

**The James S. Bowman Administrative Law
Chapter**

of the

American Inns of Court

Proudly presents...

**PLEADINGS AND MOTIONS
IN AN ADMINISTRATIVE
PROCEEDINGS**

...OR...

**“I CAN’T GET NO (ASSURED)
SATISFACTION”**

Re-presented by the

**Koltash/McKeon
Pupilage Group**

**Dauphin County Bar Association
Harrisburg, PA**

**Wednesday, April 9, 2014
6:15 p.m.**

~~Cast of Characters~~

(In No Particular Order)

Played by

Rich Burgundy Rich Welsh
Investigative Reporter ‘Dandy’ Andy David Alexander
Inspector Good Martin Toth
Investigative Reporter Nicole Couric (Katie’s younger sister)..... Nicole Radziewicz
Phil Hotshot, Esq..... Ben Barros
Dr. Evil Jonathan Koltash
Dr. Evil’s Right-Hand-Assistant..... Diane Acri
Prosecutor Mike..... Steve O’Neill
Employee Roe Marisa Lehr
Investigative Reporter ‘Big Al’ Gnoza..... Kevin McKeon
“Mad as Hell” M.A.U.D.E..... Shannon Sargent
Resident ‘Bill’/FREEZE Tom Ballaron
Hearing Examiner Flip-n-Flop Katie “the Law Student” Riggleman-Thomas
Nurse Abbe ‘Hot Lips’ HoulihanAbbegael Giunta
(Behind-the-scenes IT guru)..... Brett Woodburn

~~Cast of Original Characters~~

(In Order of Appearance)

Played by

Matt Stossel Matt Totino
Investigative Reporter ‘Dandy’ AndyAndrew Bockis
Inspector GoodMartin Toth
Investigative Reporter Lucinda Couric (Katie’s younger sister)..... Lucinda Glinn
Phil Hotshot, Esq.....Jason Gottesman
Dr. EvilJonathan Koltash
Dr. Evil’s Right-Hand-Assistant.....Diane Acri
Prosecutor Mike.....Michael Trimmer
Employee Roe Brianna Kula
Investigative Reporter ‘Big Al’ Gnoza..... Al Peters
“Mad as Hell” M.A.U.D.E..... Deb Wallet
Resident ‘Bill’Bill Nast
Hearing Examiner Flip-n-FlopJudge Cohn-Jubelirer
Nurse Abbe ‘Hot Lips’ HoulihanAbbegael Giunta
(Behind-the-scenes IT guru and written materials)..... Brianna Kula

~~Table of Contents~~

1.	Cast of Characters	page 2
2.	Table of Contents	page 3
3.	Section One: Pleadings	page 4
	A. Initial Order to Show Cause..... (not included herein)	
	B. Amended Order to Show Cause.....	page 5
	C. Answer.....	page 20
4.	Section Two: Motions	page 39
	A. Motion to Dismiss.....	page 40
	B. Motion to Strike.....	page 44
	C. Motion in Limine.....	page 47
	D. Motion to Recuse.....	page 52
5.	Section Three: Intervention	page 56
	A. M.A.U.D.E.’s Petition to Intervene.....	page 57
	B. C.C.R.A.S.’s Petition to Intervene.....	page 60
	C. Answer to M.A.U.D.E.’s Petition to Intervene.....	page 62
6.	Reference Materials	page 65
	A. Rules.....	page 66
	B. Caselaw.....	page 69

SECTION ONE: PLEADINGS

**COMMONWEALTH OF PENNSYLVANIA,
DPEARTMENT OF PUBLIC WELFARE**

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
DEPARTMENT OF	:	
PUBLIC WELFARE,	:	
Complainant	:	
	:	
v.	:	Docket No. 555AA (LIC)
	:	
ASSURED SATISFACTION	:	
PERSOANL CARE FACILITY, INC.	:	
Respondent	:	

AMENDED ORDER TO SHOW CAUSE

AND NOW, this 10th day of September, 2008, **Assured Satisfaction Personal Care Facility, Inc.** (Respondent) is hereby **ORDERED TO SHOW CAUSE** why the Department of Public Welfare (Department), upon consideration of the Factual Allegations and the applicable law, should not suspend, revoke, or otherwise restrict Respondent’s license. This action is brought pursuant to the Public Welfare Code, Act of June 13, 1967, P.L. 31, as amended, 62 P.S. §§ 101-1503, and will be conducted in accordance with the Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, 63 P.S. § 2201-2207; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251.

IT IS FURTHER ORDERED that Respondent file an Answer to this Order to Show Cause in writing within thirty (30) days of the date of this Order stated above, in accordance with 1 Pa. Code § 35.37.

FACTUAL ALLEGATIONS

1. Respondent has been licensed by the Department to operate a personal care home in the Commonwealth of Pennsylvania, License No. PC-077682.

2. At all times pertinent to the Factual Allegations, Respondent held said license, which license would be subject to renewal on or about June 3, 2008.

3. Respondent's last known address on file with the Department is 11 Artificial Avenue, Fakeburg, Pa. 17105.

COUNT ONE

4. Paragraphs 1 through 3 are incorporated by reference.

5. Alex L. (Resident Alex) was a resident of Respondent's facility.

6. Resident Alex suffers from Diabetes.

7. Resident Alex has been prescribed Fixitall, 20mg b.i.d. to treat his diabetes.

8. Respondent is responsible for ensuring that medications are properly administered to its residents like Resident Alex.

9. Diane Roe is employed by Respondent as a Personal Care Specialist (PCS).

10. On or about July 3, 2008 PCS Roe ordered Resident Alex to leave his room and go to breakfast.

11. Resident Alex refused and advised that he did not want breakfast.

12. Resident Alex asked PCS Roe if he could have his first dose of Fixitall.

13. PCS Roe refused to give Resident Alex his Fixitall.

14. PCS Roe locked the door to Resident Alex's room from the outside, and did not unlock the door to Resident Alex's room until lunchtime on or about July 5, 2008.

15. As a result of PCS Roe's actions, Resident Alex was locked in his room for over two days, during which time he did not receive his scheduled doses of Fixitall.

16. While locked in his room, Resident Alex missed three scheduled doses of Fixitall.
17. By depriving Resident Alex of his prescribed medication, PCS Roe endangered Resident Alex's life and health.
18. No food was offered to Resident Alex while he was locked in his room.
19. When the door was unlocked, Resident Alex was experiencing a sugar low and had gone into diabetic shock.
20. Through the actions of its agent, Respondent violated 62 P.S. § 1026(b)(5) in that Respondent mistreated or abused Resident Alex, an individual cared for in its facility.
21. Because this violation presented a substantial probability of resulting in death or serious mental or physical harm to Resident Alex, it constitutes a Class I violation, pursuant to 55 Pa. Code § 2600.261.

COUNT TWO

22. Paragraphs 1 through 21 are hereby incorporated by reference.
23. PCS Roe locked Resident Alex in his room as punishment for refusing to go to breakfast.
24. Through the actions of its agent, Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.164(a) in that it withheld meals from Resident Alex for over two days as punishment.
25. Because this violation presented a substantial probability of resulting in death or serious mental or physical harm to Resident Alex, it constitutes a Class I violation, pursuant to 55 Pa. Code § 2600.261.

COUNT THREE

26. Paragraphs 1 through 25 are hereby incorporated by reference.

27. From about the morning of July 3 until about midday of July 5, no employee of Respondent monitored, aided or provided care to Resident Alex.
28. Damien Evil, M.D., is a physician licensed in the Commonwealth of Pennsylvania to practice medicine.
29. Dr. Evil is the medical director of Respondent and serves as the facility administrator.
30. The medical director of a personal care facility is ultimately responsible for the care provided in that facility and making reports to the Department as needed.
31. Dr. Evil, as a physician, knew or should have known the effect that deprivation of food and medicine would have upon a diabetic resident.
32. Respondent violated 62 P.S. § 1026(b)(4) in that it displayed gross incompetence, negligence or misconduct in operating its facility.
33. Respondent deprived Resident Alex of his rights as a resident to not be restrained, to have food and water at scheduled meals, and be dispensed his prescribed medication.
34. For failing to accommodate his resident rights, Respondent thus violated 55 Pa. Code §2600.43.
35. Because this violation presented a substantial probability of resulting in death or serious mental or physical harm to Resident Alex, it constitutes a Class I violation, pursuant to 55 Pa. Code § 2600.261.

COUNT FOUR

36. Paragraphs 1 through 35 are hereby incorporated by reference.

37. Gustave Twitter was employed at all relevant times by Respondent as a PCS.
38. PCS Twitter discovered on or about the afternoon of July 5, 2008 that PCS Roe had locked Resident Alex in his room for over 2 days.
39. At or about 4 p.m. on July 5, 2008, PCS Twitter attempted to report PCS Roe's misconduct regarding Resident Alex to Dr. Evil by submitting a written report.
40. Dr. Evil did not accept the report from PCS Twitter, stated "I don't have time for your bellyaching," and threw PCS Twitter's report in the trash without reading it.
41. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.44(b) in that it failed to permit and respond to PCS Twitter's oral and written complaints.
42. Because this violation is a violation which has a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation pursuant to 55 Pa. Code § 2600.261.

COUNT FIVE

43. Paragraphs 1 through 42 are hereby incorporated by reference.
44. Respondent did not report the incident involving PCS Roe to the Department.
45. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.15(a) by failing to immediately report suspected abuse of a resident served in the home.

46. Because this violation is a violation which has a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation pursuant to 55 Pa. Code § 2600.261.

COUNT SIX

47. Paragraphs 1 through 46 are hereby incorporated by reference.

48. After PCS Twitter reported PCS Roe's abuse of Resident Alex to Dr. Evil, Respondent failed to immediately develop and implement a plan of supervision for PCS Roe.

49. Following PCS Twitter's report, Respondent did not suspend PCS Roe.

50. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.15(b) by failing to immediately develop and implement a plan of supervision or suspend PCS Roe.

51. Because this violation had a substantial probability of resulting in death or serious mental or physical harm to a resident, it constitutes a Class I violation pursuant to 55 Pa. Code § 2600.261.

COUNT SEVEN

52. Paragraphs 1 through 51 are hereby incorporated by reference.

53. Respondent did not notify Resident Alex or Resident Alex's designated person of PCS Twitter's report of suspected abuse.

54. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.15(d) by failing to immediately notify Resident Alex and his designated person of Mr. Twitter's report of suspected abuse.

55. Because this violation was a minor violation, which had an adverse effect upon the health, safety or well-being of a resident, it constituted a Class III violation.

COUNT EIGHT

56. Paragraphs 1 through 55 are hereby incorporated by reference.
57. Respondent did not require PCS Roe to submit with her application a report of her criminal history record information from the State Police.
58. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.16 through 35 P.S. 10225.502(a)(1) by failing to require PCS Roe to submit with her application a report of her criminal history record information from the State Police, in violation of the Older Adults Protective Services Act, Act of December 18, 1996, P.L. 381 as amended 35 P.S. §§ 10225.101-.5102.
59. Because this violation had a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation, pursuant to 55 Pa. Code § 2600.261.

COUNT NINE

60. Paragraphs 1 through 59 are hereby incorporated by reference.
61. On or about June 10, 1995, PCS Roe, was convicted in the Commonwealth of Pennsylvania of felony forgery, 18 Pa. C.S. § 4101.
62. On or about March 17, 1997, PCS Roe was convicted in the Commonwealth of Pennsylvania of robbery (18 Pa. C.S. § 3701), aggravated assault (18 Pa. C.S. § 2702) and attempted murder (18 Pa. C.S. § 2502), of a rival to the DeVito crime family, with which PCS Roe has been affiliated since her first conviction.
63. Respondent hired PCS Roe on or about November 23, 2004.
64. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.16 through 35 P.S. 10225.503(a)(2) by hiring PCS Roe despite his

convictions for forgery, robbery, assault and attempted murder, in violation of the Older Adults Protective Services Act.

65. Because this violation had a substantial probability of resulting in death or serious mental or physical harm to a resident it constitutes a Class I violation.

COUNTS TEN THROUGH EIGHTY

66. Paragraphs 1 through 65 are hereby incorporated by reference.
67. Since first becoming licensed, Respondent has employed seventy (70) persons at its facility other than PCS Roe.
68. Respondent required none of these employees to submit with his application a report of criminal history record information from the State Police or a statement from the State Police that their central repository contains no such information relating to that person.
69. Respondent committed seventy-two violations 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.16 through 35 P.S. 10225.502(a)(1) by failing to require its employees to submit with their applications reports of criminal history record information from the State Police or statements from the State Police that their central repository contains no such information relating to those persons, in violation of the Older Adults Protective Services Act.
70. Because these violations are violations that have a substantial adverse effect upon the health, safety or well-being of a resident, they are Class II violations pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-ONE

71. Paragraphs 1 through 70 are hereby incorporated by reference.

72. Respondent employs 4 individuals under the age of eighteen (18) (“Teenagers”) at its facility.
73. None of the Teenagers is younger than 16 years of age.
74. Respondent employs the Teenagers in dietary, custodial and grounds-keeping positions.
75. Some of the Teenagers work in the kitchen of Respondent’s facility.
76. Respondent maintains alcoholic beverages on its premises for use of the residents.
77. Respondent stores these alcoholic beverages in a cabinet in the dining room of its facility to which employees in dietary are permitted access.
78. Accordingly, the Teenagers have unfettered access to the alcoholic beverages.
79. The Teenagers have taken alcoholic beverages from the cabinet and imbibed it on the premises of Respondent’s facility.
80. On or about July 6, 2008 Teenagers drank alcoholic beverages obtained from accessing the alcoholic beverages stored by Respondent.
81. Dr. Evil is aware that the Teenagers were taking alcohol from Respondent’s facility and drinking it on the premises.
82. Respondent violated 62 P.S. § 1026(b)(4) by displaying gross incompetence, negligence or misconduct in operating its facility.
83. Because this violation has a substantial adverse effect upon the health, safety or well-being of a resident, it is a Class II violation.

COUNT EIGHTY-TWO

85. Paragraphs 1 through 84 are hereby incorporated by reference.

86. Gregory House, R.Ph. is a pharmacist licensed in the Commonwealth of Pennsylvania to practice pharmacy.
87. Mr. House is addicted to opioid painkillers, specifically Vicodin.
88. Respondent employs Mr. House at its facility.
89. Mr. House fills and dispenses prescriptions for residents at Respondent's facility.
90. Mr. House is a direct care staff person.
91. Mr. House occasionally uses Vicodin while filling prescriptions for Respondent's residents.
92. Fred S. (Resident Fred) is a resident of Respondent's facility.
93. Resident Fred suffers from cardiac arrhythmias.
94. Resident Fred has been prescribed 35mg Fixitall t.i.d. for his condition, which prescription is filled on-site and administered by Respondent staff.
95. On or about December 17, 2007 Mr. House was filling prescriptions while under the influence of Vicodin.
96. One of the prescriptions that he filled that day was Resident Fred's prescription for Fixitall.
97. Mr. House mistakenly dispensed Nocebo, 50mg to Resident Fred instead of Fixitall, 35mg.
98. The medication error occurred because Mr. House was under the influence of Vicodin.
99. On or about the evening of December 17, 2007 Resident Fred suffered a tachycardic episode which required medical intervention.
100. Resident Fred's tachycardia occurred because he received Nocebo instead of Fixitall.

101. Dr. Evil is aware that Mr. House is addicted to Vicodin.
102. Respondent violated 62 P.S. § 1026(b)(4) in that it displayed gross incompetence, negligence or misconduct in operating its facility.
103. Because this violation had a substantial probability of resulting in death or serious mental or physical harm to a resident, it constitutes a Class I violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-THREE

104. Paragraphs 1 through 103 are hereby incorporated by reference.
105. Respondent violated 62 P.S. 1026(b)(1) through 55 Pa. Code 2600.54(a)(3) in that it employed a direct care staff person, Dr. House, who was not free from a drug addiction that would limit him from providing necessary personal care services with reasonable skill and safety.
106. Because this violation had a substantial probability of resulting in death or serious mental or physical harm to a resident, it constitutes a Class I violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-FOUR

107. Paragraphs 1 through 106 are hereby incorporated by reference.
108. Mr. House's mistaken dispensation of Nocebo in the place of Fixitall constituted a medication error as defined in 55 Pa. Code. § 2600.188(a).
109. Respondent did not report this medication error to Resident Fred, Resident Fred's designated person or to his treating physician.
110. Respondent did not document Mr. House's medication error involving Resident Fred.

111. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.188(c) because it failed to document a medication error.
112. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.188(b) because it failed to report a medication error to the resident involved, the resident's designated person and to the prescribing physician.
113. Because these violations had a substantial probability of resulting in death or serious mental or physical harm to a resident, it constitutes a Class I violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-FIVE

114. Paragraphs 1 through 113 are hereby incorporated by reference.
115. Respondent does not have a system in place to identify and document medication errors and its facility's pattern of errors.
116. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.188(d) because it does not have a system in place to identify and document medication errors and its facility's pattern of errors.
117. Because this violation had a substantial probability of resulting in death or serious mental or physical harm to a resident, it constitutes a Class I violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-SIX

118. Paragraphs 1 through 117 are hereby incorporated by reference.
119. Mr. House's medication error involving Resident Fred is a reportable incident as defined in 55 Pa. Code § 2600.16(a)(13).
120. Respondent did not report Mr. House's medication error involving Resident Fred to the Department.

121. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.16(c) because it failed to report a reportable incident to the Department.
122. Because this violation had a substantial probability of resulting in death or serious mental or physical harm to a resident, it is a Class I violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-SEVEN

123. Paragraphs 1 through 122 are hereby incorporated herein by reference.
124. On or about July 6, 2008, an inspector from the Department, Inspector Good, visited Respondent's facility.
125. Resident Bill (Resident Bill) is a resident of Respondent's facility.
126. On or about July 6, 2008 at approximately 2 p.m. Inspector Good heard Resident Bill moaning for help in his room in Respondent's facility.
127. Resident Bill's bed was soaked with urine.
128. Resident Bill's breakfast tray was still in the room out of Resident Bill's reach.
129. Inspector Good was unable to find any nurses in the area of the residents' rooms.
130. Six (6) nurses were on duty at the time.
131. Inspector Good found all six (6) on-duty nurses in the employee kitchen.
132. Inspector Good also observed two dietary workers in the employee kitchen.
133. The nurses and dietary workers were playing cards.
134. Inspector Good observed one of the nurses and both of the dietary workers drinking beer.

135. Inspector Good observed that at least one of the dietary workers was visibly intoxicated as he removed the breakfast tray from Resident Bill's room.
136. Respondent violated 62 P.S. § 1026(4) in that it displayed gross incompetence, negligence or misconduct when all of its nurses on duty were playing cards rather than attending to patients.
137. Because this violation had a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-EIGHT

138. Paragraphs 1 through 137 are hereby incorporated by reference.
139. Respondent violated 62 P.S. § 1026(4) in that it displayed gross incompetence, negligence or misconduct when its employees were drinking beer on premises while on duty.
140. Because this violation had a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation pursuant to 55 Pa. Code § 2600.261.

COUNT EIGHTY-NINE

141. Paragraphs 1 through 140 are hereby incorporated by reference.
142. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.43(a) in that Respondent neglected Resident Bill in violation of his right not to be neglected, as guaranteed by 55 Pa. Code § 2600.43(b).
143. Because this violation had a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation.

COUNT NINETY

144. Paragraphs 1 through 143 are hereby incorporated by reference.
145. A violation of a resident's rights is a reportable incident. See 55 Pa. Code § 2600.16(a)(4).
146. Respondent failed to report the violation of Resident Bill's right not to be neglected, which occurred on or about July 6, 2008.
147. Respondent violated 62 P.S. § 1026(b)(1) through 55 Pa. Code § 2600.16(c) by failing to report a reportable incident.
148. Because this is a violation which has a substantial adverse effect upon the health, safety or well-being of a resident, it constitutes a Class II violation.

PENALTIES

If the Department finds that the Factual Allegations are true and correct, and determines that it has the authority to suspend or revoke the Respondent's license, the Department may, in its discretion, impose one or more of the following penalties:

The revocation, suspension or other restriction of Respondent's license, or the imposition of any other disciplinary or corrective action which the Public Welfare Code authorizes the Department to impose.

The imposition of a monetary penalty of \$20 per resident per day for each Class I violation; no less than \$5 per resident per day and no more than \$15 per resident per day for each Class II violation; and up to \$3 per resident per day for each Class III violation.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
DEPARTMENT OF	:	
PUBLIC WELFARE,	:	
Complainant	:	Docket No. 555AA (LIC)
	:	
v.	:	
	:	
ASSURED SATISFACTOIN	:	
PERESONAL CARE FACILITY, INC.,	:	
Respondent	:	

ANSWER TO ORDER TO SHOW CAUSE

AND NOW comes, Commonwealth of Pennsylvania, Department of Public Welfare (“Department”) and files the following Answer to the Order to Show Cause pursuant to 1 Pa. Code §35.37 as follows:

FACTUAL ALLEGATIONS

1. Admitted.
2. Admitted.
3. Admitted.

COUNT ONE

4. No answer required.
5. Admitted.
6. Admitted.
7. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in

Paragraph 7, and they are therefore denied and strict proof thereof is demanded.

8. Denied. This paragraph constitutes a legal conclusion to which no response is required.
9. Denied. PCS Roe is no longer employed by Respondent.
10. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 10, and they are therefore denied and strict proof thereof is demanded.
11. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 11, and they are therefore denied and strict proof thereof is demanded.
12. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 12, and they are therefore denied and strict proof thereof is demanded.
13. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 13, and they are therefore denied and strict proof thereof is demanded.
14. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in

Paragraph 14, and they are therefore denied and strict proof thereof is demanded.

15. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 15, and they are therefore denied and strict proof thereof is demanded.
16. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 16, and they are therefore denied and strict proof thereof is demanded.
17. Denied. This paragraph constitutes a legal conclusion to which no response is required.
18. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 18, and they are therefore denied and strict proof thereof is demanded.
19. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 19, and they are therefore denied and strict proof thereof is demanded.
20. Denied. This paragraph constitutes a legal conclusion to which no response is required.

21. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT TWO

22. No answer required.

23. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 23, and they are therefore denied and strict proof thereof is demanded.

24. Denied. This paragraph constitutes a legal conclusion to which no response is required.

25. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT THREE

26. No response is required.

27. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 27, and they are therefore denied and strict proof thereof is demanded.

28. Admitted.

29. Admitted.

30. Denied. This paragraph constitutes a legal conclusion to which no response is required.

31. Denied. This paragraph constitutes a legal conclusion to which no response is required. By way of further answer, Dr. Evil is not the treating physician of Resident Alex and does not have actual notice of the diagnoses of each of Assured's residents and the effect that alleged medicinal administrations or omissions would have upon said residents.
32. Denied. This paragraph constitutes a legal conclusion to which no response is required.
33. Denied. This paragraph constitutes a legal conclusion to which no response is required.
34. Denied. This paragraph constitutes a legal conclusion to which no response is required.
35. Denied. This paragraph constitutes a legal conclusion to which no response is required. To the extent it is deemed to contain facts, Respondent specifically denies that there was a substantial probability of the alleged violation resulting in death or serious mental or physical harm to Resident Alex, and strict proof thereof is demanded.

COUNT FOUR

36. No response is required.
37. Admitted.
38. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 38, and they are therefore denied and strict proof thereof is demanded.

39. Denied. It is specifically denied that Dr. Evil was ever provided any written report from PCS Twitter regarding PCS Roe's activities on or about July 5, 2008, and strict proof thereof is demanded.
40. Denied. It is specifically denied that Dr. Evil was ever provided any written report from PCS Twitter regarding PCS Roe's activities on or about July 5, 2008, and further denied that Dr. Evil refused to review any such report allegedly submitted by PCS Twitter. By way of further answer, had Dr. Evil received any written report from PCS Twitter regarding an alleged abuse and/or neglect of another PCS, he would have ensured that the report was properly filed and documented.
41. Denied. This paragraph constitutes a legal conclusion to which no response is required.
42. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT FIVE

43. No response is required.
44. Denied as stated. Respondent did not report an incident involving PCS Roe to the Department because it was not provided any notice of the incident alleged herein, and thus could not have had a duty to report implied herein.
45. Denied. This paragraph constitutes a legal conclusion to which no response is required.

46. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT SIX

47. No response is required.

48. Denied. The responses to paragraphs 40 and 44 are hereby incorporated by reference as though fully set forth herein.

49. Denied. The responses to paragraphs 40, 44 and 47 above are hereby incorporated by reference as though fully set forth herein. Moreover, after reasonable investigation, it is further denied that any cause existed to suspend PCS Roe, and strict proof thereof is demanded.

50. Denied. This paragraph constitutes a legal conclusion to which no response is required.

51. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT SEVEN

52. No response is required.

53. Denied as stated. The responses to paragraphs 40, 44 and 47 above are hereby incorporated by reference as though fully set forth herein. Moreover, after reasonable investigation, it is further denied that any report of suspected abuse of Resident Alex occurred, and strict proof thereof is demanded.

54. Denied. This paragraph constitutes a legal conclusion to which no response is required.

55. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHT

56. No response is required.

57. Denied. It is specifically denied that Respondent did not require PCS Roe to submit a report of her criminal history record information. To the contrary, PCS Roe came highly recommended and a member of the State Police advised that her criminal history was void of any violations that would affect her hiring as a PCS for Assured Satisfaction.

58. Denied. This paragraph constitutes a legal conclusion to which no response is required.

59. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT NINE

60. No response is required.

61. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 61, and they are therefore denied and strict proof thereof is demanded.

62. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 62, and they are therefore denied and strict proof thereof is demanded.

63. Admitted.
64. Denied. This paragraph constitutes a legal conclusion to which no response is required.
65. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNTS TEN THROUGH EIGHTY

66. No response is required.
67. Admitted.
68. Denied. It is specifically denied that Respondent did not require each of its employees to submit a statement from the State Police that their central repository contains no criminal history record information, and strict proof thereof is demanded. To the contrary, as in the case of PCS Roe, Respondent required and obtained a statement from the State Police regarding its prospective employees to ensure that its employees did not have criminal history precluding their hire.
69. Denied. This paragraph constitutes a legal conclusion to which no response is required.
70. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-ONE

71. No response required.
72. Denied as stated. In July 2008, Respondent employed four employees under the age of majority, (“Teenage employees”).

73. Admitted.
74. Denied as stated. In July 2008, Respondent employed Teenagers in each of those capacities. By way of further answer, certain parents of a couple of the Teenage employees have not permitted their children to return to work at Assured Satisfaction, and said Teenage employees no longer work at Assured Satisfaction.
75. Admitted.
76. Admitted.
77. Admitted in part, denied in part. It is admitted that Respondent stores alcoholic beverages in a cabinet in the dining room, and that employees of dietary are permitted access. It is specifically denied that any Teenage employees are permitted access to the alcoholic beverages to which access is restricted to adults over the age of twenty-one (21) years of age.
78. Denied. It is specifically denied that Teenage employees have unfettered access to alcoholic beverages. To the contrary, Teenage employees are not permitted access to the alcoholic beverages stored at the facility, and are not issued keys to access.
79. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 79, and they are therefore denied and strict proof thereof is demanded.
80. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in

Paragraph 80, and they are therefore denied and strict proof thereof is demanded.

81. Denied. It is specifically denied that Dr. Evil is or was at any time aware that Teenage employees were obtaining unauthorized access alcohol stored at the facility and further denied that D. Evil had any knowledge that Teenage employees were drinking it on premises.
82. Denied. This paragraph constitutes a legal conclusion to which no response is required.
83. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-TWO

84. [sic] No response is required.
85. No response is required.
86. Admitted upon information and belief.
87. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 87, and they are therefore denied and strict proof thereof is demanded.
88. Admitted.
89. Admitted.
90. Admitted.
91. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in

Paragraph 91, and they are therefore denied and strict proof thereof is demanded.

92. Admitted.
93. Admitted upon information and belief.
94. Admitted upon information and belief.
95. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 95, and they are therefore denied and strict proof thereof is demanded.
96. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 96, and they are therefore denied and strict proof thereof is demanded.
97. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 97, and they are therefore denied and strict proof thereof is demanded.
98. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 98, and they are therefore denied and strict proof thereof is demanded.
99. Admitted upon information and belief.

100. Denied. This paragraph constitutes a legal conclusion to which no response is required. To the extent this paragraph may be deemed to contain facts, after reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 100, and they are therefore denied and strict proof thereof is demanded.
101. Denied. It is specifically denied that Dr. Evil was aware at the time of this alleged incident, alleged to have occurred in December 2007, that Mr. House was addicted to Vicodin, and strict proof thereof is demanded.
102. Denied. This paragraph constitutes a legal conclusion to which no response is required.
103. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-THREE

104. No response is required.
105. Denied. This paragraph constitutes a legal conclusion to which no response is required.
106. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-FOUR

107. No response is required.
108. Denied. This paragraph constitutes a legal conclusion to which no response is required.

109. Denied as stated. It is specifically denied that a medication error occurred to trigger a report to Resident Fred, his physician or his designee, and strict proof thereof is demanded.
110. Denied as stated. It is specifically denied that a medication error occurred that would necessitate documentation and strict proof thereof is demanded.
111. Denied. This paragraph constitutes a legal conclusion to which no response is required.
112. Denied. This paragraph constitutes a legal conclusion to which no response is required.
113. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-FIVE

114. No response is required.
115. Denied. It is specifically denied that Respondent does not have a system to track and document medication errors in the event that a medication error occurs.
116. Denied. This paragraph constitutes a legal conclusion to which no response is required.
117. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY SIX

118. No response is required.

119. Denied. This paragraph constitutes a legal conclusion to which no response is required. To the extent it may be deemed to contain facts, it is specifically denied that a medication error as described occurred and strict proof thereof is demanded.
120. Denied as stated. The responses to paragraphs 109-110 are hereby incorporated by reference as though fully set forth herein. By way of further answer, it is specifically denied that a medication error occurred that would trigger a report to the Department.
121. Denied. This paragraph constitutes a legal conclusion to which no response is required.
122. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-SEVEN

123. No response is required.
124. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 124, and they are therefore denied and strict proof thereof is demanded.
125. Admitted.
126. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 126, and they are therefore denied and strict proof thereof is demanded.

127. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 127, and they are therefore denied and strict proof thereof is demanded.
128. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 128, and they are therefore denied and strict proof thereof is demanded.
129. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 129, and they are therefore denied and strict proof thereof is demanded.
130. It is admitted that six nurses were on duty during the afternoon-shift on July 6, 2008.
131. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 131, and they are therefore denied and strict proof thereof is demanded.
132. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 132, and they are therefore denied and strict proof thereof is demanded.

133. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 133, and they are therefore denied and strict proof thereof is demanded.
134. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 134, and they are therefore denied and strict proof thereof is demanded.
135. Denied. After reasonable investigation, Respondent is without sufficient knowledge or information to respond to the allegations contained in Paragraph 135, and they are therefore denied and strict proof thereof is demanded.
136. Denied. This paragraph constitutes a legal conclusion to which no response is required.
137. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-EIGHT

138. No response is required.
139. Denied. This paragraph constitutes a legal conclusion to which no response is required.
140. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNT EIGHTY-NINE

- 141. No response is required.
- 142. Denied. This paragraph constitutes a legal conclusion to which no response is required.
- 143. Denied. This paragraph constitutes a legal conclusion to which no response is required.

COUNTY NINETY

- 144. No response is required.
- 145. Denied. This paragraph constitutes a legal conclusion to which no response is required.
- 146. Denied. This paragraph constitutes a legal conclusion to which no response is required. To the extent it is deemed to contain facts, it is specifically denied that Resident Bill was neglected on July 6, 2008 as described in the Department's Amended Order and strict proof thereof is demanded.
- 147. Denied. This paragraph constitutes a legal conclusion to which no response is required.
- 148. Denied. This paragraph constitutes a legal conclusion to which no response is required.

WHEREFORE, Respondent, Assured Satisfaction Personal Care Facility, by and through its attorneys, requests a full administrative hearing such that Respondent can defend against the allegations in the order to Show Cause and to

present evidence in mitigation of any penalties which may be imposed, and further that the revocation be stayed pending the results of the full hearing.

Respectfully Submitted,

HOTSHOT, POTSHOT & ROWE, LLP

Phil Hotshot, Esquire
Supreme Court ID: 394858

614 N. Third Street
Harrisburg, PA 17101
717-512-0620
Counsel for Respondent

SECTION TWO: MOTIONS

**COMMONWEALTH OF PENNSYLVANIA,
DPEARTMENT OF PUBLIC WELFARE**

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
DEPARTMENT OF	:	
PUBLIC WELFARE,	:	
Complainant	:	
	:	
v.	:	Docket No. 555AA (LIC)
	:	
ASSURED SATISFACTION	:	
PERSOANL CARE FACILITY, INC.	:	
Respondent	:	

RESPONDENT’S MOTION TO DISMISS THE ORDER TO SHOW CAUSE

AND NOW comes Respondent Assured Satisfaction Personal Care Facility, Inc. (“Assured”), by and through its counsel Hotshot, Potshot, and Rowe, LLC, and moves that this Department dismiss the Commonwealth’s order to show cause with prejudice, and in support states:

A. Complainant Has Violated the Due Process Rights of Respondent Facility

1. Complainant has violated the due process rights of Assured by not allowing Assured time in which to submit a correction plan and time to implement said plan, in violation of 62 Pa. Stat. Ann. § 1026(a).

2. Whenever the Department of Public Welfare finds a violation of the Public Welfare Code or the regulations there under, the Department “shall give written notice thereof to the offending person [and] [] [s]uch notice shall require the offending person to take action to bring the facility into compliance.” 62 Pa. Stat. Ann. 1026(a).

See Miller Home, Inc. v. Commonwealth, Dept. of Public Welfare, 556 A.2d 1 (Pa.

Commw. Ct. 1989); *Clites v. Commonwealth, Dept of Public Welfare*, 548 A.2d 1345; *McFarland v. Commonwealth, Dept. of Public Welfare*, 551 A.2d 364 (Pa. Commw. Ct. 1988); *Pine Haven Residential Care Home v. Com., Dept. of Public Welfare*, 512 A.2d 59 (Pa. Commw. Ct. 1986).

3. Written notice of violation was received by Assured on _____, 2008 and said notice requested that Assured submit a correction plan.

4. An Order to Show Cause was received by Assured on _____, 2008. *See* 1. Pa. Code § 35.14.

5. Due to the short period of time, Assured was neither able to formulate nor submit a proposed plan of correction.

6. Due to Assured's inability to correct any violations and the untimely order to show cause, Assured and its residents have suffered harm by trying to facilitate the transfer of patients and has suffered harm to its reputation.

B. Complainant has not Shown Enough Facts to Sustain a License Revocation

7. Under 62 Pa. Stat. Ann. § 1026(b), the Department "shall revoke a license for any of . . . (1) Violation of or non-compliance with the provisions of this act or of regulations pursuant thereto; (2) Fraud or deceit in obtaining or attempting to obtain a license; (3) Lending, borrowing or using the license of another, or in any way knowingly aiding or abetting the improper granting of a license; (4) Gross incompetence, negligence or misconduct in operating the facility; (5) Mistreating or abusing individuals cared for in the facility." 62 Pa. Stat. Ann. § 1026(b). *See also* 55 Pa. Code § 20.71.

8. An order to show cause must “set forth the grounds for the action” and must “contain a statement of the particulars and matters concerning which the agency is inquiring.” 1 Pa. Code § 35.14.

9. The Department has alleged several violations of 62 Pa. Stat. Ann. § 1026(b) and 55 Pa. Code § 20.71.

10. The Department has failed to lay out the “particulars and matters concerning which the agency is inquiring” and as such it fails to “set for the grounds for the action.” *See* Order to Show Cause at _____; 1 Pa. Code § 35.14.

C. THE ACTION AGAINST DR. EVIL FAILS FOR WANT OF JURISDICTION

11. The medical profession is regulated by the State Board of Medicine under the Department of State. *See* 63 Pa. Stat. Ann. 422, et seq.; 49 Pa. Code § 16 et seq.

12. In this action the Department of Public Welfare has brought a license revocation action against Dr. Evil, Head Medical Professional of Assured. Order to Show Cause at _____

13. Medical disciplinary process and procedures are governed by 49 Pa. Code § 16.41-16.61. Those sections place revocation proceedings solely within the jurisdiction of the State Medical Board. *See* 49 Pa. Code § 16.51.

WHEREFORE, Respondent respectfully requests that the Department dismiss the Complainants order to show cause for violating Respondent’s due process rights, for

failure to state a claim for license revocation, and for want of jurisdiction and to rule in favor and grant any other such relief that the Department deems appropriate.

Respectfully Submitted,

HOTSHOT, POTSHOT & ROWE, LLP

Phil Hotshot, Esquire
Supreme Court ID: 394858

614 N. Third Street
Harrisburg, PA 17101
717-512-0620
Counsel for Respondent

4. According to the Complainants amended Order to Show Cause, the Department is concerned with revoking Assured's license for the following reasons: inappropriate work behavior. Amended Order to Show Cause at _____.

5. As shown from Complainant's amended Order to Show Cause, the Complainant Department is not concerned with whether Assured has connections to the DeVito family and the averments are thus improper in an Order to Show Cause. *See* 1 Pa. Code § 35.14.

B. EVIDENCE OF INVOLVEMENT WITH THE DEVITO FAMILY WOULD BE INADMISSIBLE AS EVIDENCE.

6. In a hearing, "there shall be excluded evidence that is repetitious or cumulative, or evidence that is *not of the kind which would affect reasonable and fair-minded men in the conduct of their daily affairs.*" 1 Pa. Code § 35.161.

7. A hearing examiner's "exclusion of evidence is proper if the proffered testimony is not legally relevant or material to a fact in issue." *Westinghouse Elec. Co. v. WCAB (Pollock)*, 507 A.2d 1287 (Pa. Commw. Ct. 1986) (citing *Commonwealth v. Strickland Transp. Co.*, 373 A.2d 1188 (Pa. Commw. Ct. 1977)).

8. The references to the DeVito family would not affect reasonable and fair-minded men because the references are not legally relevant or material to a fact in issue.

9. The Complainant's amended Order to Show Cause describes violations at Assured as a basis for license revocation. *See* Amended Order to Show Cause at _____.

10. Personal relationships between employees of Assured bear no relation to whether Assured is in violation of any Statute or Regulation promulgated by the Department, and therefore is not legally relevant to a fact in issue or would affect a reasonable and fair-minded men.

WHEREFORE, any mention by Complainant of connections between Respondent and the DeVito family are improper and legally irrelevant, it must be stricken from the Order to Show Cause.

Respectfully Submitted,

HOTSHOT, POTSHOT & ROWE, LLP

Phil Hotshot, Esquire
Supreme Court ID: 394858

614 N. Third Street
Harrisburg, PA 17101
717-512-0620
Counsel for Respondent

**COMMONWEALTH OF PENNSYLVANIA,
DPEARTMENT OF PUBLIC WELFARE**

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE,	:	
Complainant	:	
v.	:	Docket No. 555AA (LIC)
ASSURED SATISFACTION PERSOANL CARE FACILITY, INC.	:	
Respondent	:	

**RESPONDENT’S MOTION IN LIMINE TO EXCLUDE FROM EVIDENCE
HEARSAY EVIDENCE IN THE FORM OF VIDEOTAPES OF ASSURED
EMPLOYEES**

Respondent, Assured Satisfaction Personal Care Facility, Inc., through its counsel HOTSHOT, POTSHOT, AND ROWE, LLP moves *in limine* to exclude from evidence certain videotapes of Assured’s employees under 2 Pa. Cons. Stat. § 502 and 1 Pa. Code § 35.161, and in support of such motion, Respondent avers as follows:

1. On_____, 2008, the Department of Public Welfare filed an amended Order to Show Cause why Assured’s license should not be revoked.
2. On_____, 2008, Assured, by and through its counsel, answered the amended order to show cause.
3. On_____, 2008 the popular television show “Inn America” interviewed a former employee of Assured, PCS Roe.
4. The interview with Roe details her experience working at Assured and discusses mistreatment of patients.

5. During a pretrial conference conducted with Hearing Examiner Flippinflop on _____, 2008, the Department indicated that they would be offering the interview as evidence during the hearing to show why Assured's license should be revoked.

6. PCS Roe is available for the hearing before the Department of Public Welfare.

A. THE INTERVIEW IS HEARSAY

7. According to 2 Pa. Cons. Stat. § 505, “agencies shall not be bound by technical rules of evidence.” *See also* 1 Pa. Code § 35.161 (“[R]elevant and material evidence shall be admissible.”)

8. Hearsay, however, is “not a technical rule of evidence but a fundamental rule of law which ought to be followed by administrative agencies at those points in their hearings when facts crucial to the issue are sought to be placed upon record and an objection is made thereto.” *Commonwealth, State Bd. of Medical Ed. and Licensure v. Contakos*, 346 A.2d 850, 852 (Pa. Commw. Ct. 1975) (citing *Bleilevens v. Pa. State Civil Service Comm'n*, 312 A.2d 109, 111 (Pa. Commw. Ct. 1973)).

9. Pa. R. E. 801(c) states that hearsay “is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.”

10. The video-clip constitute a statement under Pa. R. E. 801(a)(1) since it is an “oral . . . assertion” offered by the Department to “prove the truth of the matter asserted” under Pa. R. E. 801(c).

11. The videotaped segments consist of a former employee detailing alleged abuses by Assured's Staff. The abuses by Assured's Staff is a basis for the Department's license revocation proceeding. As such, the statements are offered to "prove the truth of the matter asserted."

B. PCS ROE IS AVAILABLE TO TESTIFY AT THE HEARING

12. Pa. R. E. 804 gives an exception to the hearsay rule when the declarant is unavailable. The declarants in this case are all available, therefore the exception in Rule 804 does not apply.
13. Under Pa. R. E. 804(a)(1) a declarant is unavailable if they have been given and exemption from testifying by way of a privilege of the court. Here, Roe has not been granted a privilege or immunity from testifying.
14. Under Pa. R. E. 804(a)(2) a declarant is unavailable if they persist "in refusing to testify concerning the subject matter of the declarant's statement despite an order to do so." In this case, Roe has been willingly interviewed by a popular TV news program and has made no statements regarding her desire not to testify in person.
15. A declarant is unavailable to testify under Pa. R. E. 804(a)(3) if they "testify to a lack of memory of the subject matter of the declarants' statement." The declarant in this case was interviewed only a few short weeks ago and seems to have a clear recollection of her employment at Assured's facility. In the event that the declarant cannot remember her testimony, her memory can be refreshed with a transcript of the interview.
16. There is an exception under Pa. R. E. 804(a)(4) where a declarant is not available by reason of "death or then existing physical or mental illness or infirmity." The

declarant here is healthy enough to be interviewed by “Inn America.” PCS Roe is not deceased.

17. The declarant is available under Pa. R. E. 804(a)(5) because she is able to be found by the Department by reason of her current location in State prison.

C. EVEN IF UNAVAILABLE, THE INTERVIEW TO NOT FALL WITHIN THE PURVIEW OF PA. R. E. 804(b)

18. Under 804(b)(1), the interview is not testimony given at another hearing, deposition, civil action or proceeding under the examination of a predecessor in interest. The interview is simply a television interview that has none of the same ceremonial purposes or protections as testimony given at a prior proceeding.
19. The interview does not meet the exception in Pa. R. E. 804(b)(2) in that they are not a statement made under the belief of impending death. The interview was filmed in the in prison under the protection of the prison guards away from the general populous, it was safe enough for Roe to give a “detailed” recounting of her employment at Assured.
20. The statements in the videotapes are not “statement’s against interest” under the purview of Pa. R. E. 804(b)(3) because they do not “tend[] to subject the declarant to civil or criminal liability.” Roe has already been subject to criminal penalties for her actions while an employee at Assured, and the civil suit filed against her has been settled out of court. The statements made by Roe no longer subject her to any liability and are solely made out of vengeance against her former employer.
21. Finally, the statements are not of “personal or family history” under Pa. R. E. 804(b)(4), since they are statements about Roe’s employment at Assured’s facility.

WHEREFORE the foregoing being true, the Respondent by and through its counsel
HOTSHOT, POTSHOT, AND ROWE, LLP request that the hearing examiner grant this
motion *in limine* and any other relief the deemed appropriate.

Respectfully Submitted,
HOTSHOT, POTSHOT & ROWE, LLP

Phil Hotshot, Esquire
Supreme Court ID: 394858

614 N. Third Street
Harrisburg, PA 17101
717-512-0620
Counsel for Respondent

**COMMONWEALTH OF PENNSYLVANIA,
DPEARTMENT OF PUBLIC WELFARE**

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, Complainant	:	
	:	
v.	:	Docket No. 555AA (LIC)
	:	
ASSURED SATISFACTION PERSOANL CARE FACILITY, INC. Respondent	:	
	:	

RESPONDENT’S MOTION TO RECUSE THE HEARING EXAMINER

Respondent, Assured Satisfaction Personal Care Facility, Inc., through its counsel HOTSHOT, POTSHOT, AND ROWE, LLP moves to request that Hearing Examiner Flippinflop withdraw herself from the Department of Public Welfare proceeding revoking the license of Assured because of a conflict of interest under the authority of 1 Pa. Code § 35.186, in support of which Respondent submits the following:

A. Hearing Examiner Flip-n-flop is also the Hearing Examiner in the BPOA proceeding against Dr. Evil

1. On _____, 2008, Hearing Examiner Flippinflop was assigned to preside over the license revocation of Assured Satisfaction Personal Care Facility, Inc. in the Department of Pubic Welfare.

2. The next day _____, 2008 Hearing Examiner Flippinflop was assigned to preside over the license revocation proceeding of Dr. Evil, Assured’s Chief Medical Officer, in the Bureau of Professional and Occupational Affairs.

3. Under the purview of 1 Pa. Code. § 35.186, a presiding officer “may be withdrawn . . . for good cause found after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the agency head or by another presiding officer to whom the agency head has delegated the matter for investigation and report.”

4. In this case, Hearing Examiner Flippinflop’s service as Hearing Examiner in the BPOA proceeding gives “good cause” for withdraw under 1 Pa. Code § 35.186 because Hearing Examiner Flippinflop will be subject to prejudicial evidence against Assured that is not material to the proceeding in the Department of Public Welfare.

5. Due to the nature of the evidence that will be presented in the BPOA proceeding and the nature of the proceeding that will be taking place with the Department of Public Welfare, it will be difficult for Hearing Examiner Flippinflop to keep the evidence separated from the proceedings and maintain an objective status.

B. Hearing Examiner Flippinflop has an untoward bias by reason of her father being a resident at Assured’s facility

6. On _____, 2006, Elijah Twistnturn was accepted as a resident at Assured’s facility.

7. On _____, 2008, after the commencement of the DPW action against Assured, Assured learned that Hearing Examiner Flippinflop is related to Mr. Twistnturn.

8. Mr. Twistnturn has been a resident at Assured during the time that the DPW is alleging violations took place at Assured’s facility.

9. During a pre-hearing conference, Defense counsel brought the connection to the attention to Hearing Examiner Flippinflop.

10. Due to the bias that will taint the proceeding stemming from Mr. Twistnturn being related to the hearing examiner, the relationship between the two amounts to “good cause” for withdraw under 1 Pa. Code § 35.186.

WHEREFORE the foregoing being true, Respondent by and through its counsel HOTSHOT, POTSHOT, AND ROWE, LLP request that Hearing Examiner Flippinflop be withdrawn from the Department of Public Welfare proceeding against Assured, as well as any other relief that the Department deems appropriate.

Respectfully Submitted,

HOTSHOT, POTSHOT & ROWE, LLP

Phil Hotshot, Esquire
Supreme Court ID: 394858

614 N. Third Street
Harrisburg, PA 17101
717-512-0620
Counsel for Respondent

**COMMONWEALTH OF PENNSYLVANIA,
DPEARTMENT OF PUBLIC WELFARE**

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
DEPARTMENT OF	:	
PUBLIC WELFARE,	:	
Complainant	:	
	:	
v.	:	Docket No. 555AA (LIC)
	:	
ASSURED SATISFACTION	:	
PERSOANL CARE FACILITY, INC.	:	
Respondent	:	

AFFIDAVIT IN SUPPORT OF THE MOTION TO RECUSE

September 8, 2008

Dr. Statan Evil, M.D.
11 Fake Ave.
Fakeburg, Pennsylvania 17105

Head of the Department of Public Welfare:

It has recently come to the attention of our administrative staff that one Elijah Twistnturn has been a resident of our facility during the time that your Department says that we were in violation of the Public Welfare Code and the regulations thereunder.

Elijah Twistnturn is the father of Hearing Examiner Flipinflop who will be conducting the licensing revocation proceeding against my facility, Assured Satisfaction. In my opinion, this constitutes an unprofessional bias and something should be done to remove her. I have contacted Assured's counsel regarding this matter. I was informed that all legal options will be taken to remedy this situation.

Thank you for your consideration on this matter.

Sincerely,

Dr. Statan Evil, M.D.

Notarized: 9/8/2008

SECTION THREE: INTERVENTION

BEFORE THE
PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

Pennsylvania Department of Public Welfare	:	
	:	
v.	:	Docket No. 555AA (LIC)
	:	
Assured Satisfaction Personal Care Facility	:	

**PETITION TO INTERVENE OF
MOTHERS AGAINST UNDERAGE DRINKING EVER**

Pursuant to 1 Pa. Code §§ 35.27-35.32, Mothers Against Underage Drinking Ever (“MAUDE”) petitions to intervene in the above-captioned matter. MAUDE has a direct interest in the allegations regarding under age drinking at the facility in question, which cannot be adequately represented by any other party to this proceeding, and its interests in under age drinking are directed affected by the outcome of this proceeding. Therefore, its Petition should be granted. In connection with its Petition, MAUDE represents as follows:

1. MAUDE is a non-profit Delaware corporation with a business address of 1 Bourbon Street, Bacardi, PA.
2. MAUDE was founded to increase public awareness of the problem of under age drinking and alcohol abuse, to assist in the prevention of under age drinking and alcohol abuse, and to help those families who have been victimized by under age drinking or alcohol abuse cope with the incidents and effects of such abuse.
3. The Pennsylvania Department of Public Welfare (“DPW”) initiated an action against Assured Satisfaction Personal Care Facility (“Assured”) alleging numerous violations of DPW regulations. Included among the violations are allegations

of under age drinking by Assured employees occurring at the facility and that the facility is aware of such under age drinking on its premises.

4. Eligibility to intervene in a DPW proceeding is governed by the Commonwealth's General Rules of Administrative Procedure regarding intervention 1 Pa. Code §§ 35.27-35.32. Under Section 35.28, a "right or interest" sufficient to warrant intervention includes an interest that may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Agency in the proceeding; or, another interest of such nature that participation of the petitioner may be in the public interest. 1 Pa. Code § 35.28(a)(2).

5. MAUDE has a direct interest in this proceeding. As a non-profit organization that seeks to prevent under age drinking and alcohol abuse and as an entity that assists families in dealing with the incidents and effects of under age drinking and alcohol abuse, MAUDE has a direct interest in the allegations that under age employees are consuming alcohol at Assured and has a direct interest in the outcome of this proceeding. Thus, MAUDE's intervention serves the public interest.

6. And, MAUDE's interests are not adequately represented by any other party to this proceeding. Although DPW has raised the issue of under age drinking at the facility, DPW has not emphasized this issue in its pleadings. MAUDE is the only entity in this proceeding whose sole concern is regarding under age drinking and alcohol abuse. Thus, no other participant in this case can adequately represent MAUDE's specific and unique interests.

7. Nor is MAUDE's seeking essentially representational standing to intervene an adequate basis to deny intervention. As noted by another Commonwealth agency, a party asserting representational standing should not be denied such status solely because the party itself does not have an interest as a customer, competitor, or consumer. Pa. Natural Gas Assoc. v. T. W. Phillips Gas & Oil Co., 1991 Pa. PUC LEXIS 195.

WHEREFORE, for all the foregoing reasons, MAUDE respectfully requests that its Petition to Intervene be granted and that the DPW grant such other relief as is just and reasonable under the circumstances.

Dated: _____

Attorneys for MAUDE

BEFORE THE
PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

Pennsylvania Department of Public Welfare	:	
	:	
v.	:	Docket No. 555AA (LIC)
	:	
Assured Satisfaction Personal Care Facility	:	

PETITION TO INTERVENE OF
CONCERNED CITIZENS FOR THE RESIDENTS OF ASSURED
SATISFACTION PERSONAL CARE FACILITY

Concerned Citizens for the Elderly Residents of the Assured Satisfaction Personal Care Facility ("CCRAS") petitions to intervene in the above-captioned matter, pursuant to 1 Pa. Code §§ 35.27-35.32. CCRAS represents the interests of 10 elderly residents of the facility in question, and thus, represents 10 customers, consumers or patrons of the facility. Thus, CCRAS has a direct interest in the allegations raised in and the outcome of this proceeding. Therefore, CCRAS should be permitted to intervene in this matter. In connection with its Petition, CCRAS represents as follows:

1. CCRAS is an association that was formed to protect the interests of elderly residents living in personal care facilities in Central Pennsylvania.
2. CCRAS has 25 members overall. CCR has 10 elderly members, all whom reside at the Assured Satisfaction Personal Care Facility ("Assured"). CCRAS also has 15 members who are friends, family, and/or legal guardians of the 10 elderly residents of Assured.

3. The Pennsylvania Department of Public Welfare ("DPW") initiated an action against Assured alleging numerous violations of DPW regulations. The violations include allegations, among other things, physical and mental abuse of residents in the form of withholding medication and improper methods of restraint.

4. Eligibility to intervene in a DPW proceeding is governed by the Commonwealth's General Rules of Administrative Procedure regarding intervention 1 Pa. Code §§ 35.27-35.32. Under these rules, a "right or interest" sufficient to warrant intervention includes consumers, customers or other patrons served by the applicant or respondent; holders of securities of the applicant or respondent; employees of the applicant or respondent; competitors of the applicant or respondent. 1 Pa. Code § 35.28(a)(2).

5. CCRAS clearly has a direct interest in this proceeding that warrants intervention. As the entity representing facility residents who are "consumers, customers or patrons" of the facility, CCRAS has a direct interest in the allegations regarding the quality of care rendered at the facility and in the outcome the proceeding. Therefore, CCRAS is entitled to intervene.

WHEREFORE, for all the foregoing reasons, CCRAS respectfully requests that its Petition to Intervene be granted and that the DPW grant such other relief as is just and reasonable under the circumstances.

Dated: _____

Attorneys for CCRAS

BEFORE THE
PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

Pennsylvania Department of Public Welfare	:	
	:	
v.	:	Docket No. .
	:	
Assured Satisfaction Personal Care Facility	:	

ASPCF’S ANSWER TO MAUDE’S PETITION TO INTERVENE

Respondent Assured Satisfaction Personal Care Facility (“ASPCF”), by their undersigned counsel, file this answer pursuant to 1 Pa. Code § 35.36 to Mothers Against Underage Drinking Established’s (“MAUDE’s”) petition to intervene in the above proceeding, and in support thereof states as follows:

1. Pursuant to 1 Pa. Code § 35.28, a petition to intervene may be filed where a person is claiming an *“interest which may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by the action of the agency in the proceeding”* (Emphasis added.)

2. MAUDE has failed to establish that its interests are directly affected by this proceeding. 1 Pa. Code § 35.28(a)(2). The Department of Public Welfare’s (the “Department’s”) action seeks to revoke ASPCF’s authorization to operate its facility absent an acceptable plan of compliance. MAUDE’s interests in this proceeding are general in nature and will not be affected in a way that is any different than the interests of the public at large. 1 Pa. Code § 35.28(a)(3). No members of MAUDE, or relatives of members of MAUDE, are employed by ASPCF. Further, MAUDE will not be bound by the Department’s ultimate determination in this proceeding. Because MAUDE failed to establish that its interests are directly affected, its petition to intervene should be denied.

3. MAUDE's interests are adequately represented by existing parties. 1 Pa. Code § 35.28(a)(2). In fact, MAUDE admits that the Department initiated the above action, in part, due to allegations of under age drinking by ASPCF employees. The Department's investigation into these allegations as part of this proceeding are adequate to represent MAUDE's interests. Further, ASPCF's interest in this proceeding is significant, and to the extent any alleged negligent behavior of ASPCF employees stands in the way of it being able to properly run the facility, ASPCF has a vested interest in eradicating such negligent behavior. MAUDE does not bring anything new to the table. Because MAUDE's interests are adequately represented by existing parties, its petition to intervene should be denied.

4. MAUDE is not entitled to intervene because it will not be bound by any action taken by the Department in this proceeding. 1 Pa. Code § 35.28(a)(2); *Wilksburg Education Association v. Wilksburg School District*, 690 A.2d 1252, 1257 (Pa. Cmwlth. 1996). The Department's action in this proceeding does not bind MAUDE, or any of its members, in any way. The members of MAUDE do not possess any additional rights or obligations as a result of the Department's action. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1186 (Pa. 2002). Because MAUDE will not be bound by the Department's action, its petition to intervene should be denied.

5. MAUDE has failed to establish that it has standing to appeal. *Apple v. Insurance Department*, 431 A.2d 1183 (Pa. Cmwlth. 1981). No members of MAUDE, or relatives of members of MAUDE, are employed by ASPCF. Further, MAUDE has not established that its interests are affected in any way that is greater than that faced by the

public at large. Because MAUDE failed to establish that it has standing in this proceeding, its petition to intervene should be denied.

WHEREFORE, ASPCF requests that MAUDE's petition to intervene be denied.

Attorneys for ASPCF

Dated:

SECTION FOUR: REFERENCE MATERIALS

~ ~ RULES ~ ~

(Rules listed in order of appearance)

Order to Show Cause:

- Public Welfare Code, Act of June 13, 1967, P.L. 31, as amended, 62 P.S. §§ 501-508, 701-704
- 63 P.S. §§ 2201-2207
- General Rules of Administrative Practice and Procedure (G.R.A.P.P.), 1 Pa. Code §§ 31.1-35.251
- G.R.A.P.P., 1 Pa. Code § 35.37
- 62 P.S. § 1026(b)(5)
- G.R.A.P.P., 55 Pa. Code § 2600.261
- 62 P.S. § 1026(b)(1)
- G.R.A.P.P., 55 Pa. Code § 2600.164(a)
- 62 P.S. § 1026(b)(4)
- G.R.A.P.P., 55 Pa. Code § 2600.43
- G.R.A.P.P., 55 Pa. Code § 2600.44(b)
- G.R.A.P.P., 55 Pa. Code § 2600.15(a)
- G.R.A.P.P., 55 Pa. Code § 2600.15(b)
- G.R.A.P.P., 55 Pa. Code § 2600.15(d)
- G.R.A.P.P., 55 Pa. Code § 2600.16
- 35 P.S. 10225.502(a)(1)
- Older Adults Protective Services Act, Act of December 18, 1996, P.L. 381 as amended 35 P.S. §§ 10225.101-10225.5102
- 18 Pa. C.S. § 4101
- 18 Pa. C.S. § 3701
- 18 Pa. C.S. § 2702
- 18 Pa. C.S. § 2502
- 35 P.S. 10225.503(a)(2)
- G.R.A.P.P., 55 Pa. Code 2600.54(a)(3)
- G.R.A.P.P., 55 Pa. Code § 2600.188(a)
- G.R.A.P.P., 55 Pa. Code § 2600.188(b)
- G.R.A.P.P., 55 Pa. Code § 2600.188(c)
- G.R.A.P.P., 55 Pa. Code § 2600.188(d)
- G.R.A.P.P., 55 Pa. Code § 2600.16(a)(13)
- G.R.A.P.P., 55 Pa. Code § 2600.16(c)
- 62 P.S. § 1026(4)

- G.R.A.P.P., 55 Pa. Code § 2600.43(a)
- G.R.A.P.P., 55 Pa. Code § 2600.43(b)
- G.R.A.P.P., 55 Pa. Code § 2600.16(a)(4)
- G.R.A.P.P., 55 Pa. Code § 2600.262
- G.R.A.P.P., 55 Pa. Code § 2600.266

Answer to Order to Show Cause:

- G.R.A.P.P., 1 Pa. Code § 35.37

Motion to Dismiss:

- 62 P.S. § 1026(a)
- G.R.A.P.P., 1 Pa. Code § 35.14
- 62 P.S. § 1026(b)
- G.R.A.P.P., 55 Pa. Code § 20.71
- 63 P.S. § 422, et seq.
- G.R.A.P.P., 49 Pa. Code § 16, et seq.
- G.R.A.P.P., 49 Pa. Code § 16.41-16.61
- G.R.A.P.P., 49 Pa. Code § 16.51

Motion to Strike:

- G.R.A.P.P., 1 Pa. Code § 35.14
- G.R.A.P.P., 1 Pa. Code § 35.161

Motion in Limine:

- 2 Pa. C.S.A. § 502
- G.R.A.P.P., 1 Pa. Code § 35.161
- 2 Pa. C.S.A. § 505
- Pa. R.E. 801(c)
- Pa. R.E. 801(a)(1)
- Pa. R.E. 804
- Pa. R.E. 804(a)(1)
- Pa. R.E. 804(a)(2)
- Pa. R.E. 804(a)(3)
- Pa. R.E. 804(a)(4)
- Pa. R.E. 804(a)(5)
- Pa. R.E. 804(b)(1)

- Pa. R.E. 804(b)(2)
- Pa. R.E. 804(b)(3)
- Pa. R.E. 804(b)(4)

Motion to Recuse:

- G.R.A.P.P., 1 Pa. Code §35.186

M.A.U.D.E.'s Petition to Intervene:

- G.R.A.P.P., 1 Pa. Code §§ 35.27-35.32
- G.R.A.P.P., 1 Pa. Code §35.28(a)(2)

C.C.R.A.S.'s Petition to Intervene:

- G.R.A.P.P., 1 Pa. Code §§ 35.27-35.32
- G.R.A.P.P., 1 Pa. Code §35.28(a)(2)

Answer to M.A.U.D.E.'s Petition to Intervene:

- G.R.A.P.P., 1 Pa. Code §35.36
- G.R.A.P.P., 1 Pa. Code §35.28
- G.R.A.P.P., 1 Pa. Code §35.28(a)(2)
- G.R.A.P.P., 1 Pa. Code §35.28(a)(3)

~ ~ CASES ~ ~

(Listed alphabetically)

- *Apple v. Insurance Department*, 431 A.2d 1183 (Pa. Cmwlth. 1981)
- *Clites v. Commonwealth, Dept of Public Welfare*, 548 A.2d 1345
- *Commonwealth, State Bd. Of Medical Ed. and Licensure v. Contackos*, 346 A.2d 850 (Pa. Cmwlth. Ct. 1975)
- *McFarland v. Commonwealth, Dept. of Public Welfare*, 551 A.2d 364 (Pa. Cmwlth. Ct. 1988)
- *Miller Home, Inc. v. Commonwealth, Dept. of Public Welfare*, 556 A.2d 1 (Pa. Cmwlth. Ct. 1989)
- *Pa. Natural Gas Assoc. v. T. W. Phillips Gas & Oil Co.*, 1991 Pa. PUC LEXIS 195
- *Pine Haven Residential Care Home v. Commonwealth, Dept. of Public Welfare*, 512 A.2d 59 (Pa. Cmwlth. Ct. 1986)
- *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172 (Pa. 2002)
- *Westinghouse Electric Co. v. WCAB (Pollock)*, 507 A.2d 1287 (Pa. Cmwlth. Ct. 1986)
- *Wilkinsburg Education Association v. Wilkinsburg School District*, 690 A.2d 1252 (Pa. Cmwlth. 1996)