PCH Rule 111-8-62-.20 prohibits PCH staff from administering insulin unless they are an LPN or RN, or serving as an authorized "Proxy Caregiver." A PCH could also hire an outside company to send licensed nurses to the facility to administer glucose testing and inject insulin. To become certified as a proxy caregiver, Respondent requires that there be informed consent given to the staff member or members who intend to serve. *Testimony of Elaine Wright; Respondent's Interpretive Guidelines for PCH Rule 111-8-62-.20 (Respondent's Exhibit 6).*

6. Before a staff member can be considered a Proxy Caregiver, the PCH must also have a "written plan of care developed in accordance with the Rules for the Use of Proxy Caregivers, [PCH Rules] Chapter 111-8-100," including "instructions on the limited use of 'Sliding Scale Insulin,'" and "specific protocols to be followed." The Proxy Caregiver must be given training on the specific tasks to be performed. If the resident is not capable of monitoring glucose levels, "the home staff serving as proxy caregivers...may perform the blood glucose testing if the home obtains a CLIA (Clinical Laboratories Improvements Amendments of 1988) certificate of waiver from [Respondent] and performs the monitoring in accordance with all state and federal regulations." The Proxy Caregiver must have a high school diploma, GED, or passed the "Test of Functional

Health Literacy in Adults.” *Testimony of Elaine Wright; Respondent’s Interpretive Guidelines for PCH Rule 111-8-62-.20 (Respondent’s Exhibit 6).*

7. Ms. Thornton found that the Petitioner’s PCH did not have a Proxy Caregiver on site to read Mr. P [REDACTED]’s blood glucose or give him insulin injections. She prepared a report based on her site survey that identified several violations of Respondent’s PCH Rules, including the failure to have a licensed individual or Proxy Caregiver monitor glucose levels and administer insulin. Respondent conducted follow-up surveys on September 18, 2013 and October 28, 2013 to ensure that Petitioner had taken appropriate steps to correct the violations. The surveyor noted during both follow-up visits that the facility still housed Mr. P [REDACTED] and that there still was no Proxy Caregiver available to take his glucose readings and administer insulin injections. *Testimony of Kris Adams.*

8. On February 19, 2014,<sup>1</sup> Respondent issued a “Notice of Issuance of Restricted Permit” to Petitioner’s owners. Respondent approved the application of Kenneth Page and Golphin Page, Jr. to operate the facility as co-owners, but Respondent exercised “its authority to restrict the license of Page’s Personal Care Home in order to prohibit the facility from caring for insulin dependent residents.” *Respondent’s Exhibit 1.*

9. Petitioner appealed the imposition of a restriction on its PCH operator’s permit. During the pendency of this appeal, Petitioner has found a new home for Mr. P [REDACTED] and no longer has an insulin dependent resident. Petitioner wishes to have the flexibility to have an insulin-diabetic resident in the future, however, and has pursued the appeal to contest the imposition of the permit restriction. *Testimony of Kenneth Page; Respondent’s Exhibit 5.*

10. The first time the Petitioner’s owners were aware of the requirement for a Proxy Caregiver was after the first site survey in April 2013. The owners quickly contacted Respondent regarding the criteria for a Proxy Caregiver, and attended a seminar sponsored by the VA to explain the Proxy Caregiver process. Mr. P [REDACTED] (or his representative) gave his informed consent for Golphin Page, Sr. and his niece to serve as Proxy Caregiver. The Petitioner, however, experienced great difficulty in obtaining the requisite Plan of Care from Mr. P [REDACTED]’s primary care physician. The physician was not familiar with the concept of a Proxy Caregiver and did not prepare the required plan. Petitioner went to VA and asked for help with a Plan of Care, but the VA coordinator refused to sign-off on a plan. This process ended without Petitioner obtaining a Plan of Care, and therefore not meeting the Proxy Caregiver criteria. *Testimony of Kenneth Page and Golphin Page, Sr.*

### **III. Conclusions of Law**

1. This appeal concerns Petitioner’s application for a PCH permit following a change in its ownership group, or “governing body.” Therefore, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. R. 616-1-2-.07(1)(c). The Administrative Law Judge

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<sup>1</sup> Due to an apparent scrivener’s error, the Notice is dated February 19, 2013.

required Respondent to present its evidence first at the hearing, but this did not shift the burden of proof. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. R. 616-1-2-.21(4).

2. All entities that operate personal care homes in Georgia must be licensed by the Respondent, which is authorized to promulgate rules to protect the health, safety, and welfare of occupants of such facilities. O.C.G.A. § 31-7-3, and O.C.G.A. § 31-7-12. The rules which the Respondent has promulgated for personal care homes are found in Chapter 111-8-62 of the *Official Compilation, Rules and Regulations for the State of Georgia*. Ga. Comp. R. & Regs. r. 111-8-62-.01 et seq. [Referred to *infra* and hereafter as “PCH Rules”].

3. PCH Rule 111-8-25(c) states as follows:

[The D]epartment [of Community Health] may limit or restrict any license as it deems necessary for the protection of the public....

1. Limitations or restrictions of a license may include any or all of the following as determined necessary by the department:

(iii) prohibiting a facility from caring for persons with specific types or degrees of needs that the facility is not capable of meeting in compliance with licensing requirements.

4. The authority to restrict or limit a PCH license is also granted to Respondent by the enabling statute found at O.C.G.A. § 32-2-8(a)(7). Such restrictions are to be based on several factors, including but not limited to “the hazard or potential hazard created to the health and safety of the public.” *Ibid.*

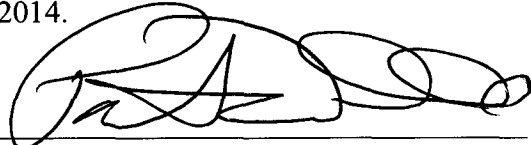
5. In the present case, Respondent determined that Petitioner could not provide care to any resident with insulin-dependent diabetes, as it did not have an outside agency to provide services to the diabetic resident, or a staff member who is a licensed nurse, or a Proxy Caregiver. The evidence shows that, as of the hearing date, Petitioner has not met the requirements for any staff member to be certified by Respondent as a Proxy Caregiver for two reasons: (1) Petitioner has not obtained a Plan of Care from a primary care physician setting out the treatment plan for a diabetic resident; (2) Petitioner has not obtained all the relevant training for any staff member in the proper glucose monitoring and insulin injection methods. These failures do not appear to be due to any fault of Petitioner’s owners or staff to put forth the effort to obtain Proxy Caregiver status for its staff, but rather the unwillingness of the physician to write an appropriate Plan of Care and an inability to find the proper training through the VA or other entity.

#### IV. Decision

It is the Initial Decision of the Administrative Law Judge that Respondent correctly restricted Petitioner from providing care to any insulin-dependent resident. Therefore, Respondent's action is AFFIRMED.

If Petitioner wishes to provide care to an insulin-depend individual in the future, it may reapply to Respondent and request that the restriction be lifted.

**SO ORDERED**, this 30<sup>th</sup> day of December, 2014.



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**M. PATRICK WOODARD**  
**Administrative Law Judge**