IOWA DEPARTMENT OF
INSPECTIONS & APPEALS

CHESTER J. CULVER
GOVERNOR

PATTY JUDGE
LT. GOVERNOR

DEAN A. LERNER, DIRECTOR

June 11, 2009

Complaint Intake: #22349-C
#22353-C

Libby Bloye, Director of Housing Operations
Oak Park Place Assisted Living
1381 Oak Park Place
Dubuque, IA 52002-2286

RE: I. Final Complaint Investigation Report– #122349-C & #22353-C– Dubuque, IA
II. Immediate Sanction - Conditional Operation
III. Civil Penalty
IV. Hearings and Appeals
V. Conclusion

Dear Ms. Bloye:

I. Final Complaint Investigation Report – Oak Park Place, Dubuque, IA

Enclosed is the **Final Complaint Investigation Report** completed by the Department of Inspections and Appeals (DIA) in accordance with Iowa Code section 231C.7 (2009) and Iowa Administrative Code, chapters 321—25, pertaining to assisted living programs and 321—26, pertaining to monitoring, civil penalties and complaints regarding assisted living programs. The Final Report notes **Regulatory Insufficiencies** in the areas of: **Service Plans, Staffing, Record Checks and Other**

DIA is accepting the Plan of Correction (POC).

II. Immediate Sanction - Conditional Operation

As reflected in this Report, the program failed to comprehensively follow the regulations in 321 IAC Chapter 25. Due to the program's noncompliance, current Regulatory Insufficiencies and the findings of the on-site monitoring visit of April 8, 2009, Oak Park Place's Conditional Certificate, effective August 26, 2008, remains in effect. The Conditional Certificate is to continue until such time as the program is in compliance, but in no case longer than August 25, 2009. The Conditional Certificate is issued as an alternative to denial, suspension or revocation pursuant to Iowa Code section 231C.10(12).

The previous sanctions of completing Dependent Adult Abuse (DAA) training of all remaining staff and the submission of documentation to DIA, the restriction from admitting any new tenants, the requirement to submit monthly updates to DIA of medication reviews and nurse delegation training forms, life safety training forms and dependant adult abuse training on all staff, are discontinued.

The sanctions remain the same and include: a Conditional Certificate, effective August 26, 2008, to remain in effect until such time as the program is in compliance, but in no case longer than **August 25, 2009,** the program may admit no more than 2 tenants per week.

Oak Park Place's Conditional Certificate will expire on August 25, 2009. If the Program is not in compliance by that time the DIA will have no choice but to revoke the program's certification. In other words, you have seventy five (75) days to come into compliance or you will no longer be allowed to conduct business as an Assisted Living Program.

III. Civil Penalty

If no appeal is requested within 30 days of receipt of this Final Report the civil penalty obligation, in the amount of five thousand five hundred ($5,500.00) dollars, is required.

IV. Hearings/Appeals

The Program may appeal the DIA decision as related to the sanctions in accordance with 321 IAC 26.4, within 30 days of notice, by submitting a request for hearing to the DIA. Hearings will be held pursuant to 481 IAC Chapter 10. If the program appeals, the civil penalty will be suspended, pending appeal. If the program does not appeal, the fine is due within 30 days of notice.

V. Conclusion

The Plan of Correction is accepted. The Conditional Certificate and above sanctions are in effect. DIA will revisit the program to confirm compliance in fulfilling the POC's corrective measures. If the program wishes to appeal or request a hearing on the final findings, the program may do so within 30 days of this letter.

Oak Park Place is being assessed a $5,500.00 civil money penalty.

If you have any questions in regard to these matters, please contact me at (515) 281-5077.

Sincerely,

Ann Martin, Bureau Chief
Adult Services Bureau

Enclosure

Iowa Department of Inspections and Appeals
Assisted Living Program
Final Complaint Investigation Report

Assisted Living Program:

Libby Bloye, Director of Housing Operations
Oak Park Place
1381 Oak Park Place
Dubuque, IA 52002-2286

Complaint Intake #: 22349-C
22353-C

Date of Investigation:

April 8, 2009

Monitor(s):

Hal Chase, RN BSN MPH
Stephanie Cummins, MA

Definitions:

The following definitions are relevant:

Regulatory Insufficiency - A violation of a statutory or rule provision within the Iowa Code or Iowa Administrative Code (IAC) governing assisted living programs. A regulatory insufficiency requires a plan of correction to be presented to, and approved by, the Department of Inspections and Appeals (DIA).

Plan of Correction - A written response to one or more regulatory insufficiencies that are rule violations [321 IAC 26.2(5)(a)]. The plan should identify how, and by a specific date, an insufficiency will be corrected. The plan is due to DIA within ten (10) working days of the program's receipt of a Complaint Investigation Report. Depending on the circumstances, DIA may revisit the assisted living program to confirm progress in fulfilling a plan's corrective measures.

Dementia-specific assisted living program - An assisted living program certified under 321 IAC - chapter 25 that either serves five or more tenants with dementia or cognitive disorder staged between 4 and 7 on the Global Deterioration Scale or holds itself out as providing special care for persons with cognitive disorder or dementia, such as Alzheimer's disease, in a dedicated setting.

Overview:

A complaint investigation on-site visit was conducted at Oak Park Place on April 8, 2009. In preparing this report, the following information was considered:

Current Program Census:

General Population Program (GPP)* – A program that is not a Dementia Specific program, but may have tenants with cognitive disorder.

Current number of tenants without cognitive disorder:	32
Current number of tenants with cognitive disorder:	2
Total Population of GPP:	34

Dementia Specific Program (DSP)* – A program that is dementia specific and provides specialized care in a dedicated setting.

Total Population of DSP:	12
Total Census of ALP:	46

***These are the census numbers represented by the program to be applicable at the time of the on-site.**

Accreditation Status – Not applicable.

Program History – There have been substantiated Regulatory Insufficiencies this certification period in the areas of: Evaluation of Tenants, Criteria for Exclusion of Tenants, Service Plans, Medications, Nurse Review, Food Service, Staffing and Other.

The March 31, 2008 recertification revisit resulted in a fine of $2,500.00 with Regulatory Insufficiencies in the areas of: Evaluation of Tenants, Service Plans, Medications, Nurse Review and Other.

The July 24, 2008 complaint, complaint revisit and 2nd recertifcation revisit resulted in a fine of $4,000.00, the issuance of a Conditional Certificate effective August 26, 2008 and a sanction that the program will train all staff on Dependent Adult Abuse and present documentation of the training to the Iowa Department of Inspections and Appeals (DIA). Regulatory Insufficiencies were noted in the following areas: Evaluation of Tenants, Criteria for Exclusion of Tenants, Staffing and Other.

The September 25 & 29, 2008 complaint visit resulted in a fine of $10,000.00. The conditional certificate, effective August 26, 2008, remains in effect and the sanction of completing Dependent Adult Abuse Training and presenting documentation of the training to DIA continues. Other sanctions include a restriction on admitting new tenants, submission of monthly updates of medication reviews (MARs), submission of nurse delegation training forms and the submission of life safety training forms.

The January 5 & 6, 2009 complaint visits and revisits resulted in a fine of $2,000.00. The Conditional Certificate, effective August 26, 2008, is to remain in effect until such time as the program is in compliance, but in no case longer than **August 25, 2009.** Sanctions include: the program may admit up to 2 tenants per week, and the program is

required to conduct Life Safety Code training with all staff in regard to the securing of all chemicals and submit this documentation and the training agenda to DIA.

Complaint Investigation – The complaint investigator(s) made the observations detailed in the following areas.

A. Service Plan – Program has an individualized service plan developed and updated for each tenant as required. [321 IAC 25.28]

Complaint Allegation #22349-C: It was alleged two tenants got into a fight and one tenant hit another tenant and staff were present during the incident and did nothing. It was alleged a tenant was not toileted every two hours as he/she is supposed to be and the tenant had open sores, previously, due to the lack of toileting.

Monitoring Observation: Four tenant files were reviewed.

Tenant #2, an 86 year old, was admitted on 1-27-06 and diagnoses include: Peripheral Neuropathy with Foot Drop, Atrial Fibrillation, Depression, Diffuse Osteoarthritis and Essential Tremors. Tenant #2 was interviewed and indicated there had been three separate occasions when Tenant #3 had confronted him/her. According to the tenant, in December, 2008, there was a short argument, in January, 2009, Tenant #3 kicked Tenant #2's shin with his/her shoe and in March, 2009, when Tenant #2 was waiting by the elevator, Tenant #3 hit Tenant #2 in the head. Staff was present when the March incident occurred; however, the tenant did not remember which staff was present. Staff #3 and the Director of Housing Operations indicated they were not present when any of the incidents occurred. Staff #3 stated she responded to an incident after staff called; however, the incident occurred before she arrived.

Tenant #3, a 90 year old, was admitted on 11-1-05 and diagnoses include: Hypertension (HTN), Benign Prostate Hypertrophy (BPH) and Degenerative Arthritis. Tenant #3 was interviewed and indicated in December, 2008 Tenant #3 and Tenant #2 had a short argument and nothing else was said between each other. The tenant's service plan did not reflect the incidents and interventions regarding the occurrences.

- Regulatory Insufficiency: The program did not consistently provide individualized service plans that indicated at a minimum the tenants identified needs and the tenant's requests for assistance and expected outcomes. (25.28(4)(a))

B. Staffing - The provisions of this section address the program's staffing and training practices and associated documentation in responding to the identified needs of the tenant. [321 IAC 25.33]

Complaint Allegation #22349-C: It was alleged a staff requested pain medication from a tenant and the tenant was afraid that staff would treat him/her badly if he/she said anything.

Monitoring Observation: Tenant #1, an 86 year old, was admitted 3-5-08 and diagnoses include: HTN, Pure Hypercholesterolemia, Arthropathy Not Elsewhere Classified (NEC), Depressive Disorder and Advanced Degenerative Arthritis.

The following information is from a statement and an interview with the Director of Housing Operations. On 3-3-09 Staff #1 was reported to have been observed requesting a pain medication from Tenant #1. The tenant did not give the staff any medication. According to a Disciplinary Action Form dated 3-3-09, the staff asked a tenant for a pain

medication and the tenant refused to give the medication. It was identified on the form that this was a critical offense and a final warning and Staff #1 refused to sign the form. Staff #1 was hired on 9-26-08 and was terminated on 3-8-09.

Tenant #1 was interviewed and indicated he/she did not require staff assistance with medications. The tenant stated none of the staff had requested or borrowed medications from him/her. The tenant reported he/she did not have any medication missing. According to the tenant, he/she was not fearful staff would treat him/her badly if he/she reported concerns.

- Regulatory Insufficiency: None noted.

Complaint Allegation#22349-C: It was alleged a tenant was not toileted appropriately and this was reported to staff and nothing was done. It was alleged a tenant's bathroom was not cleaned appropriately after toileting and the toilet had urine all over it.

Monitoring Observation: Tenant #4, a 75 year old, was admitted on 12-2-05 and diagnoses include: Hyperlipidemia, Cerebral Vascular Accident (CVA), Transient Ischemic Attack (TIA), Elevated Blood Pressure, Dementia and Depression. The tenant had a Global Deterioration Scale (GDS) of five, which indicated moderately severe cognitive impairment.

Tenant #2 and Tenant #4 reported staff do not toilet Tenant #4 every two hours and he/she is usually toileted at 11:00 a.m. and 4:00 p.m. Tenant #4 did not want to be toileted every two hours and did not want to be toileted at night. The Director of Housing Operations indicated, in the last couple of days, it had been brought to her attention that Tenant #4 was more verbally resisting toileting. Tenant #2 stated Tenant #4 was in his/her apartment during the day and early evening and Staff toileted Tenant #4 in his/her apartment. Tenant #2 stated staff did not clean up after toileting Tenant #4 as the toilet seat was wet with urine, the floor had urine on it and the trash was not emptied after they discarded the undergarments. Tenant #4 indicated staff did not always clean up after toileting.

- Regulatory Insufficiency: The program did not consistently provide sufficient trained staff available at all times to fully meet tenants identified needs. (25.33(1))

C. Record Checks – The program conducts applicable employee record checks. [Iowa Code section 135C.33(5)]

Complaint Allegation #22353-C: It was alleged the program hired a caregiver without a complete background check and the caregiver had a hit that required additional information; however, may be hired immediately.

Monitoring Observation: Five staff files were reviewed.

Staff #2 was hired on 3-9-09. Criminal history and dependent adult abuse checks were completed on 2-24-09 and a potential hit was found on the dependent adult abuse registry. The Department of Human Services (DHS) determined from the Record Check Evaluation that Staff #2 could work in a health care facility. The letter from DHS was dated 3-31-09, after hire.

- Regulatory Insufficiency: The program did not consistently complete an evaluation performed by the Department of Human Services of the potential employee, prior to hire. (135C.33(4))

D. Other – The provisions of this section address the program's noncompliance with other applicable statutory and administrative rule requirements.

During the course of the investigation, the following information was obtained.

Monitoring Observation: The monitor requested five staff files to review regarding background checks, including Staff #2's file.

Staff #2 was hired on 3-9-09. Criminal history and dependent adult abuse checks were completed on 2-24-09 and a potential hit was found on the abuse registry. The letter received from DHS, indicating Staff #2 was able to be employed by the program, was dated 3-31-09, after hire.

The letter from DHS, in Staff #2's file, did not have a date that the DHS evaluation was completed. The monitor called DHS to determine the date of the evaluation. The DHS worker indicated the letter was dated 3-31-09 and it should be below the address on the letter. The monitor indicated the date was not present on the letter and requested the letter with the date be faxed to the program. The second letter was faxed from DHS and indicated the evaluation was completed on 3-31-09 and the date appeared below the address on the letter.

The initial letter given to the monitor by the program and the subsequent letter faxed from DHS were reviewed and differences with the letters were discovered. The first letter, which was provided by the program, did not have a date the evaluation was completed; however, space was present between the program address and the greeting. The second letter sent by DHS, as requested by the monitor, had the date present between the program address and the greeting. The first letter did not have any facsimile transmission information on the document. The second letter sent by DHS had the facsimile transmission information on the top of the document. The DHS worker indicated the evaluations were faxed as soon as completed (same day). The first letter is crooked on the page and the second letter is not. The first letter has two circles at the top of the page that appear to be from a copy that shows a hole punch used to allow the paper to be filed in a file. Background check information was kept in a file with paper that has two holes punched at the top. The copies of the other four staff background checks made by the program have two circles on the top of the document similar to that of the first letter. The second letter sent by DHS did not have the two circles at the top of the letter.

Staff #3 stated she primarily did background checks and did not have an explanation regarding the letter from DHS that did not have a date on it. Staff #3 stated she had no idea who would have altered documents if the documents were altered.

The Director of Housing stated Staff #3 runs the checks and she was notified of the hit on Staff #2's background check.

- Regulatory Insufficiency: DIA may deny, suspend, or revoke a certificate for an Assisted Living Program if the Program is permitting, aiding or abetting the commission of any illegal act. (231C.10(d))

Dated this 11th day of June, 2009.